Advance Sheet No. 2 | August 2, 2013 | Pages 129-528 Acts 32-99

2013 REGULAR SESSION

Acts and Joint Resolutions

of the

GENERAL ASSEMBLY
OF THE STATE OF SOUTH CAROLINA

(continued on inside cover)

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.

James H. Harrison, Code Commissioner, P.O. Box 11489,
Columbia, S.C. 29211

If the first portion of the act on the opposite page is incomplete, see the preceding Advance Sheet for the first portion.

"Section 2-13-190. After receiving the page proofs corrected from the Code Commissioner, the Legislative Services Agency shall print the same and shall deliver not more than twenty-five copies to the Code Commissioner as the commissioner orders. LSA 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."

Name changed

SECTION 9. Section 2-13-200 of the 1976 Code is amended to read:

"Section 2-13-200. The Code Commissioner and the Legislative Council may sell the service mentioned in Section 2-13-190 on terms agreeable to the council and the Code Commissioner. All funds received for this service must be deposited in the state treasury, to the credit of the General Fund of the State, but before any funds are paid into the state treasury, the expenses of the Code Commissioner and the Legislative Services Agency (LSA) for additional supplies, postage, and clerical help may be first deducted. Payment of these additional expenses may be made on order of the Chairman of the Legislative Council and the Clerks of the House and Senate."

Name changed

SECTION 10. Section 2-13-210 of the 1976 Code is amended to read:

"Section 2-13-210. Within twenty-five days after the adjournment of any session of the General Assembly, the Code Commissioner shall furnish the Director of the Legislative Services Agency all acts and joint resolutions passed, and which have been approved by the Governor. The Code Commissioner shall deliver to the Director of the Legislative Services Agency, within fifteen days after the receipt of the final page proof, a complete index of all the acts and joint resolutions furnished the director and such other copy as may be necessary for the published acts. The style and makeup of the acts and joint resolutions must be in such form as the Code Commissioner and Clerks of the Senate and the House may agree upon."

Name changed

SECTION 11. Section 11-35-310(18) of the 1976 Code is amended to read:

"(18) 'Governmental Body' means a state government department, commission, council, board, bureau, committee, institution, college, university, technical school, agency, government corporation, or other establishment or official of the executive or judicial branch. Governmental body excludes the General Assembly or its respective branches or its committees, Legislative Council, the Legislative Services Agency, and all local political subdivisions such as counties, municipalities, school districts, or public service or special purpose districts or any entity created by act of the General Assembly for the purpose of erecting monuments or memorials or commissioning art that is being procured exclusively by private funds."

Name changed

SECTION 12. Section 11-53-20 of the 1976 Code is amended to read:

"Section 11-53-20. It is mandated by the General Assembly that the SCEIS shall be implemented for all agencies, with the exception of lump-sum agencies, the General Assembly or its respective branches or its committees, Legislative Council, and the Legislative Services Agency. The South Carolina Enterprise Information System Oversight Committee, as appointed by the Comptroller General, shall provide oversight for the implementation and continued operations of the system. The Budget and Control Board is authorized to use any available existing technology resources to assist with funding of the initial implementation of the system. It is further the intent of the General Assembly to fund the central government costs related to the implementation of the system. Agencies are required to implement SCEIS at a cost and in accordance with a schedule developed and approved by the SCEIS Oversight Committee. Full implementation must be completed within five years. An agency's implementation cost shall be borne by that agency through existing appropriations, grants, and/or the State Treasurer's Master Lease Program and shall be for the implementation of the 'back office' administrative functions that are common to all agencies in the areas of purchasing, finance, human

resources, payroll, and budgeting. Any issues arising with regard to project scope, implementation schedule, and associated costs shall be directed to the SCEIS Oversight Committee for resolution. In cooperation with the Comptroller General and the Budget and Control Board's Division of State Information Technology, the South Carolina Enterprise Information System Oversight Committee is required to report by January thirty-first of the fiscal year to the Governor, the Chairman of the Senate Finance Committee, and the Chairman of the House Ways and Means Committee the status of the system's implementation and on-going operations."

Name changed

SECTION 13. Section 29-6-250(4) of the 1976 Code is amended to read:

"(4) For purposes of this section, 'governmental body' means a state government department, commission, council, board, bureau, committee, institution, college, university, technical school, agency, government corporation, or other establishment or official of the executive or judicial branch, and all local political subdivisions. Governmental body excludes the General Assembly or its respective branches or its committees, Legislative Council, the Legislative Services Agency, or any entity created by act of the General Assembly for the purpose of erecting monuments or memorials or commissioning art that is procured exclusively by private funds."

Time effective

SECTION 14. This act takes effect upon approval by the Governor.

Ratified the 15th day of May, 2013.

Approved the 21st day of May, 2013.

No. 32

(R43, H3829)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING ARTICLE 18 TO CHAPTER 53, TITLE 59 SO AS TO BE CAPTIONED THE "GREENVILLE TECHNICAL COLLEGE AREA COMMISSION"; TO DESIGNATE SECTIONS 1A, 4, AND 5 OF ACT 743 OF 1962 AS SECTIONS 59-53-1500, 59-53-1510, AND 59-53-1520, RESPECTIVELY, OF ARTICLE 18, CHAPTER 53, TITLE 59; AND TO AMEND ARTICLE 18, CHAPTER 53, TITLE 59, RELATING TO THE MEMBERSHIP, POWERS, AND DUTIES OF THE GREENVILLE TECHNICAL COLLEGE AREA COMMISSION, SO AS TO RECONSTITUTE THE MEMBERSHIP OF THE COMMISSION AND THE TERMS AND APPOINTING PROCEDURES FOR MEMBERS.

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

Article caption added

SECTION 1. Chapter 53, Title 59 of the 1976 Code is amended by adding:

"Article 18

Greenville Technical College Area Commission"

Designation of code sections

SECTION 2. (A) Section 1A of Act 743 of 1962, as last amended by Act 310 of 2010, is designated as Section 59-53-1500, Article 18, Chapter 53, Title 59.

(B) Section 4 of Act 743 of 1962 is hereby designated as Section 59-53-1510, Article 18, Chapter 53, Title 59.

(C) Section 5 of Act 743 of 1962, is hereby designated as Section 59-53-1520, Article 18, Chapter 53, Title 59.

Commission membership revised

SECTION 3. Article 18, Chapter 53, Title 59 of the 1976 Code is amended to read:

"Article 18

Greenville Technical College Area Commission

Section 59-53-1500. (A) There is created the Greenville Technical College Area Commission which is a body politic and corporate and the governing body of Greenville Technical College. The commission consists of twelve voting members or area commissioners appointed by the Greenville County Legislative Delegation in the manner provided in this section.

(B) All members must be qualified electors of Greenville County. Each member filling a house district residency seat, as provided for in this section, at the time of their appointment and throughout their term of office, shall reside in a house district corresponding to their membership seat. A change of residency outside of Greenville County, or outside of a corresponding district for members filling house district residency seats, automatically terminates that member's appointment, although, subject to the provisions of subsection (E), the member may serve until a successor is appointed and qualifies to fill the remainder of the unexpired term.

(C) The commission shall have six members designated as occupying house district residency seats, nominated by the Greenville County Council and selected by the Greenville County Legislative Delegation as follows:

(1) Residency Seat No. 1: one member selected from either House District 19, or House District 10;

(2) Residency Seat No. 2: one member selected from either House District 21 or House District 24;

(3) Residency Seat No. 3: one member selected from either House District 20 or House District 22;

(4) Residency Seat No. 4: one member selected from either House District 23 or House District 25;

(5) Residency Seat No. 5: one member selected from either House District 17, House District 18, or House District 36; and

(6) Residency Seat No. 6: one member selected from either House District 16, House District 27, or House District 28.

Current members of the commission residing in these specified house districts are deemed to be the house district residency seat members from those districts.

(D) The commission shall have six at-large members selected by the Greenville County Legislative Delegation as follows:

(1) four at-large members nominated by the Greenville County Council. Each of these four at-large seats must be numbered as Seats 1-4, respectively;

(2) one at-large member nominated by the Greenville County Council from among the Greenville County School District Board of Trustees, including the Superintendent; and

(3) one at-large member nominated by the Greenville County Council from the Greenville County Workforce Investment Board, including the President.

Any public officials selected for the school board and Workforce Investment Board seats shall serve ex officio.

Members are responsible to all areas served by the Greenville Technical College regardless of residency and shall make decisions in the best interests of the Greenville Technical College and all those it serves as a whole. The commission shall elect from among its members a chairman, vice chairman, secretary, and treasurer. Members shall serve without compensation.

(E) Commission members shall serve terms of four years, which expire May thirty-first of the appropriate year, and until their successors are appointed and qualify. A member shall serve until his successor is appointed and qualifies for a period not to exceed one year after expiration of his term. If the Greenville County Legislative Delegation has not filled a seat within one year of the expiration of the term, the member serving in that seat shall cease serving and the seat is vacant until filled. Vacancies must be filled in the manner of the original appointment for the unexpired portion of the term.

(F) A commissioner having served as a member of the commission for a total of twelve years, after the effective date of this subsection, and whether or not consecutive or in different seats, is not eligible for appointment to any additional terms until after he has been off the commission for six consecutive years, at which time, a new twelve-year limitation period commences.

(G) For the purpose of facilitating the transition to this modified commission structure, upon the effective date of this subsection:

(a) the house district residency seats are considered filled as set forth in subsection (C);

(b) the current commissioners filling the school board and Workforce Investment Board-related seats shall fill their respective newly reconstituted subject matter seats; and

(c) the four current remaining commissioners shall become the four at-large members in Seats 1-4 as follows:

(1) current Commissioner Johnson is deemed to fill at-large Seat No. 1;

(2) current Commissioner Ehrmann is deemed to fill at-large Seat No. 2;

(3) current Commissioner Stafford is deemed to fill at-large Seat No. 3; and

(4) current Commissioner Shouse is deemed to fill at-large Seat No. 4.

Thereafter, all commission members must be selected as otherwise set forth in subsections (A) - (F) and (H) - (J) and their terms of office must be staggered and modified as follows:

(1) Block 1: The terms of office for commissioner seats falling within Block 1 initially expire on May 31, 2014, and then expire every four years thereafter. Block 1 shall include:

(a) the at-large member nominated from the Greenville County School District Board of Trustees;

(b) the at-large member nominated from the Workforce Investment Board; and

(c) Residency Seat No. 1.

(2) Block 2: The terms of office for commissioner seats falling within Block 2 initially expire on May 31, 2015, and then expire every four years thereafter. Block 2 shall include:

(a) the at-large member from at-large Seat No. 1;

(b) Residency Seat No. 2; and

(c) Residency Seat No. 3.

(3) Block 3: The terms of office for commissioner seats falling within Block 3 initially expire on May 31, 2016, and then expire every four years thereafter. Block 3 shall include:

(a) the two at-large members from at-large Seats No. 2 and No. 3; and

(b) Residency Seat No. 4.

(4) Block 4: The terms of office for commissioner seats falling within Block 4 initially expire on May 31, 2017, and then expire every four years thereafter. Block 4 shall include:

(a) the at-large member from at-large Seat No. 4;

(b) Residency Seat No. 5; and

(c) Residency Seat No. 6.

(H) The absence of a member at three consecutive regularly scheduled commission meetings shall cause that member's seat to become immediately vacant. Any regularly scheduled meeting which is canceled pursuant to the bylaws or does not begin for lack of a quorum must be disregarded for all purposes under this subsection. Vacancies occurring under this subsection must be filled in the manner of the original appointment for the unexpired portion of the term. If otherwise eligible, the member causing the vacancy may be reappointed to the seat.

(I) The nominating procedures for appointment of area commissioners are as follows:

(1) The commission shall publicize vacancies, and recommendations may be made to the commission from any individual, organization, or group. Notwithstanding this provision, the Greenville County Legislative Delegation may reappoint a member who completes an unexpired portion of a prior term of less than two years without soliciting or accepting any nominations.

(2) All recommendations, nominations, and appointments to the commission must be nondiscriminatory and shall take into account diversity and other pertinent qualifications as may be beneficial to constituting a commission which is mindful of the needs of all segments of the population of Greenville County and those served by Greenville Technical College.

(3) The Greenville County School District Board of Trustees and the Greenville County Workforce Investment Board shall submit at least two nominees to the Greenville County Council to fill vacancies in their respective proxy seats. The Greenville County Council shall submit at least two nominees to the Greenville County Legislative Delegation for all other seat vacancies for which it submits nominations.

(4) Members of the Greenville County Legislative Delegation may nominate additional candidates for any seat other than the seats filled from among the members of the Greenville County School District Board of Trustees and the Greenville County Workforce Investment Board. The Greenville County Legislative Delegation may request additional nominees for any vacant seat.

(J) Whenever the South Carolina House of Representatives election districts are redrawn and become effective, the boundaries of the house district residency seats are automatically redrawn to match the new house districts. Redistricting does not affect the term of any commissioner appointed before the effective date of redistricting. If

any new house districts are added to Greenville County or include portions of Greenville County, then one of the four at-large seats nominated by the Greenville County Council must be filled upon the expiration of the current member's term with a member residing in one of the new house districts until such time as the residency seats are amended to include the new house districts. If redistricting renames or renumbers a district, it continues to be included within the residency seat boundaries under its prior number. If disagreement arises as to whether a house district is new or renamed for the purpose of this subsection, it must be resolved by majority vote of the Greenville County Legislative Delegation.

(K) The commission shall:

(1) establish the basic qualifications for and appoint a president for the term and under the conditions as it may fix, the commission having full powers of appointment and dismissal to the fullest extent permitted by law and applicable regulations;

(2) provide for the employment of personnel pursuant to Section 59-53-20;

(3) purchase land required for college sites and rights of way which are necessary for the proper operation of the college;

(4) apply the standards and requirements for admission and graduation of students and other standards established by the State Board for Technical and Comprehensive Education;

(5) receive and accept private donations, gifts, bequests, and the like to apply them or invest any of them and apply the proceeds for the purposes and upon the terms which the donor may prescribe and which are consistent with the provisions of law and the regulations of the State Board for Technical and Comprehensive Education;

(6) require the execution of studies and take steps as are necessary to ensure that the functions of the college are always those which are most helpful and feasible in light of the resources available to the school;

(7) designate members or other agents or representatives to represent the college before the Greenville County Council, the State Board for Technical and Comprehensive Education, and other agencies concerned with the serving of financial support for the needs of the college for operational expenses and capital outlay;

(8) adopt and recommend current expense and capital outlay budgets;

(9) perform acts and do other things as may be necessary or proper for the exercise of the foregoing specific powers, including the adoption and enforcement of reasonable rules, regulations, and bylaws

for the government and operation of the college under law and for the discipline of students;

(10) perform functions required as necessary for the proper governance of the college with regard to policy, personnel, and fiduciary matters.

Section 59-53-1510. The commission at all times shall keep a full and accurate account of its acts and of its receipts and expenditures, and at least once within four months, following the close of its fiscal year, a complete audit of its affairs must be made by a qualified public accountant. Copies of the audit must be filed with the Clerk of Court for Greenville County and with the Secretary of the Greenville County Legislative Delegation.

Section 59-53-1520. Not less frequently than annually the commission shall make a written report of the activities of the commission and file a copy with the Secretary of the Greenville County Legislative Delegation."

Time effective

SECTION 4. This act takes effect on June 1, 2013.

Ratified the 15th day of May, 2013.

Approved the 21st day of May, 2013.

No. 33

(R65, H3061)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 59-63-75 SO AS TO REQUIRE THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL, IN CONSULTATION WITH THE DEPARTMENT OF EDUCATION, TO POST ON ITS WEBSITE NATIONALLY RECOGNIZED GUIDELINES AND PROCEDURES CONCERNING THE MANAGEMENT OF

CONCUSSIONS SUSTAINED BY STUDENT ATHLETES, TO REQUIRE EACH LOCAL SCHOOL DISTRICT TO DEVELOP ITS OWN GUIDELINES AND PROCEDURES BASED ON THE MODEL GUIDELINES AND PROCEDURES, TO REQUIRE AN INFORMATION SHEET ON CONCUSSIONS AND BRAIN INJURY BE PROVIDED TO CERTAIN PERSONS EACH YEAR WHO PARTICIPATE IN ATHLETICS, TO REQUIRE THE REMOVAL FROM PLAY AND EVALUATION OF A STUDENT ATHLETE BELIEVED TO HAVE SUSTAINED A CONCUSSION DURING PLAY, TO ALLOW FOR THE EVALUATION TO BE UNDERTAKEN BY CERTAIN TRAINED PERSONS, TO PROVIDE LIMITED LIABILITY FOR CERTAIN TRAINED PERSONS WHO EVALUATE STUDENT ATHLETES, TO PROVIDE A STUDENT ATHLETE REMOVED FROM PLAY AND EVALUATED MAY NOT RETURN TO PLAY UNTIL HE HAS RECEIVED WRITTEN MEDICAL CLEARANCE BY A PHYSICIAN, AND TO DEFINE NECESSARY TERMS.

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

Student athlete concussions, guidelines, management

SECTION 1. Article 1, Chapter 63, Title 59 of the 1976 Code is amended by adding:

"Section 59-63-75. (A) The South Carolina Department of Health and Environmental Control, in consultation with the State Department of Education, shall post on its website nationally recognized guidelines and procedures regarding the identification and management of suspected concussions in student athletes. The Department of Health and Environmental Control also shall post on its website model policies that incorporate best practices guidelines for the identification, management, and return to play decisions for concussions reflective of current scientific and medical literature developed by resources from or members of sports medicine community organizations including, but not limited to, the Brain Injury Association of South Carolina, the South Carolina Medical Association, the South Carolina Athletic Trainer's Association, the National Federation of High Schools, the Centers for Disease Control and Prevention, and the American Academy of Pediatrics. Guidelines developed pursuant to this section apply to South Carolina High School League-sanctioned events.

(B) A local school district shall develop guidelines and procedures based on the model guidelines and procedures referenced in subsection (A).

(C) Each year prior to participation in athletics, each school district shall provide to all coaches, volunteers, student athletes, and their parents or legal guardian, an information sheet on concussions which informs of the nature and risk of concussion and brain injury, including the risks associated with continuing to play after a concussion or brain injury. The parent or legal guardian's receipt of the information sheet must be documented in writing or by electronic means before the student athlete is permitted to participate in an athletic competition or practice.

(D)(1) If a coach, athletic trainer, official, or physician suspects that a student athlete, under the control of the coach, athletic trainer, official, or physician, has sustained a concussion or brain injury in a practice or in an athletic competition, the student athlete shall be removed from practice or competition at that time.

(2) A student athlete who has been removed from play may return to play if, as a result of evaluating the student athlete on site, the athletic trainer, physician, physician assistant pursuant to scope of practice guidelines, or nurse practitioner pursuant to a written protocol determines in his best professional judgment that the student athlete does not have any signs or symptoms of a concussion or brain injury.

(3) A student athlete who has been removed from play and evaluated and who is suspected of having a concussion or brain injury may not return to play until the student athlete has received written medical clearance by a physician.

(4) In addition to posting information regarding the recognition and management of concussions in student athletes, the Department of Health and Environmental Control, in consultation with health care provider organizations, shall post on its website continuing education opportunities in concussion evaluation and management available to providers making such medical determinations. Such information must be posted by the department upon receipt from a participating health care organization.

(5) The athletic trainer, physician, physician assistant, or nurse practitioner who evaluates the student athlete during practice or an athletic competition and authorizes the student athlete to return to play is not liable for civil damages resulting from an act or omission in rendering this decision, other than acts or omissions constituting gross negligence or wilful, wanton misconduct. This immunity applies to an

athletic trainer, physician, physician assistant, or nurse practitioner serving as a volunteer.

(E) For purposes of this section:

(1) 'Physician' is defined in the same manner as provided in Section 40-47-20(35).

(2) 'Student athlete' includes cheerleaders."

Time effective

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

Ratified the 4th day of June, 2013.

Approved the 7th day of June, 2013.

No. 34

(R66, H3193)

AN ACT TO AMEND SECTION 24-13-40, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE COMPUTATION OF TIME SERVED BY A PRISONER, SO AS TO PROVIDE THAT ANY TIME SERVED UNDER HOUSE ARREST BY A PRISONER MAY BE USED IN COMPUTING TIME SERVED BY A PRISONER.

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

Computation of time served by a prisoner

SECTION 1. Section 24-13-40 of the 1976 Code, as last amended by Act 237 of 2010, is further amended to read:

"Section 24-13-40. The computation of the time served by prisoners under sentences imposed by the courts of this State must be calculated from the date of the imposition of the sentence. However, when (a) a prisoner shall have given notice of intention to appeal, (b) the commencement of the service of the sentence follows the revocation of probation, or (c) the court shall have designated a specific time for the commencement of the service of the sentence, the computation of the

time served must be calculated from the date of the commencement of the service of the sentence. In every case in computing the time served by a prisoner, full credit against the sentence must be given for time served prior to trial and sentencing, and may be given for any time spent under monitored house arrest. Provided, however, that credit for time served prior to trial and sentencing shall not be given: (1) when the prisoner at the time he was imprisoned prior to trial was an escapee from another penal institution; or (2) when the prisoner is serving a sentence for one offense and is awaiting trial and sentence for a second offense in which case he shall not receive credit for time served prior to trial in a reduction of his sentence for the second offense."

Time effective

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

Ratified the 4th day of June, 2013.

Approved the 7th day of June, 2013.

No. 35

(R67, H3538)

AN ACT TO AMEND SECTION 16-17-500, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE SALE OR PURCHASE OF TOBACCO PRODUCTS FOR MINORS, SO AS TO INCLUDE ALTERNATIVE NICOTINE PRODUCTS IN THE PURVIEW OF THE STATUTE; TO AMEND SECTION 16-17-501, AS AMENDED, RELATING TO DEFINITIONS FOR PURPOSES OF RELEVANT TOBACCO PRODUCT FOR MINORS OFFENSES, SO AS TO DEFINE THE TERMS "ALTERNATIVE NICOTINE PRODUCT" AND "ELECTRONIC CIGARETTE"; AND TO AMEND SECTIONS 16-17-502, 16-17-503, AND 16-17-504, RELATING TO DISTRIBUTION OF TOBACCO PRODUCT SAMPLES, ENFORCEMENT AND REPORTING, AND IMPLEMENTATION, RESPECTIVELY, ALL SO AS TO MAKE CONFORMING CHANGES TO INCLUDE ALTERNATIVE NICOTINE PRODUCTS.

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

Sale or purchase of tobacco products for minors, alternative nicotine products added

SECTION 1. Section 16-17-500 of the 1976 Code, as last amended by Act 231 of 2006, is further amended to read:

"Section 16-17-500. (A) It is unlawful for an individual to sell, furnish, give, distribute, purchase for, or provide a tobacco product or an alternative nicotine product to a minor under the age of eighteen years.

(B) It is unlawful to sell a tobacco product or an alternative nicotine product to an individual who does not present upon demand proper proof of age. Failure to demand identification to verify an individual's age is not a defense to an action initiated pursuant to this subsection. Proof that is demanded, is shown, and reasonably is relied upon for the individual's proof of age is a defense to an action initiated pursuant to this subsection.

(C) A person engaged in the sale of alternative nicotine products made through the Internet or other remote sales methods shall perform an age verification through an independent, third-party age verification service that compares information available from public records to the personal information entered by the individual during the ordering process that establishes the individual is eighteen years of age or older.

(D) It is unlawful to sell a tobacco product or an alternative nicotine product through a vending machine unless the vending machine is located in an establishment:

(1) which is open only to individuals who are eighteen years of age or older; or

(2) where the vending machine is under continuous control by the owner or licensee of the premises, or an employee of the owner or licensee, can be operated only upon activation by the owner, licensee, or employee before each purchase, and is not accessible to the public when the establishment is closed.

(E)(1) An individual who knowingly violates a provision of subsections (A), (B), (C), or (D) in person, by agent, or in any other way is guilty of a misdemeanor and, upon conviction, must be:

(a) for a first offense, fined not less than one hundred dollars nor more than two hundred dollars;

(b) for a second offense, which occurs within three years of the first offense, fined not less than two hundred dollars nor more than three hundred dollars;

(c) for a third or subsequent offense, which occurs within three years of the first offense, fined not less than three hundred dollars nor more than four hundred dollars.

(2) In lieu of the fine, the court may require an individual to successfully complete a Department of Alcohol and Other Drug Abuse Services approved merchant tobacco enforcement education program.

(F)(1) A minor under the age of eighteen years must not purchase, attempt to purchase, possess, or attempt to possess a tobacco product or an alternative nicotine product, or present or offer proof of age that is false or fraudulent for the purpose of purchasing or possessing these products.

(2) A minor who knowingly violates a provision of item (1) in person, by agent, or in any other way commits a noncriminal offense and is subject to a civil fine of twenty-five dollars. The civil fine is subject to all applicable court costs, assessments, and surcharges.

(3) In lieu of the civil fine, the court may require a minor to successfully complete a Department of Health and Environmental Control approved smoking cessation or tobacco prevention program, or to perform not more than five hours of community service for a charitable institution.

(4) If a minor fails to pay the civil fine, successfully complete a smoking cessation or tobacco prevention program, or perform the required hours of community service as ordered by the court, the court may restrict the minor's driving privileges to driving only to and from school, work, and church, or as the court considers appropriate for a period of ninety days beginning from the date provided by the court. If the minor does not have a driver's license or permit, the court may delay the issuance of the minor's driver's license or permit for a period of ninety days beginning from the date the minor applies for a driver's license or permit. Upon restricting or delaying the issuance of the minor's driver's license or permit, the court must complete and remit to the Department of Motor Vehicles any required forms or documentation. The minor is not required to submit his driver's license or permit to the court or the Department of Motor Vehicles. The Department of Motor Vehicles must clearly indicate on the minor's driving record that the restriction or delayed issuance of the minor's driver's license or permit is not a traffic violation or a driver's license suspension. The Department of Motor Vehicles must notify the minor's parent, guardian, or custodian of the restriction or delayed

issuance of the minor's driver's license or permit. At the completion of the ninety-day period, the Department of Motor Vehicles must remove the restriction or allow for the issuance of the minor's license or permit. No record may be maintained by the Department of Motor Vehicles of the restriction or delayed issuance of the minor's driver's license or permit after the ninety-day period. The restriction or delayed issuance of the minor's driver's license or permit must not be considered by any insurance company for automobile insurance purposes or result in any automobile insurance penalty, including any penalty under the Merit Rating Plan promulgated by the Department of Insurance.

(5) A violation of this subsection is not a criminal or delinquent offense and no criminal or delinquent record may be maintained. A minor may not be detained, taken into custody, arrested, placed in jail or in any other secure facility, committed to the custody of the Department of Juvenile Justice, or found to be in contempt of court for a violation of this subsection or for the failure to pay a fine, successfully complete a smoking cessation or tobacco prevention program, or perform community service.

(6) A violation of this subsection is not grounds for denying, suspending, or revoking an individual's participation in a state college or university financial assistance program including, but not limited to, a Life Scholarship, a Palmetto Fellows Scholarship, or a need-based grant.

(7) The uniform traffic ticket, established pursuant to Section 56-7-10, may be used by law enforcement officers for a violation of this subsection. A law enforcement officer issuing a uniform traffic ticket pursuant to this subsection must immediately seize the tobacco product or alternative nicotine product. The law enforcement officer also must notify a minor's parent, guardian, or custodian of the minor's offense, if reasonable, within ten days of the issuance of the uniform traffic ticket.

(G) This section does not apply to the possession of a tobacco product or an alternative nicotine product by a minor working within the course and scope of his duties as an employee or participating within the course and scope of an authorized inspection or compliance check.

(H) Jurisdiction to hear a violation of this section is vested exclusively in the municipal court and the magistrates court. A hearing pursuant to subsection (F) must be placed on the court's appropriate docket for traffic violations, and not on the court's docket for civil matters.

(I) A retail establishment that distributes tobacco products or alternative nicotine products must train all retail sales employees regarding the unlawful distribution of tobacco products or alternative nicotine products to minors.

(J) Notwithstanding any other provision of law, a violation of this section does not violate the terms and conditions of an establishment's beer and wine permit and is not grounds for revocation or suspension of a beer and wine permit."

Definitions

SECTION 2. Section 16-17-501 of the 1976 Code, as last amended by Act 231 of 2006, is further amended to read:

"Section 16-17-501. As used in this section and Sections 16-17-502, 16-17-503, and 16-17-504:

(1) 'Distribute' means to sell, furnish, give, or provide tobacco products and alternative nicotine products, including tobacco product samples and alternative nicotine product samples, cigarette paper, or a substitute for them, to the ultimate consumer.

(2) 'Proof of age' means a driver's license or identification card issued by this State or a United States Armed Services identification card.

(3) 'Sample' means a tobacco product or an alternative nicotine product distributed to members of the general public at no cost for the purpose of promoting the products.

(4) 'Sampling' means the distribution of samples to members of the general public in a public place.

(5) 'Tobacco product' means a product that contains tobacco and is intended for human consumption. 'Tobacco product' does not include an alternative nicotine product.

(6) 'Alternative nicotine product' means a product, including electronic cigarettes, that consists of or contains nicotine that can be ingested into the body by chewing, smoking, absorbing, dissolving, inhaling, or by any other means. 'Alternative nicotine product' does not include:

(a) a cigarette, as defined in Section 12-21-620, or other tobacco products, as defined in Section 12-21-800;

(b) a product that is a drug pursuant to 21 U.S.C. 321(g)(1);

(c) a device pursuant to 21 U.S.C. 321(h); or

(d) a combination product described in 21 U.S.C. 353(g).

(7) 'Electronic cigarette' means an electronic product or device that produces a vapor that delivers nicotine or other substances to the person inhaling from the device to simulate smoking, and is likely to be offered to, or purchased by, consumers as an electronic cigarette, electronic cigar, electronic cigarillo, or electronic pipe. 'Electronic cigarette' does not include:

(a) a cigarette, as defined in Section 12-21-620, or other tobacco products, as defined in Section 12-21-800;

(b) a product that is a drug pursuant to 21 U.S.C. 321(g)(1);

(c) a device pursuant to 21 U.S.C. 321(h); or

(d) a combination product described in 21 U.S.C. 353(g)."

Conforming changes

SECTION 3. Section 16-17-502(A) of the 1976 Code is amended to read:

"(A) It is unlawful for a person to distribute a tobacco product or an alternative nicotine product sample to a person under the age of eighteen years."

Conforming changes

SECTION 4. Section 16-17-503(A) of the 1976 Code is amended to read:

"(A) Except as otherwise provided by law, the Director of the Department of Revenue shall provide for the enforcement of Sections 16-17-500 and 16-17-502 in a manner that reasonably may be expected to reduce the extent to which tobacco products or alternative nicotine products are sold or distributed to persons under the age of eighteen years and annually shall conduct random, unannounced inspections at locations where tobacco products or alternative nicotine products are sold or distributed to ensure compliance with the section. The department shall designate an enforcement officer to conduct the annual inspections. Penalties collected pursuant to Section 16-17-502 must be used to offset the costs of enforcement."

Conforming changes

SECTION 5. Section 16-17-504(A) of the 1976 Code is amended to read:

"(A) Sections 16-17-500, 16-17-502, and 16-17-503 must be implemented in an equitable and uniform manner throughout the State and enforced to ensure the eligibility for and receipt of federal funds or grants the State receives or may receive relating to the sections. Any laws, ordinances, or rules enacted pertaining to tobacco products or alternative nicotine products may not supersede state law or regulation. Nothing in this section affects the right of any person having ownership or otherwise controlling private property to allow or prohibit the use of tobacco products or alternative nicotine products on the property."

Savings clause

SECTION 6. The repeal or amendment by this act of any law, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

Time effective

SECTION 7. This act takes effect upon approval by the Governor.

Ratified the 4th day of June, 2013.

Approved the 7th day of June, 2013.

No. 36

(R68, H3554)

AN ACT TO AMEND SECTION 61-4-1515, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO SAMPLES AND

SALES OF BEER AT BREWERIES, SO AS TO SPECIFY THAT TWELVE PERCENT ALCOHOL BY WEIGHT IS THE MAXIMUM THAT MAY BE OFFERED FOR ON-PREMISES CONSUMPTION, TO ALLOW FOR THE SALE OF FORTY-EIGHT OUNCES OF BEER TO A CONSUMER EVERY TWENTY-FOUR HOURS, OF WHICH ONLY SIXTEEN OUNCES MAY BE MORE THAN EIGHT PERCENT ALCOHOL BY WEIGHT, TO REQUIRE THE BREWERY TO ESTABLISH A SYSTEM TO MONITOR SUCH SALES AND SAMPLES, TO PROVIDE THE BEER MUST BE SOLD AT THE APPROXIMATE RETAIL PRICE, TO PROVIDE THAT APPROPRIATE TAXES MUST BE REMITTED, TO REQUIRE THE BREWERY TO POST CERTAIN INFORMATION, TO REQUIRE THE BREWERY TO PROVIDE CERTAIN ALCOHOL ENFORCEMENT TRAINING, TO REQUIRE THE BREWERY TO MAINTAIN CERTAIN LIABILITY INSURANCE, TO CLARIFY THAT A CERTAIN PROVISION APPLIES TO OFF-PREMISES CONSUMPTION, TO INCREASE THE FINE AND PENALTIES FOR A BREWERY VIOLATING CERTAIN OFF-PREMISES CONSUMPTION PROVISIONS; TO AMEND SECTION 61-4-960, RELATING TO RETAILERS OF BEER FOR OFF-PREMISES CONSUMPTION AND BEER TASTINGS, SO AS TO ALLOW A BEER TASTING TO BE HELD IN CONJUNCTION WITH A WINE TASTING, AND TO REQUIRE THE DEPARTMENT OF REVENUE AND THE STATE LAW ENFORCEMENT DIVISION TO SUBMIT A REPORT DETAILING CERTAIN INFORMATION REGARDING THE EFFECT OF THE AMENDMENTS TO SECTION 61-4-1515.

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

Requirements for samples and sales of beer at breweries for on-premises consumption, increased penalties for a brewery's violation of off-premises consumption requirements

SECTION 1. Section 61-4-1515 of the 1976 Code, as added by Act 231 of 2010, is amended to read:

"Section 61-4-1515. (A) A brewery licensed in this State is authorized to offer samples of beer to consumers on its licensed premises, provided that the beer is brewed on the licensed premises

with an alcoholic content of twelve percent by weight, or less, subject to the following conditions:

(1) sales to or samplings by consumers must be held in conjunction with a tour by the consumer of the licensed premises and the entire brewing process utilized at the licensed premises;

(2) sales or samplings shall not be offered or made to, or allowed to be offered, made to, or consumed by an intoxicated person or a person who is under the age of twenty-one;

(3)(a) no more than a total of forty-eight ounces of beer brewed at the licensed premises, including amounts of samples offered and consumed with or without cost, shall be sold to a consumer for on-premises consumption within a twenty-four hour period; and

(b) of that forty-eight ounces of beer available to be sold to a consumer within a twenty-four hour period, no more than sixteen ounces of beer with an alcoholic weight of above eight percent, including any samples offered and consumed with or without cost, shall be sold to a consumer for on-premises consumption within a twenty-four hour period;

(4) a brewery must develop and use a system to monitor the amounts and types of beer sampled or sold to a consumer for on-premises consumption;

(5) a brewery must sell the beer at the licensed premises at a price approximating retail prices generally charged for identical beverages in the county where the licensed premises are located;

(6) a brewery must remit appropriate taxes to the Department of Revenue for beer sales in an amount equal to and in a manner required for excise taxes assessed by the department. A brewery also must remit appropriate sales and use taxes and local hospitality taxes;

(7) a brewery must post information that states the alcoholic content by weight of the various types of beer available in the brewery and the penalties for convictions for:

(a) driving under the influence;

(b) unlawful transport of an alcoholic container; and

(c) unlawful transfer of alcohol to minors.

And, the information shall be in signage that must be posted at each entrance, each exit, and in places in a brewery seen during a tour;

(8) a brewery must provide DAODAS approved alcohol enforcement training for the employees who serve beer on the licensed premises to consumers for on-premises consumption, so as to prevent and prohibit unlawful sales, transfer, transport or consumption of beer by persons who are under the age of twenty-one or who are intoxicated; and

(9) a brewery must maintain liability insurance in the amount of at least one million dollars for the biennial period for which it is licensed. Within ten days of receiving its biennial license, a brewery must send proof of this insurance to the State Law Enforcement Division and to the Department of Revenue, where the proof of insurance information shall be retained with the department's alcohol beverage licensing section.

(B) A brewery located in this State is authorized to sell beer on its licensed premises for off-premises consumption provided that the sealed beer was brewed on the licensed premises with an alcohol content of fourteen percent by weight or less, subject to the following conditions:

(1) the maximum amount of beer that may be sold to an individual per day for off-premises consumption shall be equivalent to two hundred eighty-eight ounces in total;

(2) the beer only shall be sold in conjunction with a tour by the consumer of the licensed premises and the entire brewing process utilized at the licensed premises;

(3) the beer sold is for personal use only and cannot be resold;

(4) the beer cannot be sold to anyone holding a retail beer and wine license for the purpose of resale in their establishment;

(5) the brewery must sell the beer at the licensed premises at a price approximating retail prices generally charged for identical beverages in the county where the licensed premises are located; and

(6) the brewery must remit taxes to the Department of Revenue for beer sales in an amount equal to and in a manner required for taxes assessed by Section 12-21-1020 and Section 12-21-1030. The brewery also must remit appropriate sales and use taxes and local hospitality taxes.

(C) In addition to other applicable fines or penalties, a person licensed as a brewery in this State who violates the provisions of this section must be assessed a fine of five hundred dollars for a first violation. For a second violation that occurs within three years of the first violation, a person must be assessed an additional five hundred dollars. For subsequent violations within a three-year period, the department must suspend the brewery license for a period of not less than thirty days. The revenue from the fines established in this section must be directed to the State Law Enforcement Division for supplementing funds required for the regulation and enforcement of this section."

Beer tasting authorized in conjunction with wine tasting

SECTION 2. Section 61-4-960(A) of the 1976 Code, as added by Act 231 of 2010, is amended to read:

"Section 61-4-960. (A) Notwithstanding another provision of law or regulation, the holder of a retail permit authorizing the sale of beer for off-premises consumption whose primary product is beer or wine may conduct, in accordance with department rulings or regulations, not more than twenty-four beer tastings at any one retail location in a calendar quarter, provided that:

(1) at least ten days before the tasting, a notice detailing the specific date and hours of the tasting must be sent by first class mail or by electronic mail to the State Law Enforcement Division;

(2) the tastings must be conducted by the retailer or an agent or independent contractor of the retailer and may not be conducted by a wholesaler or manufacturer or an employee, agent, or independent contractor of a wholesaler or manufacturer. Nothing in this subsection prohibits a manufacturer or employee, agent, or independent contractor of a manufacturer from attending a tasting to provide information and offer educational material on the products to be sampled. For purposes of this subsection, a wholesaler is not considered an employee, agent, or independent contractor of a manufacturer;

(3) the products must be supplied by the retailer and may not be donated or otherwise supplied at no or reduced cost by the manufacturer or wholesaler;

(4) a sample may not be offered from more than eight products at any one tasting;

(5) no more than one container of each of the products to be sampled may be open at any time. Open containers must be visible at all times and must be removed at the conclusion of a tasting;

(6) the tasting must be held in a designated tasting area of the retail store;

(7) samples must be no more than two ounces for each product sampled as defined in Section 61-4-10(1);

(8) samples must be no more than one ounce for each product sampled as defined in Section 61-4-10(2), provided that no more than two of the total eight samples may contain more than ten percent of alcohol by weight;

(9) a person shall not be served more than one sample of each product;

(10) a sample shall not be offered to, or allowed to be consumed by, an intoxicated person or a person under the age of twenty-one years. A person tasting a sample may not be allowed to loiter on the store premises;

(11) a sampling may not be offered for more than four hours;

(12) a retailer, pursuant to this section, may not offer more than one sampling per day; and

(13) the tasting may not be held in conjunction with a tasting in a retail alcoholic liquor store, pursuant to Section 61-6-1035, that is adjacent to and licensed in the same name of the retail permit authorizing the sale of beer."

Department of Revenue and State Law Enforcement Division report

SECTION 3. (A) By no later than March 15, 2016, a report, compiled jointly by the Department of Revenue and the State Law Enforcement Division, shall be delivered to the chairs of the Senate Judiciary Committee, the Senate Finance Committee, the House Judiciary Committee, and the House Ways and Means Committee, and reported in the Senate and House Journals, which contains the following information:

(1) a list of civil and criminal violations and dispositions of those violations related to the provisions of Section 61-4-1515, including, but not limited to, sales or transfers of beer to minors or intoxicated persons, suspensions of brewery licenses, unlawful transportation of beer, and offenses of driving under the influence, if known, for the period of time from the enactment of these provisions to February 1, 2016;

(2) a total of excise and sales taxes paid by the breweries to the Department of Revenue for the period of time from the enactment of these provisions to February 1, 2016;

(3) a total of all fines and penalties paid by or assessed against persons for violations of Section 61-4-1515 for the period of time from the enactment of these provisions to February 1, 2016;

(4) a monthly total of the numbers of persons touring each of the breweries licensed in this State for the period of time from two months after the enactment of these provisions to February 1, 2016, and each brewery shall be responsible for providing the Department of Revenue with this information electronically on a monthly basis during the above-described time period; and

(5) the Department of Revenue shall furnish a list of all licensed breweries upon request by the State Law Enforcement Division or local law enforcement agencies.

(B) The purpose of this report is to enable the General Assembly to consider the information provided by the report to determine if state laws should be amended and additional revenue for regulation and enforcement of Section 61-4-1515 should be appropriated.

Time effective

SECTION 4. This act takes effect upon approval by the Governor, except that, for a brewery licensed in the State at the time this act becomes effective, the requirements for proof of liability insurance shall apply immediately, and a licensed brewery must provide the required documentation within sixty days of the effective date of this act.

Ratified the 4th day of June, 2013.

Approved the 6th day of June, 2013.

No. 37

(R69, H3725)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, SO AS TO ENACT THE "SAFE ACCESS TO VITAL EPINEPHRINE (SAVE) ACT"; BY ADDING SECTION 59-63-95 SO AS TO ALLOW SCHOOL DISTRICT AND PRIVATE SCHOOL GOVERNING AUTHORITIES TO OBTAIN AND STORE SUPPLIES OF EPINEPHRINE AUTO-INJECTORS FOR SCHOOLS TO USE IN CERTAIN CIRCUMSTANCES; TO AUTHORIZE CERTAIN PEOPLE TO PRESCRIBE AND DISPENSE PRESCRIPTIONS FOR EPINEPHRINE AUTO-INJECTORS FOR ADMINISTRATION OR SELF-ADMINISTRATION BY STUDENTS AND OTHER PEOPLE; TO AUTHORIZE CERTAIN SCHOOL PERSONNEL TO PROVIDE EPINEPHRINE AUTO-INJECTORS TO STUDENTS FOR SELF-ADMINISTRATION OF THE INJECTOR; TO AUTHORIZE CERTAIN PERSONNEL TO

ADMINISTER EPINEPHRINE AUTO-INJECTORS TO STUDENTS AND OTHER PEOPLE; TO REQUIRE CERTAIN GOVERNING AUTHORITIES OF SCHOOL DISTRICTS AND PRIVATE SCHOOLS, IN CONSULTATION WITH THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL AND THE STATE DEPARTMENT OF EDUCATION, TO DEVELOP AND IMPLEMENT A PLAN FOR MANAGEMENT OF STUDENTS WITH LIFE-THREATENING ALLERGIES, INCLUDING FOR ADMINISTRATION AND PROVISION OF EPINEPHRINE AUTO-INJECTORS TO STUDENTS AND OTHER PEOPLE; TO PROVIDE THAT SCHOOLS ARE NOT SUBJECT TO THE SOUTH CAROLINA PHARMACY ACT AND RELEVANT REGULATIONS GOVERNING THE PRACTICE OF PHARMACY FOR PURPOSES OF CERTAIN ACTIONS TAKEN PURSUANT TO THE SECTION; AND TO PROVIDE FOR IMMUNITY FROM LIABILITY WITH REGARD TO USE OF EPINEPHRINE AUTO-INJECTORS BY SCHOOLS.

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

Citation of the act

SECTION 1. This act may be cited as the "Safe Access to Vital Epinephrine Act".

Epinephrine auto-injectors, obtaining, storing, dispensing, administering, and self-administering, immunity from liability

SECTION 2. Article 1, Chapter 63, Title 59 of the 1976 Code is amended by adding:

"Section 59-63-95. (A) As used in this section, and unless the specific context indicates otherwise:

(1) 'Administer' means the direct application of an epinephrine auto-injector into the body of a person.

(2) 'Advanced practice registered nurse' means a registered nurse prepared for an advanced practice registered nursing role by virtue of the additional knowledge gained through an advanced formal education program in a specialty area pursuant to Chapter 33, Title 40.

(3) 'Designated school personnel' means an employee, agent, or volunteer of a school designated by the governing authority of the

school district or the governing authority of the private school who has completed the training required in accordance with the guidelines of the governing authority to provide for or administer an epinephrine auto-injector to a student.

(4) 'Epinephrine auto-injector' means a device that automatically injects a premeasured dose of epinephrine into a person.

(5) 'Governing authority of a school' means the board of trustees of a school district or the board of trustees of a private school.

(6) 'Participating governing authorities' means governing authorities of school districts and governing authorities of private schools that authorize schools to maintain a supply of undesignated epinephrine auto-injectors and to provide and administer epinephrine auto-injectors to students and other people pursuant to subsections (B) and (C).

(7) 'Physician' means a doctor of medicine licensed by the South Carolina Board of Medical Examiners pursuant to Article 1, Chapter 47, Title 40.

(8) 'Physician assistant' means a health care professional licensed to assist with the practice of medicine with a physician supervisor pursuant to Article 7, Chapter 47, Title 40.

(9) 'Provide' means to supply one or more epinephrine auto-injectors to a student or other person.

(10) 'School' means a public or private school.

(11) 'Self-administration' means a student or other person's discretionary use of an epinephrine auto-injector, whether provided by the student or the other person or by a school nurse or other designated school personnel pursuant to this section.

(B) Notwithstanding another provision of law, a physician, an advanced practice registered nurse licensed to prescribe medication pursuant to Section 40-33-34, and a physician assistant licensed to prescribe medication pursuant to Sections 40-47-955 through 40-47-965 may prescribe epinephrine auto-injectors maintained in the name of a school for use in accordance with subsection (D). Notwithstanding another provision of law, licensed pharmacists and physicians may dispense epinephrine auto-injectors in accordance with a prescription issued pursuant to this subsection. Notwithstanding another provision of law, a school may maintain a stock supply of epinephrine auto-injectors in accordance with a prescription issued pursuant to this subsection. For the purposes of administering and storing epinephrine auto-injectors, schools are not subject to Chapter 43, Title 40 or Chapter 99 of the South Carolina Code of State Regulations.

(C) The governing authority of a school district or private school may authorize school nurses and other designated school personnel to:

(1) provide an epinephrine auto-injector to a student to self-administer the epinephrine auto-injector in accordance with a prescription specific to the student that is on file with the school;

(2) administer an epinephrine auto-injector to a student in accordance with a prescription specific to the student on file with the school;

(3) administer an epinephrine auto-injector to a student or other individual on school premises whom the school nurse or other designated school personnel believes in good faith is experiencing anaphylaxis, in accordance with a standing protocol of a physician, an advanced practice registered nurse licensed to prescribe medication pursuant to Section 40-33-34, or a physician assistant licensed to prescribe medication pursuant to Sections 40-47-955 through 40-47-965, regardless of whether the student or other individual has a prescription for an epinephrine auto-injector.

(D) The governing authority of a school district or the governing authority of a private school may enter into arrangements with manufacturers of epinephrine auto-injectors or third-party suppliers of epinephrine auto-injectors to obtain epinephrine auto-injectors at fair-market, free, or reduced prices.

(E) Participating governing authorities, in consultation with the State Department of Education and the Department of Health and Environmental Control, shall implement a plan for the management of students with life-threatening allergies enrolled in the schools under their jurisdiction. The plan must include, but need not be limited to:

(1) education and training for school personnel on the management of students with life-threatening allergies, including training related to the administration of an epinephrine auto-injector, techniques on how to recognize symptoms of severe allergic reactions, including anaphylaxis, and the standards and procedures for the storage and administration of an epinephrine auto-injector;

(2) procedures for responding to life-threatening allergic reactions, including emergency follow-up procedures; and

(3) a process for the development of individualized health care and allergy action plans for every student with a known life-threatening allergy.

(F) Participating governing authorities shall make the plan developed pursuant to subsection (E) available on the websites of the school district and private school governing authorities and on the websites of schools; however, if a school does not have a website,

make the plan publicly available through other practicable means as determined by participating governing authorities.

(G) This section applies only to participating governing authorities.

(H)(1) A school, school district, school district governing authority, private school governing authority, the Department of Health and Environmental Control, the State Department of Education, and employees, volunteers, and other agents of all of those entities including, but not limited to, a physician, advanced practice registered nurse, physician assistant, pharmacist, school nurse, and other designated school personnel, who undertake an act identified in item (2), are not liable for damages caused by injuries to a student or another person resulting from the administration or self-administration of an epinephrine auto-injector, regardless of whether:

(a) the student's parent or guardian, or a physician, advanced practice registered nurse, or physician assistant, authorized the administration or self-administration; or

(b) the other person to whom a school nurse or other designated school personnel provides or administers an epinephrine auto-injector gave authorization for the administration.

(2) The immunity granted pursuant to item (1) applies to individuals and entities who:

(a) develop or implement, or participate in the development or implementation of, a plan, pursuant to subsection (E), including, but not limited to, providing training to school nurses and other designated school personnel;

(b) make publicly available a plan, pursuant to subsection (F);

(c) prescribe epinephrine auto-injectors, pursuant to subsection (B);

(d) dispense epinephrine auto-injectors, pursuant to subsection (B);

(e) provide epinephrine auto-injectors to students or other people for self-administration, pursuant to subsection (C); or

(f) administer epinephrine auto-injectors to students or other people, pursuant to subsection (C).

(3) The immunity granted pursuant to this subsection:

(a) does not apply to acts or omissions constituting gross negligence or wilful, wanton, or reckless conduct; and

(b) is in addition to, and not in lieu of, immunity provided pursuant to Sections 15-1-310, 15-78-10, and any other provisions of law.

(4) The administration of an epinephrine auto-injector pursuant to this section is not the practice of medicine or nursing."

Time effective

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

Ratified the 4th day of June, 2013.

Approved the 7th day of June, 2013.

No. 38

(R44, S96)

AN ACT TO AMEND SECTION 54-15-20, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE MEMBERSHIP OF THE SOUTH CAROLINA COMMISSIONERS OF PILOTAGE FOR THE UPPER COASTAL AREA, SO AS TO INCREASE THE NUMBER OF MEMBERS ON THE COMMISSION FROM SIX TO EIGHT, AND TO REVISE APPOINTMENT AND RELATED PROVISIONS.

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

Membership increased, appointment procedures revised

SECTION 1. Section 54-15-20 of the 1976 Code, as last amended by Act 237 of 2006, is further amended to read:

"Section 54-15-20. (A) The South Carolina Commissioners of Pilotage for the Upper Coastal Area must be appointed by the Governor, upon the recommendation of a majority of the Legislative Delegation of Georgetown County and shall serve for three years and until their successors are appointed and qualify. Vacancies must be filled in the manner of the original appointment for the unexpired term.

(B) The South Carolina Commissioners of Pilotage for the Upper Coastal Area shall consist of eight persons appointed as provided by this chapter, one of whom is the Chairman of the South Carolina State Ports Authority or a board member designated by the chairman, ex officio, one of whom is the President of the International

Longshoremen's Association Local or his designee, ex officio, and one of whom is a pilot licensed for the Port of Georgetown under Section 54-15-90, appointed by the Governor upon the recommendation of the licensed pilots. The remaining five members are appointed by the Governor upon the recommendation of the Georgetown County Legislative Delegation. The terms of office of the commissioners are for three years and until their successors are appointed except for the members first appointed. The member representative of the pilots licensed under Section 54-15-90 shall serve a three-year term. In the event of a vacancy, however caused, a successor must be appointed in the manner of the original appointment to fill the unexpired term. The above appointments must be made as each term of the present commissioners expires."

Time effective

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

Ratified the 4th day of June, 2013.

Approved the 7th day of June, 2013.

No. 39

(R45, S117)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 44-66-75 SO AS TO REQUIRE A HEALTH CARE PROVIDER TO GIVE A PATIENT AN OPPORTUNITY TO ALLOW DISCLOSURE OF CERTAIN INFORMATION TO DESIGNATED FAMILY MEMBERS AND OTHER INDIVIDUALS AND TO AUTHORIZE THE INVOLVEMENT OF THESE FAMILY MEMBERS AND OTHER INDIVIDUALS IN THE TREATMENT OF THE PATIENT; TO SPECIFY THE CONTENTS OF THE AUTHORIZATION; TO PROVIDE CIVIL AND CRIMINAL IMMUNITY FOR GOOD FAITH DISCLOSURE OF INFORMATION; AND TO AMEND SECTION 44-66-20, AS AMENDED, RELATING TO DEFINITIONS IN THE ADULT HEALTH CARE CONSENT

ACT, SO AS TO DEFINE "PATIENT" AND "TREATMENT" AND TO AMEND OTHER DEFINITIONS.

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

Patient authorization to have medical condition disclosed to designated individual

SECTION 1. Chapter 66, Title 44 of the 1976 Code is amended by adding:

"Section 44-66-75. (A) A health care provider or the provider's agent shall provide on the patient information form or by electronic health records, the opportunity for the patient to designate a family member or other individual they choose as a person with whom the provider may discuss the patient's medical condition and treatment plan.

(B) The authorization provided for in subsection (A):

(1) satisfies the requirements of Title 42 of the Code of Federal Regulations, relating to public health, and the privacy rule of the Health Insurance Portability and Accountability Act of 1996 (HIPAA);

(2) must present the question in bold print and capitalized, or by electronic means: 'DO YOU WANT TO DESIGNATE A FAMILY MEMBER OR OTHER INDIVIDUAL WITH WHOM THE PROVIDER MAY DISCUSS YOUR MEDICAL CONDITION? IF YES, WHOM?'; and

(3) must specify that the patient may revoke or modify an authorization with regard to any family member or other individual designated by the patient in the authorization and that the revocation or modification must be in writing.

(C) A health care provider may disclose information pursuant to an authorization unless the provider has actual knowledge that the authorization has been revoked or modified.

(D) A health care provider who in good faith discloses information in accordance with an authorization signed by a patient pursuant to this section is not subject to civil liability, criminal liability, or disciplinary sanctions because of this disclosure.

(E) Nothing in this section may be construed to:

(1) require a health care provider to disclose information that he otherwise may withhold or limit;

(2) limit or prevent a provider from disclosing information without written authorization from the patient if this disclosure is otherwise lawful or permissible;

(3) prohibit a provider from receiving and using information relevant to the safe and effective treatment of the patient from family members; and

(4) conflict with an individual's health care power of attorney as provided for in the South Carolina Probate Code.

(F) Notwithstanding any other provision of this chapter, this section does not apply to nursing homes, as defined in Section 44-7-130 or a dentist, dental hygienist, or dental technician licensed or registered in Chapter 15, Title 40."

Definitions

SECTION 2. Section 44-66-20 of the 1976 Code, as last amended by Act 351 of 2002, is further amended to read:

"Section 44-66-20. As used in this chapter:

(1) 'Health care' means a procedure to diagnose or treat a human disease, ailment, defect, abnormality, or complaint, whether of physical or mental origin. Health care also includes the provision of intermediate or skilled nursing care; services for the rehabilitation of injured, disabled, or sick persons; and the placement in or removal from a facility that provides these forms of care.

(2) 'Health care provider' or 'provider' means a person, health care facility, organization, or corporation licensed, certified, or otherwise authorized or permitted by the laws of this State to administer health care.

(3) 'Health care professional' means an individual who is licensed, certified, or otherwise authorized by the laws of this State to provide health care to members of the public.

(4) 'Patient' means an individual sixteen years of age or older who presents or is presented to a health care provider for treatment.

(5) 'Person' includes, but is not limited to, an individual, a state agency, or a representative of a state agency.

(6) 'Physician' means an individual who is licensed to practice medicine or osteopathy pursuant to Chapter 47, Title 40.

(7) 'Treatment' means the broad range of emergency, outpatient, intermediate, and inpatient services and care that may be extended to a patient to diagnose and treat a human disease, ailment, defect, abnormality, or complaint, whether of physical or mental origin.

Treatment includes, but is not limited to, psychiatric, psychological, substance abuse, and counseling services.

(8) 'Unable to consent' means unable to appreciate the nature and implications of the patient's condition and proposed health care, to make a reasoned decision concerning the proposed health care, or to communicate that decision in an unambiguous manner. This term does not apply to minors, and this chapter does not affect the delivery of health care to minors unless they are married or have been determined judicially to be emancipated. A patient's inability to consent must be certified by two licensed physicians, each of whom has examined the patient. However, in an emergency the patient's inability to consent may be certified by a health care professional responsible for the care of the patient if the health care professional states in writing in the patient's record that the delay occasioned by obtaining certification from two licensed physicians would be detrimental to the patient's health. A certifying physician or other health care professional shall give an opinion regarding the cause and nature of the inability to consent, its extent, and its probable duration. If a patient unable to consent is being admitted to hospice care pursuant to a physician certification of a terminal illness required by Medicare, that certification meets the certification requirements of this item."

Time effective

SECTION 3. This act takes effect January 1, 2014.

Ratified the 4th day of June, 2013.

Approved the 7th day of June, 2013.

No. 40

(R47, S191)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 46-3-25 SO AS TO REQUIRE THE DEPARTMENT OF AGRICULTURE TO CREATE AND MAINTAIN A PROGRAM TO FOSTER RELATIONSHIPS BETWEEN SOUTH CAROLINA FARMS, SCHOOL DISTRICTS, AND OTHER INSTITUTIONS AND TO

PROVIDE THEM WITH FRESH AND MINIMALLY PROCESSED FOODS FOR CONSUMPTION BY STUDENTS.

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

Findings

SECTION 1. The General Assembly finds:

(A) A voluntary program to link local farms to school districts and other institutions to provide students and adults with fresh and minimally processed farm foods for use in their daily meals and snacks will:

(1) strengthen local economies by keeping money within the area;

(2) create jobs;

(3) open a substantial new market for farmers;

(4) provide beginning farmers with a consistent and secure customer base;

(5) help students develop lifelong healthy eating habits and reduce obesity-related diseases in South Carolina;

(6) provide students with hands-on learning opportunities, such as farm visits, cooking demonstrations, and the planting and cultivating of school gardens; and

(7) encourage the integration of nutritional and agricultural education into programs of study.

(B) A successful South Carolina Fresh on the Campus program requires the expertise and collaboration of numerous state agencies, including, but not limited to, the State Department of Education, the Department of Agriculture, the Department of Health and Environmental Control, and Clemson University.

Fresh and minimally processed foods program

SECTION 2. Chapter 3, Title 46 of the 1976 Code is amended by adding:

"Section 46-3-25. (A) There is created a program within the South Carolina Department of Agriculture to foster relationships between South Carolina farms, school districts, and other institutions and to provide them with fresh and minimally processed foods for consumption by students.

(B) The program must:

(1) identify and promote local farms to food service programs and offer them information concerning actions and strategies to implement the program;

(2) establish a partnership with public and nonprofit resources to implement a public engagement campaign and establish a structure to facilitate communication between school districts, institutions, farmers, and produce distributors;

(3) encourage food service personnel to develop and implement school nutrition plans which purchase and use locally grown farm fresh products;

(4) offer assistance and outreach to school districts that choose to participate in the voluntary program. Assistance and outreach may include, but is not limited to, conducting workshops and training sessions, providing technical assistance regarding the availability of South Carolina farm products, and promoting the benefits of purchasing and consuming fresh food products from this State. School districts that choose to participate in the voluntary program are not required to participate or otherwise accept assistance or outreach; and

(5) regularly consult with the staff of the Department of Health and Environmental Control, the State Department of Education, Clemson University, and other state agencies concerning implementation of the program.

(C) The Department of Agriculture may seek grants and private funding for the program. This subsection may not be interpreted to explicitly or implicitly require any other state agency or department to participate or join the department in any grant applications or private funding efforts.

(D) The Department of Agriculture must establish a website for the program."

Regulations

SECTION 3. Regulations may not be promulgated pursuant to this act.

Repeal

SECTION 4. The provisions contained in this act are repealed July 1, 2018, unless reauthorized by the General Assembly.

Time effective

SECTION 5. This act takes effect upon approval of the Governor.

Ratified the 4th day of June, 2013.

Approved the 7th day of June, 2013.

No. 41

(R48, S214)

AN ACT TO AMEND SECTION 40-30-30, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO DEFINITIONS CONCERNING THE MASSAGE/BODYWORK PRACTICE ACT, SO AS TO ADD, REVISE, AND DELETE DEFINITIONS; TO AMEND SECTION 40-30-40, RELATING TO THE ADVISORY PANEL FOR MASSAGE/BODYWORK THERAPY UNDER THE DEPARTMENT OF LABOR, LICENSING AND REGULATION, SO AS TO REDESIGNATE THE ADVISORY PANEL TO BE KNOWN AS THE "PANEL", TO REVISE QUALIFICATIONS AND MANNER OF APPOINTMENT OF PANEL MEMBERS, AND TO PROVIDE COMPENSATION FOR MEMBERS AND REIMBURSEMENT OF CERTAIN EXPENSES; TO AMEND SECTION 40-30-50, RELATING TO DUTIES OF THE PANEL, SO AS TO PROVIDE ADDITIONAL DUTIES AND POWERS; TO AMEND SECTION 40-30-60, RELATING TO USE OF EMPLOYEES OF THE DEPARTMENT AND PROMULGATION OF REGULATIONS BY THE BOARD, SO AS TO REMOVE OBSOLETE REFERENCES; TO AMEND SECTION 40-30-90, RELATING TO REPORTING REQUIREMENTS, SO AS TO REMOVE AN OBSOLETE REFERENCE; TO AMEND SECTION 40-30-110, RELATING TO QUALIFICATIONS FOR LICENSURE, SO AS TO REQUIRE CLASSROOM STUDY INSTEAD OF SUPERVISED STUDY, AND TO SPECIFY PROFESSIONAL EXAMINATIONS CONSIDERED ACCEPTABLE FOR LICENSURE; TO AMEND SECTION 40-30-200, RELATING TO COMPLAINTS CONCERNING THE FITNESS OF A LICENSEE TO PRACTICE, SO AS TO MAKE CONFORMING CHANGES;

TO AMEND SECTION 40-30-220, RELATING TO EQUITABLE REMEDIES AVAILABLE TO THE PANEL, SO AS TO MAKE CONFORMING CHANGES; TO AMEND SECTION 40-30-230, RELATING TO GROUNDS OF MISCONDUCT, SO AS TO MAKE CONFORMING CHANGES AND REVISE THE GROUNDS RELATED TO CONVICTIONS FOR CERTAIN CRIMINAL CONDUCT; TO AMEND SECTION 40-30-240, RELATING TO INVESTIGATIONS OF MISCONDUCT RELATED TO SUBSTANCE ABUSE, SO AS TO MAKE CONFORMING CHANGES AND REVISE LANGUAGE CONCERNING RECORDS THE PANEL OBTAINS IN AN INVESTIGATION; TO AMEND SECTION 40-30-250, RELATING TO ACTIONS THE BOARD MAY TAKE IN RESPONSE TO A DISCIPLINARY VIOLATION, SO AS TO MAKE CONFORMING CHANGES AND ADD PROVISIONS CONCERNING A PRIVATE REPRIMAND; TO AMEND SECTION 40-30-260, RELATING TO VOLUNTARY SURRENDER OF A LICENSE, SO AS TO MAKE CONFORMING CHANGES; TO AMEND SECTION 40-30-270, RELATING TO APPEALS FROM DISCIPLINARY PANEL DECISIONS, SO AS TO MAKE CONFORMING CHANGES; TO AMEND SECTION 40-30-300, RELATING TO SERVICE OF PROCESS ON NONRESIDENTS, SO AS TO MAKE CONFORMING CHANGES; TO AMEND SECTION 40-30-310, RELATING TO CIVIL PENALTIES, SO AS TO MAKE CONFORMING CHANGES; AND TO REPEAL SECTION 40-30-65 RELATING TO THE CREATION AND STRUCTURE OF THE DISCIPLINARY PANEL, SECTION 40-30-70 RELATING TO DUTIES OF THE DISCIPLINARY PANEL, AND SECTION 40-30-210 RELATING TO PROCEDURES BEFORE THE DISCIPLINARY PANEL.

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

Definitions revised

SECTION 1. Section 40-30-30 of the 1976 Code is amended to read:

"Section 40-30-30. As used in this chapter:

(1) 'Approved massage/bodywork school' means a facility that meets minimum standards for training and curriculum as determined by regulation of the department.

(2) 'Department' means the Department of Labor, Licensing and Regulation.

(3) 'Director' means the Director of the Department of Labor, Licensing and Regulation.

(4) 'Hydrotherapy' means the use of water, vapor, or ice for treatment of superficial tissues.

(5) 'Licensure' means the procedure by which an individual applies to the department and is granted approval to practice massage/bodywork.

(6) 'Massage/bodywork therapy' means the application of a system of structured touch of the superficial tissues of the human body with the hand, foot, arm, or elbow whether or not the structured touch is aided by hydrotherapy, thermal therapy, a massage device, human hands, or the application to the human body of an herbal preparation.

(7) 'Massage/bodywork therapist' means an individual licensed as required by this chapter, who administers massage/bodywork therapy for compensation.

(8) 'Massage device' means a mechanical device that mimics or enhances the actions possible by the hands by means of vibration.

(9) 'Panel' means the Panel for Massage/Bodywork under the Department of Labor, Licensing and Regulation.

(10) 'Thermal therapy' means the use of ice or a heat lamp or moist heat on superficial tissues."

Advisory panel redesignated as "panel", membership, compensation, duties, conforming changes

SECTION 2. Sections 40-30-40, 40-30-50 and 40-30-60 of the 1976 Code are amended to read:

"Section 40-30-40. (A) There is created the Panel for Massage/Bodywork under the Department of Labor, Licensing and Regulation. The panel consists of seven members appointed by the Governor. Six members must be licensed massage/bodywork therapists in good standing and must have been engaged in the practice of massage/bodywork for not fewer than three consecutive years before appointment to the panel. One member must represent the public at large and must not have a financial interest, direct or indirect, in the profession or practice of massage/bodywork therapy. A panel member must be a high school graduate or shall have received a graduate equivalency diploma and must be a citizen of the United States and a resident of this State for not fewer than five years. Nominations for

appointment to the panel may be submitted to the Governor from any individual, group, or association.

(B) Members serve a term of four years and until their successors are appointed and qualify. A vacancy on the panel must be filled in the manner of the original appointment for the remainder of the unexpired term.

(C) Members of the panel must be compensated for their services at the usual rate for mileage, subsistence, and per diem as provided by law for members of state boards, committees, and commissions and must be reimbursed for actual and necessary expenses incurred in connection with and as a result of their service on the panel. Compensation and reimbursements paid to panel members pursuant to this subsection must be paid as an expense of the panel in the administration of this chapter.

(D) The Governor may remove a member of the panel in accordance with Section 1-3-240.

Section 40-30-50. (A) The Panel for Massage/Bodywork shall:

(1) advise and recommend action to the department in the development of regulations, statutory revisions, and such other matters as the department may request in regard to the administration of this chapter;

(2) conduct hearings:

(a) on alleged violations of this chapter and regulations promulgated pursuant to this chapter;

(b) on licensure determination if not appropriate to be determined at the staff level;

(3) mediate consumer complaints if appropriate;

(4) recommend discipline for individuals licensed pursuant to this chapter in any manner provided for in this chapter.

(B) The panel may administer oaths and upon its own motion, or upon request of a party, shall subpoena witnesses, compel their attendance, take evidence, and require the production of matter that is relevant to the investigation including, but not limited to, the existence, description, nature, custody, condition, and location of books, documents, or other tangible items and the identity and location of individuals having knowledge of relevant facts or other matter reasonably calculated to lead to the discovery of material evidence. Upon failure to obey a subpoena or to answer questions propounded by the panel, the panel may apply pursuant to the Administrative Procedures Act to an administrative law judge for an order requiring

the individual to appear before the panel and to produce documentary evidence and give other evidence concerning the matter under inquiry.

Section 40-30-60. (A) The Director of the Department of Labor, Licensing and Regulation may employ and establish compensation for personnel the director considers necessary and appropriate for the administration of this chapter.

(B) The director shall prescribe duties, which may include, but are not limited to:

(1) maintaining and preserving records;

(2) receiving and accounting for all monies received by the panel;

(3) issuing necessary notices to licensees;

(4) determining the eligibility of applicants for examination and licensure;

(5) examining applicants for licensure including, but not limited to:

(a) prescribing the subjects, character, and manner of licensing examinations;

(b) preparing, administering, and grading the examination or contracting for the preparation, administration, or grading of the examination. Professional testing services may be utilized to formulate and administer any examinations required by the department;

(6) issuing and renewing licenses of qualified applicants;

(7) evaluating and approving continuing education course hours and programs;

(8) promulgating regulations to carry out this chapter including, but not limited to, establishing a code of ethics to govern the conduct and practices of individuals licensed pursuant to this chapter."

Annual report

SECTION 3. Section 40-30-90 of the 1976 Code is amended to read:

"Section 40-30-90. The department shall prepare and submit to the Governor an annual report on the administration of this chapter."

Qualifications for licensure

SECTION 4. Section 40-30-110 of the 1976 Code is amended to read:

"Section 40-30-110. To be licensed by the department as a massage/bodywork therapist an individual:

(1) must be at least eighteen years of age and have received a high school diploma or graduate equivalency diploma;

(2) shall have completed a five hundred hour course of classroom study at an approved massage/bodywork school having a curriculum that meets the standards set forth in regulation by the department; and

(3) shall have received a passing grade on the National Certification Exam for Therapeutic Massage and Bodywork (NCETMB), National Certification Examination for Therapeutic Massage (NCETM), the Massage and Bodywork Licensing Examination (MBLEx), or any other examination provided for in regulation."

Complaints, conforming changes

SECTION 5. Section 40-30-200 of the 1976 Code is amended to read:

"Section 40-30-200. If the director has reason to believe that an individual licensed pursuant to this chapter has become unfit to practice massage/bodywork therapy or has violated a provision of this chapter or a regulation promulgated pursuant to this chapter or if a written complaint is filed with the director charging a licensee with the violation of a provision of this chapter or a regulation, the director shall initiate an investigation in accordance with procedures established by the department in regulation. If after investigation it appears that probable cause exists for a hearing, a time and a place must be set by the panel for a hearing to determine whether disciplinary action must be taken against the licensee. Notice must be given and the hearing conducted in accordance with the Administrative Procedures Act."

Miscellaneous provisions, substantive and conforming changes

SECTION 6. Sections 40-30-220, 40-30-230, 40-30-240, 40-30-250, 40-30-260 and 40-30-270 of the 1976 Code are amended to read:

"Section 40-30-220. (A) If the panel or the department has reason to believe that an individual is violating or intends to violate a provision of this chapter or a regulation promulgated pursuant to this chapter, in addition to all other remedies, the panel may order an individual to immediately cease and desist from engaging in the conduct. If the individual is practicing massage/bodywork without

being licensed pursuant to this chapter the panel or the department also may apply to an administrative law judge for a temporary restraining order prohibiting the unlawful practice. The administrative law judge may issue a temporary restraining order ex parte and the panel or the department is not required to:

(1) post a bond;

(2) establish the absence of an adequate remedy at law;

(3) establish that irreparable damage would result from the continued violation.

A panel member, the Director of the Department of Labor, Licensing or Regulation, or any other employee of the department may not be held liable for damages resulting from a wrongful temporary restraining order.

(B) In accordance with the South Carolina Rules of Civil Procedure, the panel or the department also may seek from an administrative law judge other equitable relief to enjoin the violation or intended violation of this chapter or a regulation promulgated pursuant to this chapter.

Section 40-30-230. The following constitute misconduct and are grounds for the department denying initial licensure to or the panel taking disciplinary action against an individual who:

(1) used a false, fraudulent, or forged statement or document or committed a fraudulent, deceitful, or dishonest act in applying for licensure pursuant to this chapter;

(2) has had his or her license to practice massage/bodywork from another state or jurisdiction canceled, revoked, suspended, or otherwise restricted;

(3) has violated a provision of this chapter, a regulation promulgated pursuant to this chapter, or an order of the department or the panel;

(4) has intentionally or knowingly, directly or indirectly, aided or abetted in the violation or conspiracy to violate this chapter or a regulation promulgated pursuant to this chapter;

(5) has intentionally used a fraudulent statement in a document connected to the practice of massage/bodywork or has made false, deceptive, or misleading statements in the practice of massage/bodywork or in advertising;

(6) has obtained fees or assisted in obtaining fees under intentionally fraudulent circumstances;

(7) lacks the professional or ethical competence to practice massage/bodywork;

(8) has been convicted of or has pled guilty to or nolo contendere to a violent crime as defined in Section 16-1-60, during the previous five years has been convicted of or has pled guilty to or nolo contendere to a felony that directly relates to the practice or ability to practice massage/bodywork, or during the previous seven years has been convicted of or has pled guilty to or nolo contendere to a felony, an essential element of which is dishonesty, that reasonably relates to the ability to practice massage/bodywork;

(9) has practiced massage/bodywork while under the influence of alcohol or drugs or uses alcohol or drugs to such a degree as to render him or her unfit to practice massage/bodywork;

(10) has sustained a physical or mental disability, as determined by a physician that renders further practice by the licensee dangerous to the public.

Section 40-30-240. If investigating grounds for taking disciplinary action based upon an alcohol or drug addiction, as provided for in Section 40-30-230(10), or a physical or mental disability, as provided for in Section 40-30-230(11), the panel upon reasonable grounds may:

(1) require an applicant or licensee to submit to a mental or physical examination including a drug test by physicians designated by the panel. The results of an examination are admissible in a hearing before the panel, notwithstanding a claim of privilege pursuant to a contrary rule of law. An individual who accepts the privilege of practicing massage/bodywork in this State or who files an application for a license to practice massage/bodywork in this State is deemed to have consented to submit to a mental or physical examination including a drug test and to have waived all objections to the admissibility of the results in a hearing before the panel upon the grounds that the results constitute a privileged communication. If an applicant or licensee fails to submit to an examination when requested by the panel pursuant to this section, unless the failure was due to circumstances beyond the individual's control, the panel shall enter an order automatically denying or suspending the license pending compliance and further order of the panel. An applicant or licensee who is prohibited from practicing pursuant to this subsection must be afforded at reasonable intervals an opportunity to demonstrate to the panel the ability to resume or begin the practice of massage/bodywork with reasonable skill and safety to patients;

(2) obtain records of an examination required by item (1) specifically relating to the mental or physical condition of an applicant or licensee who is the subject of an investigation and these records are

admissible in a hearing before the panel, notwithstanding any other provision of law. An individual who accepts the privilege of practicing massage/bodywork in this State or who files an application to practice massage/bodywork in this State is deemed to have consented to the panel obtaining these records and to have waived all objections to the admissibility of these records in a hearing before the panel upon the grounds that the records constitute a privileged communication. If a licensee or applicant refuses to sign a written consent for the panel to obtain these records when requested by the panel pursuant to this section, unless the failure was due to circumstances beyond the individual's control, the panel shall enter an order automatically denying or suspending the license pending compliance and further order of the panel. An applicant or licensee who is prohibited pursuant to this section from practicing massage/bodywork must be afforded at reasonable intervals an opportunity to demonstrate to the panel the ability to resume or begin the practice of massage/bodywork with reasonable skill and safety to patients.

Section 40-30-250. (A) Upon a determination by the panel that one or more of the grounds for discipline exists, as provided for in Section 40-30-230, the panel may:

(1) issue a nondisciplinary letter of caution;

(2) issue a private reprimand;

(3) issue a public reprimand;

(4) impose a fine not to exceed five hundred dollars;

(5) place the licensee on probation, restrict the license, or suspend the license for a definite or indefinite time and prescribe conditions to be met during probation, restriction, or suspension, respectively including, but not limited to, satisfactory completion of additional education of a supervisory period or of continuing education programs as may be specified;

(6) permanently revoke the license.

(B) A decision by the panel to discipline a licensee as authorized pursuant to this section must be made by a majority vote of the total membership of the panel serving at the time the vote is taken.

(C) Except for a private reprimand, a final order of the department refusing to issue a license to an applicant or a final order of the panel disciplining a licensee pursuant to this section is public information.

Section 40-30-260. A licensee who is under investigation for misconduct, as defined in Section 40-30-230, voluntarily may surrender his or her license to the department, invalidating the license

at the time it is surrendered. An individual who voluntarily surrenders his or her license may not practice as a massage/bodywork therapist until the panel reinstates the individual's license. An individual practicing as a massage/bodywork therapist during the period of voluntary license surrender is deemed an illegal practitioner and is subject to the penalties provided in this chapter. Surrendering a license must not be considered an admission of guilt in a proceeding held pursuant to this chapter. However, surrendering a license does not preclude the panel from imposing conditions on the acceptance of the proffered license or from taking disciplinary action against the licensee.

Section 40-30-270. An individual aggrieved by an action of the panel or the department may appeal the decision to an administrative law judge in accordance with the Administrative Procedures Act. Service of a notice of appeal does not stay the panel's or the department's decision pending completion of the appellate process."

Appeals and violations, conforming changes

SECTION 7. Sections 40-30-300 and 40-30-310 of the 1976 Code are amended to read:

"Section 40-30-300. (A) Every communication, whether oral or written, made by or on behalf of an individual, to the director or the panel, whether by way of complaint or testimony, is privileged, and no action or proceeding, civil or criminal, may be brought against the individual, by or on whose behalf the communication is made, except upon proof that the communication was made with malice.

(B) Nothing in this chapter may be construed to prohibit the respondent or his or her legal counsel from exercising the respondent's constitutional right of due process under the law, including, but not limited to, the respondent's right to have normal access to the charges and evidence filed against him or her.

Section 40-30-310. (A) It is unlawful for an individual to:

(1) hold himself or herself out as a massage/bodywork therapist unless licensed pursuant to this chapter;

(2) allow an employed individual to practice massage/bodywork unless licensed pursuant to this chapter;

(3) present as his or her own the license of another;

(4) allow the use of his or her license by an unlicensed individual;

(5) give false or forged evidence to the department in obtaining a license pursuant to this chapter;

(6) falsely impersonate another license holder;

(7) use or attempt to use a license that has been revoked;

(8) otherwise violate a provision of this chapter or a regulation promulgated pursuant to this chapter.

(B) The department may institute civil action in the circuit court, in the name of the State, for injunctive relief against an individual violating a provision of this chapter or a regulation promulgated pursuant to this chapter or an order of the department or the panel. For each violation, the court may impose a fine of no more than one thousand dollars."

Repeal

SECTION 8. Sections 40-30-65, 40-30-70, and 40-30-210 of the 1976 Code are repealed.

Time effective

SECTION 9. This act takes effect upon approval by the Governor.

Ratified the 4th day of June, 2013.

Approved the 7th day of June, 2013.

No. 42

(R49, S221)

AN ACT TO AMEND SECTION 36-4A-108, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO UNIFORM COMMERCIAL CODE-FUNDS TRANSFERS, SO AS TO MAKE THE CHAPTER APPLICABLE TO REMITTANCE TRANSFERS, UNLESS THE REMITTANCE TRANSFER IS AN ELECTRONIC FUND TRANSFER, AND TO PROVIDE THAT, IN THE EVENT THERE IS AN INCONSISTENCY BETWEEN THE APPLICABLE PROVISION OF THE CHAPTER AND THE APPLICABLE PROVISION OF THE ELECTRONIC FUND

TRANSFER ACT, THE PROVISION OF THE ELECTRONIC FUND TRANSFER ACT GOVERNS.

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

Remittance funds transfers, applicability of UCC funds transfers law

SECTION 1. Section 36-4A-108 of the 1976 Code is amended to read:

"Section 36-4A-108. (a) Except as provided in subsection (b), this chapter does not apply to a funds transfer any part of which is governed by the Electronic Fund Transfer Act of 1978 (Title XX, Public Law 95-630, 92 Stat. 3728, 15 U.S.C. Section 1693, et seq.) as amended from time to time.

(b) This chapter applies to a funds transfer that is a remittance transfer as defined in the Electronic Fund Transfer Act (15 U.S.C. Section 1693o-l) as amended from time to time, unless the remittance transfer is an electronic fund transfer as defined in the Electronic Fund Transfer Act (15 U.S.C. Section 1693a) as amended from time to time.

(c) In a funds transfer to which this chapter applies, in the event of an inconsistency between an applicable provision of this chapter and an applicable provision of the Electronic Fund Transfer Act, the provision of the Electronic Fund Transfer Act governs to the extent of the inconsistency."

OFFICIAL COMMENT

1. The Electronic Fund Transfer Act (EFTA), implemented by Regulation E, 12 C.F.R. Part 1005, is a federal statute that covers aspects of electronic fund transfers involving consumers. EFTA also governs remittance transfers, defined in 15 U.S.C. Section 1693o-1, which involve transfers of funds through electronic means by consumers to recipients in another country through persons or financial institutions that provide such transfers in the normal course of their business. Not all "remittance transfers" as defined in EFTA, however, qualify as "electronic fund transfers" as defined under the EFTA, 15 U.S.C. Section 1693a(7). While Section 36-4A-108(a) broadly states that Chapter 4A does not apply to any funds transfer that is governed in any part by EFTA, subsection (b) provides an exception. The purpose of Section 36-4A-108(b) is to allow this chapter to apply to a funds

transfer as defined in Section 36-4A-104(a) (see Section 36-4A-102) that also is a remittance transfer as defined in EFTA, so long as that remittance transfer is not an electronic fund transfer as defined in EFTA. If the resulting application of this chapter to an EFTA-defined "remittance transfer" that is not an EFTA-defined "electronic fund transfer" creates an inconsistency between an applicable provision of this chapter and an applicable provision of EFTA, as a matter of federal supremacy, the provision of EFTA governs to the extent of the inconsistency. Section 36-4A-108(c). Of course, applicable choice of law principles or enforceable choice of law provisions in an applicable agreement also will affect whether Chapter 4A will apply to all or part of any funds transfer, including a remittance transfer. See Section 36-4A-507. The following examples assume that choice of law principles or an enforceable choice of law provision will lead a court to examine the applicability of Chapter 4A to the funds transfer.

2. The following examples illustrate the relationship between EFTA and this chapter pursuant to Section 36-4A-108.

Example 1. A commercial customer of Bank A sends a payment order to Bank A, instructing Bank A to transfer funds from its account at Bank A to the account of a consumer at Bank B. The funds transfer is executed by a payment order from Bank A to an intermediary bank and is executed by the intermediary bank by means of a clearinghouse credit entry to the consumer's account at Bank B (the beneficiary's bank). The transfer into the consumer's account is an electronic fund transfer as defined in 15 U.S.C. Section 1693a(7). Pursuant to Section 36-4A-108(a), Chapter 4A does not apply to any part of the funds transfer because EFTA governs part of the funds transfer. The funds transfer is not a remittance transfer as defined in 15 U.S.C. Section 1693o-1 because the originator is not a consumer customer. Thus Section 36-4A-108(b) does not apply.

A court might, however, apply appropriate principles from Chapter 4A by analogy in analyzing any part of the funds transfer that is not subject to the provisions of EFTA or other law, such as the obligation of the intermediary bank to execute the payment order of the originator's bank.

Example 2. A consumer originates a payment order that is a remittance transfer as defined in 15 U.S.C. Section 1693o-1 by providing the remittance transfer provider (Bank A) with cash in the amount of the transfer plus any relevant fees. The funds transfer is routed through an intermediary bank for final credit to the designated recipient's account at Bank B. Bank A's payment order identifies the designated recipient by both name and account number in Bank B, but

the name and number provided identify different persons. This remittance transfer is not an electronic fund transfer as defined in 15 U.S.C. Section 1693a(7) because it is not initiated by electronic means from a consumer's account, but does qualify as a funds transfer as defined in Section 36-4A-104. Both Chapter 4A and EFTA apply to the funds transfer. Sections 36-4A-102, 36-4A-108(a), and (b). Chapter 4A's provision on mistakes in identifying the designated beneficiary, Section 36-4A-207, would apply as long as not inconsistent with the governing EFTA provisions. Section 36-4A-108(c).

Example 3. A consumer originates a payment order from the consumer's account at Bank A to the designated recipient's account at Bank B located outside the United States. Bank A uses the CHIPS system to execute that payment order. The funds transfer is a remittance transfer as defined in 15 U.S.C. Section 1693o-1. This transfer is not an electronic fund transfer as defined in 15 U.S.C. Section 1693a(7) because of the exclusion for such types of transfers in 15 U.S.C. Section 1693a(7)(B), but qualifies as a funds transfer as defined in Section 36-4A-104. Under Sections 36-4A-102 and 36-4A-108(b), both Chapter 4A and EFTA apply to the funds transfer. The EFTA will prevail to the extent of any inconsistency between EFTA and Chapter 4A. Section 36-4A-108(c). For example, suppose the consumer subsequently exercised the right to cancel the remittance transfer under the right given under EFTA and obtain a refund. Bank A would be required to comply with the EFTA rule concerning cancellation even if Chapter 4A prevents Bank A from canceling or reversing its payment order it sent to its receiving bank. Section 36-4A-211.

Example 4. A person fraudulently originates an unauthorized payment order from a consumer's account through use of an online banking interface. This transaction is an electronic fund transfer as defined in 15 U.S.C. Section 1693a(7) and would be governed by EFTA and not Chapter 4A. Section 36-4A-108(a). Whether the funds transfer also qualifies as a remittance transfer under 15 U.S.C. Section 1693o-1 does not matter to the application of Chapter 4A.

Example 5. A person fraudulently originates an unauthorized payment order from a consumer's account at Bank A through forging written documents that are provided in person to an employee of Bank A. This funds transfer is not an electronic fund transfer as defined in 15 U.S.C. Section 1693a(7) because the fund transfer from the consumer's account is not initiated by electronic means, but the funds transfer qualifies as a funds transfer as defined in Section 36-4A-104. Chapter 4A will apply to this funds transfer regardless of whether the

funds transfer also qualifies as a remittance transfer under 15 U.S.C. Section 1693o-1. If the funds transfer is not a remittance transfer, the provisions of Section 36-4A-108 are not implicated because the funds transfer does not fall under EFTA, and the general scope provision of Chapter 4A governs. Section 36-4A-102. If the funds transfer is a remittance transfer, and thus governed by EFTA, Section 36-4A-108(b) provides that Chapter 4A also applies. The provisions of Chapter 4A will allocate the loss arising from the unauthorized payment order as long as those provisions are not inconsistent with the provisions of the EFTA applicable to remittance transfers. Section 36-4A-108(c).

3. Regulation J, 12 C.F.R. Part 210, of the Federal Reserve Board addresses the application of that regulation and EFTA to fund transfers made through Fedwire. Fedwire transfers are further described in Official Comments 1 and 2 to Section 36-4A-107. In addition, funds transfer system rules may be applicable pursuant to Section 36-4A-501.

Time effective

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

Ratified the 4th day of June, 2013.

Approved the 7th day of June, 2013.

No. 43

(R50, S250)

AN ACT TO AMEND SECTION 33-56-50, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO ORGANIZATIONS EXEMPT FROM FILING REGISTRATION STATEMENTS TO SOLICIT CHARITABLE CONTRIBUTIONS, SO AS TO ADD PUBLIC SCHOOL DISTRICTS AND PUBLIC SCHOOLS AS ORGANIZATIONS EXEMPT FROM THE FILING REQUIREMENT.

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

Organizations exempt from filing registration statements, public school districts and public schools

SECTION 1. Section 33-56-50 of the 1976 Code, as last amended by Act 69 of 2007, is further amended to read:

"Section 33-56-50. (A) The following are not required to file registration statements with the Secretary of State if their fundraising activities are not conducted by professional solicitors, professional fundraising counsel, or commercial coventurers:

(1) an educational institution which solicits contributions from only its students and their families, alumni, faculty, friends, and other constituencies, trustees, corporations, foundations, and individuals who are interested in and supportive of the programs of the institution;

(2) a person requesting contributions for the relief of an individual specified by name at the time of the solicitation when all of the contributions collected, without deductions of any kind, are turned over to the named beneficiary for his use, as long as the person soliciting the contributions is not a named beneficiary;

(3) a charitable organization which (a) does not intend to solicit or receive contributions from the public in excess of twenty thousand dollars in a calendar year and (b) has received a letter of tax exemption from the Internal Revenue Service, if all functions, including fundraising activities, of the organization exempted pursuant to this item are conducted by persons who are compensated no more than five hundred dollars in a year for their services and no part of their assets or income inures to the benefit of or is paid to an officer or a member. If the contributions raised from the public, whether or not the contributions are actually received by a charitable organization during any calendar year, are in excess of these amounts, within thirty days after the date the contributions exceed these amounts, the organization must register with and report to the Secretary of State as required by this chapter;

(4) an organization which solicits exclusively from its membership, including a utility cooperative;

(5) a veterans' organization which has a congressional charter; and

(6) the State, its political subdivisions, and an agency or a department of the State which are subject to the disclosure provisions of the Freedom of Information Act.

(B) The following are not required to file registration statements with the Secretary of State regardless of whether or not their

fundraising activities are conducted by professional solicitors, professional fundraising counsel, or commercial coventurers:

(1) a public school district located in the State and any public school teaching pre-K through grade twelve located within the public school district. For purposes of this chapter, the term 'public school' includes any student organization within the school that does not maintain separate financial accounts or a separate federal Employer's Identification Number (EIN) from the school and whose fundraising revenues are deposited in the school's student activity fund; and

(2) a charitable organization that does not intend to solicit or receive contributions from the public in excess of seven thousand five hundred dollars during a calendar year. If the contributions raised from the public, whether or not the contributions are actually received by a charitable organization during any calendar year, are in excess of these amounts, the organization shall register and report to the Secretary of State as required by this chapter within thirty days after the date the contributions exceed these amounts.

(C) A charitable organization claiming to be exempt from the registration provisions of this chapter and which solicits charitable contributions must submit annually to the Secretary of State, on forms prescribed by the Secretary of State, the name, address, and purpose of the organization and a statement setting forth the reason for the claim for exemption. If appropriate, the Secretary of State or his appropriate division shall issue a letter of exemption that may be exhibited to the public. A filing fee is not required of an exempt organization.

(D) A professional solicitor, professional fundraising counsel, or commercial coventurer conducting fundraising activities on behalf of an exempt organization must comply with the registration and filing requirements of this chapter."

Time effective

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

Ratified the 4th day of June, 2013.

Approved the 7th day of June, 2013.

No. 44

(R52, S382)

AN ACT TO AMEND SECTION 56-15-10, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO DEFINITIONS FOR REGULATING MANUFACTURERS, DISTRIBUTORS, AND DEALERS, SO AS TO DEFINE THE TERMS "DUE CAUSE" AND "MATERIAL BREACH"; TO AMEND SECTION 56-15-40, RELATING TO SPECIFIC ACTS DEEMED UNFAIR METHODS OF COMPETITION AND UNFAIR OR DECEPTIVE ACTS OR PRACTICES, SO AS TO PROVIDE THAT A MANUFACTURER, DISTRIBUTOR, WHOLESALER, DISTRIBUTOR BRANCH OR DIVISION, FACTORY BRANCH OR DIVISION, WHOLESALE BRANCH OR DIVISION, OFFICER, AGENT, OR OTHER REPRESENTATIVE THEREOF, MAY NOT REQUIRE OR COERCE A MOTOR VEHICLE DEALER TO OFFER TO SELL OR SELL ANY EXTENDED SERVICE CONTRACT, EXTENDED MAINTENANCE PLAN, FINANCIAL PRODUCT, OR INSURANCE PRODUCT OFFERED, SOLD, OR SPONSORED BY THE MANUFACTURER OR TO SELL, ASSIGN, OR TRANSFER ANY RETAIL INSTALLMENT SALES CONTRACT OR LEASE OBTAINED BY THE MOTOR VEHICLE DEALER IN CONNECTION WITH THE SALE OR LEASE OF A NEW MOTOR VEHICLE MANUFACTURED BY THE MANUFACTURER TO A SPECIFIED FINANCE COMPANY, CLASS OF FINANCE COMPANIES, LEASING COMPANY, CLASS OF LEASING COMPANIES, OR TO ANY OTHER SPECIFIED PERSON, TO DEFINE THE TERM "FINANCIAL SERVICES COMPANY", AND TO PROVIDE THAT A MANUFACTURER OR DISTRIBUTOR MAY NOT USE CERTAIN FINANCIAL SERVICES COMPANIES OR LEASING COMPANIES TO ACCOMPLISH ILLEGAL CONDUCT; BY ADDING SECTION 56-15-47 SO AS TO PROVIDE THAT A MANUFACTURER MAY NOT PREVENT A MOTOR VEHICLE DEALER FROM DESIGNATING A SUCCESSOR TO THE DEALERSHIP IN THE EVENT OF DEATH OR INCAPACITY OF THE MOTOR VEHICLE DEALER, AND TO PROVIDE THE CONDITIONS UPON WHICH A PERSON MAY SUCCEED TO A FRANCHISE; TO AMEND SECTION 56-15-60, RELATING TO MOTOR

VEHICLE DEALERS' CLAIMS FOR COMPENSATION, SO AS TO PROVIDE THAT ALL WARRANTY CLAIMS, SERVICE CLAIMS, OR INCENTIVE CLAIMS NOT SPECIFICALLY DISAPPROVED IN WRITING WITHIN THIRTY DAYS OF RECEIPT SHALL BE CONSTRUED AS APPROVED AND PAYMENT MUST FOLLOW WITHIN THIRTY DAYS, AND A MANUFACTURER SHALL NOT UNREASONABLY DISAPPROVE A CLAIM THAT RESULTS IN A CLERICAL OR ADMINISTRATIVE ERROR AND THAT CLAIM DISAPPROVAL MUST BE BASED ON A MATERIAL DEFECT; BY ADDING SECTION 56-15-95 SO AS TO PROVIDE THAT A MANUFACTURER MAY NOT TERMINATE OR CANCEL A FRANCHISE OR SELLING AGREEMENT OF A MOTOR VEHICLE DEALER WITHOUT DUE CAUSE, AND TO PROVIDE THE FACTORS THE COURT MUST USE WHEN IT DETERMINES WHETHER DUE CAUSE EXISTS; BY ADDING SECTION 56-15-96 SO AS TO PROVIDE THAT A PERFORMANCE STANDARD, SALES EFFECTIVENESS STANDARD, SALES OBJECTIVE, OR PROGRAM FOR MEASURING DEALERSHIP PERFORMANCE THAT MAY HAVE A MATERIAL EFFECT ON A MOTOR VEHICLE DEALER SHALL BE FAIR, REASONABLE, EQUITABLE, BASED ON ACCURATE INFORMATION, AND UNIFORMLY APPLIED TO OTHER SIMILARLY SITUATED MOTOR VEHICLE DEALERS; AND BY ADDING SECTION 56-15-98 SO AS TO PROVIDE THAT A MANUFACTURER OR DISTRIBUTOR, OFFICER, AGENT, OR ANY REPRESENTATIVE OF A MANUFACTURER OR DISTRIBUTOR MAY NOT UNREASONABLY ALTER A NEW MOTOR VEHICLE DEALER'S AREA OF RESPONSIBILITY, AND TO PROVIDE A PROCEDURE TO ALTER A NEW MOTOR VEHICLE DEALER'S AREA OF RESPONSIBILITY.

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

Definitions

SECTION 1. Section 56-15-10 of the 1976 Code is amended by adding the following items at the end:

"(r) 'Due cause' means a material breach by a dealer of a lawful provision of a franchise or selling agreement that is not cured within a

reasonable period of time after being given prior written notice of the specific material breach.

(s) 'Material breach' means a contract violation that is substantial and significant."

Unfair or deceptive acts or practices

SECTION 2. A. Section 56-15-40(2) of the 1976 Code is amended to read:

"(2) It shall be deemed a violation of subsection (a) of Section 56-15-30 for a manufacturer, a distributor, a wholesaler, a distributor branch or division, a factory branch or division, or a wholesale branch or division, or an officer, agent or other representative, to require, coerce, or attempt to coerce, any motor vehicle dealer:

(a) to order or accept delivery of any motor vehicle or vehicles, appliances, equipment, parts or accessories, or any other commodity or commodities which such motor vehicle dealer has not voluntarily ordered;

(b) to order or accept delivery of any motor vehicle with special features, appliances, accessories, or equipment not included in the list price of said motor vehicles as publicly advertised by the manufacturer thereof;

(c) to order for any person any parts, accessories, equipment, machinery, tools, appliances, or any commodity whatsoever;

(d) to offer to sell or to sell any extended service contract, extended maintenance plan, financial product, or insurance product offered, sold, or sponsored by the manufacturer, distributor, or wholesaler. Nothing in this item shall prohibit a manufacturer or distributor or financial arm from providing functionally available incentive programs to a motor vehicle dealer who voluntarily offers to sell or sells any extended service contract, extended maintenance plan, financial product, or insurance product offered, sold, or sponsored by the manufacturer or distributor or financial arm;

(e) to sell, assign, or transfer any retail installment sales contract or lease obtained by the motor vehicle dealer in connection with the sale or lease of a new motor vehicle manufactured by the manufacturer to a specified finance company, class of finance companies, leasing company, class of leasing companies, or to any other specified person."

B. Section 56-15-40 of the 1976 Code is amended by adding an appropriately numbered item to read:

"( )(a) For purposes of this subsection, a 'financial services company' means any finance source that provides automotive-related loans, or purchases retail installment contracts or lease contracts for motor vehicles and is, directly or indirectly, owned, operated, or controlled, in whole or in part, by a manufacturer, a distributor, a wholesaler, a distributor branch or division, a factory branch or division, or a wholesale branch or division.

(b) A manufacturer or distributor may not use any financial services company or leasing company owned or controlled by the manufacturer or distributor to accomplish what would otherwise be illegal conduct on the part of the manufacturer or distributor pursuant to subitems (2)(d) or (e)."

Successor to a dealership

SECTION 3. Article 1, Chapter 15, Title 56 of the 1976 Code is amended by adding:

"Section 56-15-47. A manufacturer may not prevent a motor vehicle dealer from designating a successor to the dealership in the event of death or incapacity of the motor vehicle dealer. The designation may be made by the motor vehicle dealer by will or other written instrument or, in the event of his death or incapacity, by the qualified executor or personal representative of the motor vehicle dealer by will or other written instrument. No individual may succeed to a franchise until the franchisor has been given written notice as to the identity, financial ability, and qualifications of the successor in question. The manufacturer or distributor is not required to accept a succession which does not meet the manufacturer's or distributor's written, reasonable, and uniformly applied minimal standard qualifications. The burden of proof shall be on the manufacturer or distributor to show that the succession does not meet the manufacturer's or distributor's written, reasonable, and uniformly applied minimal standard qualifications."

Fulfillment of warranty agreements

SECTION 4. Section 56-15-60 of the 1976 Code is amended to read:

"Section 56-15-60. (A)(1) Every manufacturer, distributor, wholesaler, distributor branch or division, factory branch or division, or wholesale branch or division must fulfill properly a warranty

agreement and compensate adequately and fairly each of its motor vehicle dealers for labor and parts. All warranty claims, service claims, or incentive claims made by motor vehicle dealers pursuant to this section and Section 56-15-50 for labor and parts must be paid within thirty days following their approval. All claims must be either approved or disapproved within thirty days after their receipt. Any claim not specifically disapproved in writing within thirty days of receipt shall be construed as approved and payment must follow within thirty days. The motor vehicle dealer who submits a disapproved claim must be notified in writing of its disapproval within that period, and the notice must state the specific grounds upon which the disapproval is based.

(2) A claim disapproval must be based on a material defect. A manufacturer shall not disapprove claims:

(a) for which the motor vehicle dealer has received preauthorization from the manufacturer or its representative; or

(b) based on the motor vehicle dealer's incidental failure to comply with a specific claim processing requirement that results in a clerical or administrative error.

(3) In the event of neglect, oversight, or mistake by the motor vehicle dealer, the dealer may submit an amended claim for labor and parts up to sixty days from the date on which the manufacturer provided written notice to the motor vehicle dealer of the material defect or deviation. The motor vehicle dealer must substantiate the claim in accordance with the manufacturer's reasonable written procedures.

(4) Any special handling of claims required by the manufacturer, distributor, wholesaler, distributor branch or division, factory branch or division, or wholesale branch or division, but not uniformly required of all dealers of that make, may be enforced only after thirty days' notice in writing of good and sufficient reason."

Termination or cancellation of a franchise or selling agreement

SECTION 5. Article 1, Chapter 15, Title 56 of the 1976 Code is amended by adding:

"Section 56-15-95. (A) A manufacturer may not terminate or cancel a franchise or selling agreement of a motor vehicle dealer without due cause.

(B) The nonrenewal of a franchise or selling agreement, without due cause, shall constitute an unfair termination or cancellation regardless of the terms of the franchise or selling agreement.

(C) In determining whether due cause exists, the court shall take into consideration:

(1) the motor vehicle dealer's sales in relation to the business available to the motor vehicle dealer;

(2) the motor vehicle dealer's investments and obligations;

(3) whether the motor vehicle dealer was provided adequate inventory;

(4) injury to the public welfare;

(5) the adequacy of the motor vehicle dealer's sales and service facilities, equipment, and parts;

(6) the qualifications of the management, sales, and service personnel to provide the consumer with reasonably good service and care of new motor vehicles;

(7) the motor vehicle dealer's failure to comply with the requirements of the franchise agreement;

(8) the opportunity to cure the alleged breach; and

(9) the harm caused to the manufacturer or distributor."

Performance, sales effective and sales objective standards

SECTION 6. Article 1, Chapter 15, Title 56 of the 1976 Code is amended by adding:

"Section 56-15-96. (A) A performance standard, sales effectiveness standard, sales objective, or program for measuring dealership performance that may have a material effect on a motor vehicle dealer including, but not limited to, his right to payment under any incentive or reimbursement program, shall be fair, reasonable, equitable, based on accurate information, and uniformly applied to other similarly situated motor vehicle dealers.

(B) If a motor vehicle dealer protests a new performance standard, sales effectiveness standard, sales objective, or program for measuring dealership performance, the burden of proof shall be on the manufacturer to show the action is reasonable and justifiable in light of the market conditions."

Alteration of a new motor vehicle dealer's area of responsibility

SECTION 7. Article 1, Chapter 15, Title 56 of the 1976 Code is amended by adding:

"Section 56-15-98. (A) A manufacturer or distributor, officer, agent, or any representative of a manufacturer or distributor may not unreasonably alter a new motor vehicle dealer's area of responsibility.

(B) To alter a new motor vehicle dealer's area of responsibility, a manufacturer or distributor, officer, agent, or any representative of a manufacturer or distributor must provide advance notice to the motor vehicle dealer including an explanation of the basis for the alteration at least sixty days before the effective date of the alteration.

(C)(1) At any time prior to the effective date of an alteration of a new motor vehicle dealer's area of responsibility, and after the completion of any internal appeal process pursuant to the manufacturer's or distributor's policy manual, the motor vehicle dealer may petition the court to enjoin or prohibit the alteration.

(2) The court shall enjoin or prohibit the alteration of a motor vehicle dealer's area of responsibility unless the franchisor shows, by a preponderance of the evidence, that the alteration is reasonable and justifiable in light of market conditions.

(3) If a motor vehicle dealer petitions the court, no alteration to a motor vehicle dealer's area of responsibility shall become effective until a final determination by the court.

(D) If a new motor vehicle dealer's area of responsibility is altered, the manufacturer shall allow twenty-four months for the motor vehicle dealer to become sales effective prior to taking any action claiming a breach or nonperformance of the motor vehicle dealer's sales performance responsibilities."

Time effective

SECTION 8. This act takes effect upon approval by the Governor.

Ratified the 4th day of June, 2013.

Approved the 7th day of June, 2013.

No. 45

(R53, S417)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, SO AS TO ENACT THE "MILITARY SERVICE OCCUPATION, EDUCATION, AND CREDENTIALING ACT"; BY ADDING SECTION 59-101-400 SO AS TO PROVIDE A PUBLIC, POST-SECONDARY INSTITUTION OF HIGHER EDUCATION IN THIS STATE MAY AWARD EDUCATIONAL CREDIT TO AN HONORABLY DISCHARGED MEMBER OF THE ARMED FORCES FOR A COURSE THAT IS PART OF HIS MILITARY TRAINING OR SERVICE, SUBJECT TO CERTAIN CONDITIONS, AND TO REQUIRE THE INSTITUTION TO IMPLEMENT RELATED POLICIES AND REGULATIONS WITHIN A SPECIFIED TIME FRAME; BY ADDING ARTICLE 3 TO CHAPTER 1, TITLE 40 SO AS TO PROVIDE MISCELLANEOUS LICENSURE PROVISIONS FOR MILITARY PERSONNEL, TO PROVIDE A PERSON LICENSED BY BOARD OR COMMISSION UNDER THE DEPARTMENT OF LABOR, LICENSING AND REGULATION IS EXEMPT FROM CONTINUING EDUCATION REQUIREMENTS AND FEE ASSESSMENTS DURING ACTIVE DUTY IN THE UNITED STATES ARMED FORCES, TO PROVIDE A BOARD OR COMMISSION MAY ISSUE A TEMPORARY PROFESSIONAL LICENSE TO THE SPOUSE OF AN ACTIVE DUTY MEMBER OF THE UNITED STATES ARMED FORCES IN CERTAIN CIRCUMSTANCES, AND TO PROVIDE A BOARD OR COMMISSION MAY ACCEPT CERTAIN COURSEWORK OR EXPERIENCE OBTAINED DURING THE COURSE OF MILITARY SERVICE TO SATISFY RELATED PROFESSIONAL OR OCCUPATIONAL EDUCATION OR TRAINING LICENSURE REQUIREMENTS; AND TO REPEAL SECTIONS 40-1-75 RELATING TO EXEMPTING ACTIVE DUTY MILITARY PERSONNEL FROM CONTINUING EDUCATION REQUIREMENTS, AND 40-1-77 RELATING TO TEMPORARY PROFESSIONAL OR OCCUPATIONAL LICENSES FOR MILITARY SPOUSES, THE SUBSTANCE OF WHICH IS INCORPORATED INTO THE NEW ARTICLE ADDED BY THIS ACT.

Whereas, the South Carolina General Assembly finds that military service members after separating from military service are frequently delayed in getting post-military employment even though the service member may have applicable military education, training, and experience which could qualify for an occupational license or certification, or which could provide academic credit toward college, university, or technical degree requirements; and

Whereas, the General Assembly finds it is advantageous to the State to create occupational and educational opportunities for post-military service members who are honorably discharged and spouses of active-duty service members who must leave work in another state to accompany their service member on transfer and assignment for military duty in this State; and

Whereas, the General Assembly finds that the spouse of an active-duty service member assigned for duty in this State who possesses a valid professional license or certification with current experience in another state should be allowed to apply for the same professional license or certification in this State and such application should be expedited for better employment opportunities and based upon the person having substantially equivalent education, training, and experience for licensure in this State. Now, therefore,

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

Citation

SECTION 1. This act is known and may be cited as the "Military Service Occupation, Education, and Credentialing Act".

Educational credit for certain courses that are part of the military training or service

SECTION 2. Article 1, Chapter 101, Title 59 of the 1976 Code is amended by adding:

"Section 59-101-400. (A) A state-supported post-secondary educational institution governed by this title, including a technical and comprehensive educational institution, may award educational credit to a student honorably discharged from the Armed Forces of the United

States for a course that is part of the military training or service of the student, provided:

(1) the award must be made within three years after the enrollment of the student at the institution;

(2) the course meets the standards of the American Council of Education or equivalent standards for awarding academic credit; and

(3) the award is based upon the admissions standards, role, scope, and mission of the institution.

(B) An institution authorized to award educational credit under subsection (A) shall:

(1) develop a policy concerning the provisions of subsection (A) before January 1, 2014; and

(2) adopt rules and procedures to implement the provisions of this section to become effective on the beginning of the 2013-2014 academic year of the institution."

Miscellaneous licensure provisions for military personnel

SECTION 3. Chapter 1, Title 40 of the 1976 Code is amended by adding:

"Article 3

Miscellaneous Licensure Provisions for Military Personnel

Section 40-1-610. A person whose profession or occupation is regulated by this title is exempt from completing continuing education requirements for his profession or occupation while serving on active military duty.

Section 40-1-620. A person whose profession or occupation is regulated by this title may not be assessed, and is exempt from being required to pay, a license fee for his profession or occupation for a calendar year in which he serves any period of active military duty.

Section 40-1-630. (A) A board or commission that regulates the licensure of a profession or occupation under Title 40 may issue a temporary professional license for a profession or occupation it regulates to the spouse of an active duty member of the United States Armed Forces if the member is assigned to a duty station in this State pursuant to the official active duty military orders of the member.

(B)(1) A person seeking a temporary professional license under subsection (A) shall submit an application to the board or commission from which it is seeking the temporary license on forms the board or commission shall create and provide. In addition to general personal information about the applicant, the application must include proof that the:

(a) applicant is married to a member of the United States Armed Forces who is on active duty;

(b) applicant holds a valid license issued by another state, the District of Columbia, a possession or territory of the United States, or a foreign jurisdiction for the profession for which temporary licensure is sought;

(c) applicant holds the license in subitem (b) in 'good standing' as evidenced by a certificate of good standing from the state, possession or territory of the United States, or foreign jurisdiction that issued the license;

(d)(i) applicant submitted at his expense to a fingerprint-based background check conducted by the State Law Enforcement Division to determine if the applicant has a criminal history in this State and a fingerprint-based background check conducted by the Federal Bureau of Investigation to determine if the person has other criminal history, and the official results of these checks must be provided to the board or commission to which application for temporary licensure is made; and

(ii) the provisions of this subitem only apply if a similar background check is required to obtain ordinary licensure in the profession or occupation for which temporary licensure is sought by the applicant; and

(e) spouse of the applicant is assigned to a duty station in this State pursuant to the official active duty military orders of the member.

(C) A temporary license issued under this section expires one year from the date of issue and may not be renewed.

Section 40-1-640. (A) A professional or occupational board or commission governed by this title may accept the education, training, and experience completed by an individual as a member of the Armed Forces or Reserves of the United States, National Guard of any state, the Military Reserves of any state, or the Naval Militias of any state and apply this education, training, and experience in the manner most favorable toward satisfying the qualifications for issuance of the requested license or certification or approval for license examination in this State, subject to the receipt of evidence considered satisfactory by the board or commission.

(B) Nothing in this section may be construed to require the issuance of a license or certificate to an applicant who does not otherwise meet the stated eligibility standards, criteria, qualifications, or requirements for licensure, or certification, nor may the provisions be construed to automatically allow issuance of any license or certificate without testing or examination, without proper consideration by the licensing and examination board, or without proper verification that the applicant is not subject to pending criminal charges or disciplinary actions, has not been convicted of any offense prohibiting licensure or certification, and has no other impairment that would prohibit licensure or certification in this State."

Repeal

SECTION 4. Sections 40-1-75 and 40-1-77 of the 1976 Code are repealed.

Time effective

SECTION 5. This act takes effect upon approval by the Governor.

Ratified the 4th day of June, 2013.

Approved the 7th day of June, 2013.

No. 46

(R54, S438)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 8-15-70 SO AS TO PROVIDE FOR THE FAIR AND OPEN COMPETITION IN GOVERNMENTAL CONTRACTS BY STIPULATING THAT STATE OR LOCAL ENTITIES, OFFICIALS, AND EMPLOYEES, IN REGARD TO A PUBLIC BUILDING, MAY NOT REQUIRE OR PROHIBIT A BIDDER, OFFEROR, CONTRACTOR, OR SUBCONTRACTOR FROM ENTERING INTO OR ADHERING TO AN AGREEMENT WITH ONE OR MORE LABOR ORGANIZATIONS IN REGARD TO THE PROJECT AND MAY NOT OTHERWISE DISCRIMINATE

AGAINST A BIDDER, OFFEROR, CONTRACTOR, OR SUBCONTRACTOR FOR BECOMING OR REFUSING TO BECOME A SIGNATORY TO AN AGREEMENT WITH ONE OR MORE LABOR ORGANIZATIONS IN REGARD TO THE PROJECT, TO PROVIDE THAT STATE AND LOCAL ENTITIES, OFFICIALS, AND EMPLOYEES SHALL NOT AWARD A GRANT, TAX ABATEMENT, OR TAX CREDIT CONDITIONED UPON THE INCLUSION OF SUCH AGREEMENTS IN THE AWARD, AND TO PROVIDE EXCEPTIONS TO AND EXEMPTIONS FROM THESE PROVISIONS.

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

Governmental contractual requirements, public grant or award requirements

SECTION 1. Chapter 15, Title 8 of the 1976 Code is amended by adding:

"Section 8-15-70. (A) It is the intent of the General Assembly that the provisions of this section provide for more economical, nondiscriminatory, neutral, and efficient procurement of construction-related services by this State and political subdivisions of this State as market participants. The General Assembly finds that providing for fair and open competition best effectuates this intent.

(B) An agent or employee of this State, a board or governing body of this State, or of any institution of state government, or any agent, employee, or board or governing body of any political subdivision of this State awarding a contract for the construction, repair, remodeling, or demolition of a public building shall not in any bid specifications, project agreements, or other controlling documents:

(1) require or prohibit a bidder, offeror, contractor, or subcontractor from entering into or adhering to an agreement with one or more labor organizations in regard to that project or a related construction project; and

(2) otherwise discriminate against a bidder, offeror, contractor, or subcontractor for becoming, remaining, refusing to become or remain a signatory to, or for adhering or refusing to adhere to an agreement with one or more labor organizations in regard to that project or a related construction project.

(C) An agent or employee of this State, a board or governing body of this State, or of any institution of state government, or an agent, employee, or board or governing body of any political subdivision of this State shall not award a grant, tax abatement, or tax credit that is conditioned upon a requirement that the person receiving the grant, tax abatement, or tax credit include a term described in subsection (B) in a contract document for any construction, improvement, maintenance, or renovation to real property or fixtures that are the subject of the grant, tax abatement, or tax credit.

(D) This section does not prohibit an agent or employee of this State, a board or governing body of this State, or of any institution of state government, or an agent, employee, or board or governing body of any political subdivision of this State from awarding a contract, grant, tax abatement, or tax credit to a private owner, bidder, contractor, or subcontractor who enters into or who is party to an agreement with a labor organization if being or becoming a party or adhering to an agreement with a labor organization is not a condition for award of the contract, grant, tax abatement, or tax credit, and if the state agent, employee, or board or the political subdivision does not discriminate against a private owner, bidder, contractor, or subcontractor in the awarding of that contract, grant, tax abatement, or tax credit based upon the person's status as being or becoming, or the willingness or refusal to become, a party to an agreement with a labor organization.

(E) This section does not prohibit a contractor or subcontractor from voluntarily entering into or complying with an agreement entered into with one or more labor organizations in regard to a contract with this State or a political subdivision of this State or funded in whole or in part from a grant, tax abatement, or tax credit from this State or political subdivision.

(F) This State or the governing body of a political subdivision may exempt a particular project, contract, subcontract, grant, tax abatement, or tax credit from the requirements of any or all of the provisions of subsection (B) or (C) if the State or governing body of the political subdivision finds, after public notice and a hearing, that special circumstances require an exemption to avert an imminent threat to public health or safety. A finding of special circumstances under this section must not be based on the possibility or presence of a labor dispute concerning the use of contractors or subcontractors who are nonsignatories to, or otherwise do not adhere to, agreements with one or more labor organizations, or concerning employees on the project who are not members of or affiliated with a labor organization.

(G) This section does not do either of the following:

(1) prohibit employers or other parties from entering into agreements or engaging in any other activity protected by the National Labor Relations Act, 29 U.S.C. Sections 151-169; or

(2) interfere with labor relations of parties that are left unregulated under the National Labor Relations Act, 29 U.S.C. Sections 151-169."

Time effective

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

Ratified the 4th day of June, 2013.

Approved the 7th day of June, 2013.

No. 47

(R55, S464)

AN ACT TO AMEND SECTION 38-77-150, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO MANDATORY MINIMUM UNINSURED MOTORIST INSURANCE COVERAGE, SO AS TO INCREASE THE MINIMUM COVERAGE TO TWENTY-FIVE THOUSAND DOLLARS; TO AMEND SECTION 56-9-20, RELATING TO DEFINITIONS IN THE MOTOR VEHICLE RESPONSIBILITY ACT, SO AS TO REVISE THE DEFINITION OF "PROOF OF FINANCIAL RESPONSIBILITY" TO CONFORM AND TO INCREASE THE AMOUNT OF COVERAGE REQUIRED FOR MULTIPLE BODILY INJURIES; AND TO AMEND SECTION 56-9-353, RELATING TO POLICIES AND BONDS, AND SECTION 56-9-480, RELATING TO SATISFACTION OF JUDGMENTS, SO AS TO MAKE CONFORMING CHANGES.

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

Mandatory uninsured motorist coverage, minimum increased

SECTION 1. Section 38-77-150(A) of the 1976 Code is amended to read:

"(A) No automobile insurance policy or contract may be issued or delivered unless it contains a provision by endorsement or otherwise, herein referred to as the uninsured motorist provision, undertaking to pay the insured all sums which he is legally entitled to recover as damages from the owner or operator of an uninsured motor vehicle, within limits which may be no less than the requirements of Section 38-77-140. The uninsured motorist provision also must provide for no less than twenty-five thousand dollars' coverage for injury to or destruction of the property of the insured in any one accident but may provide an exclusion of the first two hundred dollars of the loss or damage. The director or his designee may prescribe the form to be used in providing uninsured motorist coverage and when prescribed and promulgated no other form may be used."

Motor Vehicle Responsibility Act definitions, conforming changes

SECTION 2. Section 56-9-20(11) of the 1976 Code is amended to read:

"(11) 'Proof of financial responsibility': Proof of ability to respond to damages for liability, as provided in Section 38-77-150, or, on account of accidents occurring after the effective date of this proof, arising out of the ownership, maintenance, or use of a motor vehicle in the amount of twenty-five thousand dollars because of bodily injury to or death of one person in any one accident and, subject to this limit for one person, in the amount of fifty thousand dollars because of bodily injury to or death of two or more persons in any one accident and in the amount of twenty-five thousand dollars because of injury to or destruction of property of others in any one accident;"

Policies and bonds, conforming changes

SECTION 3. Section 56-9-353 of the 1976 Code is amended to read:

"Section 56-9-353. No policy or bond shall be effective under Sections 56-9-351 and 56-9-352 unless issued by an insurance company or surety company licensed and authorized by the South

Carolina Department of Insurance to do business in this State, except that if the motor vehicle was not registered in this State or was a motor vehicle which was registered elsewhere than in this State at the effective date of the policy or bond or the most recent renewal thereof, the policy or bond shall not be effective under Sections 56-9-351 and 56-9-352 unless the insurance company or surety company if not authorized to do business in this State shall execute a power of attorney authorizing the Department of Motor Vehicles to accept service on its behalf of notice of process in any action upon the policy or bond arising out of the accident. Every policy or bond must be subject, if the accident has resulted in bodily injury or death, to a limit, exclusive of interest and costs, of not less than twenty-five thousand dollars because of bodily injury to or death of one person in any one accident, and subject to this limit for one person, to a limit of not less than fifty thousand dollars because of bodily injury to or death of two or more persons in any one accident, and, if the accident has resulted in injury to or destruction of property, to a limit of not less than twenty-five thousand dollars because of injury to or destruction of property of others in any one accident."

Satisfaction of judgments, conforming changes

SECTION 4. Section 56-9-480 of the 1976 Code is amended to read:

"Section 56-9-480. Judgments referred to in this article must, for the purpose of this article only, be considered satisfied:

(1) when twenty-five thousand dollars has been credited upon any judgments rendered in excess of that amount because of bodily injury to or death of one person as the result of any one accident;

(2) when, subject to the limit of twenty-five thousand dollars because of bodily injury to or death of one person, the sum of fifty thousand dollars has been credited upon any judgments rendered in excess of that amount because of bodily injury to or death of two or more persons as the result of any one accident; or

(3) when twenty-five thousand dollars has been credited upon any judgments rendered in excess of that amount because of injury to or destruction of property of others as a result of any one accident.

Payments made in settlement of any claims because of bodily injury, death, or property damage arising from a motor vehicle accident must be credited in reduction of the amounts provided for in this section."

New offer of uninsured motorist insurance not required

SECTION 5. An automobile liability insurer is not required to make a new offer of coverage or obtain a new prescribed form on any automobile insurance policy, within the contemplation of Section 38-77-350, to comply with statutory changes to the minimum required limits set forth in Section 38-77-140 and Section 38-77-150.

Time effective

SECTION 6. This act takes effect January 1, 2014, and applies to all policies of automobile insurance issued or renewed on or after the effective date of this act.

Ratified the 4th day of June, 2013.

Approved the 7th day of June, 2013.

No. 48

(R56, S465)

AN ACT TO AMEND SECTION 38-71-1330, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO DEFINITIONS IN THE SMALL EMPLOYER HEALTH INSURANCE AVAILABILITY ACT, SO AS TO REVISE THE DEFINITION OF AN "ELIGIBLE EMPLOYEE".

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

"Eligible employee" redefined

SECTION 1. Section 38-71-1330(6) of the 1976 Code, as last amended by Act 180 of 2008, is further amended to read:

"(6) 'Eligible employee' means an employee:

(a) as defined in Section 38-71-710(1) or Section 38-71-840(7) who works on a full-time basis and has a normal workweek of thirty or more hours; or

(b) who is a licensed real estate person engaged in the sale, leasing, or rental of real estate for a licensed real estate broker on a straight commission basis, who has signed a valid independent contractor agreement with the broker who works on a full-time basis and has a normal workweek of thirty or more hours."

Time effective

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

Ratified the 4th day of June, 2013.

Approved the 7th day of June, 2013.

No. 49

(R57, S530)

AN ACT TO AMEND SECTION 38-71-1730, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO CLOSED PANEL HEALTH PLANS, SO AS TO REMOVE THE REQUIREMENT THAT CERTAIN EMPLOYERS WHO OFFER ONLY CLOSED PANEL HEALTH PLANS TO ITS EMPLOYEES ALSO OFFER A POINT-OF-SERVICE OPTION TO ITS EMPLOYEES, TO MAKE CONFORMING CHANGES, TO PROVIDE THAT A POINT-OF-SERVICE OPTION MAY NOT DISCRIMINATE AGAINST CERTAIN HEALTH CARE PROVIDERS BY EXCLUDING THEM FROM NETWORK PARTICIPATION ON THE BASIS OF THEIR PROFESSION, AND TO INCREASE THE ALLOWABLE DIFFERENCES BETWEEN COINSURANCE PERCENTAGES FOR IN-NETWORK AND OUT-OF-NETWORK COVERED SERVICES AND SUPPLIES UNDER A POINT-OF-SERVICE OPTION.

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

Employers only offering closed panel health plans, point-of-service options

SECTION 1. Section 38-71-1730(A) of the 1976 Code is amended to read:

"(A) For purposes of health plans offered pursuant to this section:

(1) An employer may require an employee who chooses a point-of-service option to be responsible for payment of premiums, deductibles, copayments, or other payments in excess of the benefits provided by the closed panel health plan.

(2) Differences between coinsurance percentages for in-network and out-of-network covered health care services or supplies in a point-of-service option may not exceed a maximum differential of thirty percent. The coinsurance percentage for in-network and out-of-network covered health care services or supplies provided by dentists may not exceed a maximum difference of five percent.

(3) An employee, a spouse, or a dependent receiving treatment for an illness covered under a closed panel health plan may continue to receive services from a provider who elects to discontinue participation as a closed panel plan provider, subject to the terms of the contract between the provider and the health plan. This right of continuation is limited to a period of ninety days or the anniversary date of the plan, whichever occurs first.

(4) A point-of-service option or closed panel health plan may not discriminate against a physician, a podiatrist, an optometrist, an oral surgeon, or a chiropractor by excluding the provider from participating in the plan on the basis of the profession. A health care plan may not exclude these providers from providing health care services which they are licensed to provide and which are covered by the plan and as determined by medical necessity under utilization review guidelines. Nothing in this section interferes in any way with the medical decision of the primary health care provider to use or not use any health care professional on a case-by-case basis.

(5) A pharmacist may provide professional services under the pharmacist's scope of practice so long as the services are provided pursuant to a prescription written by a medical doctor or dentist with whom the patient has an established physician-patient relationship. Nothing in this subsection requires a managed care plan to provide reimbursement to a pharmacist. An advanced practice nurse functioning as authorized by the State Board of Nursing Regulation 91-6 may provide professional services under the advanced practice

nurse's scope of practice so long as the services provided are pursuant to protocols by a medical doctor with whom the patient has an established physician-patient relationship. A point-of-service option offered pursuant to this section may not discriminate against an advanced practice nurse. Nothing in this subsection requires a managed care plan to provide reimbursement to an advanced practice nurse.

(6) Nothing contained in this article affects in any way a plan exempted by the federal Employee Retirement Income Security Act of 1974 or any South Carolina law in existence before January 1, 1999, and state employee health insurance programs or any political subdivision self-funded health insurance program; and this article does not affect the right of an employer to specify plan design or affect the right of a plan to credential or re-credential a provider. Nothing contained in this article affects accident-only, blanket accident and sickness, specified disease, credit, Medicare supplement, long-term care, or disability income insurance, coverage issued as a supplement to liability or other insurance coverage designed solely to provide payments on a per diem, fixed-indemnity, or nonexpense incurred basis, coverage for Medicare or Medicaid services pursuant to a contract with state or federal government, worker's compensation or similar insurance, or automobile medical payment insurance."

Time effective

SECTION 2. This act takes effect forty-five days after approval by the Governor.

Ratified the 4th day of June, 2013.

Approved the 7th day of June, 2013.

No. 50

(R58, S559)

AN ACT TO AMEND SECTION 50-5-1705, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO FLOUNDER CATCH LIMITS, SO AS TO DECREASE THE MAXIMUM CATCH LIMITS FOR FLOUNDER AND TO

PROVIDE THAT IT IS UNLAWFUL FOR A PERSON TO TAKE OR POSSESS MORE THAN FIFTEEN FLOUNDER TAKEN BY MEANS OF GIG, SPEAR, HOOK AND LINE, OR SIMILAR DEVICE IN ANY ONE DAY, NOT TO EXCEED THIRTY FLOUNDER IN ANY ONE DAY ON ANY BOAT.

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

Flounder catch limits

SECTION 1. Section 50-5-1705(G) of the 1976 Code, as last amended by Act 7 of 2013, is further amended to read:

"(G) It is unlawful for a person to take or possess more than fifteen flounder (Paralichthys species) taken by means of gig, spear, hook and line, or similar device in any one day, not to exceed thirty flounder in any one day on any boat."

Time effective

SECTION 2. This act takes effect July 1, 2014.

Ratified the 4th day of June, 2013.

Approved the 7th day of June, 2013.

No. 51

(R59, S620)

AN ACT TO AMEND SECTION 56-3-2335, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE ISSUANCE OF RESEARCH AND DEVELOPMENT LICENSE PLATES, SO AS TO INCLUDE THE MANUFACTURE AND RESEARCH AND DEVELOPMENT OF TRANSMISSIONS IN THIS STATE AS A PART OF THE DEFINITION OF THE TERM "RESEARCH AND DEVELOPMENT BUSINESS", TO INCLUDE A PERSON OR COMPANY IN THE BUSINESS OF OPERATING A GROUP OF VEHICLES DRIVEN BY THEIR EMPLOYEES FOR THE

PURPOSE OF TESTING AND EVALUATING THE PERFORMANCE OF A RESEARCH AND DEVELOPMENT BUSINESS' TRANSMISSIONS AS A PART OF THE DEFINITION OF THE TERM "CONTRACTED FLEET OWNER", TO DEFINE THE TERM "TRANSMISSIONS", TO PROVIDE THAT THE DEPARTMENT OF MOTOR VEHICLES MAY ISSUE RESEARCH AND DEVELOPMENT LICENSE PLATES FOR THE PURPOSE OF TESTING AND EVALUATING THE PERFORMANCE OF A RESEARCH AND DEVELOPMENT BUSINESS' TRANSMISSIONS ON A MOTOR VEHICLE, TO PROVIDE THAT THE DEPARTMENT MAY ENTER INTO RECIPROCAL AGREEMENTS WITH OTHER STATES CONCERNING THE REGISTRATION AND OPERATION OF VEHICLES OWNED BY A RESEARCH AND DEVELOPMENT BUSINESS FOR THE PURPOSE OF TESTING AND EVALUATING THE PERFORMANCE OF THE RESEARCH AND DEVELOPMENT BUSINESS' TRANSMISSIONS, AND TO PROVIDE THAT IT IS THE SOLE RESPONSIBILITY OF THE RESEARCH AND DEVELOPMENT BUSINESS OR CONTRACTED FLEET OWNER TO TAKE ANY OTHER ACTIONS REQUIRED BY ANOTHER STATE THAT ARE NECESSARY FOR THE RESEARCH AND DEVELOPMENT BUSINESS OR CONTRACTED FLEET OWNER, TO LEGALLY TEST AND EVALUATE THE PERFORMANCE OF THE RESEARCH AND DEVELOPMENT BUSINESS' TRANSMISSIONS IN THAT STATE.

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

Research and development license plates

SECTION 1. Section 56-3-2335 of the 1976 Code, as last amended by Act 15 of 2011, is further amended to read:

"Section 56-3-2335. (A) As used in this section:

(1) 'Research and development business' or 'business' means a person who manufacturers tires or transmissions in this State for use as original or replacement equipment on motor vehicles and who conducts research and development activities on tires or transmissions in conjunction with the person's manufacturing activities in South Carolina.

(2) 'Contracted fleet owner' or 'contractor' means a person or company in the business of operating a group of vehicles driven by their employees for the purpose of testing and evaluating the performance of a research and development business' tires or transmissions.

(3) 'Tires' includes tires and tire replacement parts.

(4) 'Transmissions' includes transmissions and transmission parts.

(B)(1) Upon application and payment of the required fee, the Department of Motor Vehicles may issue research and development license plates to a research and development business. The license plates must be used exclusively on motor vehicles, including motorcycles, provided by a motor vehicle manufacturer to the research and development business for the purpose of testing and evaluating the performance of the research and development business' tires or transmissions on the motor vehicle.

(2) Application for research and development license plates must be made by the research and development business on a form prescribed by the department and submitted with proof of the applicant's status as a bona fide research and development business. The cost of each research and development license plate issued is two hundred dollars, of which one hundred sixty dollars must be remitted by the department to the county in which the testing facility of the business is located. Each plate is valid for two years. A maximum of one hundred research and development license plates may be issued for the two-year period.

(C)(1) Upon application and payment of the required fee, the Department of Motor Vehicles may issue fleet research and development plates to a research and development business or to a contracted fleet owner. The license plates will be registered to a specific vehicle owned by the research and development business, or owned by a contracted fleet owner under contract with the research and development business.

(2) Application for fleet research and development license plates must be made by the contractor on a form prescribed by the department and submitted with certification from the research and development business establishing the applicant's status as a bona fide contracted fleet owner under contract with the research and development business. The cost of each fleet research and development license plate is two hundred dollars, of which one hundred sixty dollars must be remitted by the department to the county in which the vehicle is sited, as evidenced by the address on the registration card. Each plate is valid

for two years. A maximum of one hundred fleet research and development license plates may be issued to a contracted fleet owner for the two-year period.

(D) Vehicles with research and development plates or fleet research and development plates may be operated on the state's streets and highways or another state's streets and highways pursuant to a reciprocity agreement with that state. The vehicles may be operated pursuant to this section only for the purpose of testing and evaluating the performance of the research and development business' tires or transmissions on the motor vehicle.

(E) The Department of Motor Vehicles may enter into reciprocal agreements with other states concerning the registration and operation of vehicles owned by a research and development business, provided to the research and development business by a contractor under contract with the research and development business, or provided by a motor vehicle manufacturer to the research and development business for the purpose of testing and evaluating the performance of the research and development business' tires or transmissions.

(F) It is the sole responsibility of the research and development business, or contracted fleet owner, to take any other actions required by another state that are necessary for the research and development business, or contracted fleet owner, to legally test and evaluate the performance of the research and development business' tires or transmissions in that state. The research and development business must comply with any other requirements associated with the operation of the vehicle on the other state's roads and highways."

Time effective

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

Ratified the 4th day of June, 2013.

Approved the 7th day of June, 2013.

No. 52

(R61, S636)

AN ACT TO AMEND SECTION 7-7-430, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE DESIGNATION OF VOTING PRECINCTS IN OCONEE COUNTY, SO AS TO ADD THE "NEW HOPE" PRECINCT, TO DESIGNATE A MAP NUMBER ON WHICH THE NAMES OF THESE PRECINCTS MAY BE FOUND AND MAINTAINED BY THE OFFICE OF RESEARCH AND STATISTICS OF THE STATE BUDGET AND CONTROL BOARD, AND TO CORRECT ARCHAIC LANGUAGE.

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

Oconee County voting precincts revised

SECTION 1. Section 7-7-430 of the 1976 Code, as last amended by Act 157 of 2012, is further amended to read:

"Section 7-7-430. (A) In Oconee County there are the following voting precincts:
Bounty Land
Earles Grove
Fair Play
Friendship
Holly Springs
Keowee
Long Creek
Madison
Mountain Rest
New Hope
Newry-Corinth
Oakway
Ravenel
Return
Richland
Salem
Seneca No. 1
Seneca No. 2
Seneca No. 3

Seneca No. 4
Shiloh
South Union
Stamp Creek
Tamassee
Tokeena/Providence
Utica
Walhalla No. 1
Walhalla No. 2
Westminster No. 1
Westminster No. 2
West Union

(B) The precinct lines defining the above precincts in Oconee 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-73-13 and as shown on certified copies of the official map provided to the Oconee Registration and Elections Commission.

(C) The polling places for the precincts provided in this section must be established by the Oconee Registration and Elections Commission."

Time effective

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

Ratified the 4th day of June, 2013.

Approved the 7th day of June, 2013.

No. 53

(R70, H3751)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, SO AS TO CONFORM WITH FEDERAL MANDATES ENACTED BY THE UNITED STATES CONGRESS IN THE TRADE ADJUSTMENT ASSISTANCE EXTENSION ACT OF 2011; BY ADDING SECTION 41-41-45 SO AS TO PROVIDE THE DEPARTMENT OF EMPLOYMENT

AND WORKFORCE SHALL IMPOSE A PENALTY ON FRAUDULENT OVERPAYMENTS OF UNEMPLOYMENT BENEFITS IN A CERTAIN MANNER; BY ADDING SECTION 41-35-135 SO AS TO PROVIDE CIRCUMSTANCES WHEN THE DEPARTMENT SHALL CHARGE THE ACCOUNT OF AN EMPLOYER FOR OVERPAYMENT OF BENEFITS; BY ADDING SECTION 41-33-910 SO AS TO CREATE THE DEPARTMENT OF EMPLOYMENT AND WORKFORCE INTEGRITY FUND AND PROVIDE FOR ITS SOURCE AND USE, EFFECTIVE OCTOBER 1, 2013; TO AMEND SECTION 43-5-598, AS AMENDED, RELATING TO DEFINITIONS CONCERNING THE SOUTH CAROLINA EMPLOYABLES PROGRAM ACT, SO AS TO REVISE THE DEFINITION OF "NEW HIRE"; AND TO MANDATE IMPLEMENTATION OF AN ONLINE, PREFILING PROGRAM BY THE DEPARTMENT FOR USE OF EMPLOYERS TO ADDRESS POTENTIAL BENEFIT CLAIMS.

Whereas, the United States Congress enacted the Trade Adjustment Assistance Extension Act of 2011 on October 21, 2011, and this act, among other things, imposed three mandatory integrity requirements on the unemployment insurance program of each state; and

Whereas, this mandate requires states to impose a monetary penalty on claimants whose fraudulent acts resulted in overpayments; prohibit states from providing relief from charges to an employer's unemployment insurance account when the actions of an employer or an agent of an employer have led to an improper payment, and requires employers to report to a State Directory of New Hires information on employees the employer has rehired after at least a sixty-day separation; and

Whereas, the State of South Carolina seeks to comply with this mandate by enacting necessary and appropriate changes to our statutory law. Now, therefore,

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

Improper unemployment compensation payments

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

"Section 41-41-45. (A) Notwithstanding any other provision of law, if the department determines that an improper payment from its unemployment compensation fund or from any federal unemployment compensation fund was made to any individual due to a false statement or failure to disclose a material fact pursuant to Sections 41-41-10 and 41-41-20, the department will assess a monetary penalty of twenty-five percent of the amount of the overpayment.

(B) The notice of the determination or decision informing the individual of the overpayment must include:

(1) the claimant's appeal rights;

(2) the penalty amount;

(3) an explanation of the reason for the overpayment; and

(4) the reason the penalty has been applied.

(C) The recovered amounts shall be applied with priority to:

(1) the principal amount of the overpayment to the unemployment compensation fund;

(2) sixty percent of the monetary penalty to the unemployment compensation fund;

(3) the remaining forty percent of the monetary penalty to promote unemployment compensation integrity; and

(4) any remaining amounts to interest.

(D) Offset of future unemployment insurance benefits shall not be applied to the monetary penalty or interest associated with an overpayment.

(E) The monetary penalty will be assessed on any fraudulent overpayment determined by the department after October 21, 2013."

Charge of overpaid benefits to employer's account

SECTION 2. Article 1, Chapter 35, Title 41 of the 1976 Code is amended by adding:

"Section 41-35-135. (A) Notwithstanding any other provision of law, the department shall not relieve the charge benefits to an employer's account when it determines that the overpayment has been made to a claimant and it determines that both of the following conditions apply:

(1) the overpayment occurred because the employer was at fault for failing to respond timely or adequately to a written request of the department for information relating to an unemployment compensation claim; and

(2) the employer exhibits a pattern of failure to timely or adequately respond to requests from the department for information relating to unemployment compensation claims on three or more occasions, or three percent of requests made, within a single calendar year, whichever is greater, provided:

(a) if an employer uses a third-party agent to respond on its behalf to the department's request for information relating to an unemployment compensation claim, the agent's actions on behalf of the employer will be considered when determining a pattern of behavior;

(b) a response is considered untimely if it fails to meet the time as prescribed in the statute or in the regulations;

(c) a response is considered inadequate if it fails to provide sufficient facts to enable the department to make an accurate determination of benefits that do not result in an overpayment. However, a response may not be considered inadequate if the department fails to request the necessary information.

(B) In all cases where the department contacts, or attempts to contact, an employer via telephone concerning a claim for benefits, it must document the contact, or attempt to contact, the employer and provide the documentation to the employer upon request. The documentation must contain the name of the department's staff contacting, or attempting to contact, the employer, the date, time, and whether the department's staff spoke with the employer, and the name of the person with whom the department's staff spoke, if anyone.

(C) A written request for information may be made by electronic mail provided, the employer has opted for notice by electronic mail pursuant to Section 41-35-615.

(D) The department shall charge an employer's account that meets the conditions of subsection (A) for each week of unemployment compensation that is an overpayment until the department makes a determination that the individual is no longer eligible for unemployment compensation and stops making such payments.

(E) If the claim is a combined wage claim, the determination of not charging for the combined wage claim shall be made by the paying state. If the response from the employer does not meet the criteria established by the paying state for an adequate or timely response, the paying state promptly must notify the transferring state of its determination and the employer must be appropriately charged.

(F)(1) The department must waive the charging of benefits to an employer's account when the department finds the employer failed to timely or adequately respond due to good cause.

(2) For the purposes of this section, 'good cause' may include, but is not limited to, an error made by the department that results in the employer's error, or a natural disaster, emergency, or similar event, or an illness on the part of the employer, the employer's agent of record, or the employer's staff charged with responding to inquiries. The burden is on the employer to establish good cause.

(G) Determinations of the department prohibiting the relief of charges pursuant to this section shall be subject to appeal pursuant to procedures contained in Chapter 35, Title 41.

(H) The department shall charge benefits to an employer's account pursuant to this section for any overpayment determined by the department after October 21, 2013."

South Carolina Employables Program Act, definitions

SECTION 3. Section 43-5-598(A)(6) of the 1976 Code is amended to read:

"(6) 'New hire' includes an individual newly employed or an individual who has been rehired who was separated for at least sixty consecutive days or has returned to work after being laid off, furloughed, separated, granted leave without pay, or terminated from employment for at least sixty consecutive days."

Department of Employment and Workforce integrity fund, time effective

SECTION 4. A. Article 5, Title 41, Chapter 33 of the 1976 Code is amended by adding:

"Section 41-33-910. (A) There is created in the State Treasury a special fund to be known as the Department of Employment and Workforce integrity fund.

(B) The fund shall consist of monetary penalties collected pursuant to Section 41-41-45(C)(3) for the purpose of promoting unemployment compensation integrity. The Department of Employment and Workforce integrity fund shall be used for the purpose of preserving the integrity of the unemployment compensation fund. These efforts may include, but are not limited to, identifying overpayments, verifying eligibility, determining status, and updating technology and educational tools to support integrity activities.

(C) All money collected in the integrity fund must be deposited, administered, and disbursed in the same manner and under the same conditions and requirements as are provided by law for other special funds in the State Treasury, except that money in this fund must not be commingled with other state funds, but must be maintained in a separate account on the books of a depository bank. These funds must be secured by the bank by securities or surety bonds as required by law of depositories of state funds.

(D) All money that is deposited or paid into the fund is appropriated and made available to the department. All money in this fund must be expended solely for the purpose of promoting unemployment insurance integrity efforts by the department as provided in Section 41-41-45.

(E) All balances in this fund must not lapse at any time but must be continuously available to the department by expenditure consistent with Chapters 27 through 41 of this title. The department shall issue its requisition, which must be approved by the executive director or any designated officer, agent, or other individual for payment of the costs of interest to the Comptroller General who shall draw his warrant in the usual form provided by law on the State Treasurer, who shall pay it by check on the integrity fund."

B. The provisions of this SECTION take effect October 1, 2013.

Online employer prefiling program implementation mandated

SECTION 5. The Department of Employment and Workforce, as soon as practicable, fully must implement an online, employer prefiling program that allows employers to address potential claims for benefits by one of the employer's former employees. The department must report progress on implementation upon request by the Chairman of the Senate Labor, Commerce and Industry Committee or the Chairman of the House Labor, Commerce and Industry Committee.

Time effective

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

Ratified the 4th day of June, 2013.

Approved the 7th day of June, 2013.

No. 54

(R71, H3762)

AN ACT TO AMEND SECTIONS 50-11-740, AS AMENDED, AND 50-11-745, RELATING TO THE CONFISCATION, FORFEITURE, SALE, AND RELEASE OF PROPERTY USED FOR THE UNLAWFUL HUNTING OF WILDLIFE, SO AS TO PROVIDE ADDITIONAL TYPES OF PROPERTY THAT ARE COVERED BY BOTH PROVISIONS, TO REVISE THE DEFINITION OF THE TERM "HUNTING" BY EXCLUDING REFERENCES TO THE CARCASS OF A COYOTE, ARMADILLO, OR FERAL HOG, TO MAKE A TECHNICAL CHANGE, TO DELETE THE PROVISION THAT RELATES TO THE HUNTING OF CERTAIN ANIMALS UNDER SECTION 50-11-710, TO DELETE THE PROVISION THAT REQUIRES THE DEPARTMENT OF NATURAL RESOURCES TO PAY THE NET PROCEEDS FROM THE SALE OF A CONFISCATED DEVICE TO THE STATE TREASURER FOR DEPOSIT INTO THE FISH AND WILDLIFE PROTECTION FUND, AND REQUIRE THAT THE NET PROCEEDS FROM A SALE MUST BE DEPOSITED IN A COUNTY'S GAME AND FISH FUND, AND TO REVISE THE PENALTIES THAT MAY BE IMPOSED FOR THE UNLAWFUL HUNTING OF WILDLIFE.

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

Confiscation, forfeiture, sale, and release of property used for unlawful hunting

SECTION 1. Section 50-11-740 of the 1976 Code, as last amended by Act 228 of 2012, is further amended to read:

"Section 50-11-740. (A) Every vehicle, boat, trailer, other means of conveyance, animal, firearm, or device used in the hunting of deer or bear at night is forfeited to the State and must be seized by any peace officer who shall forthwith deliver it to the department.

(B) 'Hunting' as used in this section in reference to a vehicle, boat, or other means of conveyance includes the transportation of a hunter to or from the place of hunting or the transportation of the carcass, or any

part of the carcass, of a deer or bear which has been unlawfully killed at night.

(C)(1) For purposes of this section, a conviction for unlawfully hunting deer or bear at night is conclusive as against any owner of the above mentioned property.

(2) In all other instances, forfeiture must be accomplished by the initiation by the State of an action in the circuit court in the county in which the property was seized giving notice to owners of record and lienholders of record or other persons having claimed an interest in the property subject to forfeiture and an opportunity to appear and show, if they can, why the property should not be forfeited and disposed of as provided for by this section. Failure of any person claiming an interest in the property to appear at the above proceeding after having been given notice of the proceeding constitutes a waiver of his claim and the property must be immediately forfeited to the State.

(3) Notice of the above proceedings must be accomplished by:

(a) personal service of the owner of record or lienholder of record by certified copy of the petition or notice of hearing; or

(b) in the case of property for which there is no owner or lienholder of record, publication of notice in a newspaper of local circulation in the county where the property was seized for at least two successive weeks before the hearing.

(D) The department shall sell any confiscated device at public auction for cash to the highest bidder in front of the county courthouse in the county where it is confiscated, after having given ten days' public notice of the sale by posting advertisement thereof on the door or bulletin board of the county courthouse or by publishing the advertisement at least once in a newspaper of general circulation in the county.

(E)(1) If an individual is apprehended for a first offense and the device is of greater value than two thousand five hundred dollars, the owner may at any time before sale redeem it by paying to the department the sum of two thousand five hundred dollars. When the device is of lesser value than two thousand five hundred dollars, the owner may at any time before sale redeem it by paying to the department the retail market value.

(2) If an individual is apprehended for a second offense and the device is of greater value than five thousand dollars, the owner may, at any time before sale, redeem it by paying to the department the sum of five thousand dollars. When the device is of lesser value than five thousand dollars, the owner may, at any time before sale, redeem it by paying to the department the retail market value.

(3) If an individual is apprehended for a third or subsequent offense, the device must be forfeited to the State.

(F) Upon sale or redemption of a confiscated device, the department shall pay over the net proceeds, after payment of any proper costs and expenses of the seizure, advertisement, and sale, including any proper expense incurred for the storage of the confiscated device, to the State Treasurer for deposit in the County Game and Fish Fund."

Confiscation, forfeiture, sale, and release of property used for unlawful hunting

SECTION 2. Section 50-11-745(A) of the 1976 Code is amended to read:

"(A) Notwithstanding another provision of law, the Department of Natural Resources may administratively release any vehicle, boat, trailer, other means of conveyance, animal, firearm, or device confiscated from a person charged with hunting of deer or bear at night to an innocent owner or lienholder of the property."

Savings clause

SECTION 3. The repeal or amendment by this act of any law, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

Time effective

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

Ratified the 4th day of June, 2013.

Approved the 7th day of June, 2013.

No. 55

(R73, H4038)

AN ACT TO AMEND SECTION 40-22-280, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO EXEMPTIONS FROM THE APPLICATION OF THE CHAPTER CONCERNING ENGINEERS AND SURVEYORS, SO AS TO ADD AN EXEMPTION FOR THE WORK OR PRACTICE OF RENDERING CERTAIN ENGINEERING SERVICES TO A CORPORATION OPERATING UNDER A PRODUCTION CERTIFICATE ISSUED BY THE FEDERAL AVIATION AUTHORITY, AND TO DEFINE A RELATED TERM.

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

Regulation of engineers and surveyors, exemptions, definition

SECTION 1. Section 40-22-280(A) of the 1976 Code is amended by adding an appropriately numbered new item to read:

"( ) the work or practice of a person rendering engineering services to a corporation that operates in South Carolina under a production certificate issued by the Federal Aviation Authority, provided that the general business of the corporation does not consist, either wholly or in part, of the rendering of engineering services to the general public. For purposes of this section, 'engineering services' means design, construction, and maintenance of airplanes and airplane manufacturing equipment."

Time effective

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

Ratified the 4th day of June, 2013.

Approved the 7th day of June, 2013.

No. 56

(R90, H3033)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING ARTICLE 132 TO CHAPTER 3, TITLE 56 SO AS TO PROVIDE THAT THE DEPARTMENT OF MOTOR VEHICLES MAY ISSUE SPECIAL LICENSE PLATES TO RECIPIENTS OF THE DISTINGUISHED FLYING CROSS; TO AMEND SECTIONS 56-3-1810, 56-3-1815, AND 56-3-1820, ALL RELATING TO SPECIAL LICENSE PLATES THAT MAY BE ISSUED TO MEMBERS OF THE NATIONAL GUARD, SO AS TO DEFINE THE TERMS "PRIVATE PASSENGER MOTOR VEHICLE" AND "MOTORCYCLES"; TO AMEND SECTION 56-3-10410, AS AMENDED, RELATING TO THE ISSUANCE OF "VETERAN" SPECIAL LICENSE PLATES, SO AS TO INCREASE THE NUMBER OF LICENSE PLATES THAT MAY BE ISSUED TO A VETERAN; BY ADDING ARTICLES 133, 134, AND 135 TO CHAPTER 3, TITLE 56 SO AS TO PROVIDE THAT THE DEPARTMENT OF MOTOR VEHICLES MAY ISSUE "MOTORCYCLE AWARENESS ALLIANCE", "S.C. RIVERKEEPERS", AND "SAVANNAH LEE MONROE AUTISM AWARENESS" SPECIAL LICENSE PLATES; BY ADDING SECTION 56-3-8110 SO AS TO PROVIDE THAT THE DEPARTMENT OF MOTOR VEHICLES MAY ISSUE MOTORCYCLE SPECIAL LICENSE PLATES FOR ANY MOTOR VEHICLE SPECIAL LICENSE PLATE ISSUED BY THE DEPARTMENT; TO AMEND SECTIONS 56-3-8000 AND 56-3-8100, BOTH AS AMENDED, RELATING TO DEPARTMENT OF MOTOR VEHICLE GUIDELINES FOR THE PRODUCTION AND DISTRIBUTION OF SPECIAL LICENSE PLATES, SO AS TO REVISE THESE GUIDELINES.

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

Distinguished Flying Cross special license plates

SECTION 1. Chapter 3, Title 56 of the 1976 Code is amended by adding:

"Article 132

Special License Plates for Recipients of the Distinguished Flying Cross

Section 56-3-13210. (A) The Department of Motor Vehicles may issue a special motor vehicle license plate to a recipient of the Distinguished Flying Cross. The biennial fee for the special license plate is the same as the fee provided for in Section 56-3-2020 plus the regular registration fee contained in Article 5, Chapter 3, and only one plate may be issued to a person. The application for a special plate must include proof that the applicant is a recipient of the Distinguished Flying Cross.

(B) The special license plates must be of the same size as regular motor vehicle license plates, upon which must be imprinted on the left side of the plates the distinctive Distinguished Flying Cross insignia with numbers and designs determined by the department. The license plate must be issued for a biennial period which shall expire twenty-four months from the month in which the special license plate is issued.

(C) A license plate issued pursuant to this article may be transferred to another vehicle of the same weight class owned by the same person upon application being made and approved by the department. It is unlawful for a person to whom the special plate has been issued to knowingly permit it to be displayed on any vehicle except the one authorized by the department.

(D) This special license plate is exempt from the provisions contained in Section 56-3-8100, except that the department may retain its cost for the license plate from the special license plate fee authorized in subsection (A). The department also may require, if necessary, that written authorization be provided to the department to use a logo, trademark, or design that is a copyrighted or registered emblem, seal, or other symbol to be used to appear on the license plate.

(E) The provisions of this article do not affect the registration and licensing of motor vehicles as required by other provisions of this chapter but are cumulative to them. A person who violates the provisions of this article or who:

(1) fraudulently gives false or fictitious information in an application for a special license plate authorized in this article;

(2) conceals a material fact; or

(3) otherwise commits a fraud in an application or in the use of a special license plate issued is guilty of a misdemeanor and, upon conviction, must be punished by a fine of not more than one hundred dollars or by imprisonment for not more than thirty days."

Special license plates

SECTION 2. A. Section 56-3-1810 of the 1976 Code is amended to read:

"Section 56-3-1810. The number of plates that may be issued to members of the National Guard by the Department of Motor Vehicles shall equal the number of private passenger motor vehicles, as defined in Section 56-3-630, or motorcycles, as defined in Section 56-3-20, registered in such person's name in this State; provided, however, that the total number of such plates issued to any one person shall not exceed three. The department shall issue such plates for a particular private passenger motor vehicle or motorcycle registered in that person's name and such plates only may be transferred to another vehicle upon compliance with the provisions of Section 56-3-1830."

B. Section 56-3-1815 of the 1976 Code is amended to read:

"Section 56-3-1815. The Department of Motor Vehicles may issue a special motor vehicle license plate to a retired member of the South Carolina National Guard and may issue a special motor vehicle license plate to a member of the South Carolina State Guard who is a resident of the State for a private passenger motor vehicle, as defined in Section 56-3-630, or motorcycles, as defined in Section 56-3-20, owned or leased by a member or a retiree only after the current stock of South Carolina Guard, National Guard, and South Carolina National Guard Retired license plates is exhausted. An application for a special motor vehicle license plate must include a copy of the applicant's military identification card or other evidence that shows the applicant is either a retired or an active member of the South Carolina National Guard or the South Carolina State Guard."

C. Section 56-3-1820 of the 1976 Code is amended to read:

"Section 56-3-1820. The special license plates must be of the same size and general design of regular motor vehicle license plates upon which must be imprinted the figure of the Minute Man with numbers, or letters, or both, as determined by the Department of Motor Vehicles. The license plate must provide a space on the top of the plate to affix a decal indicating National Guard, Retired National Guard, Air National Guard, or State Guard. This license plate must be issued only after the current stock of South Carolina State Guard, National Guard, and South Carolina National Guard Retired license plates is exhausted. The biennial fee for the special license plate is the regular motor vehicle registration fee prescribed by Article 5 of this chapter. The plates must be issued for biennial periods."

Veteran special license plates

SECTION 3. Section 56-3-10410(A) of the 1976 Code, as last amended by Act 272 of 2012, is further amended to read:

"Section 56-3-10410. (A) The department may issue a 'Veteran' special motor vehicle license plate for use on a private passenger motor vehicle, as defined in Section 56-3-630, or motorcycle as defined in Section 56-3-20, registered in a person's name in this State who served in the United States Armed Forces, active or reserve components, and who was honorably discharged from service. An application for this special motor vehicle license plate must include official military documentation showing the applicant was honorably discharged from service. Only four plates may be issued to a person."

Motorcycle Awareness Alliance special license plates

SECTION 4. Chapter 3, Title 56 of the 1976 Code is amended by adding:

"Article 133

Motorcycle Awareness Alliance Special License Plates

Section 56-3-13310. (A) The Department of Motor Vehicles may issue 'Motorcycle Awareness Alliance' special motor vehicle license plates to owners of private passenger motor vehicles, as defined in Section 56-3-630, or motorcycles, as defined in Section 56-3-20, registered in their names which may have imprinted on the plate the

Motorcycle Awareness Alliance emblem. The Motorcycle Awareness Alliance shall submit to the department for its approval the proposed design it desires to be used for this special license plate. The fee for this special license plate is the regular motor vehicle registration fee contained in Article 5, Chapter 3 of this title and a special motor vehicle license plate fee of thirty dollars. This special license plate must be of the same size and general design of regular motor vehicle license plates. The special license plates must be issued or revalidated for a biennial period which expires twenty-four months from the month the special license plate is issued.

(B) Notwithstanding any other provision of law, from the fees collected pursuant to this section, the Comptroller General shall place sufficient funds into a special restricted account to be used by the Department of Motor Vehicles to defray the expenses of the Department of Motor Vehicles in producing and administering the special license plates. The remaining funds collected from the special motor vehicle license plate fee must be distributed to the Motorcycle Awareness Alliance for the promotion of motorcycle safety, education and awareness programs and deposited into an appropriate nonprofit account designated by the Motorcycle Awareness Alliance.

(C) The guidelines for the production of a special license plate under this section must meet the requirements of Section 56-3-8100.

(D) If the department receives less than three hundred biennial applications and renewals for a particular special license plate authorized under this section, it shall not produce additional special license plates in that series. The department shall continue to issue special license plates of that series until the existing inventory is exhausted."

S.C. Riverkeepers special license plates

SECTION 5. Chapter 3, Title 56 of the 1976 Code is amended by adding:

"Article 134

S.C. Riverkeepers Special License Plates

Section 56-3-13410. (A) The Department of Motor Vehicles may issue S.C. Riverkeepers special license plates to owners of private passenger carrying motor vehicles, as defined in Section 56-3-630, or motorcycles, as defined in Section 56-3-20, registered in their names

which shall have a blue background and imprinted on them in white 'S.C. Riverkeepers', 'Keep Our Rivers Clean', a crescent moon, and a palmetto tree. The fee for this special license plate is thirty dollars every two years in addition to the regular motor vehicle registration fee set forth in Article 5, Chapter 3, Title 56. This special license plate must be of the same size and general design of regular motor vehicle license plates. This special license plate must be issued or revalidated for a biennial period which expires twenty-four months from the month it is issued.

(B) The additional fees collected pursuant to this section above the cost of production must be distributed equally to the Congaree Riverkeeper, Charleston Waterkeeper, Waccamaw Riverkeeper, Savannah Riverkeeper, Catawba Riverkeeper, and Santee Riverkeeper organizations.

(C) The guidelines for the production, collection, and distribution of fees for a special license plate under this section must meet the requirements of Section 56-3-8100."

Autism Awareness special license plates

SECTION 6. Chapter 3, Title 56 of the 1976 Code is amended by adding:

"Article 135

Autism Awareness Special License Plates

Section 56-3-13510. This article may be cited as the 'Savannah Lee Monroe Autism Awareness Special License Plates Act'.

Section 56-3-13520. (A) The Department of Motor Vehicles may issue 'Autism Awareness' special motor vehicle license plates to owners of private passenger motor vehicles, as defined in Section 56-3-630, or motorcycles, as defined in Section 56-3-20, registered in their names. This special license plate must be of the same size and general design of regular motor vehicle license plates. This special license plate must be issued or revalidated for a biennial period which expires twenty-four months from the month it is issued.

(B) The requirements for production, collection, and distribution of fees for this license plate are those set forth in Section 56-3-8100. The fees collected pursuant to this section above the cost of producing the

license plates must be distributed to the South Carolina Autism Society."

Motorcycle special license plates

SECTION 7. Article 82, Chapter 3, Title 56 of the 1976 Code is amended by adding:

"Section 56-3-8110. Motorcycle special license plates may be issued by the Department of Motor Vehicles for any special license plate under the same terms and conditions as prescribed by law for private passenger motor vehicles."

Guidelines for the issuance and distribution of special license plates

SECTION 8. A. Section 56-3-8000 of the 1976 Code, as last amended by Act 272 of 2012, is further amended to read:

"Section 56-3-8000. (A) An organization which has obtained certification pursuant to either Section 501(C)(3), 501(C)(6), 501(C)(7), or 501(C)(8) of the federal Internal Revenue Code and maintained this certification for a period of five years may apply to the Department of Motor Vehicles for a special license plate. The department may issue special motor vehicle license plates to owners of private passenger motor vehicles as defined in Section 56-3-630, and motorcycles, as defined in Section 56-3-20, registered in their names.

(B) The department must develop a basic license plate design that will be used for all special organizational license plates. The plate must be the same size and general design of regular motor vehicle license plates but may be imprinted on the plate in an area specified by the department with an emblem, seal, insignia, or other identifying symbol of the sponsoring organization that the department considers appropriate. No text or slogans may be added to the plate design unless they are part of the approved emblem, seal, insignia, or other identifying symbol. The name of the organization may be imprinted across the top of the license plate. The standard plate design must be issued for all organizational license plates newly requested after July 1, 2013. Organizational license plate designs in production as of that date must be changed when the license plate, or license plate class, is replaced.

(C) The license plates must be issued or revalidated for a biennial period which expires twenty-four months from the month it is issued.

The biennial fee for this special license plate is the regular registration fee set forth in Article 5, Chapter 3 of this title plus an additional fee to be requested by the individual or organization seeking issuance of the license plate. The initial fee amount requested may be changed only every five years from the first year the license plate is issued. Of the additional fee collected pursuant to this section, the Comptroller General shall place sufficient funds into a special restricted account to be used by the Department of Motor Vehicles to defray the expenses of producing and administering special license plates. Any of the remaining fee not placed in the restricted account must be distributed to an organization designated by the individual or organization seeking issuance of the license plate.

(D) If the organization seeking issuance of the plate does not request an additional fee above the regular registration fee, the department may collect an additional fee of ten dollars.

(E) Of the additional fee collected pursuant to subsections (A) and (D), the Comptroller General shall place sufficient funds into a special restricted account to be used by the Department of Motor Vehicles to defray the expenses of producing and administering special license plates.

(F) Any of the remaining additional fee collected pursuant to subsection (D) not placed in the restricted account must be distributed to an organization designated by the individual or organization seeking issuance of the license plate, or to the general fund, if no additional fee is requested by the organization.

(G) Before the department produces and distributes a plate pursuant to this section, it must receive:

(1) six thousand eight hundred dollars from the individual or organization seeking issuance of the license plate; and

(2) a plan to market the sale of the special license plate which must be approved by the department.

(H) The Comptroller General shall place the six thousand eight hundred dollar application fee pursuant to subsection (G)(1) into a restricted account to be used by the department to defray the initial cost of producing the special license plate.

(I) If the department receives less than three hundred biennial applications and renewals for a particular plate authorized under this section, it shall not produce additional plates in that series. The department shall continue to issue license plates of that series until the existing inventory is exhausted.

(J) License plates issued pursuant to this section shall not contain a reference to a private or public college or university in this State or use

symbols, designs, or logos of these institutions without the institution's written authorization.

(K) Before a design is approved, the organization must submit to the department written authorization of legal authority for the use of any copyrighted or registered logo, trademark, or design, and the organization's acceptance of legal responsibility for the use.

(L) The department may alter, modify, or refuse to produce any special license plate that it deems offensive or fails to meet community standards. If the department alters, modifies, or refuses to produce a special license plate, the organization or individual applying for the license plate may appeal the department's decision to a special joint legislative committee. This committee shall be comprised of two members from the House Education and Public Works Committee and two members from the Senate Transportation Committee.

Appointments to the joint legislative committee shall be made by the Chairmen of the House Education and Public Works Committee and the Senate Transportation Committee. The department's decision may be reversed by a majority of the joint legislative committee. If the committee reverses the department's decision, the department must issue the license plate pursuant to the committee's decision. However, the provision contained in subsection (G) also must be met. The joint legislative committee may also review all license plates issued by the department and instruct the department to cease issuing or renewing a plate it deems offensive or fails to meet community standards.

(M) Each new classification of special vehicle license plates including, but not limited to, motorcycle license plates, created pursuant to this section must meet the requirements of Articles 81 and 82, Chapter 3, Title 56, as appropriate.

(N) The fee required in subsection (G)(1) must be reviewed by the General Assembly during the 2013 legislative session, and every two years thereafter. The department must provide a detailed, comprehensive justification to increase the fee. Any fee increase must be introduced in a separate bill separate and apart from any other matter."

B. Section 56-3-8100 of the 1976 Code, as last amended by Act 272 of 2012, is further amended to read:

"Section 56-3-8100. (A) Before the Department of Motor Vehicles produces and distributes a special license plate created by the General Assembly after January 1, 2006, it must receive:

(1) six thousand eight hundred dollars from the individual or organization seeking issuance of the license plate; and

(2) a plan to market the sale of the special license plate which must be approved by the department.

(B) The Comptroller General shall place the six thousand eight hundred dollar application fee pursuant to subsection (A)(1) into a restricted account to be used by the department to defray the initial cost of producing the special license plate.

(C) The department must develop a basic plate design that will be used for all special license plates authorized by the General Assembly. The license plate must be the same size and general design of regular motor vehicle license plates but may be imprinted on the license plate in an area specified by the department with an emblem, seal, insignia, or other identifying symbol of the sponsoring organization that the department considers appropriate. No text or slogans may be added to the license plate design unless they are part of the approved emblem, seal, insignia, or other identifying symbol. The name of the organization may be imprinted across the top of the license plate. The standard license plate design must be issued for all organizational license plates newly requested after July 1, 2013. License plate designs in production as of that date must be changed when the license plate, or license plate class, is replaced.

(D) The fee for all special license plates created by the General Assembly after January 1, 2006, is the regular biennial registration fee set forth in Article 5, Chapter 3 of this title plus an additional fee to be requested by the individual or organization seeking issuance of the plate, as authorized by law. The initial fee amount requested can only be changed every five years from the first year the plate is issued. Each special license plate must be of the same size and general design of regular motor vehicle license plates. Each special license plate must be issued or revalidated for a biennial period which expires twenty-four months from the month the special license plate is issued.

(E) If the individual or organization seeking issuance of the plate does not request an additional fee above the regular registration fee, and no other additional fee is prescribed by law, the department may collect an additional fee of ten dollars.

(F) Of the additional fee collected pursuant to subsections (D) and (E), the Comptroller General shall place sufficient funds into a special restricted account to be used by the Department of Motor Vehicles to defray the expenses of producing and administering special license plates.

(G) Any of the remaining additional fee collected pursuant to subsections (D) and (E) not placed in the restricted account must be distributed to an organization designated by the individual or organization seeking issuance of the license plate, or to the general fund, if no additional fee is requested by the organization.

(H) If the department receives less than three hundred biennial applications and renewals for a particular special license plate, it shall not produce additional special license plates in that series. The department shall continue to issue special license plates of that series until the existing inventory is exhausted.

(I) If the department receives less than three hundred biennial applications and renewals for plates created pursuant to Article 12, Chapter 3, Title 56; Article 14, Chapter 3, Title 56; Article 31, Chapter 3, Title 56; Article 39, Chapter 3, Title 56; Article 40, Chapter 3, Title 56; Article 43, Chapter 3, Title 56; Article 45, Chapter 3, Title 56; Article 49, Chapter 3, Title 56; Article 50, Chapter 3, Title 56; Article 60, Chapter 3, Title 56; Article 70, Chapter 3, Title 56; Article 72, Chapter 3, Title 56; and Article 76, Chapter 3, Title 56 it shall not produce additional special license plates in that series. The department shall continue to issue special license plates of that series until the existing inventory is exhausted.

(J) The provisions contained in subsection (A)(1) and (2) do not apply to the production and distribution of the Korean War Veterans Special License Plates contained in Article 68, Chapter 3, Title 56.

(K) For each new classification of special vehicle license plate, including, but not limited to, motorcycle license plates, created pursuant to this section, must meet the requirements of Articles 81 and 82, Chapter 3, Title 56, as appropriate.

(L) The fee required in subsection (A)(1) must be reviewed by the General Assembly during the 2013 legislative session, and every two years thereafter. The department must provide a detailed, comprehensive justification to increase the fee. Any fee increase must be introduced in a separate bill separate and apart from any other matter."

Time effective

SECTION 9. SECTION 1 takes effect three months after its approval by the Governor. SECTION 5 takes effect six months after its approval by the Governor. All other SECTIONS take effect upon approval by the Governor.

Ratified the 11th day of June, 2013.

Approved the 12th day of June, 2013.

No. 57

(R91, H3093)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING CHAPTER 67 TO TITLE 12 SO AS TO ENACT THE "SOUTH CAROLINA ABANDONED BUILDINGS REVITALIZATION ACT" TO PROVIDE THAT A TAXPAYER MAKING INVESTMENTS OF A CERTAIN SIZE IN REHABILITATING AN ABANDONED BUILDING BASED ON THE POPULATION OF THE POLITICAL SUBDIVISION IN WHICH THE BUILDING IS LOCATED MAY AT THE TAXPAYER'S OPTION RECEIVE SPECIFIED INCOME TAX CREDITS OR CREDITS AGAINST THE PROPERTY TAX LIABILITY, TO PROVIDE THE PROCEDURES, CRITERIA, AND REQUIREMENTS NECESSARY TO OBTAIN THESE CREDITS, AND TO PROVIDE THAT THE PROVISIONS OF CHAPTER 67, TITLE 12 ARE REPEALED ON DECEMBER 31, 2019.

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

Abandoned Buildings Revitalization Act

SECTION 1. A. Title 12 of the 1976 Code is amended by adding:

"CHAPTER 67

South Carolina Abandoned Buildings
Revitalization Act

Section 12-67-100. This chapter may be cited as the 'South Carolina Abandoned Buildings Revitalization Act'.

Section 12-67-110. (A) The purpose of this chapter is to create an incentive for the rehabilitation, renovation, and redevelopment of abandoned buildings located in South Carolina.

(B) The abandonment of buildings has resulted in the disruption of communities and increased the cost to local governments by requiring additional police and fire services due to excessive vacancies. Many abandoned buildings pose safety concerns. A public and corporate purpose is served by restoring these buildings to productive assets for the communities in which they are located and result in increased job opportunities.

(C) There exists in many communities of this State abandoned buildings. The stable economic and physical development of these communities is endangered by the presence of these abandoned buildings as manifested by their progressive and advanced deterioration. As a result of the existence of these abandoned buildings, there is an excessive and disproportionate expenditure of public funds, inadequate public and private investment, unmarketability of property, growth in delinquencies and crime in the areas, together with an abnormal exodus of families and businesses, so that the decline of these areas impairs the value of private investments, threatens the sound growth and the tax base of taxing districts in these areas, and threatens the health, safety, morals, and welfare of the public. To remove and alleviate these adverse conditions, it is necessary to encourage private investment and restore and enhance the tax base of the taxing districts in which such buildings are located by the redevelopment of abandoned buildings.

Section 12-67-120. For the purposes of this chapter, unless the context requires otherwise:

(1) 'Abandoned building' means a building or structure, which clearly may be delineated from other buildings or structures, at least sixty-six percent of the space in which has been closed continuously to business or otherwise nonoperational for income producing purposes for a period of at least five years immediately preceding the date on which the taxpayer files a 'Notice of Intent to Rehabilitate'. For purposes of this item, a building or structure that otherwise qualifies as an 'abandoned building' may be subdivided into separate units or parcels, which units or parcels may be owned by the same taxpayer or different taxpayers, and each unit or parcel is deemed to be an abandoned building site for purposes of determining whether each subdivided parcel is considered to be abandoned. For purposes of this item, an abandoned building is not a building or structure with an

immediate preceding use as a single-family residence. For purposes of this item, use of any portion of a building or structure listed on the National Register for Historic Places when used solely for storage or warehouse purposes is considered nonoperational for income producing purposes; provided, however, that the credit provided under Section 12-67-140(B) is further limited by disqualifying for credit purposes the portion of the building or structure that was operational and used as a storage or warehouse for income producing purposes. This limitation is calculated based on the actual percentage of the space which has been closed continuously to business or otherwise nonoperational for income producing purposes for a period of at least five years immediately preceding the date on which the taxpayer files a 'Notice of Intent to Rehabilitate' divided by one hundred percent.

(2) 'Building site' means the abandoned building together with the parcel of land upon which it is located and other improvements located on the parcel. However, the area of the building site is limited to the land upon which the abandoned building is located and the land immediately surrounding such building used for parking and other similar purposes directly related to the building's income producing use.

(3) 'Local taxing entities' means a county, municipality, school district, special purpose district, and other entity or district with the power to levy ad valorem property taxes against the building site.

(4) 'Local taxing entity ratio' means that percentage computed by dividing the millage rate of each local taxing entity by the total millage rate for the building site.

(5) 'Placed in service' means the date upon which the building site is completed and ready for its intended use. If the building site is completed and ready for use in phases or portions, each phase or portion is considered to be placed in service when it is completed and ready for its intended use.

(6) 'Rehabilitation expenses' means the expenses or capital expenditures incurred in the rehabilitation, demolition, renovation, or redevelopment of the building site, including without limitations, the renovation or redevelopment of existing buildings, environmental remediation, site improvements, and the construction of new buildings and other improvements on the building site, but excluding the cost of acquiring the building site or the cost of personal property located at the building site. For expenses associated with a building site to qualify for the tax credit, the abandoned buildings on the building site must be either renovated or redeveloped. Rehabilitation expenses associated with a building site that increases the amount of square

footage on the building site in excess of two hundred percent of the amount of square footage of the buildings that existed on the building site as of the filing of the Notice of Intent to Rehabilitate shall not be considered a rehabilitation expense for purposes of calculating the amount of the credit. Notwithstanding any other provision of this section, demolition expenses shall not be considered a rehabilitation expense for purposes of calculating the amount of the credit if the building being demolished is on the National Register for Historic Places.

(7) 'Notice of Intent to Rehabilitate' means a letter submitted by the taxpayer to the department or the municipality or county as specified in this chapter, indicating the taxpayer's intent to rehabilitate the building site, the location of the building site, the amount of acreage involved in the building site, the amount of square footage of existing buildings involved in the building site, and the estimated expenses to be incurred in connection with rehabilitation of the building site. The notice also must set forth information as to which buildings the taxpayer intends to renovate and whether new construction is to be involved.

Section 12-67-130. (A) This chapter only applies to abandoned building sites or phases or portions thereof put into operation in which a taxpayer incurs the following rehabilitation expenses:

(1) more than two hundred fifty thousand dollars for buildings located in the unincorporated areas of a county or in a municipality in the county with a population based on the most recent official United States census of more than twenty-five thousand persons;

(2) more than one hundred fifty thousand dollars for buildings located in the unincorporated areas of a county or in a municipality in the county with a population of at least one thousand persons, but not more than twenty-five thousand persons based on the most recent official United States census; and

(3) more than seventy-five thousand dollars for buildings located in a municipality with a population of less than one thousand persons based on the most recent official United States census.

(B) This chapter only applies to abandoned building sites or phases or portions thereof put into operation for income producing purposes and that meet the purpose of this chapter set forth in Section 12-67-110. The construction or operation of a charter school, private or parochial school, or other similar educational institution does meet the purpose of this chapter. The construction of a single-family

residence is not an income producing purpose and does not meet the purpose of this chapter.

Section 12-67-140. (A) Subject to the terms and conditions of this chapter, a taxpayer who rehabilitates an abandoned building is eligible for either:

(1) a credit against income taxes imposed pursuant to Chapter 6 and Chapter 11 of this title, corporate license fees pursuant to Chapter 20 of this title, or taxes on associations pursuant to Chapter 13 of this title, or a combination thereof; or

(2) a credit against real property taxes levied by local taxing entities.

(B) If the taxpayer elects to receive the credit pursuant to subsection (A)(1), the following provisions apply:

(1) The taxpayer shall file with the department a Notice of Intent to Rehabilitate before incurring its first rehabilitation expenses at the building site. Failure to provide the Notice of Intent to Rehabilitate results in qualification of only those rehabilitation expenses incurred after the notice is provided.

(2) The amount of the credit is equal to twenty-five percent of the actual rehabilitation expenses incurred at the building site if the actual rehabilitation expenses incurred in rehabilitating the building site are between eighty percent and one hundred twenty-five percent of the estimated rehabilitation expenses set forth in the Notice of Intent to Rehabilitate. If the actual rehabilitation expenses exceed one hundred twenty-five percent of the estimated expenses set forth in the Notice of Intent to Rehabilitate, the taxpayer qualifies for the credit based on one hundred twenty-five percent of the estimated expenses as opposed to the actual expenses it incurred in rehabilitating the building site. If the actual rehabilitation expenses are below eighty percent of the estimated rehabilitation expenses, the credit is not allowed.

(3)(a) The entire credit is earned in the taxable year in which the applicable phase or portion of the building site is placed in service but must be taken in equal installments over a five-year period beginning with the tax year in which the applicable phase or portion of the building site is placed in service. Unused credit may be carried forward for the succeeding five years.

(b) The entire credit earned pursuant to this subsection may not exceed five hundred thousand dollars for any taxpayer in a tax year for each abandoned building site. The limitation provided in this subitem applies to each unit or parcel deemed to be an abandoned building site.

(4) If the taxpayer qualifies for both the credit allowed by this section and the credit allowed pursuant to the Textiles Communities Revitalization Act or the Retail Facilities Revitalization Act, the taxpayer only may claim one of the three credits. However, the taxpayer is not disqualified from claiming any other tax credit in conjunction with the credit allowed by this section.

(5) The credit allowed by this subsection is limited in use to fifty percent of either:

(a) the taxpayer's income tax liability for the taxable year if the taxpayer claims the credit allowed by this section as a credit against income tax imposed pursuant to Chapter 6 or Chapter 11 of this title, or taxes on associations pursuant to Chapter 13 of this title, or both; or

(b) the taxpayer's corporate license fees for the taxable year if the taxpayer claims the credit allowed by this section as a credit against license fees imposed pursuant to Chapter 20.

(6)(a) If the taxpayer leases the building site, or part of the building site, the taxpayer may transfer any applicable remaining credit associated with the rehabilitation expenses incurred with respect to that part of the site to the lessee of the site. If a taxpayer sells the building site, or any phase or portion of the building site, the taxpayer may transfer all or part of the remaining credit, associated with the rehabilitation expenses incurred with respect to that phase or portion of the site, to the purchaser of the applicable portion of the building site.

(b) To the extent that the taxpayer transfers the credit, the taxpayer shall notify the department of the transfer in the manner the department prescribes.

(7) To the extent that the taxpayer is a partnership or a limited liability company taxed as a partnership, the credit may be passed through to the partners or members and may be allocated among any of its partners or members including, without limitation, an allocation of the entire credit to one partner or member, without regard to any provision of the Internal Revenue Code or regulations promulgated pursuant thereto, that may be interpreted as contrary to the allocation, including, without limitation, the treatment of the allocation as a disguised sale.

(C) If the taxpayer elects to receive the credit pursuant to subsection (A)(2), the following provisions apply:

(1) The taxpayer shall file a Notice of Intent to Rehabilitate with the municipality, or the county if the building site is located in an unincorporated area, in which the building site is located before incurring its first rehabilitation expenses at the building site. Failure to

provide the Notice of Intent to Rehabilitate results in qualification of only those rehabilitation expenses incurred after notice is provided.

(2) Once the Notice of Intent to Rehabilitate has been provided to the county or municipality, the municipality or the county first shall determine, by resolution, the eligibility of the building site and the proposed rehabilitation expenses for the credit. A proposed rehabilitation of a building site must be approved by a positive majority vote of the local governing body. For purposes of this subsection, 'positive majority vote' is as defined in Section 6-1-300(5). If the county or municipality determines that the building site and the proposed rehabilitation expenses are eligible for the credit, there must be a public hearing and the municipality or county shall approve the building site for the credit by ordinance. Before approving a building site for the credit, the municipality or county shall make a finding that the credit does not violate a covenant, representation, or warranty in any of its tax increment financing transactions or an outstanding general obligation bond issued by the county or municipality.

(3)(a) The amount of the credit is equal to twenty-five percent of the actual rehabilitation expenses incurred at the building site times the local taxing entity ratio of each local taxing entity that has consented to the credit pursuant to item (4), if the actual rehabilitation expenses incurred in rehabilitating the building site are between eighty percent and one hundred twenty-five percent of the estimated rehabilitation expenses set forth in the Notice of Intent to Rehabilitate. If the actual rehabilitation expenses exceed one hundred twenty-five percent of the estimated expenses set forth in the Notice of Intent to Rehabilitate, the taxpayer qualifies for the credit based on one hundred twenty-five percent of the estimated expenses as opposed to the actual expenses it incurred in rehabilitating the building site. If the actual rehabilitation expenses are below eighty percent of the estimated rehabilitation expenses, the credit is not allowed. The ordinance must provide for the credit to be taken as a credit against up to seventy-five percent of the real property taxes due on the building site each year for up to eight years.

(b) The local taxing entity ratio is set as of the time the Notice of Intent to Rehabilitate is filed and remains set for the entire period that the credit may be claimed by the taxpayer.

(4) Not fewer than forty-five days before holding the public hearing required by subsection (C)(2), the governing body of the municipality or county shall give notice to all affected local taxing entities in which the building site is located of its intention to grant a credit against real property taxes for the building site and the amount of

estimated credit proposed to be granted based on the estimated rehabilitation expenses. If a local taxing entity does not file an objection to the tax credit with the municipality or county on or before the date of the public hearing, the local taxing entity is considered to have consented to the tax credit.

(5) The credit against real property taxes for each applicable phase or portion of the building site may be claimed beginning with the property tax year in which the applicable phase or portion of the building site is first placed in service.

(D) A taxpayer is not eligible for the credit if the taxpayer owned the otherwise eligible building site when the site was operational and immediately prior to its abandonment.

Section 12-67-150. The provisions of Chapter 31, Title 6 also apply to this chapter, except that the requirements of Section 6-31-40 do not apply."

B. The provisions of Chapter 67, Title 12 contained in this act are repealed on December 31, 2019. Any carryforward credits shall continue to be allowed until the five or eight year time period in Section 12-67-140 is completed.

Time effective

SECTION 2. This act takes effect upon approval by the Governor, and applies to the rehabilitation, renovation, and redevelopment of abandoned buildings begun in tax years beginning after 2012.

Ratified the 11th day of June, 2013.

Approved the 11th day of June, 2013.

No. 58

(R98, H3464)

AN ACT TO AMEND SECTION 63-7-730, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO EXPEDITED PLACEMENT OF A CHILD WITH RELATIVES AT THE PROBABLE CAUSE HEARING, SO AS TO ENCOURAGE

PLACEMENT OF A CHILD WITH A GRANDPARENT OR OTHER RELATIVE OF THE FIRST OR SECOND DEGREE UNDER CERTAIN CIRCUMSTANCES; TO SET FORTH CRITERIA FOR THE COURT TO CONSIDER WHEN DECIDING WHETHER TO PLACE A CHILD WITH A GRANDPARENT OR OTHER RELATIVE OF THE FIRST OR SECOND DEGREE AT THE PROBABLE CAUSE HEARING; TO REQUIRE THE COURT TO CONSIDER A PARENT FOR PLACEMENT OF A CHILD AT THE PROBABLE CAUSE HEARING BEFORE CONSIDERING OTHER RELATIVES OF THE FIRST OR SECOND DEGREE IN CERTAIN CIRCUMSTANCES; AND TO PROVIDE THAT IF THE COURT PLACES A CHILD WITH A GRANDPARENT OR OTHER RELATIVE OF THE FIRST OR SECOND DEGREE AT THE PROBABLE CAUSE HEARING, THE INDIVIDUAL MAY BE ADDED AS A PARTY TO THE ACTION FOR THE DURATION OF THE CASE OR UNTIL FURTHER ORDER OF THE COURT.

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

Child abuse, expedited placement of child with relatives at probable cause hearing

SECTION 1. Section 63-7-730 of the 1976 Code is amended to read:

"Section 63-7-730. (A) If the court finds at the probable cause hearing that the department made reasonable efforts to prevent removal of the child and that continuation of the child in the home would be contrary to the welfare of the child, the court may order expedited placement of the child with a grandparent or other relative of the first or second degree. In making this expedited placement decision, the court shall consider the totality of the circumstances including, but not limited to, the individual's suitability, fitness, and willingness to serve as a placement for the child. A parent who complies with these requirements must be the first relative considered by the court for expedited placement. The court shall require the department to check the names of all adults in the home against the Central Registry of Child Abuse and Neglect, other relevant records of the department, county sex abuse registers, and records for the preceding five years of law enforcement agencies in the jurisdiction in which the person resides and, to the extent reasonably possible, jurisdictions in which the

person has resided during that period. The court may hold open the record of the probable cause hearing for up to twenty-four hours to receive these reports. Nothing in this section precludes the department from requesting or the court from ordering pursuant to the department's request either a full study of the individual's home before placement or the licensing or approval of the individual's home before placement.

(B) If the court orders expedited placement of the child with a grandparent or other relative of the first or second degree, the individual may be added as a party to the action for the duration of the case or until further order of the court."

Time effective

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

Ratified the 11th day of June, 2013.

Approved the 12th day of June, 2013.

No. 59

(R99, H3472)

AN ACT TO AMEND SECTION 59-40-210, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE CONVERSION OF A PRIVATE SCHOOL TO A CHARTER SCHOOL AND THE REQUIREMENT THAT THE CONVERTED PRIVATE SCHOOL NOT BE ALLOWED TO OPEN AS A CHARTER SCHOOL FOR A PERIOD OF TWELVE MONTHS, SO AS TO PROVIDE THAT THE PROHIBITION AGAINST THE CONVERTED PRIVATE SCHOOL BEING ALLOWED TO OPEN AS A CHARTER SCHOOL FOR A PERIOD OF TWELVE MONTHS DOES NOT APPLY UNDER SPECIFIED CONDITIONS IF THE ENROLLMENT OF THE CONVERTED PRIVATE SCHOOL FOR THE MOST RECENTLY COMPLETED SCHOOL TERM BEFORE THE DATE OF THE PROPOSED CONVERSION REFLECTS THE RACIAL COMPOSITION OF THE LOCAL SCHOOL DISTRICT IN WHICH THE CONVERTED PRIVATE SCHOOL IS LOCATED; AND TO AMEND SECTION 59-40-100,

AS AMENDED, RELATING TO THE CONVERSION TO A CHARTER SCHOOL, SO AS TO PROVIDE FOR THE MANNER IN WHICH CERTAIN SPECIAL PUBLIC SCHOOLS NOT ASSOCIATED WITH A PUBLIC SCHOOL DISTRICT MAY APPLY TO BECOME A PUBLIC CHARTER SCHOOL, AND TO PROVIDE THAT IF THE SPECIAL PUBLIC SCHOOL BECOMES A PUBLIC CHARTER SCHOOL, IT SHALL NOT BE DEEMED TO BE A CONVERTED CHARTER SCHOOL.

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

Twelve month delay in opening not required

SECTION 1. Section 59-40-210 of the 1976 Code, as last amended by Act 274 of 2006, is further amended to read:

"Section 59-40-210. A school established as a private school, on the effective date of this section, which desires to convert to a charter school shall dissolve and must not be allowed to open as a charter school for a period of twelve months; provided, however, that if the enrollment of the converted private school for the most recently completed school term before the date of the proposed conversion to a charter school reflects the racial composition of the local school district in which the converted private school is located, the provisions of this section prohibiting the private school from opening as a charter school for a period of twelve months do not apply. However, the provisions of Section 59-40-70(D) continue to apply to a private school which was not required to close for a period of twelve months after its conversion to a charter school."

Special public school becoming a public charter school

SECTION 2. A. Section 59-40-100 of the 1976 Code, as last amended by Act 164 of 2012, is further amended by adding an appropriately numbered subsection to read:

"( ) A special public school that is funded directly by the State of South Carolina and, therefore, is not associated with a public school district may apply to become a public charter school if it serves as a professional development school for an institution of higher learning's teacher education program. If a special public school becomes a public

charter school pursuant to this subsection, the provisions of Section 59-127-75 do not apply.

Notwithstanding any other provision of law, if the qualifying special public school becomes a public charter school, it shall be deemed not to be a converted charter school."

B. This SECTION takes effect upon approval by the Governor and applies beginning with the 2013-2014 school year for any special public school that applies to become a public charter school by May 1, 2013.

Time effective

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

Ratified the 11th day of June, 2013.

Approved the 12th day of June, 2013.

No. 60

(R60, S635)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 48-23-300 SO AS TO PROVIDE THAT A MAJOR FACILITY PROJECT REQUESTING THIRD-PARTY CERTIFICATION SHALL NOT BE ALLOWED TO SEEK A RATING POINT THAT WOULD DISCRIMINATE AGAINST WOOD PRODUCTS OF THIS STATE DERIVED FROM FOREST LANDS CERTIFIED BY THE SUSTAINABLE FORESTRY INITIATIVE OR THE AMERICAN TREE FARM SYSTEM.

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

Disallowance of certain rating points

SECTION 1. Chapter 23, Title 48 of the 1976 Code is amended by adding:

"Section 48-23-300. A major facility project as defined in Section 48-52-810(10) requesting third-party certification shall not be allowed to seek a rating point that would discriminate against wood products of this State derived from forest lands certified by the Sustainable Forestry Initiative or the American Tree Farm System."

Time effective

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

Ratified the 4th day of June, 2013.

Approved the 7th day of June, 2013.

No. 61

(R74, S2)

AN ACT TO AMEND SECTION 7-11-10, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO METHODS OF NOMINATING CANDIDATES, SO AS TO PROHIBIT A PERSON WHO WAS DEFEATED AS A CANDIDATE IN A PARTY PRIMARY OR BY PARTY CONVENTION FROM HAVING HIS NAME PLACED ON THE BALLOT FOR THE ENSUING GENERAL OR SPECIAL ELECTION EXCEPT WHEN THE PARTY'S NOMINEE DIES, RESIGNS, IS DISQUALIFIED, OR OTHERWISE CEASES TO BECOME THE PARTY'S NOMINEE FOR THAT OFFICE; TO AMEND SECTION 7-11-15, AS AMENDED, RELATING TO QUALIFICATIONS TO RUN AS A CANDIDATE IN GENERAL ELECTIONS, SO AS TO PROVIDE STREAMLINED GUIDELINES AND PROCEDURES FOR THE FILING OF STATEMENTS OF INTENTION OF CANDIDACY AND PARTY PLEDGE AND ANY FILING FEES TO THE STATE ELECTION COMMISSION OR THE COUNTY BOARD OF REGISTRATION AND ELECTIONS, AS APPROPRIATE; TO AMEND SECTION 7-11-30, RELATING TO PARTY CONVENTION NOMINATION OF CANDIDATES, SO AS TO PROVIDE A PROCEDURE FOR THE NOMINATION OF CANDIDATES BY PARTY CONVENTION BY A

THREE-FOURTHS VOTE AT THE CONVENTION AND TO USE THE CONVENTION NOMINATION PROCESS WITH A MAJORITY VOTE IN THE PARTY'S NEXT PRIMARY ELECTION TO APPROVE THIS PROCESS; TO AMEND SECTION 7-11-210, AS AMENDED, RELATING TO NOTICE OF CANDIDACY AND PLEDGE, SO AS TO REFERENCE SECTION 7-11-15, DELETE PROVISIONS RELATING TO NOTICE, AND MAKE CONFORMING CHANGES TO THE PARTY PLEDGE; TO AMEND SECTION 7-13-40, AS AMENDED, RELATING TO THE TIME OF THE PARTY PRIMARY, CERTIFICATION OF NAMES, VERIFICATION OF CANDIDATES' QUALIFICATIONS, AND THE FILING FEE, SO AS TO PROVIDE CERTIFICATION OF CANDIDATES NOT LATER THAN NOON ON APRIL FIFTH OR NOON ON THE FOLLOWING MONDAY IF THE FIFTH FALLS ON THE WEEKEND; TO AMEND SECTION 7-13-45, AS AMENDED, RELATING TO FILING AS A CANDIDATE, SO AS TO REFERENCE THE REQUIREMENTS OF SECTION 7-11-15 AND MAKE CONFORMING CHANGES; TO AMEND SECTION 8-13-365, AS AMENDED, RELATING TO ELECTRONIC FILING FOR DISCLOSURES AND REPORTS, SO AS TO EXEMPT FORMS AND REPORTS REQUIRED PURSUANT TO ARTICLE 9, CHAPTER 13, TITLE 8 FROM THE STATE ETHICS COMMISSION'S DIRECTIVE TO ESTABLISH AN ELECTRONIC FILING SYSTEM AND TO DELETE OBSOLETE LANGUAGE; TO AMEND SECTION 8-13-1140, RELATING TO FILING OF AN UPDATED STATEMENT OF ECONOMIC INTERESTS, SO AS TO REFERENCE SECTION 8-13-365 AND TO CHANGE THE FILING DEADLINE FROM APRIL FIFTEENTH TO NOON ON MARCH THIRTIETH; TO AMEND SECTION 8-13-1356, AS AMENDED, RELATING TO THE FILING OF STATEMENTS OF ECONOMIC INTERESTS BY CANDIDATES, SO AS TO PROVIDE THAT A CANDIDATE WHO FILES A STATEMENT OF INTENTION OF CANDIDACY SEEKING NOMINATION BY POLITICAL PARTY PRIMARY OR CONVENTION MUST ELECTRONICALLY FILE A STATEMENT OF ECONOMIC INTERESTS PRIOR TO THE CLOSE OF FILING FOR THAT PARTICULAR OFFICE, A CANDIDATE WHO FILES A PETITION FOR NOMINATION MUST FILE A STATEMENT OF ECONOMIC INTERESTS WITHIN FIFTEEN DAYS OF SUBMITTING THE PETITION, AND A PERSON WHO

BECOMES A WRITE-IN CANDIDATE MUST ELECTRONICALLY FILE A STATEMENT OF ELECTRONIC INTERESTS WITHIN TWENTY-FOUR HOURS OF FILING AN INITIAL CAMPAIGN FINANCE REPORT OR BEFORE TAKING THE OATH OF OFFICE, WHICHEVER OCCURS EARLIER; TO REPEAL SECTION 7-11-220 RELATING TO NOTICE OR PLEDGE BY CANDIDATES FOR THE STATE SENATE; AND TO REQUIRE THE STATE ELECTION COMMISSION TO NOTIFY EACH COUNTY ELECTION COMMISSION OF THE PROVISIONS OF THIS ACT, TO POST THE PROVISIONS OF THIS ACT ON ITS WEBSITE, AND TO REQUIRE EACH STATE PARTY EXECUTIVE COMMITTEE TO NOTIFY THE COUNTY EXECUTIVE PARTIES OF THE PROVISIONS OF THIS ACT.

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

Nomination of candidates, prohibition of defeated candidates appearing on the ballot, exceptions

SECTION 1. Section 7-11-10 of the 1976 Code is amended to read:

"Section 7-11-10. Nominations for candidates for the offices to be voted on in a general or special election may be by political party primary, by political party convention, or by petition; however, a person who was defeated as a candidate for nomination to an office in a party primary or party convention shall not have his name placed on the ballot for the ensuing general or special election, except that this section does not prevent a defeated candidate from later becoming his party's nominee for that office in that election if the candidate first selected as the party's nominee dies, resigns, is disqualified, or otherwise ceases to become the party's nominee for that office before the election is held."

Candidate qualifications, streamlined guidelines and procedures

SECTION 2. Section 7-11-15 of the 1976 Code, as last amended by Act 3 of 2003, is further amended to read:

"Section 7-11-15. (A) In order to qualify as a candidate to run in the general election, all candidates seeking nomination by political party primary or political party convention must file a statement of

intention of candidacy and party pledge and submit any filing fees between noon on March sixteenth and noon on March thirtieth as provided in this section.

(1) Except as otherwise provided in this section, candidates seeking nomination for a statewide, congressional, or district office that includes more than one county must file their statements of intention of candidacy, and party pledge and submit any filing fees with the State Election Commission.

(2) Candidates seeking nomination for the State Senate or House of Representatives must file their statements of intention of candidacy and party pledge and submit any filing fees with the county election commission in the county of their residence. The state executive committees must certify candidates pursuant to Section 7-13-40.

(3) Candidates seeking nomination for a countywide or less than countywide office shall file their statements of intention of candidacy and party pledge and submit any filing fees with the county election commission in the county of their residence.

(B) Except as provided herein, the election commission with whom the documents in subsection (A) are filed must provide a copy of all statements of intention of candidacy, the party pledge, receipt and filing fees, to the appropriate political party executive committee within two days following the deadline for filing. If the second day falls on Saturday, Sunday, or a legal holiday, the statement of intention of candidacy, party pledge, and filing fee must be filed by noon the following day that is not a Saturday, Sunday, or legal holiday. No candidate's name may appear on a primary election ballot, convention slate of candidates, general election ballot, or special election ballot, except as otherwise provided by law, if (1) the candidate's statement of intention of candidacy and party pledge has not been filed with the county election commission or State Election Commission, as the case may be, as well as any filing fee, by the deadline and (2) the candidate has not been certified by the appropriate political party as required by Sections 7-13-40 and 7-13-350, as applicable. The candidate's name must appear if the candidate produces the signed and dated copy of his timely filed statement of intention of candidacy. An error or omission by a person seeking to qualify as a candidate pursuant to this section that is not directly related to a constitutional or statutory qualification for that office must be construed in a manner that favors the person's access to the ballot.

(C) The statement of intention of candidacy required in this section and in Section 7-13-190(B) must be on a form designed and provided by the State Election Commission. This form, in addition to all other

information, must contain an affirmation that the candidate meets, or will meet by the time of the general election, or as otherwise required by law, the qualifications for the office sought. The candidate must file three signed copies and the election commission with whom it is filed must stamp each copy with the date and time received, keep one copy, return one copy to the candidate, and send one copy to the appropriate political party executive committee.

(D) The candidate must file three signed copies of the party pledge, as required pursuant to Section 7-11-210, and the election commission with whom it is filed must stamp each copy with the date and time received, return one copy to the candidate, and send one copy to the appropriate political party executive committee.

(E) The candidate must sign a receipt for the filing fee, and the election commission with whom it is filed must stamp the receipt with the date and time the filing fee was received, provide one copy to the candidate and provide one copy to the appropriate political executive party. The filing fee must be made payable to the appropriate political party.

(F) If, after the closing of the time for filing the documents required pursuant to this section, there are not more than two candidates for any one office and one or more of the candidates dies, or withdraws, the state or county committee, as the case may be, if the nomination is by political party primary or political party convention only may, in its discretion, afford opportunity for the entry of other candidates for the office involved; however, for the office of State House of Representatives or State Senator, the discretion must be exercised by the state committee.

(G) The county chairman of a political party and the chairman of the state executive committee of a political party may designate a person to observe the filings made at the election commission pursuant to this section.

(H) The provisions of this section do not apply to nonpartisan school trustee elections in any school district where local law provisions provide for other dates and procedures for filing statements of candidacy or petitions, and to the extent the provisions of this section and the local law provisions conflict, the local law provisions control."

Nomination of candidates, party convention election procedures

SECTION 3. Section 7-11-30 of the 1976 Code is amended to read:

"Section 7-11-30. (A) A party may choose to nominate candidates for all offices including, but not limited to, Governor, Lieutenant Governor, United States Senator, United States House of Representatives, Circuit Solicitor, State Senator, and members of the State House of Representatives if:

(1) there is a three-fourths vote of the total membership of the convention to use the convention nomination process; and

(2) a majority of voters in that party's next primary election approve the use of the convention nomination process.

(B) A party may not choose to nominate by party convention for an election cycle in which the filing period for candidates has begun.

(C) A political party nominating candidates by party convention shall nominate the party candidates and make the nominations public not later than the time for certifying candidates to the authority charged by law with preparing ballots for the general or special election."

Notice of candidacy and pledge, conforming changes

SECTION 4. Section 7-11-210 of the 1976 Code, as last amended by Act 236 of 2000, is further amended to read:

"Section 7-11-210. Every candidate for selection as a nominee of any political party for any state office, United States Senator, member of Congress, or solicitor, to be voted for in any party primary election or political party convention, shall file with and place in the possession of the appropriate election commission, pursuant to Section 7-11-15 by twelve o'clock noon on March thirtieth a party pledge in the following form, the blanks being properly filled in and the party pledge signed by the candidate: 'I hereby file my notice as a candidate for the nomination as _____ in the primary election or convention to be held on _____. I affiliate with the _____ Party, and I hereby pledge myself to abide by the results of the primary or convention. I shall not authorize my name to be placed on the general election ballot by petition and will not offer or campaign as a write-in candidate for this office or any other office for which the party has a nominee. I authorize the issuance of an injunction upon ex parte application by the party chairman, as provided by law, should I violate this pledge by offering or campaigning in the ensuing general election for election to this office or any other office for which a nominee has been elected in the party primary election, unless the nominee for the office has become deceased or otherwise disqualified for election in the ensuing general election. I hereby affirm that I meet, or will meet by

the time of the general or special election, or as otherwise required by law, the qualifications for this office'.

Every candidate for selection in a primary election as the nominee of any political party for member of the Senate, member of the House of Representatives, and all county and township offices shall file with and place in the possession of the county election commission of the county in which they reside by twelve o'clock noon on March thirtieth a like party pledge.

The party pledge required by this section to be filed by a candidate in a primary must be signed personally by the candidate, and the signature of the candidate must be signed in the presence of an individual authorized by the election commission director. Any party pledge of any candidate signed by an agent on behalf of a candidate shall not be valid.

In the event that a person who was defeated as a candidate for nomination to an office in a party's primary election shall thereafter offer or campaign as a candidate against any nominee for election to any office in the ensuing general election, the state chairman of the party which held the primary (if the office involved is one voted for in the general election by the electors of more than one county), or the county chairman of the party which held the primary (in the case of all other offices), shall forthwith institute an action in a court of competent jurisdiction for an order enjoining the person from so offering or campaigning in the general election, and the court is hereby empowered upon proof of these facts to issue an order."

Certification of candidates, certification date changed

SECTION 5. Section 7-13-40 of the 1976 Code, as last amended by Act 236 of 2000, is further amended to read:

"Section 7-13-40. In the event that a party nominates candidates by party primary, a party primary must be held by the party and conducted by the State Election Commission and the respective county election commissions on the second Tuesday in June of each general election year, and a second and third primary each two weeks successively thereafter, if necessary. Written certification of the names of all candidates to be placed on primary ballots must be made by the political party chairman, vice chairman, or secretary to the State Election Commission or the county election commission, whichever is responsible under law for preparing the ballot, not later than twelve o'clock noon on April fifth, or if April fifth falls on a Saturday or

Sunday, not later than twelve o'clock noon on the following Monday. Political parties nominating candidates by party primary must verify the qualifications of those candidates prior to certification to the appropriate election commission of the names of candidates to be placed on primary ballots. The written verification required by this section must contain a statement that each candidate certified meets, or will meet by the time of the general election, or as otherwise required by law, the qualifications for office for which he has filed. A political party must not certify any candidate who does not or will not by the time of the general election, or as otherwise required by law, meet the qualifications for the office for which the candidate has filed, and such candidate's name shall not be placed on a primary ballot. The filing fees for all candidates filing to run in all primaries, except municipal primaries, must be transmitted by the respective political parties to the State Election Commission and placed by the executive director of the commission in a special account designated for use in conducting primary elections and must be used for that purpose. The filing fee for each office is one percent of the total salary for the term of that office or one hundred dollars, whichever amount is greater."

Candidate filing, conforming changes

SECTION 6. Section 7-13-45 of the 1976 Code, as last amended by Act 434 of 1996, is further amended to read:

"Section 7-13-45. (A) In every general election year, the Executive Director of the State Election Commission and the director of each county election commission shall:

(1) establish regular hours of not less than four hours a day during the final seventy-two hours of the filing period in which the director or some person he designates must be present to accept filings as required by Section 7-11-15;

(2) place an advertisement to appear two weeks before the filing period begins in a newspaper of general circulation in the county at least five by seven inches in size that notifies the public of the dates of the filing periods, the offices which may be filed for, the place and street address where filings may be made, and the hours that an authorized person will be present to receive filings."

Economic interests statements, electronic filing, appointee exceptions, technical cleanup

SECTION 7. Section 8-13-365 of the 1976 Code, as last amended by Act 190 of 2010, is further amended to read:

"Section 8-13-365. The commission shall establish a system of electronic filing for all disclosures and reports required pursuant to Chapter 13, Title 8 and Chapter 17, Title 2 except for forms and reports required pursuant to Article 9, Chapter 13, Title 8. These disclosures and reports must be filed using an Internet-based filing system as prescribed by the commission. The information contained in the reports and disclosure forms, with the exception of social security numbers, campaign bank account numbers, and tax ID numbers, must be publicly accessible, searchable, and transferable."

Economic interests statements, deadline for filing changed

SECTION 8. Section 8-13-1140 of the 1976 Code, as added by Act 248 of 1991, is amended to read:

"Section 8-13-1140. A person required to file a statement of economic interests under this chapter annually shall file, pursuant to Section 8-13-365, an updated statement for the previous calendar year, no later than noon on March thirtieth of each calendar year. If the person has filed the description by name, amount, and schedule of payments of a continuing arrangement relating to an item required to be reported under this article, an updating statement need not be filed for each payment under the continuing arrangement, but only if the arrangement is terminated or altered."

Economic interests statements, filing deadlines for particular candidates

SECTION 9. Section 8-13-1356 of the 1976 Code, as last amended by Act 330 of 1996, is further amended to read:

"Section 8-13-1356. (A) A person who becomes a candidate by filing a statement of intention of candidacy seeking nomination by political party primary or political party convention must electronically file a statement of economic interests for the preceding calendar year

pursuant to Section 8-13-365 prior to the close of filing for the particular office.

(B) A person who becomes a candidate by filing a petition for nomination must electronically file a statement of economic interests for the preceding calendar year pursuant to Section 8-13-365 within fifteen days of submitting the petition pursuant to Section 7-11-70 or 7-11-71.

(C) A person who becomes a write-in candidate must electronically file a statement of economic interests for the preceding calendar year within twenty-four hours of filing an initial campaign finance report pursuant to Section 8-13-1308(A) or before taking the oath of office, whichever occurs earlier.

(D) A candidate who is not a public official otherwise filing a statement has the same disclosure requirements as a public official with the exception of reporting gifts.

(E) The appropriate supervisory office shall assess a civil penalty pursuant to Section 8-13-1510 against a candidate who fails to timely file a statement of economic interests as required by this section."

Repeal

SECTION 10. Section 7-11-220 of the 1976 Code is repealed.

Notification of the act

SECTION 11. In order to educate various parties regarding the provisions contained in this act, the following notifications must be made:

(1) The State Election Commission must notify each county election commission of the provisions of this act.

(2) The State Election Commission must post the provisions of this act on its website.

(3) Each state party executive committee must notify their respective county executive parties of the provisions of this act.

One subject

SECTION 12. The General Assembly finds that all the provisions contained in this act relate to one subject as required by Section 17, Article III of the South Carolina Constitution in that each provision relates directly to or in conjunction with other sections to the subject of election reform as stated in the title. The General Assembly further

finds that a common purpose or relationship exists among the sections, representing a potential plurality but not disunity of topics, notwithstanding that reasonable minds might differ in identifying more than one topic contained in this act.

Severability Clause

SECTION 13. The provisions of this act are severable. If any section, subsection, paragraph, subparagraph, item, subitem, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of the act, the General Assembly hereby declaring that it would have passed each and every section, subsection, paragraph, subparagraph, item, subitem, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, items, subitems, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

Time effective

SECTION 14. This act takes effect upon preclearance approval by the United States Department of Justice or approval by a declaratory judgment issued by the United States District Court for the District of Columbia, whichever occurs first.

Ratified the 11th day of June, 2013.

Approved the 13th day of June, 2013.

No. 62

(R75, S8)

AN ACT TO AMEND SECTION 47-3-110, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE LIABILITY OF AN OWNER OR KEEPER OF A DOG FOR A DOG ATTACK, SO AS TO PROVIDE THAT LIABILITY DOES NOT EXTEND TO A DOG WHO WAS PROVOKED OR HARASSED BY THE PERSON ATTACKED OR TO TRAINED LAW

ENFORCEMENT DOGS UNDER CERTAIN DELINEATED CIRCUMSTANCES; AND BY ADDING SECTION 23-23-140 SO AS TO DEFINE THE TERM "PATROL CANINE TEAMS" AND PROVIDE CERTIFICATION REQUIREMENTS FOR THE TEAMS.

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

Liability for attacks by dogs, provoked attacks, trained law enforcement dogs

SECTION 1. Section 47-3-110 of the 1976 Code is amended to read:

"Section 47-3-110. (A) If a person is bitten or otherwise attacked by a dog while the person is in a public place or is lawfully in a private place, including the property of the dog owner or person having the dog in the person's care or keeping, the dog owner or person having the dog in the person's care or keeping is liable for the damages suffered by the person bitten or otherwise attacked. For the purposes of this section, a person bitten or otherwise attacked is lawfully in a private place, including the property of the dog owner or person having the dog in the person's care or keeping, when the person bitten or otherwise attacked is on the property in the performance of a duty imposed upon the person by the laws of this State, the ordinances of a political subdivision of this State, the laws of the United States of America including, but not limited to, postal regulations, or when the person bitten or otherwise attacked is on the property upon the invitation, express or implied, of the property owner or a lawful tenant or resident of the property.

(B) This section does not apply if, at the time the person is bitten or otherwise attacked:

(1) the person who was attacked provoked or harassed the dog and that provocation was the proximate cause of the attack; or

(2) the dog was working in a law enforcement capacity with a governmental agency and in the performance of the dog's official duties provided that:

(a) the dog's attack is in direct and complete compliance with the lawful command of a duly certified canine officer;

(b) the dog is trained and certified according to the standards adopted by the South Carolina Law Enforcement Training Council;

(c) the governmental agency has adopted a written policy on the necessary and appropriate use of dogs in the dog's official law enforcement duties;

(d) the actions of the dog's handler or dog do not violate the agency's written policy;

(e) the actions of the dog's handler or dog do not constitute excessive force; and

(f) the attack or bite does not occur on a third party bystander."

Patrol canine teams, certification

SECTION 2. Chapter 23, Title 23 of the 1976 Code is amended by adding:

"Section 23-23-140. (A) For purposes of this section, 'patrol canine teams' refers to a certified officer and a specific patrol canine controlled by the handler working together in the performance of law enforcement or correctional duties. 'Patrol canine teams' does not refer to canines used exclusively for tracking or specific detection.

(B) The South Carolina Criminal Justice Academy shall verify that patrol canine teams have been certified by a nationally recognized police dog association or similar organization.

(C) No law enforcement agency may utilize patrol canine teams after July 1, 2014, unless the patrol canine teams have met all certification requirements."

Time effective

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

Ratified the 11th day of June, 2013.

Approved the 12th day of June, 2013.

No. 63

(R76, S127)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING ARTICLE 6 TO CHAPTER 38, TITLE 44 SO AS TO CREATE THE SOUTH CAROLINA BRAIN INJURY LEADERSHIP COUNCIL, TO PROVIDE FOR DUTIES OF THE COUNCIL, TO PROVIDE FOR QUALIFICATIONS AND MEMBERSHIP OF THE COUNCIL; AND TO REPEAL SECTION 44-20-225 RELATING TO CONSUMER ADVISORY BOARDS FOR INDIVIDUALS WITH CERTAIN INTELLECTUAL DISABILITIES AND BRAIN AND SPINAL CORD INJURIES.

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

South Carolina Brain Injury Leadership Council, creation, membership, and duties

SECTION 1. Chapter 38, Title 44 of the 1976 Code is amended by adding:

"Article 6

South Carolina Brain Injury Leadership Council

Section 44-38-610. There is created the South Carolina Brain Injury Leadership Council, within the Department of Disabilities and Special Needs, to provide statewide coordination in promoting support services to persons with brain injuries, their families, and caregivers, and to identify emerging issues and innovations, foster education and advocacy, and build consensus to support necessary policies and programs.

Section 44-38-620. The South Carolina Brain Injury Leadership Council shall:

(1) advise and make recommendations to the State on ways to improve services coordination regarding traumatic brain injury;

(2) encourage citizen participation through the establishment of public hearings and other types of community outreach programs;

(3) identify emerging issues and expand methods and resources to enhance statewide services;

(4) serve as a resource for education, research, and training and provide information and referral services;

(5) provide technical assistance for the development of support groups and other local initiatives to serve individuals, families, and caregivers;

(6) consult with federal, state, and local government agencies and with citizens' groups and other private entities to recommend public policy concerning brain injuries to state policymakers; and

(7) serve as the statewide advisory board for implementing the federal Traumatic Brain Injury Act and applying for federal traumatic brain injury funding.

Section 44-38-630. (A) The members of the South Carolina Brain Injury Leadership Council should have knowledge or expertise in the area of brain injury or related services. The council shall be comprised of representatives of the following agencies and organizations, shall be appointed by the director of the agency or organization and shall serve ex officio:

(1) South Carolina Department of Education;

(2) South Carolina Department of Health and Human Services;

(3) South Carolina Department of Mental Health;

(4) South Carolina Department of Social Services;

(5) South Carolina Department of Health and Environmental Control;

(6) South Carolina Vocational Rehabilitation Department;

(7) South Carolina Department of Disabilities and Special Needs;

(8) Head and Spinal Cord Injury Division within the South Carolina Department of Disabilities and Special Needs;

(9) Medical University of South Carolina;

(10) University Center for Excellence in Developmental Disabilities within the University of South Carolina School of Medicine;

(11) South Carolina Statewide Independent Living Council;

(12) South Carolina Developmental Disabilities Council;

(13) Protection and Advocacy for People with Disabilities, Inc.; and

(14) Brain Injury Association of South Carolina.

(B) Council members shall include persons who are survivors of traumatic brain injury, family members or legal guardians of these persons, health care professionals, representatives of service provider

entities, or other interested parties knowledgeable about brain injuries. Membership shall meet requirements of the State Advisory Board designated by the federal Traumatic Brain Injury Act.

(C) Officers of the council shall be as follows: chairperson, vice chairperson, and secretary. Council officers are to be elected at the final quarterly council meeting of the year, and shall serve a two year term starting the next calendar year.

(D) Council members shall be appointed with consideration given to statewide geographic and demographic representation. When an appointed vacancy on the council exists, nominations to fill the vacancy may be received from members of the council by the secretary.

(E) Members and officers of the council are not entitled to mileage, per diem, subsistence, or any other form of compensation.

Section 44-38-640. The South Carolina Brain Injury Leadership Council shall have the authority to apply for grants for the purposes of carrying out the responsibilities and duties of the council."

Repeal of section

SECTION 2. Section 44-20-225 is repealed.

Time effective

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

Ratified the 11th day of June, 2013.

Approved the 13th day of June, 2013.

No. 64

(R77, S341)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, TO ENACT THE "EMERSON ROSE ACT" BY ADDING SECTION 44-37-70 SO AS TO REQUIRE EACH BIRTHING FACILITY LICENSED BY THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL TO PERFORM

A PULSE OXIMETRY SCREENING, OR ANOTHER APPROVED SCREENING TO DETECT CONGENITAL HEART DEFECTS, ON EVERY NEWBORN IN ITS CARE, WHEN THE BABY IS TWENTY-FOUR TO FORTY-EIGHT HOURS OF AGE, OR AS LATE AS POSSIBLE IF THE BABY IS DISCHARGED FROM THE HOSPITAL BEFORE REACHING TWENTY-FOUR HOURS OF AGE.

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

Citation

SECTION 1. This act may be cited as the "Emerson Rose Act".

Findings

SECTION 2. The General Assembly finds that:

(1) Congenital heart defects are structural abnormalities of the heart that are present at birth and range in severity from simple problems such as holes between chambers of the heart, to severe malformations, such as the complete absence of one or more chambers or valves. Some critical congenital heart defects can cause severe and life-threatening symptoms which require intervention within the first days of life.

(2) Congenital heart defects are the leading cause of infant death due to birth defects. According to the United States Secretary of Health and Human Services' Advisory Committee on Heritable Disorders in Newborns and Children, congenital heart disease affects approximately seven to nine of every thousand live births in the United States and Europe.

(3) Current methods for detecting congenital heart defects generally include prenatal ultrasound screening and repeated clinical examinations. While prenatal ultrasound screenings can detect some major congenital heart defects, these screenings, alone, identify less than half of all congenital heart defect cases, and critical congenital heart defect cases are often missed during routine clinical exams performed prior to a newborn's discharge from a birthing facility.

(4) Pulse oximetry is a noninvasive test that estimates the percentage of hemoglobin in blood that is saturated with oxygen. When performed on a newborn when the baby is twenty-four to forty-eight hours of age, or as late as possible if the baby is discharged from the hospital before reaching twenty-four hours of age, pulse

oximetry screening is often more effective at detecting critical, life-threatening congenital heart defects which otherwise go undetected by current screening methods.

(5) Newborns with abnormal pulse oximetry results require immediate confirmatory testing and intervention. Many newborn lives potentially could be saved by earlier detection and treatment of congenital heart defects if birthing facilities in the State were required to perform this simple, noninvasive newborn screening in conjunction with current congenital heart defect screening methods.

(6) The American Academy of Pediatrics, the American College of Cardiology Foundation, and the American Heart Association recommend pulse oximetry screening for newborns.

(7) The South Carolina Birth Outcomes Initiative, established by the Department of Health and Human Services to improve care and outcomes for mothers and newborns, has acknowledged the value of pulse oximetry screening of newborns and under this initiative all South Carolina birthing hospitals have committed to implementing this screening for newborns.

Required screening to detect congenital heart defects in newborns

SECTION 3. Chapter 37, Title 44 of the 1976 Code is amended by adding:

"Section 44-37-70. (A) The Department of Health and Environmental Control shall require each birthing facility licensed by the department to perform on every newborn in its care a pulse oximetry or other department-approved screening to detect critical congenital heart defects when the baby is twenty-four to forty-eight hours of age, or as late as possible if the baby is discharged from the hospital before reaching twenty-four hours of age. A department-approved screening must be based on standards set forth by the United States Secretary of Health and Human Services' Advisory Committee on Heritable Disorders in Newborns and Children, the American Heart Association, and the American Academy of Pediatrics. If a parent of a newborn objects, in writing, to the screening, for reasons pertaining to religious beliefs only, the newborn is exempt from the screening required by this subsection.

(B) The Department of Health and Human Services shall work with birthing facilities through its partnership with the Birth Outcomes Initiative to recommend policies for critical congenital heart defect

screening. The Department of Health and Human Services shall provide reimbursement for services provided pursuant to this section.

(C) For purposes of this section, 'birthing facility' means an inpatient or ambulatory health care facility licensed by the Department of Health and Environmental Control that provides birthing and newborn care services.

(D) The department with advice from the Birth Outcome Initiative Leadership Team under the Department of Health and Human Services shall promulgate regulations necessary to implement the provisions of this section. In promulgating the regulations, the department must consider the best practices in screening, current scientific guidelines and recommendations, and advances in medical technology."

Time effective

SECTION 4. This act takes effect ninety days after approval by the Governor.

Ratified the 11th day of June, 2013.

Approved the 13th day of June, 2013.

No. 65

(R78, S348)

AN ACT TO AMEND SECTION 6-9-55, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE SOUTH CAROLINA BUILDING CODES COUNCIL PROMULGATING CERTAIN REGULATIONS, SO AS TO EXTEND A PROVISION REGARDING REGULATIONS AND RESIDENTIAL FIRE SPRINKLER SYSTEMS, AND TO PROVIDE THAT SECTION 501.3 OF THE 2012 INTERNATIONAL RESIDENTIAL CODE MUST NOT BE ENFORCED PRIOR TO JULY 1, 2015; AND BY ADDING SECTION 6-10-35 SO AS TO PROVIDE FOR REQUIREMENTS FOR FIREPLACES IN LIEU OF REQUIREMENTS OF THE 2009 EDITION OF THE INTERNATIONAL ENERGY CONSERVATION CODE.

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

Extension of a provision regarding regulations and residential fire sprinkler systems, retention of crawl space ceiling requirements

SECTION 1. Section 6-9-55 of the 1976 Code, as added by Act 232 of 2010, is amended to read:

"Section 6-9-55. (A) The council shall promulgate as regulations, in accordance with the procedure and requirements contained in Article 1, Chapter 23, Title 1, any provision of or amendment to any building code that would affect construction requirements for one-family or two-family dwellings. No building code provision that would otherwise become effective after the effective date of this section concerning construction requirements for one-family or two-family dwellings shall be enforced until the effective date of the regulations required to be promulgated by this section.

(B) Notwithstanding subsection (A), a regulation mandating the installation of an automatic residential fire sprinkler system in one-family or two-family dwellings shall not become effective at any time before July 1, 2015.

(C) Notwithstanding subsection (A), Section 501.3 of the 2012 International Residential Code must not be enforced at any time before July 1, 2015."

Wood-burning fireplace requirements

SECTION 2. Chapter 10, Title 6 of the 1976 Code is amended by adding:

"Section 6-10-35. Notwithstanding Section 402.4.3 of the 2009 Edition of the International Energy Conservation Code, new wood-burning fireplaces shall have tight-fitting flue dampers and outdoor combustion air."

Time effective

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

Ratified the 11th day of June, 2013.

Approved the 14th day of June, 2013.

No. 66

(R79, S460)

AN ACT TO AMEND SECTION 38-45-90, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO DUTIES OF BROKERS PLACING BUSINESS WITH NONADMITTED INSURERS, SO AS TO REVISE THE PROOF THAT THE DIRECTOR OF THE DEPARTMENT OF INSURANCE MAY REQUIRE FROM A BROKER SEEKING TO PLACE BUSINESS WITH A NONADMITTED INSURER, TO PROVIDE A NECESSARY DEFINITION, AND TO IMPOSE CERTAIN DUE DILIGENCE REQUIREMENTS ON THE BROKER.

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

Duties of surplus lines brokers

SECTION 1. Section 38-45-90 of the 1976 Code, as last amended by Act 283 of 2012, is further amended to read:

"Section 38-45-90. (A) At the request of a licensed resident broker, the director or his designee may approve certain nonadmitted insurers as eligible surplus lines insurers to write business on risks located in this State that one or more insurers licensed in this State to write that line of business in this State have declined to write. The director or his designee may require the broker to submit, on behalf of the insurer, documents necessary to satisfy him that the insurer is licensed in his domiciliary state, that meets at least the minimum capital and surplus requirements of this State, and that its operation is not hazardous to the policyholders. The director or his designee may require the broker or the insurer to file additional documents at any time to maintain the insurer's status as an eligible surplus lines insurer. For the purposes of this section, 'domiciliary state' means the state or jurisdiction in which an insurer is incorporated or organized. The director or his designee

may withdraw his approval at any time the insurer fails to meet any of the requirements. While the insurer maintains his status as an eligible surplus lines insurer, a duly licensed broker, under the terms of this chapter, may place business with the insurer. An insurance broker shall exercise due care in the placing of insurance, except as provided in subsection (B). Each broker transacting business in the State during a calendar year shall file annually with the department within thirty days after December thirty-first a detailed report of this business. The report must be in the form the director or his designee prescribes. The broker's books, papers, and accounts must be open at all times to the inspection of the director or his designee.

(B) A surplus lines broker is not required to search with due diligence to determine whether the full amount or type of insurance can be obtained from an admitted insurer when the broker is seeking to procure or place nonadmitted insurance for an exempt commercial purchaser provided the:

(1) broker procuring or placing the surplus lines insurance has disclosed to the exempt commercial purchaser that the insurance may or may not be available from the admitted market and that insurance obtained from the admitted market may provide greater protection with more regulatory oversight; and

(2) exempt commercial purchaser has subsequently requested in writing for the broker to procure or place such insurance from a nonadmitted insurer."

Time effective

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

Ratified the 11th day of June, 2013.

Approved the 13th day of June, 2013.

No. 67

(R80, S463)

AN ACT TO AMEND SECTION 38-53-90, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO APPLICANTS FOR LICENSURE AS PROFESSIONAL BONDSMEN AND

RUNNERS, SO AS TO REQUIRE CERTAIN STATE AND NATIONAL CRIMINAL BACKGROUND CHECKS, TO PROVIDE THE DEPARTMENT OF INSURANCE MUST REPORT THE RESULTS, AND TO PROVIDE THE APPLICANT MUST BEAR THE ASSOCIATED COSTS.

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

Criminal background checks for professional bondsmen and runners

SECTION 1. Section 38-53-90 of the 1976 Code is amended to read:

"Section 38-53-90. (A) Before a license is issued to an applicant permitting him to act as a professional bondsman or runner, the applicant shall furnish to the director or his designee a complete set of his fingerprints and a recent passport size full-face photograph in the manner prescribed by the director. Before a license is issued to a new or renewal applicant permitting him to act as a professional surety bondsman or runner, the applicant must undergo a state criminal records check, supported by his fingerprints, by the South Carolina Law Enforcement Division (SLED) and a national criminal records check, supported by his fingerprints, by the Federal Bureau of Investigation (FBI). The results of these criminal records checks must be reported by the department. The cost associated with the criminal history record must be borne by the applicant. The applicant's fingerprints must be certified by an authorized law enforcement officer.

(B) Before being issued the license, every applicant for a license as a professional bondsman, surety bondsman, or runner shall certify to the director that he:

(1) is eighteen years of age or older;

(2) is a resident of this State;

(3) is a person of good moral character and has not been convicted of a felony or any crime involving moral turpitude within the last ten years;

(4) has knowledge, training, or experience of sufficient duration and extent to satisfy reasonably the director or his designee that he possesses the competence necessary to fulfill the responsibilities of a licensee."

Time effective

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

Ratified the 11th day of June, 2013.

Approved the 13th day of June, 2013.

No. 68

(R81, S481)

AN ACT TO AMEND SECTION 12-21-2425, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE ADMISSIONS LICENSE TAX EXEMPTION FOR A MOTORSPORTS ENTERTAINMENT COMPLEX, SO AS TO REQUIRE THE COMPLEX TO BE A NASCAR-SANCTIONED MOTOR SPEEDWAY THAT HOSTED AT LEAST ONE NASCAR SPRINT CUP SERIES RACE IN 2012, AND CONTINUES TO HOST AT LEAST ONE NASCAR SPRINT CUP SERIES RACE, OR ANY SUCCESSOR RACE FEATURING THE SAME NASCAR CUP SERIES.

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

Admissions license tax exemption for motorsports entertainment complex

SECTION 1. Section 12-21-2425(B)(1) of the 1976 Code, as added by Act 313 of 2008, is amended to read:

"(1) is a NASCAR-sanctioned motor speedway or racetrack that hosted at least one NASCAR Sprint Cup Series race in 2012, and continues to host at least one NASCAR Sprint Cup Series race, or any successor race featuring the same NASCAR Cup series;"

Time effective

SECTION 2. This act takes effect for tax years beginning after 2012.

Ratified the 11th day of June, 2013.

Approved the 13th day of June, 2013.

No. 69

(R82, S484)

AN ACT TO AMEND SECTION 9-11-80, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO DISABILITY RETIREMENT FOR MEMBERS OF THE POLICE OFFICERS RETIREMENT SYSTEM, SO AS TO DELETE THE REQUIREMENT THAT CERTAIN MEMBERS BE ELIGIBLE FOR, AND PROVIDE PROOF OF, SOCIAL SECURITY DISABILITY BENEFITS TO CONTINUE TO RECEIVE A DISABILITY RETIREMENT BENEFIT, AND TO MAKE TECHNICAL CHANGES; TO AMEND SECTION 9-11-10, AS AMENDED, RELATING TO DEFINITIONS THAT APPLY TO THE POLICE OFFICERS RETIREMENT SYSTEM, SO AS TO DEFINE "MEDICAL BOARD"; TO AMEND SECTION 9-11-30, AS AMENDED, RELATING TO THE ADMINISTRATION OF THE POLICE OFFICERS RETIREMENT SYSTEM, SO AS TO REQUIRE THE BOARD OF DIRECTORS OF THE SOUTH CAROLINA PUBLIC EMPLOYEE BENEFIT AUTHORITY TO DESIGNATE A MEDICAL BOARD, TO ESTABLISH ITS MEMBERSHIP, AND TO PROVIDE ITS DUTIES; AND TO AMEND ACT 153 OF 2005, RELATING TO THE RETIREMENT SYSTEMS, SO AS TO MAKE CONFORMING CHANGES RELATING TO REFERENCES TO THE MEDICAL BOARD.

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

Requirement for disability retirement allowance

SECTION 1. Section 9-11-80 of the 1976 Code, as last amended by Act 278 of 2012, is further amended to read:

"Section 9-11-80. (1) On the application of a member in service or the member's employer, a member who has the years of earned service

required for the member's class pursuant to Section 9-11-60(1) or any contributing member who is disabled as a result of an injury arising out of and in the course of the performance of the member's duties regardless of length of membership, may be retired by the retirement board not less than thirty days and not more than nine months next following the date of filing the application on a disability retirement allowance if the system, after a medical examination of the member, certifies that the member is mentally or physically incapacitated for the further performance of duty, that the incapacity is likely to be permanent, and that the member should be retired. For purposes of this section, a member is considered to be in service on the date the application is filed if the member is not retired and the last day the member was employed by a covered employer in the system occurred not more than ninety days before the date of filing.

The South Carolina Retirement System may contract with the Department of Vocational Rehabilitation to evaluate the medical evidence submitted with the disability application relative to the job being performed and make recommendations to the system. The system may approve a disability retirement subject to the member participating in vocational rehabilitation with the Department of Vocational Rehabilitation. Upon determination by the department that a member retired on disability is able to reenter the job market and work is available, the retirement system may adjust the benefit paid by the system in accordance with Sections 9-1-1580, 9-1-1590, 9-9-60, and 9-11-90.

(2)(A) Upon disability retirement based upon an application received by the system before January 1, 2014, the member shall receive a disability retirement allowance which shall be equal to a service retirement allowance computed on the basis of his average final compensation, his years of credited service and his accumulated additional contributions at the date of his disability retirement; provided, however, that, at disability retirement, his disability retirement allowance shall be determined on the basis of the number of years of credited service the member would have completed had he remained in service until attaining age fifty-five and on the basis of the average final compensation. For the purpose of calculating the disability retirement allowance, the additional credited service so determined must be either Class One service, Class Two service, or Class Three service depending upon the classification of the member at the time of retirement.

(B) Upon disability retirement based upon an application received by the system after December 31, 2013, the member shall

receive a disability retirement allowance which is equal to a service retirement allowance computed on the basis of the member's average final compensation, the member's years of credited service, and the member's accumulated additional contributions at the date of the member's disability retirement. However, at disability retirement, the member's disability retirement allowance must be determined on the basis of the member's average final compensation at retirement and on the basis of the number of years of credited service the member would have completed had the member remained in service until attaining age fifty-five or until attaining twenty-five years of credited service, whichever is less. For the purpose of calculating the disability retirement allowance, the additional credited service so determined must be either Class One service, Class Two service, or Class Three service depending upon the classification of the member at the time of retirement.

(3) Once each year during the first five years following the retirement of a member on a disability retirement allowance, and once in every three-year period thereafter, the board may require any disability beneficiary who has not yet attained the age of fifty-five years to undergo a medical examination, such examination to be made at the place of residence of the beneficiary or other place mutually agreed upon, by the system. If a disability beneficiary who has not yet attained the age of fifty-five years refuses to submit to any such medical examination, the member's retirement allowance may be discontinued until the member's withdrawal of such refusal, and if the refusal continues for one year, all the member's rights in and to the member's retirement allowance may be revoked, but upon revocation any unexpended portion of the member's accumulated contributions to date of retirement shall be returned to the member.

(4) If the system certifies that the member's disability has been removed and that the member has regained earning capacity, the member's disability retirement allowance may be discontinued, or if the disability has been partly removed and the member's earning capacity regained in part, the disability retirement allowance may be reduced proportionately as provided pursuant to Section 9-1-1580. The determination of the board as to any disputed question, after due consideration accorded to the member, is conclusive. If the retirement allowance of any member retired for disability is discontinued or reduced, and if the member again suffers disability within five years of the date of the member's recovery and again loses earning capacity, the member is entitled to apply to the board for a restoration of the original retirement allowance, and the board may restore all or part of the

member's original retirement allowance. At the expiration of the five-year period, if the retirement allowance has not been restored, all rights in and to the member's disability retirement allowance are revoked. The member then is entitled to a deferred early retirement allowance as provided in Section 9-11-70 based upon the member's average final compensation and credited service at the member's date of disability retirement.

(5) After age fifty-five, a disability retiree is subject to the same earnings limitation as a service retiree.

(6) Notwithstanding any other provision of this section, upon retirement for disability after October 15, 1992, at any age, a member must receive a disability retirement allowance equal to at least fifteen percent of his average final compensation."

Definition and composition of medical board

SECTION 2. A. Section 9-11-10(18) of the 1976 Code, as last amended by Act 153 of 2005, is further amended to read:

"(18) 'Medical board' means the board provided for in Section 9-11-30(2)."

B. Section 9-11-30(2) of the 1976 Code, as last amended by Act 153 of 2005, is further amended to read:

"(2) The board shall designate a medical board composed of three physicians who are not members of the system. If required, other physicians who are not members of the system may be employed to report on special cases. The medical board shall arrange for and pass upon all medical examinations required under the system, shall investigate all essential statements and certificates by or on behalf of a member in connection with an application for disability retirement, and shall report in writing to the board its conclusions and recommendations upon all matters referred to it."

References to medical board

SECTION 3. Part III, SECTION 6 of Act 153 of 2005, is amended to read:

"SECTION 6. Excluding Chapter 11 in Title 9 of the 1976 Code, wherever the phrase 'medical board' or any variant of 'medical board'

appears, it must be construed to mean the 'system' unless the context clearly requires otherwise. The Code Commissioner shall replace the reference in future code supplements and replacement volumes as the Code Commissioner determines appropriate."

Time effective

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

Ratified the 11th day of June, 2013.

Approved the 13th day of June, 2013.

No. 70

(R83, S551)

AN ACT TO AMEND SECTION 50-11-310, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE OPEN HUNTING SEASON FOR ANTLERED DEER, SO AS TO PROVIDE THAT THE OPEN SEASON IN GAME ZONE 1 WITH ARCHERY EQUIPMENT AND FIREARMS IS OCTOBER 11 THROUGH JANUARY 1, AND TO PROVIDE THAT ON WILDLIFE MANAGEMENT AREA LANDS, THE DEPARTMENT OF NATURAL RESOURCES MAY PROMULGATE REGULATIONS IN ACCORDANCE WITH THE ADMINISTRATIVE PROCEDURES ACT TO ESTABLISH SEASONS FOR THE HUNTING AND TAKING OF DEER.

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

Open season for hunting and taking antlered deer

SECTION 1. Section 50-11-310(A)(1) of the 1976 Code, as last amended by Act 286 of 2010, is further amended to read:

"(A) The open season for the hunting and taking of antlered deer is:

(1) In Game Zone 1: October 1 through October 10, with primitive weapons only; October 11 through January 1, with archery equipment and firearms."

Promulgation of regulations

SECTION 2. Section 50-11-310(C) of the 1976 Code, as last amended by Act 286 of 2008, is further amended to read:

"(C) On Wildlife Management Area lands, the department may promulgate regulations in accordance with the Administrative Procedures Act to establish the seasons for the hunting and taking of deer, methods for the hunting and taking of deer, and other restrictions for the hunting and taking of deer."

Time effective

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

Ratified the 11th day of June, 2013.

Approved the 13th day of June, 2013.

No. 71

(R84, S562)

AN ACT TO AMEND SECTION 27-27-10, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE RECOVERY OF THE VALUE OF IMPROVEMENTS MADE IN GOOD FAITH IN AN ACTION TO RECOVER LANDS AND TENEMENTS, SO AS TO PROVIDE THAT THE DEFENDANT SHALL BE ENTITLED TO RECOVER THE FULL VALUE OF ALL IMPROVEMENTS IF THE DEFENDANT PURCHASED OR ACQUIRED TITLE TO THE LANDS AND TENEMENTS.

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

Recovery of certain improvements on acquired lands and tenements

SECTION 1. Section 27-27-10 of the 1976 Code is amended to read:

"Section 27-27-10. After final judgment in favor of the plaintiff in an action to recover lands and tenements, if the defendant has purchased or acquired the lands and tenements recovered in such action or taken a lease thereof or those under whom he holds have purchased or acquired a title to such lands and tenements or taken a lease thereof, supposing at the time of such purchase or acquisition such title to be good in fee or such lease to convey and secure the title and interest therein expressed, such defendant shall be entitled to recover of the plaintiff in such action the full value of all improvements made upon such land by such defendant or those under whom he claims, in the manner provided in this chapter."

Time effective

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

Ratified the 11th day of June, 2013.

Approved the 13th day of June, 2013.

No. 72

(R86, S590)

AN ACT TO AMEND SECTION 50-5-1705, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO CATCH LIMITS FOR CERTAIN FISH, SO AS TO PROVIDE THAT IT IS UNLAWFUL FOR A PERSON TO TAKE OR POSSESS MORE THAN ONE TARPON IN ANY ONE DAY OR A TARPON OF LESS THAN SEVENTY-SEVEN INCHES IN FORK LENGTH; AND TO AMEND SECTION 50-5-15, AS AMENDED, RELATING TO CERTAIN TERMS AND THEIR DEFINITIONS, SO AS TO DEFINE THE TERM "FORK LENGTH".

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

Taking and possessing of tarpon

SECTION 1. Section 50-5-1705(E) of the 1976 Code, as last amended by Act 7 of 2013, is further amended to read:

"(E) It is unlawful for a person to take or possess more than one tarpon in any one day or a tarpon of less than seventy-seven inches in fork length."

Definition

SECTION 2. Section 50-5-15 of the 1976 Code, as last amended by Act 7 of 2013, is further amended by adding the following appropriately numbered item:

"( ) 'Fork length' means the length of a fish laid flat and measured from the tip of the closed mouth (snout) to the center of the fork of the tail. It is a straight line measure, not over the curvature of the body."

Time effective

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

Ratified the 11th day of June, 2013.

Approved the 13th day of June, 2013.

No. 73

(R87, S610)

AN ACT TO AMEND SECTION 11-41-30, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO DEFINITIONS FOR PURPOSES OF THE STATE GENERAL OBLIGATION ECONOMIC DEVELOPMENT BOND ACT, SO AS TO CLARIFY THAT THE DEFINITION OF "ECONOMIC DEVELOPMENT PROJECT", INCLUDING A NATIONAL AND INTERNATIONAL CONVENTION AND TRADE SHOW CENTER OWNED BY A PUBLIC ENTITY INCLUDES AN ADJACENT FACILITY ALLOWING SPECIFIC EVENTS

THEREBY MAKING ADDITIONAL TIME AND SPACE AVAILABLE FOR THE MAJOR CONVENTIONS, TRADE SHOWS, AND SPECIAL EVENTS CONTEMPLATED BY THE ACT AND REQUIRE JOINT BOND REVIEW COMMITTEE REVIEW AND COMMENT ON SUCH AN ADJACENT FACILITY; AND TO AMEND SECTION 11-41-70, RELATING TO PURPOSES OF THE ISSUE OF BONDS PURSUANT TO THE STATE GENERAL OBLIGATION ECONOMIC DEVELOPMENT BOND ACT AND SPECIFIC REQUIREMENTS APPLICABLE TO A PUBLIC ENTITY RECEIVING BOND PROCEEDS, SO AS TO EXTEND FROM TEN TO FIFTEEN YEARS THE PERIOD IN WHICH A NATIONAL AND INTERNATIONAL CONVENTION AND TRADE SHOW CENTER MUST BE COMPLETED.

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

Definition of "project" expanded

SECTION 1. Section 11-41-30(2)(e) of the 1976 Code is amended to read:

"(e) 'Economic development project' or 'project' also includes a national and international convention and trade show center in this State, owned by the State or any agency, instrumentality, or political subdivision thereof. A 'national and international convention and trade show center' means a not less than two hundred thousand square foot facility consisting of meeting and exhibit space at which are held major conventions, trade shows, and special events that bring delegates into the State and community including, but not limited to, consumer shows, sporting events, and other meetings. Included in the space requirement is an adjacent facility allowing specific events thereby making additional time and space available for the major conventions, trade shows, and special events contemplated by this definition. However, if any adjacent facility is contemplated or initiated under the terms and conditions of this subitem, these plans must be submitted to the Joint Bond Review Committee for review and comment. A national and international convention and trade show center is not subject to the job creation and capital investment requirements imposed on projects as defined in subsections (a) and (b) above."

Project completion time extended

SECTION 2. Section 11-41-70(2)(d) of the 1976 Code is amended to read:

"(d) in the case of a national and international convention and trade show center, partial payment of costs for infrastructure associated with a meeting and exhibit space as defined in Section 11-41-30(2)(e), owned by the State or any agency, instrumentality, or political subdivision thereof for which project there has been executed an agreement between the State and the state agency, instrumentality, or political subdivision owning such meeting and exhibit space providing that, upon either the sale of the meeting and exhibit space partially financed with proceeds of bonds issued pursuant to this chapter or the failure of the state agency, instrumentality, or political subdivision to (1) purchase land within eighteen months of the effective date of this item (d), (2) begin construction within five years of the effective date of this item (d) of a meeting and exhibit space as defined in Section 11-41-30(2)(e), or (3) complete the project within fifteen years of the effective date of this item (d), then the state agency, instrumentality, or political subdivision owning such meeting and exhibit space will reimburse the amount of bond proceeds to the general fund of the State, plus interest thereon from the date of expenditure to the date of such reimbursement at a rate equal to the total interest cost rate on the issuance of bonds used to make such expenditure. The state agency, instrumentality, or political subdivision must notify the State Treasurer immediately upon the sale of any land acquired with proceeds of bonds issued pursuant to this chapter. The state agency, instrumentality, or political subdivision also must provide sufficient proof to the State Treasurer that the deadlines to purchase land, begin construction, and complete the project imposed pursuant to this item have been met. If the state agency, instrumentality, or political subdivision sells the land or fails to meet any of these deadlines, then the State Treasurer shall take the appropriate action necessary to recover all bond proceeds and interest disbursed to the state agency, instrumentality, or political subdivision to finance the project;"

Time effective

SECTION 3. This act takes effect upon approval by the Governor and the definition clarified and time limit extension included in Sections

11-41-30 and 11-41-70 of the 1976 Code, as amended by this act, apply with respect from the original effective date of Act 114 of 2005.

Ratified the 11th day of June, 2013.

Approved the 13th day of June, 2013.

No. 74

(R92, H3099)

AN ACT TO AMEND SECTION 63-17-2310, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO ENTITIES REQUIRED TO PROVIDE INFORMATION TO THE DEPARTMENT OF SOCIAL SERVICES FOR THE PURPOSE OF ESTABLISHING, MODIFYING, AND ENFORCING CHILD SUPPORT OBLIGATIONS, SO AS TO ALSO REQUIRE THESE ENTITIES TO PROVIDE THIS INFORMATION TO CLERKS OF COURT FOR THE SAME PURPOSE IN CASES NOT BEING ADMINISTERED PURSUANT TO TITLE IV-D OF THE SOCIAL SECURITY ACT BY THE DEPARTMENT OF SOCIAL SERVICES; AND TO MAKE TECHNICAL CORRECTIONS.

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

Paternity and child support, clerk of court authority to attempt to locate and right to obtain information from organizations

SECTION 1. Section 63-17-2310 of the 1976 Code is amended to read:

"Section 63-17-2310. (A) The Department of Social Services shall attempt to locate individuals for the purposes of establishing paternity and establishing, modifying, and enforcing child support obligations. In all cases not being administered pursuant to Title IV-D of the Social Security Act by the department, the clerk of court may attempt to locate individuals for the purpose of enforcing child support obligations. Notwithstanding any other provision of law making this information confidential, these entities in this State promptly shall provide to the department, its designee or a federally approved child

support agency of another state, or to the clerk of court, information upon request of the department or another agency for the purpose of establishing paternity or establishing, modifying, or enforcing a support obligation or the clerk of court for the purpose of enforcing child support obligations:

(1) All entities in the State including, but not limited to, for-profit, nonprofit and governmental employers, and labor organizations shall provide the full name, social security number or the alien identification number assigned to a resident alien who does not have a social security number, date of birth, home address, wages or salary, existing or available medical, hospital, and dental insurance coverage, and number of dependents listed for tax purposes on all employees, contractors, and members of labor organizations.

(2) All utility companies, including wire and nonwire telecommunication companies, cable television companies, and financial institutions, shall provide the full name, social security number or the alien identification number assigned to a resident alien who does not have a social security number, date of birth, home address, telephone number, account numbers, and other identifying data, including information on assets and liabilities, on all persons who maintain an account with that entity. For purposes of this item, a financial institution is defined as a federal, state, commercial, or savings bank, savings and loan association, cooperative bank, federal or state chartered credit union, benefit association, insurance company, safe deposit company, money market mutual fund, or investment company doing business in this State.

(3) The appropriate state or local agency of this State shall provide access to information contained in these records:

(a) vital statistics;

(b) state and local tax and revenue records;

(c) records concerning real and titled property;

(d) records of occupational and professional licenses;

(e) records concerning the ownership and control of corporations, partnerships, and other business entities;

(f) employment security records;

(g) records of motor vehicle departments; and

(h) corrections records.

A state or local agency, board, or commission that provides information pursuant to this subsection to the department, or to the clerk of court in non-Title IV-D cases, may not charge the department or the clerk of court a fee for providing the information; however, a

commission that receives federal grants, the uses of which are restricted, may charge a fee for providing the information.

(B) An entity that provides information pursuant to this section in good faith reliance upon certification by the department, or to the clerk of court in non-Title IV-D cases, that the information is needed to establish paternity or to establish, modify, or enforce a support obligation is not liable for damages resulting from the disclosure.

(C) An entity that fails to provide the requested information within thirty days of the request may be subject to a civil penalty of one hundred dollars for each occurrence. Fines imposed pursuant to this subsection must be enforced as provided for in Section 63-3-530(A)(43) and distributed according to Section 63-17-520."

Time effective

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

Ratified the 11th day of June, 2013.

Approved the 14th day of June, 2013.

No. 75

(R93, H3184)

AN ACT TO AMEND SECTION 22-5-910, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO EXPUNGEMENT OF CRIMINAL RECORDS, SO AS TO PROVIDE THAT A PERSON MAY BE ELIGIBLE FOR EXPUNGEMENT OF A FIRST OFFENSE CRIME WHICH CARRIES A FINE OF ONE THOUSAND DOLLARS RATHER THAN FIVE HUNDRED DOLLARS; TO AMEND SECTION 17-1-40, AS AMENDED, RELATING TO THE DESTRUCTION OF CRIMINAL RECORDS WHEN CHARGES ARE DISMISSED, SO AS TO PROVIDE FOR DESTRUCTION OF CRIMINAL RECORDS WHEN A COURTESY SUMMONS WAS ISSUED UNDER CERTAIN CIRCUMSTANCES AND TO REQUIRE REMOVAL OF ANY INTERNET-BASED PUBLIC RECORD OF A CHARGE THAT IS DISMISSED OR

DISCHARGED NO LATER THAN THIRTY DAYS FROM THE DISPOSITION DATE.

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

Expungement of criminal records, persons fined up to one thousand dollars for a first offense eligible

SECTION 1. Section 22-5-910 of the 1976 Code, as last amended by Act 36 of 2009, is further amended to read:

"Section 22-5-910. (A) Following a first offense conviction for a crime carrying a penalty of not more than thirty days imprisonment or a fine of one thousand dollars, or both, the defendant after three years from the date of the conviction, including a conviction in magistrates or general sessions court, may apply, or cause someone acting on his behalf to apply, to the circuit court for an order expunging the records of the arrest and conviction. However, this section does not apply to:

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

(2) a violation of Title 50 or the regulations promulgated pursuant to Title 50 for which points are assessed, suspension provided for, or enhanced penalties for subsequent offenses are authorized; or

(3) an offense contained in Chapter 25, Title 16, except first offense criminal domestic violence as contained in Section 16-25-20, which may be expunged five years from the date of the conviction.

(B) If the defendant has had no other conviction during the three-year period, or during the five-year period as provided in subsection (A)(3), following the first offense conviction for a crime carrying a penalty of not more than thirty days imprisonment or a fine of not more than one thousand dollars, or both, including a conviction in magistrates or general sessions court, the circuit court may issue an order expunging the records. No person may have his records expunged under this section more than once. A person may have his record expunged even though the conviction occurred prior to June 1, 1992.

(C) After the expungement, the South Carolina Law Enforcement Division is required to keep a nonpublic record of the offense and the date of the expungement to ensure that no person takes advantage of the rights of this section more than once. This nonpublic record is not subject to release pursuant to Section 34-11-95, the Freedom of Information Act, or any other provision of law except to those authorized law or court officials who need to know this information in

order to prevent the rights afforded by this section from being taken advantage of more than once.

(D) As used in this section, 'conviction' includes a guilty plea, a plea of nolo contendere, or the forfeiting of bail."

Destruction of criminal records, courtesy summons, Internet-based public records destruction

SECTION 2. Section 17-1-40 of the 1976 Code, as last amended by Act 167 of 2010, is further amended to read:

"Section 17-1-40. (A)(1) A person who after being charged with a criminal offense and the charge is discharged, proceedings against the person are dismissed, or the person is found not guilty of the charge, the arrest and booking record, files, mug shots, and fingerprints of the person must be destroyed and no evidence of the record pertaining to the charge may be retained by any municipal, county, or state law enforcement agency. Provided, however, that local and state detention and correctional facilities may retain booking records, identifying documentation and materials, and other institutional reports and files under seal, on all persons who have been processed, detained, or incarcerated, for a period not to exceed three years from the date of the expungement order to manage their statistical and professional information needs and, where necessary, to defend such facilities during litigation proceedings except when an action, complaint, or inquiry has been initiated. Information retained by a local or state detention or correctional facility as permitted under this section after an expungement order has been issued is not a public document and is exempt from disclosure. Such information only may be disclosed by judicial order, pursuant to a subpoena filed in a civil action, or as needed during litigation proceedings. A person who otherwise intentionally retains the arrest and booking record, files, mug shots, fingerprints, or any evidence of the record pertaining to a charge discharged or dismissed pursuant to this section is guilty of contempt of court.

(2) If a person has been issued a courtesy summons pursuant to Section 22-3-330 or another provision of law and the charge for which the courtesy summons was issued is discharged, proceedings against the person are dismissed, or the person is found not guilty of the charge, the arrest and booking record, files, mug shots, and fingerprints of the person must be destroyed and no evidence of the record pertaining to the charge may be retained by any municipal, county, or

state law enforcement agency in accordance with the provisions of item (1).

In addition, a person who violates the provisions of this item is subject to the same penalty as provided in item (1).

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

(C) This section does not apply to a person who is charged with a violation of Title 50, Title 56, an enactment pursuant to the authority of counties and municipalities provided in Titles 4 and 5, or any other state criminal offense if the person is not fingerprinted for the violation.

(D) If a charge enumerated in subsection (C) is discharged, proceedings against the person are dismissed, or the person is found not guilty of the charge, the charge must be removed from any Internet-based public record no later than thirty days from the disposition date.

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

Time effective

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

Ratified the 11th day of June, 2013.

Approved the 13th day of June, 2013.

No. 76

(R95, H3378)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 6-1-90 SO AS TO ENACT THE "VOLUNTEER SERVICE PERSONNEL APPRECIATION ACT" AND TO ALLOW THE GOVERNING BODY OF A LOCAL GOVERNMENT TO AUTHORIZE THE DISTRIBUTION OF CERTAIN REWARDS TO THREE ENUMERATED CATEGORIES OF VOLUNTEER SERVICE PERSONNEL SO LONG AS ALL PERSONNEL IN A RESPECTIVE CATEGORY ARE TREATED EQUALLY.

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

Citation

SECTION 1. This act shall be known as the "Volunteer Service Personnel Appreciation Act".

Authorization of gifts to certain emergency services responders

SECTION 2. Article 1, Chapter 1, Title 6 of the 1976 Code is amended by adding:

"Section 6-1-90. (A) Notwithstanding another provision of law, the governing body of a local government may authorize the distribution of a gratuitous year-end or holiday monetary or other type of gift to the following categories of volunteer service personnel:

(1) reserve law enforcement officers;
(2) volunteer firefighters; or
(3) volunteer emergency medical service personnel.

(B) If the governing body of a local government elects to authorize the distribution of a gratuitous year-end or holiday monetary or other type of gift, it shall ensure all personnel in that respective category bequeathed pursuant to this section are treated equally."

Time effective

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

Ratified the 11th day of June, 2013.

Approved the 13th day of June, 2013.

No. 77

(R96, H3409)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 40-59-25 SO AS TO PROVIDE CIRCUMSTANCES IN WHICH A PERSON MAY

CANCEL A WRITTEN CONTRACT FOR ROOFING SYSTEMS GOODS AND SERVICES TO BE PAID FOR BY PROPERTY AND CASUALTY INSURANCE PROCEEDS IF COVERAGE IS SUBSEQUENTLY DENIED, TO SPECIFY APPLICABILITY OF THIS PROVISION TO CERTAIN PROVIDERS OF ROOFING SYSTEMS GOODS AND SERVICES, TO PROVIDE THE MANNER OF CANCELLATION, AND TO PROVIDE NECESSARY DEFINITIONS; AND TO AMEND SECTION 40-59-110, RELATING TO BASES FOR REVOCATION, SUSPENSION, OR RESTRICTION OF CERTAIN LICENSEES OR REGISTRANTS BY THE RESIDENTIAL HOME BUILDERS COMMISSION, SO AS TO MAKE A RELATED CHANGE.

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

Roofing contract cancellations for insurance coverage denial

SECTION 1. Article 1, Chapter 59, Title 40 of the 1976 Code is amended by adding:

"Section 40-59-25. (A)(1) A person who enters into a written contract for goods or services related to a roofing system with a party who will be paid from proceeds of a property and casualty insurance policy and who subsequently receives written notice from the insurer that all or part of the claim or contract is not a covered loss under the policy may cancel the contract prior to midnight on the fifth business day after the insured has received the written notice of the denial of coverage.

(2) This section applies to the following persons performing goods or services related to a roofing system:

(a) a licensed residential builder;

(b) a registered residential specialty contractor; and

(c) a person or firm who engages or offers to engage in the business of residential building or residential specialty contracting without first having registered with the commission or procured a license from the commission.

(3) Cancellation must be evidenced by the insured giving written notice of cancellation to the builder or contractor at the address provided in the contract. Notice of cancellation, if given by mail, must be effective upon deposit into the United States mail, postage prepaid and properly addressed to the builder or contractor. Notice of

cancellation need not take a particular form and shall be sufficient if it indicates, by any form of written expression, the intention of the insured not to be bound by the contract.

(4) For purposes of this subsection, 'roof system' means a roof covering, roof sheathing, roof weatherproofing, roof framing, roof ventilation system, or insulation.

(B) Before entering a contract as provided in subsection (A), the builder or contractor shall:

(1) provide the insured a statement in boldface type of a minimum size of ten points, in substantially the following form:

'You may cancel this contract at any time before midnight on the fifth business day after you have received written notification from your insurer that all or any part of this claim or contract is not a covered loss under the insurance policy. This right to cancel is in addition to any other rights of cancellation which may be found in state or federal law or regulation. See attached notice of cancellation form for an explanation of this right'; and

(2) provide each insured a fully completed form, in duplicate, prominently captioned 'NOTICE OF CANCELLATION', which must be attached to the contract but easily detachable, and which must contain in boldface type of a minimum size of ten points the following statement:

'NOTICE OF CANCELLATION

If you are notified by your insurer that all or any part of the claim or contract is not a covered loss under the insurance policy, you may cancel the contract by mailing or delivering a signed and dated copy of this cancellation notice or any other written notice to (insert name of contractor) at (insert address of contractor's place of business) any time prior to midnight on the fifth business day after you have received such notices from your insurer.

I HEREBY CANCEL THIS TRANSACTION

_____

DATE

_____

SIGNATURE OF INSURED'

(C) In circumstances in which payment may be made from the proceeds of a property and casualty insurance policy, a builder or contractor shall not require any payments from an insured until the five-day cancellation period has expired. If, however, the builder or contractor has performed any emergency services, acknowledged by the insured in writing to be necessary to prevent damage to the premises, the builder or contractor must be entitled to collect the

amount due for the emergency services at the time they are rendered. A provision in a contract as provided in subsection (A) that requires payment of any fee for anything except emergency services must not be enforceable against an insured who has canceled a contract under this section.

(D)(1) A builder or contractor shall not represent or negotiate, or offer or advertise to represent or negotiate, on behalf of an owner or possessor of residential real estate on any insurance claim in connection with the repair or replacement of roof systems.

(2) Notwithstanding item (1), or any other provision of state law, an owner is not prevented from consulting with a builder, contractor, or other person of his choice to provide an evaluation of the condition of his roof system and using the evaluation he receives in the negotiation for the repair or replacement of his roof system.

(E)(1) A builder or contractor shall not advertise or promise to pay or rebate all or any portion of any insurance deductible as an inducement to the sale of goods or services.

(2) A person who violates a provision of this subsection is guilty of a misdemeanor. The violation is grounds for suspension or revocation of licenses issued pursuant to this chapter.

(3) As used in this subsection, the term 'promise to pay or rebate' means:

(a) granting any allowance or offering any discount against the fees to be charged, including, but not limited to, an allowance or discount in return for displaying a sign or other advertisement at the insured's premises; or

(b) paying the insured or any person directly or indirectly associated with the property any form of compensation, gift, prize, bonus, coupon, credit, referral fee, or other item of monetary value for any reason."

Residential Home Builders Commission powers, misconduct

SECTION 2. Section 40-59-110 of the 1976 Code is amended to read:

"Section 40-59-110. In addition to the grounds provided for in Section 40-1-110, the commission, upon a majority vote, may revoke, suspend, or restrict the license or registration of a licensee or registrant who the commission finds has committed fraud or deceit in obtaining a license or registration under this chapter or has engaged in misconduct in the practice of residential building or residential specialty contracting. For purposes of this section, misconduct includes a

violation of Section 40-59-25, or a pattern of repeated failure by a residential builder or residential specialty contractor to pay labor or material bills. For purposes of disciplinary matters, or otherwise, compliance with the construction standards adopted by the commission is prima facie evidence of compliance with applicable professional standards."

Time effective

SECTION 3. This act takes effect on July 1, 2013.

Ratified the 11th day of June, 2013.

Approved the 14th day of June, 2013.

No. 78

(R97, H3451)

AN ACT TO AMEND SECTION 56-7-10, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE OFFENSES THAT A PERSON MAY BE CHARGED ON A UNIFORM TRAFFIC TICKET, SO AS TO PROVIDE THAT THE OFFENSES OF SHOPLIFTING AND CRIMINAL DOMESTIC VIOLENCE FIRST OFFENSE AND SECOND OFFENSE MUST BE CHARGED ON A UNIFORM TRAFFIC TICKET, AND THAT A UNIFORM TRAFFIC TICKET MAY BE USED IN AN ARREST FOR CERTAIN MISDEMEANOR OFFENSES UNDER THE JURISDICTION OF THE MAGISTRATES COURT; AND TO AMEND SECTION 56-7-15, AS AMENDED, RELATING TO THE USE OF THE UNIFORM TRAFFIC TICKET BY A LAW ENFORCEMENT OFFICER TO MAKE AN ARREST, SO AS TO PROVIDE THAT THE OFFENSE MUST HAVE BEEN FRESHLY COMMITTED OR IS COMMITTED IN THE PRESENCE OF A LAW ENFORCEMENT OFFICER, AND TO PROVIDE THAT THIS PROVISION ALSO APPLIES TO THE ARREST OF A PERSON WHO IS CHARGED WITH SHOPLIFTING.

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

Uniform traffic ticket

SECTION 1. Section 56-7-10 of the 1976 Code, as last amended by Act 68 of 2005, is further amended to read:

"Section 56-7-10. (A) There will be a uniform traffic ticket used by all law enforcement officers in arrests for traffic offenses and for the following additional offenses:

Offense	Citation
Interfering with Police Officer Serving Process	Section 16-5-50
Dumping Trash on Highway/Private Property	Section 16-11-700
Indecent Exposure	Section 16-15-130
Disorderly Conduct	Section 16-17-530
Damaging Highway	Section 57-7-10
Place Glass, Nails, Etc. on Highway	Section 57-7-20
Obstruction of Highway by Railroad Cars, Etc.	Section 57-7-240
Signs Permitted on Interstate	Section 57-25-140
Brown Bagging	Section 61-5-20
Drinking Liquors in Public Conveyance	Section 61-13-360
Poles Dragging on Highway	Section 57-7-80
Open Container	Section 61-9-87
Purchase or Possession of Beer or Wine by a Person Under Age	Section 63-19-2440
Purchase or Possession of Alcoholic Liquor by a Person Under Age Twenty-One	Section 63-19-2450
Unlawful Possession and Consumption of Alcoholic Liquors	Section 61-5-30
Sale of Beer or Wine on Which Tax Has Not Been Paid	Section 61-9-20
Falsification of Age to Purchase Beer or Wine	Section 61-9-50
Unlawful Purchase of Beer or Wine for a Person Who Cannot Legally Buy	Section 61-9-60
Unlawful Sale or Purchase of Beer or Wine, Giving False Information as to Age, Buying Beer or Wine Unlawfully for Another	Section 61-9-85

Employment of a Person Under the Age of Twenty-One as an Employee in Retail orWholesale or Manufacturing Liquor Business	Section 61-13-340
Failure to Remove Doors from Abandoned Refrigerators	Section 16-3-1010
Malicious Injury to Animals or Personal Property	Section 16-11-510
Timber, Logs, or Lumber Cutting, Removing, Transporting Without Permission, Valued at Less Than Fifty Dollars	Section 16-11-580
Littering	Section 16-11-700
Larceny of a Bicycle Valued at Less Than One Hundred Dollars	Section 16-13-80
Shoplifting	Section 16-13-110
Cock Fighting	Section 16-17-650
Ticket Scalping	Section 16-17-710
Criminal Domestic Violence, First Offense and Second Offense	Section 16-25-20 (B)(1) and (2)
Glue Sniffing	Section 44-53-1110
Trespassing	Section 16-11-755
Trespassing	Section 16-11-600
Trespassing	Section 16-11-610
Trespassing	Section 16-11-620
Negligent Operation of Watercraft; Operation of Watercraft While Under Influence of Alcohol or Drugs	Section 50-21-110
Negligence of Boat Livery to Provide Proper Equipment and Registration	Section 50-21-120
Interference with Aids to Navigation or Regulatory Markers or Operation of Watercraft in Prohibited Area	Section 50-21-170
Operation of Watercraft Without a Certificate of Title	Section 50-23-190
Parking on private property without permission	Section 16-11-760
Certificate of Veterinary Inspection; Requirement for Out-of-State Livestock or Poultry	Section 47-4-60

Inhibition of Livestock Inspection	Section 47-4-120
Imported Swine	Section 47-6-50
Operating Equine Sales Facility or Livestock Market Without Permit	Section 47-11-20
Liability of Person Removing Livestock for Slaughter	Section 47-11-120
Notice to Disinfect	Section 47-13-310
Quarantine of Livestock or Poultry	Section 47-4-70
Unlawful for Horse to Enter State Unless Tested	Section 47-13-1350
Quarantine of Exposed Horses	Section 47-13-1360
Proof of Test Required for Public Assembly of Horses	Section 47-13-1370
False Certificates	Section 47-13-1390
Unlawful to Feed Garbage to Swine	Section 47-15-20
Notification Required from Certain Persons Disposing of Garbage	Section 47-15-40
Sale of Uninspected Meat and Meat Products	Section 47-17-60
Sale of Uninspected Poultry and Poultry Product	Section 47-19-70

(B) In addition to the offenses contained in subsection (A), a uniform traffic ticket may be used in an arrest for a misdemeanor offense within the jurisdiction of magistrates court that has been freshly committed or is committed in the presence of a law enforcement officer.

(C) No other ticket may be used for these offenses. The service of the uniform traffic ticket shall vest all traffic, recorders', and magistrates' courts with jurisdiction to hear and to dispose of the charge for which the ticket was issued and served. This ticket will be designed by the department and approved by the Attorney General within thirty days of submission by the department. A law enforcement agency may utilize computers and other electronic devices to issue uniform traffic citations and store information resulting from the issuance of a traffic citation if this method of issuing a citation has been approved by the Department of Public Safety."

Uniform traffic ticket

SECTION 2. Section 56-7-15 of the 1976 Code, as last amended by Act 166 of 2005, is further amended to read:

"Section 56-7-15. (A) The uniform traffic ticket, established pursuant to the provisions of Section 56-7-10, may be used by law enforcement officers to arrest a person for an offense that has been freshly committed or is committed in the presence of a law enforcement officer if the punishment is within the jurisdiction of magistrates court and municipal court. A law enforcement agency processing an arrest made pursuant to this section must furnish the information to the State Law Enforcement Division as required in Chapter 3, Title 23.

(B) An officer who effects an arrest, by use of a uniform traffic ticket, for a violation of Chapter 25, Title 16 or Section 16-13-110 shall complete and file an incident report immediately following the issuance of the uniform traffic ticket."

Time effective

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

Ratified the 11th day of June, 2013.

Approved the 13th day of June, 2013.

No. 79

(R100, H3502)

AN ACT TO AMEND SECTION 59-121-55, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE TRANSFER OF FUNDS OR PROPERTY BY THE CITADEL BOARD OF VISITORS TO A NONPROFIT ELEEMOSYNARY CORPORATION ESTABLISHED BY THE BOARD AND KNOWN AS THE CITADEL FOUNDATION, SO AS TO REMOVE A LIMIT ON THE AMOUNT OF FUNDS AND PROPERTY THAT THE BOARD MAY TRANSFER TO THE CORPORATION, AND TO PROVIDE THE BOARD MAY TRANSFER FUNDS AND PROPERTY PRIVATELY DONATED TO THE COLLEGE, AND INCOME AND PROCEEDS DERIVED FROM THOSE FUNDS AND PROPERTY.

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

The Citadel Foundation, transfer of funds and property

SECTION 1. Section 59-121-55(B) of the 1976 Code is amended to read:

"(B) The Board of Visitors is further authorized to transfer funds and property privately donated to the college, and income or proceeds derived from these privately donated funds and property, that the board holds in its name or in the college's name for scholarship and other college support purposes to the nonprofit corporation formed pursuant to subsection (A). These funds, property, and income and proceeds derived from them, must be used by the nonprofit corporation for its stated purposes, except that any restrictions or limitations applicable to a specified portion of these funds or property continue to be applicable after the transfer of the funds, property, and income and proceeds derived from them, to the nonprofit corporation. Any encumbrances or liability on the funds, property, and income and proceeds derived from them so transferred must be assumed by the nonprofit corporation."

Time effective

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

Ratified the 11th day of June, 2013.

Approved the 13th day of June, 2013.

No. 80

(R101, H3505)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING CHAPTER 44 TO TITLE 11 SO AS TO ENACT THE "HIGH GROWTH SMALL BUSINESS JOB CREATION ACT OF 2013" BY PROVIDING FOR STATE NONREFUNDABLE INCOME TAX CREDITS FOR QUALIFIED INVESTMENTS IN BUSINESSES MEETING CERTAIN CRITERIA AND PRIMARILY ENGAGED IN SPECIFIED ACTIVITIES, TO ESTABLISH THE CRITERIA

AND PROCEDURES FOR THE CREDIT, TO MAKE THE CREDIT TRANSFERABLE AND PROVIDE FOR LIMITATIONS ON AND REPORTING OF CERTAIN INFORMATION ON THE CREDITS, TO PROVIDE FOR CERTAIN ADJUSTED NET CAPITAL GAIN AND LOSS COMPUTATIONS FOR INVESTOR TAXPAYERS WHO RECOGNIZE SUCH A GAIN OR LOSS ON THE SALE OF CREDIT ASSETS AS DEFINED IN THIS CHAPTER, AND TO PROVIDE THAT THE PROVISIONS OF CHAPTER 44, TITLE 11 ARE REPEALED ON DECEMBER 31, 2019; AND TO AMEND SECTION 12-54-240, AS AMENDED, RELATING TO DISCLOSURE OF RECORDS, REPORTS, AND RETURNS FILED WITH THE DEPARTMENT OF REVENUE, SO AS TO AUTHORIZE THE EXCHANGE BETWEEN THE DEPARTMENT OF REVENUE AND THE SECRETARY OF STATE OF ANY INFORMATION THAT ASSISTS THE DEPARTMENT OF REVENUE OR THE SECRETARY OF STATE IN DETERMINING OR VERIFYING INFORMATION CONCERNING WHETHER A BUSINESS IS A QUALIFIED BUSINESS UNDER CHAPTER 44, TITLE 11.

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

High Growth Small Business Job Creation

SECTION 1. A. Title 11 of the 1976 Code is amended by adding:

"CHAPTER 44

High Growth Small Business Job Creation Act

Section 11-44-10. This chapter may be cited as the 'High Growth Small Business Job Creation Act of 2013'.

Section 11-44-20. The General Assembly desires to support the economic development goals of this State by improving the availability of early stage capital for emerging high-growth enterprises in South Carolina. To further these goals, this chapter is intended to:

(1) encourage individual angel investors to invest in early stage, high-growth, job-creating businesses;

(2) enlarge the number of high-quality, high-paying jobs within the State;

(3) expand the economy of this State by enlarging its base of wealth-creating businesses; and

(4) support businesses seeking to commercialize technology invented in this state's institutions of higher education.

Section 11-44-30. For purposes of this chapter:

(1) 'Angel investor' means an accredited investor as defined by the United States Securities and Exchange Commission, who is:

(a) an individual person who is a resident of this State or a nonresident who is subject to taxes imposed by Chapter 6, Title 12; or

(b) a pass-through entity which is formed for investment purposes, has no business operations, does not have committed capital under management exceeding five million dollars, and is not capitalized with funds raised or pooled through private placement memoranda directed to institutional investors. A venture capital fund or commodity fund with institutional investors or a hedge fund does not qualify as an angel investor.

(2) 'Headquarters' means the facility or portion of a facility where corporate staff employees are physically employed, and where the majority of the company's or company business unit's financial, personnel, legal, planning, information technology, or other headquarters-related functions are handled.

(3) 'Net income tax liability' means South Carolina state income tax liability reduced by all other credits allowed under Titles 11, 12, and 48.

(4) 'Pass-through entity' means a partnership, an S-corporation, or a limited liability company taxed as a partnership.

(5) 'Qualified business' means a registered business that:

(a) is either a corporation, limited liability company, or a general or limited partnership located in this State and has its headquarters located in this State at the time the investment was made and has maintained these headquarters for the entire time the qualified business benefitted from the tax credit provided for pursuant to this section;

(b) was organized no more than five years before the qualified investment was made;

(c) employs twenty-five or fewer people in this State at the time it is registered as a qualified business;

(d) has had in any complete fiscal year before registration gross income as determined in accordance with the Internal Revenue Code of two million dollars or less on a consolidated basis;

(e) is primarily engaged in manufacturing, processing, warehousing, wholesaling, software development, information

technology services, research and development, or a business providing services set forth in Section 12-6-3360(M)(13), other than those described in subitem (f); and

(f) does not engage substantially in:

(i) retail sales;

(ii) real estate or construction;

(iii) professional services;

(iv) gambling;

(v) natural resource extraction;

(vi) financial brokerage, investment activities, or insurance;

(vii) entertainment, amusement, recreation, or athletic or fitness activity for which an admission or fee is charged.

A business is substantially engaged in one of the activities defined in subitem (f) if its gross revenue from an activity exceeds twenty-five percent of its gross revenues in a fiscal year or it is established pursuant to its articles of incorporation, articles of organization, operating agreement, or similar organizational documents to engage as one of its primary purposes such activity.

(6) 'Qualified investment' means an investment by an angel investor of cash in a qualified business for common or preferred stock or an equity interest or a purchase for cash of subordinated debt in a qualified business. Investment of common or preferred stock or an equity interest or purchase of subordinated debt does not qualify as a qualified investment if a broker fee or commission or a similar remuneration is paid or given directly or indirectly for soliciting an investment or a purchase.

(7) 'Registered' or 'registration' means that a business has been certified by the Secretary as a qualified business at the time of application to the Secretary.

(8) 'Secretary' means the Secretary of State.

Section 11-44-40. (A) An angel investor is entitled to a nonrefundable income tax credit of thirty-five percent of its qualified investment made pursuant to this chapter.

(B) Fifty percent of the allowed credit may be applied to the angel investor's net income tax liability in the tax year during which the qualified investment is made, and fifty percent of the allowed credit may be applied to the angel investor's net income tax liability in the tax years after the qualified investment is made and may be carried forward for a period not to exceed ten years for these purposes as provided in Section 11-44-50.

(C) For any pass-through entity making a qualified investment directly in a qualified business, each individual who is a shareholder, partner, or member of the entity must be allocated the credit allowed the pass-through entity in an amount determined in the same manner as the proportionate shares of income or loss of such pass-through entity would be determined. The pass-through entity must make an irrevocable election with the Department of Revenue as to the manner in which the credit is allocated. If an individual's share of the pass-through entity's credit is limited due to the maximum allowable credit under this chapter for a taxable year, the pass-through entity and its owners may not reallocate the unused credit among the other owners.

Section 11-44-50. Tax credits claimed pursuant to this chapter are subject to the following conditions and limitations:

(1) the total amount of credits allowed pursuant to this chapter may not exceed in the aggregate five million dollars for all taxpayers for any one calendar year;

(2) the aggregate amount of credit allowed an individual for one or more qualified investments in a single taxable year under this chapter, whether made directly or by a pass-through entity and allocated to an individual, shall not exceed one hundred thousand dollars each year, not including any carry forward credits;

(3) the amount of the tax credit allowed an individual under this chapter for a taxable year shall not exceed an individual's net income tax liability. An unused credit amount is allowed to be carried forward for ten years from the close of the taxable year in which the qualified investment was made. Credit is not allowed against prior years' tax liability;

(4) the credit is transferrable by the angel investor to his heirs and legatees upon his or her death and to his or her spouse or incident to divorce;

(5) the credit may be sold, exchanged, or otherwise transferred, and may be carried forward for a period of ten taxable years following the taxable year in which the credit originated until fully expended. A tax credit or increment of a tax credit may be transferred only once. The credit may be transferred to any taxpayer. A taxpayer to whom a credit has been transferred may use the credit for the taxable year in which the transfer occurred and unused amounts may be carried forward to succeeding taxable years, but the transferred credit may not be used more than ten years after it was originally issued; and

(6) the Department of Revenue may develop procedures for the transfer of the credits.

Section 11-44-60. (A) A qualified business shall register with the Secretary for purposes of this chapter. Approval of this registration constitutes certification by the Secretary for twelve months after being issued. A business is permitted to renew its registration with the Secretary so long as, at the time of renewal, the business remains a qualified business.

(B) If the Secretary finds that any information contained in an application of a business for registration under this chapter is false, the Secretary shall revoke the registration of the business. The Secretary shall not revoke the registration of a business only because it ceases business operations for an indefinite period of time, as long as the business renews its registration.

(C) A registration as a qualified business may not be sold or otherwise transferred, except that, if a qualified business enters into a merger, conversion, consolidation, or other similar transaction with another business and the surviving company would otherwise meet the criteria for being a qualified business, the surviving company retains the registration for the twelve-month registration period without further application to the Secretary. In this case, the qualified business shall provide the Secretary with written notice of the merger, conversion, consolidation, or similar transaction and other information as required by the Secretary.

(D) By January thirty-first each year, the Secretary shall report to the House Ways and Means Committee, the Senate Finance Committee, and the Governor, a list of the businesses that have registered with the Secretary as a qualified business. The report must include, by county, the name and address of each business, the location of its headquarters, a description of the type of business in which it engages, the amount of capital it has raised including the amount of qualified investment as defined by this chapter, the number of full-time, part-time, and temporary jobs created by the business during the period covered by the report, and the average wages paid by these jobs. An aggregated statewide report containing the number of businesses, the amount of capital raised by the businesses including the amount of qualified investment as defined by this chapter, the number of full-time, part-time and temporary jobs created by the businesses, and the average wages paid by these jobs also must be made available in a conspicuous place on the Secretary’s website. The report must be updated annually.

Section 11-44-65. (A) For purposes of this section:

(1) 'Angel investor taxpayer' means a taxpayer who invested in a capital asset and as a result of that investment was eligible to claim the tax credit allowed pursuant to this chapter.

(2) 'Credit asset' means a capital asset acquired by an angel investor taxpayer who was eligible to claim the tax credit allowed pursuant to this chapter with respect to the acquisition.

(3) 'Net capital gain' is as defined in Internal Revenue Code Section 1222 and related sections.

(4) 'Net capital loss' is as defined in Internal Revenue Code Section 1211(b), not including the limitation imposed pursuant to Section 1211(b)(1).

(B)(1) If an angel investor taxpayer recognized net capital gain on the sale or exchange of credit assets in a taxable year, then the amount of net capital gain of that taxpayer eligible for the deduction otherwise allowed pursuant to Section 12-6-1150 must be reduced by the net capital gain on the sale or exchange of credit assets by the angel investor taxpayer.

(2) In a separate computation in each taxable year the angel investor taxpayer shall attribute the net capital gain on credit assets to each credit asset in the ratio that the long term capital gain on each separate credit asset as a proportion of all such long term gain bears to the net capital gain reduction required pursuant to item (1). If cumulative net capital gain on a credit asset multiplied by seven percent equals the total credit claimed on the credit asset, the excess of the net capital gain attributable to this credit asset over that necessary to produce the total credit amount in the computation is deducted from the reduction otherwise required pursuant to item (1).

(C)(1) If an angel investor taxpayer recognized net capital loss on the sale or exchange of credit assets in a taxable year in an amount equal to or less than the total of tax credits claimed on those credit assets, then there is added to the angel investor taxpayer's South Carolina taxable income for that taxable year the amount of the net capital loss on those credit assets not to exceed the tax credits claimed on those credit assets.

(2) If an angel investor taxpayer recognized net capital loss on the sale or exchange of credit assets in a taxable year in an amount greater than the amount of the tax credits claimed on those credit assets, then there is added to the angel investor taxpayer's South Carolina taxable income for that taxable year the amount of the tax credit claimed on those credit assets.

Section 11-44-70. (A) An angel investor seeking to claim a tax credit provided for under this chapter shall submit an application to the Department of Revenue for tentative approval for the tax credit in the year for which the tax credit is claimed or allowed. The Department of Revenue shall provide for the manner in which the application is to be submitted. The Department of Revenue shall review the application and tentatively shall approve the application upon determining that it meets the requirements of this chapter.

(B) The Department of Revenue shall provide tentative approval of the applications by the date provided in subsection (C).

(C) The Department of Revenue shall notify each qualified investor of the tax credits tentatively approved and allocated to the qualified investor by January thirty-first of the year after the application was submitted. If the credit amounts on the tax credit applications filed with the Department of Revenue exceed the maximum aggregate limit of tax credits, then the tax credit must be allocated among the angel investors who filed a timely application on a pro rata basis based upon the amounts otherwise allowed by this chapter. Once the tax credit application has been approved and the amount has been communicated to the applicant, the angel investor then may apply the amount of the approved tax credit to its tax liability for the tax year of which the approved application applies.

(D) By March thirty-first each year, the Department of Revenue shall report to the House Ways and Means Committee, the Senate Finance Committee, and the Governor, by county, the number of angel investor tax credit applications the department has received, the number of tax credit applications approved, and the tax credits approved. This report must be made available in a conspicuous place on the department's website.

Section 11-44-80. Tax credits generated as a result of these investments are not considered securities under the laws of this State."

B. The provisions of Chapter 44, Title 11, contained in this act are repealed on December 31, 2019. Any carry forward credits shall continue to be allowed until the ten year time period in Section 11-44-40(B) is completed.

Exchange of information authorized

SECTION 2. Section 12-54-240(B) of the 1976 Code, as last amended by Act 116 of 2007, is further amended by adding an appropriately numbered item at the end to read:

"( ) exchange between the Department of Revenue and the Secretary of State of any information that assists the Department of Revenue or the Secretary of State in determining or verifying information concerning whether a business is a qualified business pursuant to Section 11-44-60."

Time effective

SECTION 3. This act takes effect upon approval by the Governor, and the tax credits permitted by this chapter are first available for investments made after December 31, 2012.

Ratified the 11th day of June, 2013.

Approved the 14th day of June, 2013.

No. 81

(R102, H3557)

AN ACT TO AMEND SECTION 12-6-3375, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE TAX CREDIT FOR PORT CARGO VOLUME INCREASE, SO AS TO EXPAND THE TYPES OF BUSINESSES THAT QUALIFY FOR THE CREDIT, TO GIVE THE COORDINATING COUNCIL FOR ECONOMIC DEVELOPMENT DISCRETION IN AWARDING CREDITS, TO FURTHER DEFINE TERMS, TO PROVIDE THAT TAXPAYERS ENGAGED IN THE MOVEMENT OF GOODS IMPORTED OR EXPORTED THROUGH SOUTH CAROLINA'S PORT FACILITIES MAY BE ELIGIBLE FOR THE CREDIT IF THE CARGO SUPPORTS A PRESENCE IN THE STATE AND MEETS OTHER JOB AND CAPITAL INVESTMENT REQUIREMENTS, AND TO PROVIDE THAT A

TAXPAYER THAT FAILS TO MEET THE REQUIREMENTS OF THE CREDIT MUST REPAY A PRO RATA PORTION OF THE CREDIT.

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

Revised port cargo volume tax credit, definitions, credits for certain new distribution facilities

SECTION 1. Section 12-6-3375 of the 1976 Code, as last amended by Act 290 of 2010, is further amended to read:

"Section 12-6-3375. (A)(1) A taxpayer engaged in any of the following: manufacturing, warehousing, freight forwarding, freight handling, goods processing, cross docking, transloading, wholesaling of goods, or distribution, exported or imported through port facilities in South Carolina and which increases its port cargo volume at these facilities by a minimum of five percent in a single calendar year over its base year port cargo volume is eligible to claim an income tax credit or a credit against employee withholding in the amount determined by the Coordinating Council for Economic Development (council).

(2) The maximum amount of tax credits allowed to all qualifying taxpayers pursuant to this section may not exceed eight million dollars for each calendar year. The credits may be claimed against the taxes imposed pursuant to Sections 12-6-530 and 12-6-545 and against employee withholdings. The council has sole discretion in allocating the credits provided by this section and must consider the following factors:

(a) the amount of base year port cargo volume;

(b) the total and percentage increase in port cargo volume; and

(c) factors related to the economic benefit of the State or other factors.

(3)(a) If the income tax credit exceeds the taxpayer's income tax liability for the taxable year, the excess amount may be carried forward and claimed against income taxes in the next five succeeding taxable years.

(b) If the credit against withholding taxes exceeds the taxpayer's withholding tax liability for the taxable quarter that is not otherwise refunded under Title 12 of the 1976 Code, the excess amount may be carried forward and claimed against withholding liability that is not otherwise refunded under Title 12 of the 1976 Code in the next twenty succeeding taxable quarters.

(B)(1) For every year in which a taxpayer claims the credit, the taxpayer shall submit an application to the council after the calendar year in which the increase in port cargo volume occurs. Allocations of the credit may be made on a monthly, quarterly, or annual basis. The taxpayer shall attach a schedule to the taxpayer's application to the council with the following information and information requested by the council or the department:

(a) a description of how the base year port cargo volume and the increase in port cargo volume was determined;

(b) the amount of the base year port cargo volume;

(c) the amount of the increase in port cargo volume for the taxable year stated both as a percentage increase and as a total increase in net tons of non-containerized cargo, measurement of cargo, and TEUs of cargo, including information which demonstrates an increase in port cargo volume in excess of the minimum amount required to claim the tax credits pursuant to this section;

(d) any tax credit utilized by the taxpayer in prior years; and

(e) the amount of tax credit carried over from prior years.

(2) To receive the credit the taxpayer shall claim the credit on its income tax or withholding return in a manner prescribed by the department. The department may require a copy of the certification form issued by the council be attached to the return or otherwise provided.

(C) As used in this section:

(1) 'TEU' means a twenty-foot equivalent unit; a volumetric measure based on the size of a container twenty feet long by eight feet wide by eight feet, six inches high. A 'weighted TEU' is equal to seven and one-half tons. A 'measured TEU' is equal to thirty-eight and one-half cubic meters.

(2) 'Base year port cargo volume' initially means the total amount of net tons of non-containerized cargo, measured equivalent of non-cargo or TEUs of cargo actually transported by way of a waterborne ship through a port facility during the period from January first through December thirty-first of the same year. Base year port cargo volume must be at least seventy-five net tons of non-containerized cargo, three hundred eighty-five cubic meters, or ten TEUs for a taxpayer to be eligible for the credits provided in this section. For a taxpayer that does not ship that amount in the year ending December thirty-first of the previous year, including a taxpayer who locates in South Carolina after December thirty-first of the previous year, its base cargo volume will be measured by the initial January first through December thirty-first calendar year in which it

meets the requirements of seventy-five net tons of non-containerized cargo, three hundred eighty-five cubic meters, or ten loaded TEUs. Base year port cargo volume must be recalculated each calendar year after the initial base year.

(3) 'Port facility' means any publicly or privately owned facility located within this State through which cargo is transported by way of a waterborne ship or vehicle to or from destinations outside this State and which handles cargo owned by third parties in addition to cargo owned by the port facility's owner.

(4) 'Port cargo volume' means the total amount of net tons of non-containerized cargo or containers measured in twenty-foot equivalent units (TEUs) of cargo transported by way of a waterborne ship or vehicle through a port facility, or measured cubic meters of cargo.

(D) The council annually may award up to one million dollars of the eight million dollars of credits against employee withholdings that are not otherwise refundable pursuant to this title to a new warehouse or distribution facility which commits to expending at least forty million dollars at a single site and creating one hundred new full-time jobs, and the base year cargo shall not be less than five thousand TEUs or its non-containerized equivalent. The council may make the award in the year the facility is announced provided that it may not tender the certificate until it has received satisfactory proof that the capital investment and job creation requirements have, or will be, satisfied. Any credit certificate expires three years after issuance if satisfactory proof has not been received. If the credit exceeds the taxpayer's withholding tax liability for the taxable quarter that is not otherwise refundable pursuant to this title, the excess amount may be carried forward and claimed against withholding liability that is not otherwise refundable pursuant to this title in the next twenty succeeding taxable quarters.

(E)(1) A taxpayer engaged in the movement of goods imported or exported through South Carolina's port facilities may be eligible for the port volume tax credit if the cargo supports a presence in the State and the taxpayer does not have a distribution center in the State at the time of initial approval of the port volume tax credit, so long as:

(a) the taxpayer employs at least two hundred and fifty full-time or full-time equivalent South Carolinians in operations statewide;

(b) the taxpayer completes the construction of the distribution facility in South Carolina, and is operational, within five years of the initial approval of the port volume tax credit; and

(c) the base year for the taxpayer shall be not less than five thousand TEUs or its non-containerized equivalent.

(2) Any credit certificate expires three years after issuance if satisfactory proof has not been received.

(F) The council has discretion to award the credits pursuant to either subsection (D) or (E).

(G) Notwithstanding Section 12-54-240, the department and the Department of Commerce may exchange information submitted by a taxpayer pursuant to this section.

(H)(1) If a taxpayer receives the credit under subsection (D) but fails to meet the requirements of subsection (D) at the end of the three-year period, the taxpayer must repay the department a pro rata portion of the credits claimed.

(2) If a taxpayer receives the credit under subsection (E) but fails to meet the requirements of subsection (E)(1) at the end of the five-year period, the taxpayer must repay the department a pro rata portion of the credits claimed."

Time effective

SECTION 2. This act takes effect upon approval by the Governor and applies to tax years beginning after December 31, 2013.

Ratified the 11th day of June, 2013.

Approved the 13th day of June, 2013.

No. 82

(R103, H3602)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 16-13-131 SO AS TO CREATE OFFENSES RELATING TO STEALING GOODS OR MERCHANDISE FROM A MERCHANT BY CREATING OR AFFIXING A PRODUCT CODE AND TO PROVIDE GRADUATED PENALTIES; BY ADDING SECTION 16-13-135 SO AS TO DEFINE NECESSARY TERMS, CREATE OFFENSES RELATING TO RETAIL THEFT, AND TO PROVIDE GRADUATED PENALTIES; TO AMEND SECTION

16-13-440, RELATING TO THE USE OF A FALSE OR FICTITIOUS NAME OR ADDRESS TO OBTAIN A REFUND FROM A BUSINESS ESTABLISHMENT FOR MERCHANDISE, SO AS TO INCLUDE USING A FALSE OR ALTERED DRIVER'S LICENSE OR IDENTIFICATION CARD TO COMMIT CERTAIN RETAIL THEFT OFFENSES; TO AMEND SECTION 17-25-323, RELATING TO DEFAULT ON COURT-ORDERED PAYMENTS INCLUDING RESTITUTION BY PERSONS ON PROBATION OR PAROLE AND CIVIL JUDGMENTS AND LIENS, SO AS TO INCLUDE DEFENDANTS WHO DEFAULT ON THE VARIOUS MAGISTRATES OR MUNICIPAL COURT-ORDERED PAYMENTS INCLUDING RESTITUTION IN THE PURVIEW OF THE STATUTE AND TO PROVIDE THAT A FILING FEE OR OTHER FEE MAY NOT BE REQUIRED WHEN SEEKING A CIVIL JUDGMENT; TO AMEND SECTION 14-25-65, AS AMENDED, RELATING TO PENALTIES THE MAGISTRATES COURT MAY IMPOSE, RESTITUTION, AND CONTEMPT, SO AS TO ALLOW A MAGISTRATE TO CONVERT CERTAIN UNPAID COURT-ORDERED PAYMENTS TO A CIVIL JUDGMENT; TO AMEND SECTION 22-3-550, AS AMENDED, RELATING TO THE JURISDICTION OF THE MAGISTRATES COURT OVER MINOR OFFENSES, RESTITUTION, AND CONTEMPT, SO AS TO ALLOW A MAGISTRATE TO CONVERT CERTAIN UNPAID COURT-ORDERED PAYMENTS TO A CIVIL JUDGMENT; AND TO AMEND SECTION 16-13-180, AS AMENDED, RELATING TO RECEIVING STOLEN GOODS, SO AS TO INCLUDE RECEIVING OR POSSESSING STOLEN GOODS FROM AN AGENT OF A LAW ENFORCEMENT AGENCY AND TO REVISE THE PENALTIES FOR THE OFFENSE.

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

Retail theft, creating or affixing a product code to fraudulently obtain goods or merchandise for less than the actual sales price, graduated penalties

SECTION 1. Article 1, Chapter 13, Title 16 of the 1976 Code is amended by adding:

"Section 16-13-131. (A) It is unlawful for a person to create or conspire with another person to create a product code for the purpose of fraudulently obtaining goods or merchandise from a merchant at less than its actual sale price.

(B) It is unlawful for a person to commit or conspire with another person to commit larceny against a merchant by affixing a product code created for the purpose of fraudulently obtaining goods or merchandise from a merchant at less than its actual sale price.

(C) A person who violates this section:

(1) for a first offense, is guilty of a misdemeanor and, upon conviction, must be fined not more than five thousand dollars or imprisoned for not more than three years, or both; and

(2) for a second or subsequent offense, is guilty of a felony and, upon conviction, must be fined not more than ten thousand dollars or imprisoned for not more than ten years, or both."

Retail theft, offense created, graduated penalties

SECTION 2. Article 1, Chapter 13, Title 16 of the 1976 Code is amended by adding:

"Section 16-13-135. (A) As used in this section:

(1) 'Retail property' means a new article, product, commodity, item, or component intended to be sold in retail commerce.

(2) 'Retail property fence' means a person or business that buys retail property knowing or believing that the retail property is stolen.

(3) 'Theft' means to take possession of, carry away, transfer, or cause to be carried away the retail property of another with the intent to steal the retail property.

(4) 'Value' means the retail value of an item as offered for sale to the public by the affected retail establishment and includes all applicable taxes.

(B) It is unlawful for a person to:

(1) commit theft of retail property from a retail establishment, with a value exceeding two thousand dollars aggregated over a ninety-day period, with the intent to sell the retail property for monetary or other gain, and sell, barter, take, or cause the retail property to be placed in the control of a retail property fence or other person in exchange for consideration;

(2) conspire with another person to commit theft of retail property from a retail establishment, with a value exceeding two

thousand dollars aggregated over a ninety-day period, with the intent to:

(a) sell, barter, or exchange the retail property for monetary or other gain; or

(b) place the retail property in the control of a retail property fence or other person in exchange for consideration; or

(3) receive, possess, or sell retail property that has been taken or stolen in violation of item (1) or (2) while knowing or having reasonable grounds to believe the property is stolen. A person is guilty of this offense whether or not anyone is convicted of the property theft.

(C) Acts committed in different counties that have been aggregated in one count may be indicted and prosecuted in any one of the counties in which the acts occurred. In a prosecution for a violation of this section, the State is not required to establish and it is not a defense that some of the acts constituting the crime did not occur within one city, county, or local jurisdiction.

(D) Property, funds, and interest a person has acquired or maintained in violation of this section are subject to forfeiture pursuant to the procedures for forfeiture as provided in Section 44-53-530.

(E) A person who violates this section:

(1) for a first offense, is guilty of a misdemeanor and, upon conviction, must be fined not more than five thousand dollars or imprisoned for not more than three years, or both; and

(2) for a second or subsequent offense, is guilty of a felony and, upon conviction, must be fined not more than ten thousand dollars or imprisoned for not more than twenty years, or both."

Retail theft, fraudulent refunds from businesses, use of false or fictitious driver's licenses or identification cards

SECTION 3. Section 16-13-440 of the 1976 Code is amended to read:

"Section 16-13-440. (A) It is unlawful for a person to give a false or fictitious name or address, or to give the name or address of another person without that person's approval, for the purpose of obtaining or attempting to obtain a refund from a business establishment for merchandise.

A person who violates the provisions of this subsection is guilty of a misdemeanor and, upon conviction, must be fined not more than two hundred dollars or imprisoned for not more than thirty days.

(B) It is unlawful for a person to obtain or attempt to obtain a refund in the form of cash, check, credit on a credit card, merchant gift

card, or credit in any other form from a merchant using a motor vehicle driver's license not issued to the person, a motor vehicle driver's license containing false information, an altered motor vehicle driver's license, an identification card containing false information, an altered identification card, or an identification card not issued to the person. A person who violates the provisions of this subsection:

(1) when the value is less than two thousand dollars, is guilty of a misdemeanor and, upon conviction, must be fined not more than two thousand five hundred dollars or imprisoned for not more than six months, or both;

(2) when the value is two thousand dollars or more, is guilty of a felony and, upon conviction, must be fined not more than five thousand five hundred dollars or imprisoned for not more than five years, or both; or

(3) regardless of the value involved, if the person has two or more prior convictions for a violation of this subsection, is guilty of a felony and, upon conviction, must be imprisoned for not more than ten years."

Court-ordered payments, magistrates and municipal court payments included

SECTION 4. Section 17-25-323 of the 1976 Code is amended to read:

"Section 17-25-323. (A) The trial court retains jurisdiction of the case for the purpose of modifying the manner in which court-ordered payments are made until paid in full, or until the defendant's active sentence and probation or parole expires.

(B) When a defendant is placed on probation by the court or parole by the Board of Probation, Parole and Pardon Services, and ordered to make restitution, and the defendant is in default in the payment of them or any installment or any criminal fines, surcharges, assessments, costs, and fees ordered, the court, before the defendant completes his period of probation or parole, on motion of the victim or the victim's legal representative, the Attorney General, the solicitor, or a probation and parole agent, or upon its own motion, must hold a hearing to require the defendant to show cause why his default should not be treated as a civil judgment and a judgment lien attached. The court must enter:

(1) judgment in favor of the State for the unpaid balance, if any, of any fines, costs, fees, surcharges, or assessments imposed; and

(2) judgment in favor of each person entitled to restitution for the unpaid balance if any restitution is ordered plus reasonable attorney's fees and cost ordered by the court.

(C) When a defendant is ordered to make restitution by a magistrate or municipal court, and the defendant is in default in the payment of restitution or of any installment or any criminal fines, surcharges, assessments, costs, and fees ordered, the magistrate or municipal court, within one year of the imposition of the sentence, on motion of the victim or the victim's legal representative, the Attorney General, the solicitor, or the prosecuting law enforcement agency, or upon its own motion, must hold a hearing to require the defendant to show cause why his default should not be treated as a civil judgment and a judgment lien attached. The magistrate or municipal court must enter:

(1) judgment in favor of the State for the unpaid balance, if any, of any fines, costs, fees, surcharges, or assessments imposed; and

(2) judgment in favor of each person entitled to restitution for the unpaid balance if any restitution is ordered plus reasonable attorney's fees and cost ordered by the court.

Notwithstanding the provisions of Section 14-25-65, municipal courts shall have the authority and jurisdiction to convert unpaid restitution, fines, costs, fees, surcharges, and assessments to civil judgments.

The magistrate or municipal court, upon a conversion to a judgment, must transmit the judgment to the clerk of the circuit court in the county for entry pursuant to subsection (F). Judgments entered and docketed pursuant to this subsection must be handled in the same manner and have the same force and effect as judgments entered and docketed pursuant to Sections 22-3-300, 22-3-310, and 22-3-320.

(D) The judgments may be enforced as a civil judgment.

(E) A judgment issued pursuant to this section has the force and effect of a final judgment and may be enforced by the judgment creditor in the same manner as any other civil judgment with enforcement to take place in the court of common pleas.

(F) The clerk of the circuit court must enter a judgment issued pursuant to this section in the civil judgment records of the court. A judgment issued pursuant to this section is not effective until entry is made in the civil judgment records of the court as required pursuant to this subsection.

(G) A filing or other fee may not be required for seeking or for the filing of a civil judgment obtained or issued pursuant to this section.

(H) Upon full satisfaction of a judgment entered pursuant to this section, the judgment creditor must record the satisfaction on the

margin of the copy of the judgment on file in the civil judgment records of the court.

(I) Any funds resulting from the collection of a judgment for unpaid fines, costs, fees, surcharges, or assessments must be distributed in the same manner and proportion as fines, costs, fees, surcharges, or assessments are distributed as otherwise set forth by law."

Court-ordered payments, unpaid payments converted to civil judgments

SECTION 5. Section 14-25-65 of the 1976 Code, as last amended by Act 273 of 2010, is further amended to read:

"Section 14-25-65. (A) If a municipal judge finds a party guilty of violating a municipal ordinance or a state law within the jurisdiction of the court, he may impose a fine of not more than five hundred dollars or imprisonment for thirty days, or both. In addition, a municipal judge may order restitution in an amount not to exceed the civil jurisdictional amount of magistrates court provided in Section 22-3-10(2). In determining the amount of restitution, the judge shall determine and itemize the actual amount of damage or loss in the order. In addition, the judge may set an appropriate payment schedule.

(B) A municipal judge may hold a party in contempt for failure to pay the restitution ordered if the judge finds the party has the ability to pay. In addition, a municipal judge may convert any unpaid restitution, fines, costs, fees, surcharges, and assessments to a civil judgment as provided in Section 17-25-323(C)."

Court-ordered payments, unpaid payments converted to civil judgments

SECTION 6. Section 22-3-550 of the 1976 Code, as last amended by Act 273 of 2010, is further amended to read:

"Section 22-3-550. (A) Magistrates have jurisdiction of all offenses which may be subject to the penalties of a fine or forfeiture not exceeding five hundred dollars, or imprisonment not exceeding thirty days, or both. In addition, a magistrate may order restitution in an amount not to exceed the civil jurisdictional amount provided in Section 22-3-10(2). In determining the amount of restitution, the judge shall determine and itemize the actual amount of damage or loss in the order. In addition, the judge may set an appropriate payment schedule.

A magistrate may hold a party in contempt for failure to pay the restitution ordered if the judge finds the party has the ability to pay. In addition, a magistrate may convert any unpaid restitution, fines, costs, fees, surcharges, and assessments to a civil judgment as provided in Section 17-25-323(C).

(B) However, a magistrate does not have the power to sentence a person to consecutive terms of imprisonment totaling more than ninety days except for convictions resulting from violations of Chapter 11, Title 34, pertaining to fraudulent checks, or violations of Section 16-13-110(B)(1), relating to shoplifting. Further, a magistrate must specify an amount of restitution in damages at the time of sentencing as an alternative to any imprisonment of more than ninety days which is lawfully imposed. The provisions of this subsection do not affect the transfer of criminal matters from the general sessions court made pursuant to Section 22-3-545."

Receiving stolen goods, receiving stolen goods from law enforcement

SECTION 7. Section 16-13-180 of the 1976 Code, as last amended by Act 273 of 2010, is further amended to read:

"Section 16-13-180. (A) It is unlawful for a person to buy, receive, or possess stolen goods, chattels, or other property if the person knows or has reason to believe the goods, chattels, or property is stolen. A person is guilty of this offense whether or not anyone is convicted of the property theft.

(B) It is unlawful for a person to knowingly receive or possess property from an agent of a law enforcement agency that was represented to the person by the same or other agent of the law enforcement agency as stolen. For purposes of this section, the person receiving or possessing the property need not know the person is receiving or has received the property from an agent of a law enforcement agency, and the property need not be actually stolen.

(C) A person who violates this section is guilty of a:

(1) misdemeanor triable in magistrates court or municipal court, notwithstanding the provisions of Sections 22-3-540, 22-3-545, 22-3-550, and 14-25-65, if the value of the property is two thousand dollars or less. Upon conviction, the person must be fined not more than one thousand dollars or imprisoned not more than thirty days;

(2) misdemeanor and, upon conviction, must be fined not less than one thousand dollars or imprisoned not more than three years, if

the value of the property is more than two thousand dollars but less than ten thousand dollars; or

(3) felony and, upon conviction, must be fined not less than two thousand dollars or imprisoned not more than ten years, if the value of the property is ten thousand dollars or more.

(D) For purposes of this section, the receipt of multiple items in a single transaction or event constitutes a single offense.

(E) For purposes of this section, multiple offenses occurring within a ninety-day period may be aggregated into a single count with the aggregated value used to determine whether the violation is a misdemeanor or felony as provided in subsection (C).”

Savings clause

SECTION 8. The repeal or amendment by this act of any law, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

Time effective

SECTION 9. This act takes effect upon approval by the Governor.

Ratified the 11th day of June, 2013.

Approved the 13th day of June, 2013.

No. 83

(R105, H3735)

AN ACT TO AMEND SECTION 50-5-2730, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE STATE'S ADOPTION OF CERTAIN FEDERAL LAWS AND REGULATIONS THAT REGULATE THE TAKING OF FISH IN STATE WATERS, SO AS TO PROVIDE THAT THESE LAWS AND REGULATIONS DO NOT APPLY TO BLACK SEA BASS (CENTROPRISTIS STRIATA), TO PROVIDE A LAWFUL CATCH LIMIT AND SIZE FOR THIS SPECIES OF FISH, AND TO PROVIDE THAT THERE IS NO CLOSED SEASON ON THE CATCHING OF BLACK SEA BASS (CENTROPRISTIS STRIATA).

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

Taking of black sea bass in federal and state waters

SECTION 1. Section 50-5-2730 of the 1976 Code is amended to read:

"Section 50-5-2730. (A) Unless otherwise provided by law, any regulations promulgated by the federal government under the Fishery Conservation and Management Act (PL 94-265) or the Atlantic Tuna Conservation Act (PL 94-70) which establishes seasons, fishing periods, gear restrictions, sales restrictions, or bag, catch, size, or possession limits on fish are declared to be the law of this State and apply statewide including in state waters.

(B) This provision does not apply to black sea bass (Centropristis striata) whose lawful catch limit is five fish per person per day or the same as the federal limit for black sea bass, whichever is higher. The lawful minimum size is thirteen inches total length. Additionally, there is no closed season on the catching of black sea bass (Centropristis striata)."

Time effective

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

Ratified the 11th day of June, 2013.

Approved the 13th day of June, 2013.

No. 84

(R106, H3752)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, SO AS TO ENACT THE "EXPANDED VIRTUAL LEARNING ACT"; TO AMEND SECTION 59-16-15, RELATING TO THE SOUTH CAROLINA VIRTUAL SCHOOL PROGRAM, SO AS TO RESTYLE THE PROGRAM AS A VIRTUAL EDUCATION PROGRAM AND TO REMOVE LIMITS ON THE NUMBER OF ONLINE CREDITS A STUDENT MAY BE AWARDED UNDER THE PROGRAM; AND TO AMEND SECTION 59-40-65, RELATING TO ENROLLMENT OF CHARTER SCHOOL STUDENTS IN THE SOUTH CAROLINA VIRTUAL SCHOOL PROGRAM, SO AS TO MAKE A CONFORMING CHANGE.

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

Expanded Virtual Learning Act

SECTION 1. Section 59-16-15 of the 1976 Code, as added by Act 26 of 2007, is amended to read:

"Section 59-16-15. (A) The State Board of Education is authorized to establish a virtual education program to provide South Carolina students access to distance, online, or virtual learning courses offered for an initial unit of credit. Additionally, the virtual education program shall offer access to credit recovery programs for students who have been identified by a school district as not having received credit for a course previously taken or for students who have been identified by a school district as not likely to receive credit for a course in which the student is currently enrolled. Students may enroll in courses for credit recovery based on policies established by the State Board of Education. The virtual education program shall not award a South Carolina High School diploma.

(B) A public, private, or homeschool student residing in South Carolina who is twenty-one years of age or younger must be eligible to enroll in the virtual education program. A private school or home school student enrolled in the virtual education program must not be entitled to any rights, privileges, courses, activities, or services available to a public school student other than receiving an appropriate unit of credit for a completed course.

(C) Local school districts shall accurately transcribe a student's final numeric grade to the student's permanent record and transcript. Home school students and private school students shall receive a certified grade report indicating date, course, and final numeric grade from the virtual education program or an entity approved by the State Board of Education.

(D) Students enrolled in an online course for a unit of credit must be administered final exams and appropriate state assessments in a proctored environment.

(E) It is not the responsibility of the school, district, or state to provide home computer equipment and Internet access for enrollment in courses provided by the virtual education program. However, nothing in this section shall prohibit a school or district from providing home computer equipment or Internet access to students enrolled in the virtual education program."

Conformity change

SECTION 2. Section 59-40-65(D) of the 1976 Code, as added by Act 26 of 2007, is amended to read:

"(D) Charter school students may enroll in the Department of Education's virtual education program pursuant to program requirements."

Time effective

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

Ratified the 11th day of June, 2013.

Approved the 13th day of June, 2013.

No. 85

(R107, H3870)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 23-49-65 SO AS TO PROVIDE IN THE "FIREFIGHTER MOBILIZATION ACT OF 2000" THAT THE SOUTH CAROLINA LAW ENFORCEMENT DIVISION (SLED) HAS SPECIFIC AND EXCLUSIVE JURISDICTION ON BEHALF OF THE STATE IN MATTERS PERTAINING TO THE RESPONSE TO AND CRISIS MANAGEMENT OF ACTS OF TERRORISM AND EMERGENCY EVENT MANAGEMENT OF EXPLOSIVE DEVICES; TO AMEND SECTION 23-49-20, RELATING TO THE SOUTH CAROLINA FIREFIGHTER MOBILIZATION OVERSIGHT COMMITTEE, SO AS TO ADD THE CHIEF OF SLED TO THE COMMITTEE AND TO CORRECT ARCHAIC REFERENCES; TO AMEND SECTION 23-49-50, RELATING TO THE SOUTH CAROLINA FIREFIGHTER MOBILIZATION PLAN, SO AS TO RENAME THE COMMITTEE AS THE SOUTH CAROLINA FIREFIGHTER MOBILIZATION AND EMERGENCY RESPONSE TASK FORCE PLAN, TO ADD THE TASK FORCE TO THOSE RESOURCES THAT THE PLAN IS INTENDED TO OFFER, AND TO PROVIDE THE PLAN IS OPERATIONAL WHEN THE CHIEF OF SLED DIRECTS A RESPONSE TO A TERRORIST OR EXPLOSIVE DEVICE EVENT; TO AMEND SECTION 23-49-60, RELATING TO THE DUTIES OF THE COMMITTEE, SO AS TO PROVIDE THE COMMITTEE SHALL DEVELOP GUIDELINES FOR USING RESOURCES ALLOCATED TO THE TASK FORCE AT THE STATE AND REGIONAL LEVEL; TO AMEND SECTION 23-49-70, RELATING TO STATE AND REGIONAL COORDINATORS APPOINTED BY THE COMMITTEE TO EXECUTE THE PLAN, SO AS TO MAKE A CONFORMING CHANGE TO THE NAME OF THE PLAN, TO REQUIRE THE OFFICE OF STATE FIRE MARSHAL TO PROVIDE ADMINISTRATIVE SUPPORT AS REQUIRED BY THE COMMITTEE TO PERFORM ITS PRESCRIBED FUNCTIONS, AND TO PROVIDE THAT THE STATE COORDINATOR APPOINTED BY THE COMMITTEE SHALL REPORT TO THE STATE FIRE MARSHAL AND PROVIDE ADMINISTRATIVE SUPPORT TO THE COMMITTEE; TO AMEND SECTION

23-49-80, RELATING TO INFORMATION REQUIRED OF THE SOUTH CAROLINA STATE FIREMEN'S ASSOCIATION, SO AS TO CORRECT ARCHAIC LANGUAGE; AND TO AMEND SECTION 23-49-110, RELATING TO DEFINITIONS, SO AS TO DEFINE ADDITIONAL TERMS.

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

SLED jurisdiction

SECTION 1. Chapter 49, Title 23 of the 1976 Code is amended by adding:

"Section 23-49-65. Pursuant to Section 23-3-15, the South Carolina Law Enforcement Division has specific and exclusive jurisdiction on behalf of the State in matters pertaining to the response to and crisis management of acts of terrorism and emergency event management of explosive devices."

Oversight committee revised

SECTION 2. Section 23-49-20 of the 1976 Code is amended to read:

"Section 23-49-20. There is created the South Carolina Firefighter Mobilization Oversight Committee, to be comprised of the following persons: (1) the State Fire Marshal; (2) the State Emergency Management Division Director of the Adjutant General's Office; (3) the State Forester; (4) a county emergency management division coordinator appointed by the Governor upon consideration of the written recommendations of the Emergency Management Association for a term of three years; (5) the Chief of the South Carolina Law Enforcement Division or his designee; and (6) six fire prevention and control personnel appointed by the Governor upon consideration of the written recommendations of the South Carolina State Firefighters' Association for three-year terms, three of whom shall serve initial terms of two years, and three of whom shall serve initial terms of three years; thereafter, all fire prevention and control personnel shall serve three-year terms. The Executive Director of the South Carolina State Firefighters' Association shall serve as an ex officio, nonvoting member of the committee."

Task force plan

SECTION 3. Section 23-49-50 of the 1976 Code is amended to read:

"Section 23-49-50. The South Carolina Firefighter Mobilization Oversight Committee shall establish the South Carolina Firefighter Mobilization and Emergency Response Task Force Plan. The purpose of the plan is to provide for responding firefighting and rescue resources, including the South Carolina Emergency Response Task Force, from one part of the State to another part of the State or from one state to another state. The plan is operative (1) under emergencies declared by the Governor or by the President of the United States, (2) when a local fire chief needs additional resources after existing mutual aid agreements have been utilized, (3) when another state requests assistance in dealing with an emergency when a state mutual aid agreement exists between South Carolina and the other state, or (4) when the Chief of the State Law Enforcement Division directs a response to a terrorist or explosive device event. In addition, the plan operates and is a part of the State Emergency Response Plan."

Resource allocation guidelines mandated

SECTION 4. Section 23-49-60 of the 1976 Code is amended to read:

"Section 23-49-60. (A) The South Carolina Firefighter Mobilization Oversight Committee shall (1) develop procedures and guidelines for dispatching and deploying rural and municipal fire and rescue resources, and (2) establish a system of regions in the State for managing fire and rescue emergencies utilizing an incident command system.

(B) The committee shall develop a Firefighter Mobilization Mutual Aid Agreement and, with the assistance from the offices of the State Fire Marshal and State Emergency Management Director of the Adjutant General's Office, secure local governments' and other states' participation in the agreement.

(C) In order to receive fire and rescue resources under the South Carolina Firefighter Mobilization Plan, each county and municipality in the State must sign a mutual aid agreement. Other participating states must sign a mutual aid agreement with the State Emergency Management Division of the Adjutant General's Office in order to receive the same, or similar, fire and rescue resources.

(D) The committee shall develop guidelines for using resources allocated to the task force at the state and regional level."

Administrative support

SECTION 5. Section 23-49-70 of the 1976 Code is amended to read:

"Section 23-49-70. The South Carolina Firefighter Mobilization Oversight Committee shall appoint the number of state and regional coordinators the committee considers necessary and sufficient for the execution of the South Carolina Firefighter Mobilization and Emergency Response Task Force Plan. A state coordinator shall be designated by the committee to be in overall charge of coordinating the state response for fire and rescue services. A regional coordinator is in overall charge of a region for the purpose of coordinating the regional response for fire and rescue services and must report directly to the state coordinator designated by the committee. The Office of State Fire Marshal shall provide administrative support as required by the Firefighter Mobilization Oversight Committee to perform its prescribed functions. The state coordinator shall report to the State Fire Marshal and provide administrative support to the Firefighter Mobilization Oversight Committee."

Archaic reference corrected

SECTION 6. Section 23-49-80 of the 1976 Code is amended to read:

"Section 23-49-80. The committee may request and utilize information regarding equipment, personnel, and other fire and rescue resources maintained by the South Carolina State Firefighters' Association."

Definitions

SECTION 7. Section 23-49-110(A) of the 1976 Code is amended to read:

"(A) For purposes of this chapter:

(1) 'Dry fire hydrant' means a fire hydrant that is connected to a source of water from which water is pumped for fire suppression or fire suppression training.

(2) 'Firefighting agency' means any entity that provides firefighting services including, but not limited to:

(a) a fire department;

(b) a political subdivision of this State authorized to provide firefighting services; and

(c) the South Carolina Forestry Commission or commission cooperators.

(3) 'Source of water' means a water system, water tank, ditch, pool, pond, lake, or river.

(4) 'Fire and rescue resources' means local firefighting and rescue resources that include structural firefighting teams, firefighting water supply teams, wild land firefighting teams, rescue teams, and hazardous materials teams.

(5) 'South Carolina Emergency Response Task Force' means an organization of specialized units manned through voluntary participation by various agencies and overseen by the State Fire Marshal that provides a comprehensive all-hazard tiered response to incidents by providing services including, but not limited to, firefighting, urban search and rescue, aviation search and rescue, technical rescue, incident support, and the mitigation of hazardous materials.

(6) 'Hazardous materials team' means a specialized unit that responds to the spill, leak, or disbursement of a hazardous product in order to identify, mitigate, and recover from the effects of that incident."

Time effective

SECTION 8. This act takes effect upon approval by the Governor.

Ratified the 11th day of June, 2013.

Approved the 13th day of June, 2013.

No. 86

(R108, H3944)

AN ACT TO AMEND SECTION 4-23-20, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE BOARD OF

FIRE CONTROL FOR THE MURRELL'S INLET - GARDEN CITY FIRE DISTRICT IN GEORGETOWN AND HORRY COUNTIES, SO AS TO PROVIDE THAT THE MEMBERS OF THAT BOARD REPRESENTING GEORGETOWN COUNTY MUST BE APPOINTED BY THE GOVERNOR UPON THE RECOMMENDATION OF A MAJORITY OF THE GEORGETOWN COUNTY LEGISLATIVE DELEGATION NOTWITHSTANDING THE PROVISIONS OF ACT 515 OF 1996 DEVOLVING THAT APPOINTMENT AUTHORITY ON THE GOVERNING BODY OF GEORGETOWN COUNTY AND TO DELETE OBSOLETE LANGUAGE.

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

Murrell's Inlet - Garden City Fire District, appointment of board members revised

SECTION 1. Section 4-23-20 of the 1976 Code is amended to read:

"Section 4-23-20. After the creation of the Murrell's Inlet-Garden City Fire District, there is established a Board of Fire Control for the District to be composed of three members from Georgetown County who must be appointed by the Governor upon the recommendation of a majority of the Georgetown County legislative delegation notwithstanding the provisions of Act 515 of 1996 and three members from Horry County who must be appointed by the Governor upon the recommendation of a majority of the members of the Horry County legislative delegation. The members of the board shall serve without pay and shall file annually a report with the governing bodies of Georgetown and Horry Counties not later than the first of November of each year, showing all activities and disbursements made by the board during the year. The board shall elect a chairman from its membership and such other officers as it considers necessary. The chairman shall not vote except in case of a tie.

If at least twenty percent of the qualified electors residing in the District petition the commissioners of election by the first of September of any general election year, the commissioners shall call an election to be held at the following general election for the purpose of electing a member to the board to succeed the member whose term expires during the year, for a four-year term. Thereafter, members must be elected in each succeeding general election for terms of four years."

Time effective

SECTION 2. This act takes effect upon approval by the Governor and first applies to members from Georgetown County on the Board of Fire Control of the Murrell's Inlet - Garden City Fire District whose terms expire on or after that date.

Ratified the 11th day of June, 2013.

Approved the 13th day of June, 2013.

No. 87

(R109, H3956)

AN ACT TO AMEND SECTION 61-6-20, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO DEFINITIONS IN THE ALCOHOLIC BEVERAGE CONTROL ACT, SO AS TO REVISE THE DEFINITION OF "FURNISHING LODGING" TO PROVIDE FOR AT LEAST EIGHTEEN INSTEAD OF TWENTY ROOMS THAT A BUSINESS MUST OFFER FOR ACCOMMODATIONS ON A REGULAR BASIS.

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

Definition revised

SECTION 1. Section 61-6-20(5) of the 1976 Code, as last amended by Act 67 of 2011, is further amended to read:

"(5) 'Furnishing lodging' means those businesses which rent accommodations for lodging to the public on a regular basis consisting of not less than eighteen rooms."

Time effective

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

Ratified the 11th day of June, 2013.

Approved the 13th day of June, 2013.

No. 88

(R110, H3960)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 38-41-35 SO AS TO REQUIRE AN EMPLOYER WHO PARTICIPATES IN A MULTIPLE EMPLOYER SELF-INSURED HEALTH PLAN TO EXECUTE HOLD HARMLESS AGREEMENTS IN WHICH THE EMPLOYER AGREES TO PAY ALL UNPAID PORTIONS OF INSURED CLAIMS, TO REQUIRE THESE AGREEMENTS MUST BE MADE ON CERTAIN FORMS THAT THE DEPARTMENT OF INSURANCE SHALL PROVIDE, AND TO IMPOSE CERTAIN RELATED RESPONSIBILITIES ON THE EMPLOYER AND INSURER; AND TO AMEND SECTION 38-41-50, AS AMENDED, RELATING TO STOP-LOSS COVERAGE IN MULTIPLE EMPLOYER SELF-INSURED PLANS, SO AS TO REVISE THE REQUIREMENTS FOR DETERMINING POLICY COVERAGE LIMITS, AND TO REQUIRE A PARTICIPATING EMPLOYER'S FUND FOR AN EXCESS STOP-LOSS POLICY.

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

Hold harmless agreements

SECTION 1. Chapter 41, Title 38 of the 1976 Code is amended by adding:

"Section 38-41-35. Each participating employer, as a condition of participation in a multiple employer self-insured health plan, shall execute an agreement by which the employer agrees to personally pay all claims for benefits covered under the multiple employer self-insured health plan which are incurred by his or its covered employees and their covered dependents, but which the plan has failed to pay. Such agreements shall be made on forms prescribed by the director and shall

extend to all unpaid claims for benefits incurred by the employer's employees and their dependents during the time such employees and dependents were covered under the multiple employer self-insured health plan. Neither failure of a participating employer to execute an agreement, nor failure of the plan to require such execution, shall excuse the employer from liability for unpaid claims incurred by covered employees and dependents. An employer shall be deemed to have notice of the requirements of this section, and upon joining a multiple employer self-insured health plan, the employer shall be deemed to have agreed to liability for unpaid claims of his covered employees and their dependents in the same manner as if an agreement had been executed.

The multiple employer self-insured health plan shall provide each participating employer annual notice of the participating employer's responsibilities. This notice shall be in a form approved by the director or his designee and shall state that the participating employer is responsible for all claims incurred by the participating employer's covered employees and their covered dependents that the multiple employer self-insured health plan has failed to pay. The multiple employer self-insured health plan must obtain written certification from each participating employer annually that the participating employer understands that it is liable for covered claims which the multiple employer self-insured health plan fails to pay. The multiple employer self-insured health plan shall file an affidavit signed by the multiple employer self-insured health plan's chief executive officer that it has obtained each participating employer's certification. The multiple employer self-insured health plan shall maintain copies of each participating employer's annual certification for the duration of the multiple employer self-insured health plan. Failure of the multiple employer self-insured health plan to comply with any of its obligations under this section shall not be a defense to, or in any way diminish, an employer's obligation to personally pay all claims for benefits covered under the multiple employer self-insured health plan which are incurred by his or its covered employees and their covered dependents, but which the plan has failed to pay."

Stop-loss coverage

SECTION 2. Section 38-41-50 of the 1976 Code, as last amended by Act 137 of 2012, is further amended to read:

"Section 38-41-50. A multiple employer self-insured health plan shall include aggregate excess stop-loss coverage and individual excess stop-loss coverage provided by an insurer licensed, approved, or eligible by the State. A MEWA shall maintain excess insurance coverage written by an insurer that the Department of Insurance considers approved or eligible to do business in this State. This coverage must have a net retention level determined in accordance with sound actuarial principles approved by the director or his designee, and based on the number of risks insured by the MEWA. The MEWA must file the policy contract providing this coverage with the director or his designee. The terms of this policy contract must require that before the insurer may cancel or modify the terms of this policy contract, the insurer must give notice of the pending cancellation or modification of terms to the director at least thirty days before the cancellation or modification may occur. Aggregate excess stop-loss coverage shall include provisions to cover incurred, unpaid claim liability in the event of plan termination. The excess or stop-loss insurer shall bear the risk of coverage for any member of the pool that becomes insolvent with outstanding contributions due. The limits required for an excess stop-loss policy shall be determined by the director or his designee in accordance with sound actuarial principles, so that the probability of incurred claims exceeding the participating employers' fund and the aggregate limit of the excess or stop-loss coverage is de minimus. A plan shall submit its proposed excess or stop-loss insurance contract to the director or his designee at least thirty days prior to the proposed contract's effective date and at least thirty days prior to any renewal date. The director or his designee shall review the contract to determine whether it meets the standards established by this chapter and respond within a thirty-day period. In reviewing an excess stop-loss agreement for approval, the director or his designee will closely scrutinize the agreement to determine whether the levels of individual and aggregate risk retained by the plan will put the plan in an unsound condition or will render its proceedings hazardous to the public or to persons covered under the plan. Any excess or stop-loss insurance contract must be noncancelable for a minimum term of two years. In addition, the plan shall have a participating employer's fund in an amount at least equal to the point at which the excess or stop-loss insurer shall assume a one hundred percent share of additional liability. The amount required for the employer's fund must be determined in accordance with sound actuarial principles and approved by the director or his designee and

based upon the number of risks insured by the plan. This employer's fund must be funded via cash or cash equivalent securities."

Time effective

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

Ratified the 11th day of June, 2013.

Approved the 13th day of June, 2013.

No. 89

(R111, H3962)

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 ADD CERTAIN PRECINCTS AND TO DESIGNATE A MAP NUMBER ON WHICH THE NAMES OF THESE PRECINCTS MAY BE FOUND 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:

Greenwood County voting precincts revised

SECTION 1. Section 7-7-290 of the 1976 Code, as last amended by Act 21 of 2009, is further amended to read:

"Section 7-7-290. (A) In Greenwood County there are the following voting precincts:

Greenwood No. 1
Greenwood No. 2
Greenwood No. 3
Greenwood No. 4
Greenwood No. 5
Greenwood No. 6
Greenwood No. 7

Greenwood No. 8
Glendale
Harris
Laco
Ninety Six
Ninety Six Mill
Ware Shoals
Hodges
Cokesbury
Coronaca
Greenwood High
Georgetown
Sandridge
Callison
Bradley
Troy
Epworth
Verdery
New Market
Emerald
Airport
Emerald High
Civic Center
Riley
Shoals Junction
Greenwood Mill
Stonewood
Mimosa Crest
Lower Lake
Pinecrest
Maxwellton Pike
New Castle
Rutherford Shoals
Liberty
Biltmore Pines
Marshall Oaks
Sparrows Grace
Mountain Laurel
Allie’s Crossing
Gideon’s Way
Parson’s Mill

(B) The precinct lines defining the precincts are as shown on the official map P-47-13 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 11th day of June, 2013.

Approved the 13th day of June, 2013.

No. 90

(R113, H3974)

AN ACT TO AMEND SECTION 12-54-240, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE DISCLOSURE OF RECORDS AND RETURNS FILED WITH THE DEPARTMENT OF REVENUE, SO AS TO ALLOW THE DISCLOSURE OF CERTAIN INFORMATION TO THE SECRETARY OF STATE ABOUT A TAXPAYER WHO FILED AN INITIAL OR FINAL CORPORATE RETURN; AND BY ADDING SECTION 12-58-165 SO AS TO ALLOW THE DEPARTMENT OF REVENUE TO EXPUNGE THE RECORDING OF A LIEN ONCE THE LIEN IS FULLY PAID AND SATISFIED.

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

Disclosure of corporate return to Secretary of State

SECTION 1. Section 12-54-240(B)(17) of the 1976 Code is amended to read:

"(17) disclosure of information to the Secretary of State about a taxpayer who filed an initial or final corporate return or failed to pay a tax or fee or file a return, where the Secretary of State has the power to dissolve administratively the taxpayer or to revoke the taxpayer's authority to transact business in this State for failure to pay taxes or fees or file returns."

Expungement of a recorded lien

SECTION 2. Chapter 58, Title 12 of the 1976 Code is amended by adding:

"Section 12-58-165. The department may take necessary action to expunge the recording of any lien imposed pursuant to Section 12-54-120, or any other provision authorizing the department to collect monies due, once the lien is fully paid and satisfied. If, upon investigation, the department determines that no taxes were due, the provisions of this section apply and the recorded lien shall be expunged as if it were fully paid and satisfied."

Time effective

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

Ratified the 11th day of June, 2013.

Approved the 13th day of June, 2013.

No. 91

(R115, H4192)

AN ACT TO AMEND SECTION 7-7-120, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE DESIGNATION OF VOTING PRECINCTS IN BERKELEY COUNTY, SO AS TO REDESIGNATE AN EXISTING PRECINCT, TO ADD FOUR PRECINCTS, TO DELETE AN OBSOLETE REFERENCE, AND TO REDESIGNATE THE MAP NUMBER ON WHICH THE NAMES OF THESE PRECINCTS MAY BE FOUND 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:

Berkeley County voting precincts revised

SECTION 1. Section 7-7-120 of the 1976 Code, as last amended by Act 163 of 2010, is further amended to read:

"Section 7-7-120. (A) In Berkeley County there are the following voting precincts:

Alvin
Bethera
Beverly Hills
Bonneau
Bonneau Beach
Central
Cainhoy
Carnes Cross Road No. 1
Carnes Cross Road No. 2
Cordesville
Cross
Daniel Island No. 1
Daniel Island No. 2
Daniel Island No. 3
Daniel Island No. 4
Devon Forest No. 1
Devon Forest No. 2
Eadytown
Foster Creek
Goose Creek No. 1
Goose Creek No. 2
Hanahan No. 1
Hanahan No. 2
Hanahan No. 3
Hanahan No. 4
Hilton Cross Roads
Howe Hall No. 1
Howe Hall No. 2
Huger
Jamestown

Lebanon
Liberty Hall
Macedonia
McBeth
Medway
Moncks Corner No. 1
Moncks Corner No. 2
Moncks Corner No. 3
Moncks Corner No. 4
Pimlico
Pinopolis
Russellville
Sangaree No. 1
Sangaree No. 2
Sangaree No. 3
Shulerville
St. Stephen No. 1
St. Stephen No. 2
Stratford No. 1
Stratford No. 2
Stratford No. 3
Stratford No. 4
The Village
Wassamassaw No. 1
Wassamassaw No. 2
Westview No. 1
Westview No. 2
Westview No. 3
Whitesville No. 1
Whitesville No. 2
Yellow House

(B) The precinct lines defining the precincts provided in subsection (A) 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-15-13 and as shown on copies provided to the Board of Elections and Voter Registration of Berkeley County.

(C) The polling places for the precincts provided in this section must be established by the Board of Elections and Voter Registration of Berkeley County subject to the approval of a majority of the Senators and a majority of the House members of the Berkeley County Delegation."

Time effective

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

Ratified the 11th day of June, 2013.

Approved the 13th day of June, 2013.

No. 92

(R116, H4204)

AN ACT TO AMEND SECTION 7-7-170, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE DESIGNATION OF PRECINCTS IN CHESTER COUNTY, SO AS TO REDESIGNATE CERTAIN PRECINCTS, TO DESIGNATE A MAP NUMBER ON WHICH THE NAMES OF THESE PRECINCTS MAY BE FOUND AND MAINTAINED BY THE OFFICE OF RESEARCH AND STATISTICS OF THE STATE BUDGET AND CONTROL BOARD, AND TO CORRECT ARCHAIC LANGUAGE.

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

Chester County voting precincts revised

SECTION 1. Section 7-7-170 of the 1976 Code, as last amended by Act 240 of 1996, is further amended to read:

"Section 7-7-170. (A) In Chester County there are the following voting precincts:

Baldwin Mill
Baton Rouge
Beckhamville
Blackstock
Edgemoor
Eureka Mill
Fort Lawn
Halsellville

Hazelwood
Lando
Lansford
Lowrys
Richburg
Rodman
Rossville
Wilksburg
Great Falls Nos. 1 and 2
Great Falls No. 3
Chester, Ward 1
Chester, Ward 2
Chester, Ward 3
Chester, Ward 4
Chester, Ward 5

(B) The precinct lines defining the precincts provided in subsection (A) 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-23-13 and as shown on copies of the official map provided to the Registration and Election Commission of Chester County by the Office of Research and Statistics.

(C) The polling places for the above precincts must be determined by the Registration and Election Commission of Chester County with the approval of a majority of the Chester County Legislative Delegation."

Time effective

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

Ratified the 11th day of June, 2013.

Approved the 13th day of June, 2013.

No. 93

(R117, H4216)

AN ACT TO AMEND SECTION 7-7-465, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE

DESIGNATION OF VOTING PRECINCTS IN RICHLAND COUNTY, SO AS TO REVISE AND ADD CERTAIN PRECINCTS, TO REDESIGNATE THE MAP NUMBER ON WHICH THE NAMES AND PRECINCT LINES OF THESE PRECINCTS MAY BE FOUND AND MAINTAINED BY THE OFFICE OF RESEARCH AND STATISTICS OF THE STATE BUDGET AND CONTROL BOARD, TO CORRECT REFERENCES, AND TO PROVIDE FOR ALTERNATE PRECINCT POLLING PLACES UNDER SPECIFIED CONDITIONS.

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

Richland County voting precincts revised

SECTION 1. Section 7-7-465 of the 1976 Code, as last amended by Act 24 of 2007, is further amended to read:

"Section 7-7-465. (A) In Richland County there are the following voting precincts:

Ward 1
Ward 2
Ward 3
Ward 4
Ward 5
Ward 6
Ward 7
Ward 8
Ward 9
Ward 10
Ward 11
Ward 12
Ward 13
Ward 14
Ward 15
Ward 16
Ward 17
Ward 18
Ward 19
Ward 20
Ward 21
Ward 22

Ward 23
Ward 24
Ward 25
Ward 26
Ward 29
Ward 30
Ward 31
Ward 32
Ward 33
Ward 34
Arcadia
Ardincaple
Ballentine 1
Ballentine 2
Barrier Free
Beatty Road
Bluff
Blythewood 1
Blythewood 2
Blythewood 3
Bookman
Brandon 1
Brandon 2
Briarwood
Bridge Creek
Caughman Road
College Place
Cooper
Dennyside
Dentsville
Dutch Fork 1
Dutch Fork 2
Dutch Fork 3
Dutch Fork 4
Eastover
Edgewood
Estates
Fairlawn
Fairwold
East Forest Acres
North Forest Acres
South Forest Acres

Friarsgate 1
Friarsgate 2
Old Friarsgate
Gadsden
Garners
Greenview
Gregg Park
Hampton
Harbison 1
Harbison 2
Hopkins 1
Hopkins 2
Horrell Hill
Hunting Creek
Keels 1
Keels 2
Keenan
Kelly Mill
Killian
Kingswood
Lake Carolina
Lincolnshire
Longcreek
Longleaf
Lykesland
Mallet Hill
Meadowfield
Meadowlake
McEntire
Midway
Mill Creek
Monticello
North Springs 1
North Springs 2
North Springs 3
Oak Pointe 1
Oak Pointe 2
Oak Pointe 3
Oakwood
Olympia
Parkridge 1
Parkridge 2

Parkway 1
Parkway 2
Parkway 3
Pennington 1
Pennington 2
Pine Grove
Pine Lakes 1
Pine Lakes 2
Pinewood
Polo Road
Pontiac 1
Pontiac 2
Rice Creek 1
Rice Creek 2
Ridge View 1
Ridge View 2
Ridgewood
Riverside
Riversprings 1
Riversprings 2
Riversprings 3
Riverwalk
Round Top
St. Andrews
Sandlapper
Satchelford
Skyland
South Beltline
Spring Hill
Spring Valley
Spring Valley West
Springville 1
Springville 2
Trenholm Road
Trinity
Valhalla
Valley State Park
Walden
Webber
Westminster
Whitewell
Wildewood

Woodfield
Woodlands

(B) The precinct lines defining the precincts provided in subsection (A) are as shown on the official map prepared by and on file with the Office of Research and Statistics of the South Carolina Budget and Control Board designated as document P-79-13 and as shown on copies of the official map provided to the Board of Elections and Voter Registration of Richland County by the Office of Research and Statistics.

(C) The polling places for the precincts provided in this section must be established by the Board of Elections and Voter Registration of Richland County subject to the approval of the majority of the Richland County Legislative Delegation.

(D) If the Board of Elections and Voter Registration of Richland County determines that a precinct contains no suitable location for a polling place, the board, upon approval by a majority of the county's legislative delegation, may locate the polling place inside the county and within five miles of the precinct's boundaries."

Time effective

SECTION 2. This act takes effect on January 1, 2014.

Ratified the 11th day of June, 2013.

Approved the 13th day of June, 2013.

No. 94

(R85, S584)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 50-9-15 SO AS TO DEFINE THE TERMS "LICENSE SALES VENDOR" AND "LICENSE YEAR"; TO AMEND SECTION 50-9-20, AS AMENDED, RELATING TO THE DURATION OF HUNTING AND FISHING LICENSES ISSUED BY THE DEPARTMENT OF NATURAL RESOURCES, SO AS TO PROVIDE FOR THE DURATION OF LICENSES FOR RECREATIONAL AND COMMERCIAL USE, AND PERMIT THE DEPARTMENT TO

DISCONTINUE THE ISSUANCE OF STAMPS AND PERMIT THE DEPARTMENT TO ISSUE A LICENSE THAT EXPIRES ON THE DAY BEFORE THE ANNIVERSARY OF ITS ISSUANCE; TO AMEND SECTION 50-9-30, AS AMENDED, RELATING TO RESIDENCY REQUIREMENTS IMPOSED FOR THE ISSUANCE OF CERTAIN LICENSES, SO AS TO REVISE THE REQUIREMENTS; TO AMEND SECTION 50-9-350, AS AMENDED, RELATING TO APPRENTICE HUNTING LICENSES, SO AS TO PROVIDE THAT THE HOLDER OF AN APPRENTICE HUNTING LICENSE WHO OBTAINS A CERTIFICATE OF COMPLETION PRIOR TO THE EXPIRATION DATE OF HIS APPRENTICE HUNTING LICENSE MUST USE HIS APPRENTICE HUNTING LICENSE AS HIS STATEWIDE HUNTING LICENSE, PROVIDED THAT THE LICENSEE MUST HAVE THE CERTIFICATE OF COMPLETION IN HIS POSSESSION WHILE HUNTING; TO AMEND SECTION 50-9-510, AS AMENDED, RELATING TO LICENSES FOR PURCHASE FOR THE PRIVILEGE OF HUNTING, SO AS TO DISCONTINUE ISSUANCE OF HUNTING LICENSES THAT ARE VALID ONLY IN A SINGLE COUNTY, TO REMOVE RESTRICTIONS ON THE THREE YEAR LICENSE PURCHASE, TO CLARIFY REQUIREMENTS FOR MIGRATORY WATERFOWL PERMITS, AND TO PROVIDE FOR THE RETAINED VENDOR FEE; TO AMEND SECTION 50-9-525, RELATING TO THE ISSUANCE OF HUNTING AND FISHING LICENSES TO DISABLED RESIDENTS, SO AS TO REVISE THE CRITERIA USED TO DETERMINE WHO MAY OBTAIN A LICENSE UNDER THIS PROVISION; TO AMEND SECTION 50-9-530, AS AMENDED, RELATING TO CATAWBA LICENSES, SO AS TO PROVIDE THAT THERE IS NO COST TO A CATAWBA HUNTING AND FISHING LICENSEE FOR ANY OTHER TAGS REQUIRED BY LAW FOR RECREATIONAL HUNTING AND FISHING EXCEPT FOR THOSE DEPARTMENT HUNTING AND FISHING ACTIVITIES CONTROLLED BY LOTTERY; TO AMEND SECTION 50-9-540, AS AMENDED, RELATING TO RECREATIONAL FISHING LICENSES, SO AS TO PROVIDE THAT RESIDENTS AND NONRESIDENTS MUST PURCHASE ANY OTHER LICENSE THAT GRANTS FISHING PRIVILEGES, TO DELETE THE LAKES AND RESERVOIRS PERMIT, AND TO CHANGE THE TEMPORARY NONRESIDENT FISHING LICENSE FROM SEVEN TO

FOURTEEN DAYS; TO AMEND SECTION 50-9-610, RELATING TO ADDITIONAL REQUIREMENTS FOR TAKING NONGAME FRESHWATER FISH, SO AS TO DELETE THE PROVISION THAT EXEMPTS A RESIDENT WHO IS SIXTY-FIVE YEARS OF AGE OR OLDER FROM PURCHASING A PERMIT FOR RECREATIONAL FISHING OF CERTAIN SET HOOKS AND PROVIDE THAT TAGS MUST BE ATTACHED AS PRESCRIBED; TO AMEND SECTION 50-9-665, RELATING TO BEAR HUNTING, SO AS TO MAKE A TECHNICAL CHANGE; TO AMEND SECTION 50-9-920, AS AMENDED, RELATING TO REVENUES FROM THE SALE OF PRIVILEGES, LICENSES, PERMITS, AND TAGS, SO AS TO MAKE CONFORMING CHANGES, AND TO PROVIDE FOR REVISED LICENSE REVENUE DISTRIBUTION; TO AMEND SECTION 50-9-950, RELATING TO THE FISH AND WILDLIFE PROTECTION FUND, SO AS TO REVISE THE FUND'S PURPOSE, SOURCES OF REVENUE, AND DISTRIBUTION OF REVENUES; TO AMEND SECTION 50-9-955, RELATING TO THE FISH AND WILDLIFE DEFERRED LICENSE FUND, SO AS TO MAKE A TECHNICAL CHANGE, AND REVISE THE FORMULA FOR DISTRIBUTING REVENUES CONTAINED IN THE FUND; TO AMEND SECTION 50-9-960, RELATING TO THE MARINE RESOURCES FUND, SO AS TO REVISE THE PURPOSE OF THE FUND, REVISE THE SOURCES OF REVENUE CONTAINED IN THE FUND, AND REVISE THE PROJECTS THAT MAY BE SUPPORTED BY THE FUND; TO AMEND SECTION 50-9-965, RELATING TO THE MARINE RESOURCES DEFERRED LICENSE FUND, SO AS TO MAKE A TECHNICAL CHANGE, AND REVISE THE FORMULA FOR TRANSFERRING REVENUES INTO THE FUND; TO REPEAL SECTION 50-15-65(E) RELATING TO ALLIGATOR HUNTING, CONTROL, AND MANAGEMENT; TO AMEND SECTION 50-9-35, RELATING TO A PERSON WHO TRANSFERS HIS RESIDENCY, SO AS TO REVISE THE PROVISIONS THAT REGULATE WHO MAY LAWFULLY HOLD A RESIDENT LICENSE PERMIT, STAMP, OR TAG ISSUED BY THE DEPARTMENT OF NATURAL RESOURCES.

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

Definitions

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

"Section 50-9-15. For the purposes of this title:

(1) 'License sales vendor' means a business, not for profit entity, or unit of state or local government that has entered into an agreement with the department to offer for sale hunting and fishing licenses.

(2) 'License year' means the period beginning July first and ending June thirtieth."

Hunting and fishing licenses, permits, and tags

SECTION 2. Section 50-9-20 of the 1976 Code, as last amended by Act 233 of 2010, is further amended to read:

"Section 50-9-20. (A) The duration for hunting and fishing licenses, permits, and tags for recreational purposes is as follows:

(1) a temporary license, permit, or tag expires after the specified number of consecutive days inclusive of the start date and expiration date;

(2) an annual license, permit, or tag expires on the last day of the license year for which the license was issued; provided, the department may issue an annual license, permit, or tag that expires the day before the anniversary of the date of its issuance;

(3) a three year license or permit expires on the last day of the third license year of issue; provided, the department may issue a three year license or permit that expires the day before the third anniversary of the date of its issuance;

(4) a three year disability license expires the day before the third anniversary of the date of its issuance; and

(5) the Catawba Indian license expires October 27, 2092.

(B) For commercial purposes, an annual license, permit, or tag expires on the last day of the license year for which the license, permit, or tag was issued.

(C) This section does not alter the start date or expiration date of a permit which by law has other terms."

Residency requirements

SECTION 3. Section 50-9-30 of the 1976 Code, as last amended by Act 233 of 2010, is further amended to read:

"Section 50-9-30. (A) For the purposes of obtaining:

(1) a recreational license, permit, or tag with a duration of three years or less, 'resident', unless otherwise specified, means a United States citizen or a citizen of a foreign country lawfully in the United States who:

(a) has been domiciled in this State for thirty consecutive days or more immediately preceding the date of application;

(b) is a regularly enrolled full-time student in a high school, technical school, college, or university within this State; or

(c) is an active member of the United States Armed Forces, or the member's dependent, stationed in this State for thirty consecutive days or more immediately preceding the date of application;

(2) a lifetime recreational license, 'resident' means a United States citizen who has been domiciled in this State for one hundred eighty consecutive days or more immediately preceding the date of application;

(3) a disability recreational license, 'resident' means a United States citizen who has been domiciled in this State for three hundred sixty-five consecutive days or more immediately preceding the date of application;

(4)(a) a commercial license, permit, or tag, 'resident' means a United States citizen who has been domiciled in this State for three hundred sixty-five consecutive days or more immediately preceding the date of application; and

(b) a commercial license or permit issued for a business, 'resident' means a business that has been incorporated and operating in this State for three hundred sixty-five days or more immediately preceding the date of application.

(B) An applicant for a resident license must furnish proof of residency as may be required by the department.

(C) 'Nonresident' means an individual or business that is not a resident under subitem (A)."

Apprentice hunting license

SECTION 4. Section 50-9-350 of the 1976 Code, as last amended by Act 257 of 2012, is further amended to read:

"Section 50-9-350. To encourage the recruitment of persons as responsible hunters:

(1) The certificate of completion requirement may be waived for one license year if a person obtains an apprentice hunting license, and a person may receive such a waiver only one time. An apprentice hunting license may be issued if the applicant:

(a) is at least sixteen years of age and otherwise required to obtain a certificate of completion to obtain a hunting license;

(b) has not been convicted of or received deferred adjudication for violation of the hunter education requirement in this State; and

(c) has not been convicted of a hunting violation.

(2) While afield, the apprentice hunter must be accompanied by a licensed hunter who:

(a) has attained the age of twenty-one years;

(b) is not licensed as an apprentice hunter; and

(c) stays within a distance that enables uninterrupted, unaided, visual, and oral communication with the apprentice hunter and provides adequate direction to the apprentice.

(3) If the holder of an apprentice hunting license obtains a certificate of completion prior to the expiration date of his apprentice hunting license, his apprentice hunting license will be used as his statewide hunting license; provided, the licensee must have the certificate of completion in his possession while hunting.

(4) In addition to obtaining the apprentice hunting license, an apprentice license holder must obtain any other license, permit, receipt, stamp, and tag required to participate in a specific hunting activity."

Hunting and fishing licenses

SECTION 5. Section 50-9-510 of the 1976 Code, as last amended by Act 233 of 2010, is further amended to read:

"Section 50-9-510. (A) For the privilege of hunting:

(1) a resident must purchase:

(a) an annual statewide hunting license for twelve dollars, one dollar of which the issuing sales vendor may retain;

(b) a three year statewide hunting license for thirty-six dollars, three dollars of which the issuing sales vendor may retain;

(c) a lifetime statewide hunting license for three hundred dollars at designated licensing locations; or

(d) any other license which grants statewide hunting privileges;

(2) a resident who meets the qualifications as an apprentice hunter must purchase an annual statewide apprentice hunting license for twelve dollars, one dollar of which the issuing sales vendor may retain;

(3) a nonresident must purchase:

(a) a three day temporary statewide hunting license for forty dollars, one dollar of which the issuing sales vendor may retain;

(b) a ten day temporary statewide hunting license for seventy-five dollars, two dollars of which the issuing sales vendor may retain;

(c) an annual statewide hunting license for one hundred twenty-five dollars, two dollars of which the issuing sales vendor may retain; or

(d) any other license which grants statewide hunting privileges;

(4) a nonresident who meets the qualifications as an apprentice hunter must purchase an annual statewide apprentice hunting license for one hundred twenty-five dollars, two dollars of which the issuing sales vendor may retain.

(B) For the privilege of hunting big game:

(1) a resident must purchase in addition to the required hunting license:

(a) an annual big game permit for six dollars, one dollar of which the issuing sales vendor may retain;

(b) a three year big game permit for eighteen dollars, three dollars of which the issuing sales vendor may retain; or

(c) any other license which grants big game privileges;

(2) a nonresident must purchase in addition to the required hunting license:

(a) an annual big game permit for one hundred dollars, two dollars of which the issuing sales vendor may retain; or

(b) any other license which grants big game privileges.

(C) For the privilege of hunting on wildlife management areas:

(1) a resident must purchase in addition to the required hunting license:

(a) an annual wildlife management area permit for thirty dollars and fifty cents, one dollar of which the issuing sales vendor may retain;

(b) a three year wildlife management area permit for ninety-one dollars and fifty cents, three dollars of which the issuing sales vendor may retain; or

(c) any other license which grants wildlife management area privileges;

(2) the department may issue residents temporary wildlife management area permits from the department's designated licensing locations for department specified hunting events for five dollars and fifty cents, fifty cents of which the issuing sales vendor may retain;

(3) a nonresident must purchase in addition to the required hunting license:

(a) a wildlife management area permit for seventy-six dollars, one dollar of which the issuing sales vendor may retain; or

(b) any other license which grants wildlife management area privileges.

(D) For the privilege of hunting migratory game birds, in addition to the required hunting license:

(1) a resident must obtain an annual migratory game bird permit at no cost;

(2) a nonresident must obtain an annual migratory game bird permit at no cost.

(E) For the privilege of hunting migratory waterfowl, in addition to the required hunting license and permits and any required federal stamp or permit:

(1) a resident must purchase a migratory waterfowl permit for five dollars and fifty cents, fifty cents of which the issuing sales vendor may retain;

(2) a nonresident must purchase a migratory waterfowl permit for five dollars and fifty cents, fifty cents of which the issuing sales vendor may retain.

(F) For the privilege of hunting only the authorized released species on a licensed shooting preserve, in lieu of a hunting license, an individual may purchase an annual statewide shooting preserve license for eight dollars and fifty cents, one dollar of which the issuing sales vendor may retain."

Licenses for disabled residents

SECTION 6. Section 50-9-525(A) of the 1976 Code, as added by Act 233 of 2010, is amended to read:

"(A) A resident who is determined to be disabled and receiving benefits under a Social Security program, the Civil Service Retirement System, the South Carolina State Retirement System, the Railroad Retirement Board, the Veterans Administration, or Medicaid, or their successor agencies or programs, may obtain a three year disability combination license or a three year disability fishing license at no cost. The license must be issued by the department from its designated offices and is valid for three years from the date of issue. Disability recertification is required for renewal. To recertify, an applicant must furnish proof, in the manner prescribed by the department, that he or she is currently receiving disability benefits and is a domiciled resident of this State. The department may waive the proof of disability benefit requirement for renewals where the resident is at least sixty-five years of age."

Catawba hunting and fishing licenses

SECTION 7. Section 50-9-530 of the 1976 Code, as last amended by Act 233 of 2010, is further amended by adding at the end:

"(G) There is no cost to a Catawba hunting and fishing licensee for any other tags required by law for recreational hunting and fishing except for those department hunting and fishing activities controlled by lottery."

Fishing licenses

SECTION 8. Section 50-9-540 of the 1976 Code, as last amended by Act 233 of 2010, is further amended to read:

"Section 50-9-540. (A) For the privilege of recreational statewide fishing in saltwater:

(1) a resident must purchase:

(a) a fourteen day temporary saltwater fishing license for five dollars, one dollar of which the issuing sales vendor may retain;

(b) an annual saltwater fishing license for ten dollars, one dollar of which the issuing sales vendor may retain;

(c) a three year saltwater fishing license for thirty dollars, one dollar of which the issuing sales vendor may retain;

(d) a lifetime statewide saltwater fishing license for three hundred dollars at designated licensing locations; or

(e) any other license which grants saltwater fishing privileges;

(2) a nonresident must purchase:

(a) a fourteen day temporary saltwater fishing license for eleven dollars, one dollar of which the issuing sales vendor may retain;

(b) an annual saltwater fishing license for thirty-five dollars, one dollar of which the issuing sales vendor may retain;

(c) a three year saltwater fishing license for one hundred five dollars, three dollars of which the issuing sales vendor may retain; or

(d) any other license which grants saltwater fishing privileges.

(B) For the privilege of recreational statewide fishing in freshwater:

(1) a resident must purchase:

(a) a fourteen day temporary freshwater fishing license for five dollars, one dollar of which the issuing sales vendor may retain;

(b) an annual freshwater fishing license for ten dollars, one dollar of which the issuing sales vendor may retain;

(c) a three year freshwater fishing license for thirty dollars, three dollars of which the issuing sales vendor may retain;

(d) a lifetime statewide freshwater fishing license for three hundred dollars at designated licensing locations; or

(e) any other license which grants freshwater fishing privileges;

(2) a nonresident must purchase:

(a) a fourteen day temporary freshwater fishing license for eleven dollars, one dollar of which the issuing sales vendor may retain;

(b) an annual freshwater fishing license for thirty-five dollars, one dollar of which the issuing sales vendor may retain;

(c) a three year freshwater fishing license for one hundred five dollars, three dollars of which the issuing sales vendor may retain; or

(d) any other license which grants freshwater fishing privileges.

(C) 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 a pier with a total length:

(1) of one hundred feet or less, the fee is one hundred fifty dollars;

(2) greater than one hundred feet, the fee is three hundred fifty dollars.

(D) 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 a vessel:

(1) to carry six or fewer passengers, the fee is one hundred fifty dollars;

(2) to carry seven but no more than forty-nine passengers, the fee is two hundred fifty dollars;

(3) to carry fifty or more passengers, the fee is three hundred fifty dollars."

Taking of nongame freshwater fish

SECTION 9. Section 50-9-610 of the 1976 Code, as added by Act 200 of 2010, is amended to read:

"Section 50-9-610. (A) In addition to the licenses required for freshwater fishing, each licensee attempting to take nongame freshwater fish must obtain:

(1) a tag for each eel pot, at five dollars a tag for residents and fifty dollars a tag for nonresidents;

(2) a tag for each fyke net, at ten dollars for residents and fifty dollars for nonresidents;

(3) a tag for each gill net, at five dollars a tag for residents and fifty dollars a tag for nonresidents;

(4) a tag for each hoop net, at ten dollars a tag for residents and fifty dollars a tag for nonresidents;

(5) a tag for each trap, at five dollars a tag for residents and fifty dollars a tag for nonresidents;

(6) a tag for each trotline, not to exceed fifty hooks each, at two dollars fifty cents a tag for residents and fifty dollars a tag for nonresidents;

(7) a permit for using up to fifty jugs, at five dollars a permit for residents and fifty dollars for nonresidents;

(8) a permit for using up to fifty set hooks, at five dollars a permit for residents and fifty dollars for nonresidents.

(B) Permits for jugs and set hooks are not required for residents assisting permit holders.

(C) The licensee must affix the tag or identification information to the respective device."

Bear hunting

SECTION 10. Section 50-9-665(A) of the 1976 Code, as added by Act 286 of 2010, is amended to read:

"(A) For the privilege of hunting bear, in addition to the required hunting license and big game permit the licensee must obtain a bear tag issued in his name, and the fee:

(1) for a resident is twenty-five dollars per tag, one dollar of which may be retained by the license sales vendor;

(2) for a nonresident is one hundred dollars per tag, two dollars of which may be retained by the license sales vendor."

Revenue distribution

SECTION 11. Section 50-9-920 of the 1976 Code, as last amended by Act 286 of 2010, is further amended to read:

"Section 50-9-920. (A) Revenue generated from the sale of lifetime privileges shall be deposited in the Wildlife Endowment Fund.

(B) Revenue generated from the sale of other hunting and freshwater fishing licenses, permits, and tags shall be remitted to the State Treasurer and unless otherwise required by law credited to the Fish and Wildlife Protection Fund. Revenue from each:

(1) wildlife management area permit shall be used for the management and the procurement of wildlife management area lands;

(2) nonresident annual statewide hunting license shall be used as follows:

(a) one dollar for the propagation, management, and protection of ducks and geese in this State;

(b) one dollar contributed by the department to proper agencies along the Atlantic Flyway for the propagation, management, and protection of ducks and geese; and

(c) the balance to the Fish and Wildlife Protection Fund;

(3) nonresident temporary statewide hunting license shall be used as follows:

(a) fifty cents for the propagation, management, and protection of ducks and geese in this State;

(b) fifty cents contributed by the department to proper agencies along the Atlantic Flyway for the propagation, management, and protection of ducks and geese; and

(c) the balance to the Fish and Wildlife Protection Fund;

(4) nonresident annual freshwater fishing license shall be distributed as follows:

(a) twenty-five percent to the County Game and Fish Fund account for the respective county in which the license was sold, except that these licenses sold through a central point such as online, call

centers, and department mass mailings shall be equally allocated to the counties;

(b) twenty-five percent for the operation and management of department freshwater fish hatcheries; and

(c) the balance to the Fish and Wildlife Protection Fund;

(5) application fee, permit, tag, and nonresident hunting fee for the privilege of hunting alligators shall be used to administer the alligator management program;

(6) antlerless deer quota permit (ADQP) shall be exclusively used to administer the ADQP program and for deer management and research;

(7) individual antlerless deer tags shall be used as follows:

(a) eighty percent to administer the tag program, deer management, and research; and

(b) the remaining twenty percent for law enforcement;

(8) application fee, permit, and tag for the privilege of hunting bear shall be used to administer the tag program, protect bear habitats, and support bear research and management;

(9) field trial permit and shooting preserve operation permit shall be used to support the management of small game programs;

(10) lottery hunt application fee shall be used to administer the lottery hunt program and support management of lands on which the lottery hunts take place;

(11) falconry permit shall be used to support the falconry permitting program.

(C) Revenue generated from the sale of recreational and commercial marine licenses, permits, and tags shall be deposited to the Marine Resources Fund unless otherwise required by law. Revenue shall be distributed as follows, from each:

(1) annual or temporary recreational saltwater fishing license:

(a) twenty-five cents to saltwater administration;

(b) one dollar to law enforcement; and

(c) the balance to recreational saltwater programs;

(2) charter vessel license:

(a) five percent to saltwater administration;

(b) twenty percent to law enforcement; and

(c) the balance to recreational saltwater programs;

(3) saltwater fishing pier license:

(a) five percent to saltwater administration;

(b) twenty percent to law enforcement; and

(c) the balance to recreational saltwater programs;

(4) shrimp baiting license:

(a) seventy percent for additional enforcement efforts during the established shrimp baiting period to assist existing law enforcement personnel in monitoring and enforcement of the shrimp baiting laws; and

(b) the balance to the Marine Resources Fund;

(5) sale of stamps, prints, and related articles:

(a) five percent to saltwater administration;

(b) twenty percent to saltwater enforcement; and

(c) the balance to recreational saltwater programs.

(D) Two-thirds of the revenue generated from the sale of three year recreational saltwater licenses shall be allocated to the Marine Resources Deferred License Fund.

(E) Two-thirds of the revenue generated from the sale of three year recreational freshwater fishing and hunting licenses shall be allocated to the Fish and Wildlife Deferred License Fund.

(F) Revenue generated from the sale of duplicate or replacement licenses, permits, and tags shall be credited to the Fish and Wildlife Protection Fund."

Fish and Wildlife Protection Fund

SECTION 12. Section 50-9-950 of the 1976 Code, as added by Act 233 of 2010, is amended to read:

"Section 50-9-950. (A) The Fish and Wildlife Protection Fund is created for the purpose of supporting the department and its effort to conserve freshwater fisheries and wildlife. The assets of the fund are derived from the following sources:

(1) revenue from the sale of freshwater fisheries and wildlife licenses, permits, stamps, and tags;

(2) application fees for recreational events and charges for room and board on state property where the property was procured with proceeds from the fund and its predecessor funds;

(3) revenue generated from the sale of timber and property procured with proceeds from the fund and its predecessor funds;

(4) revenue transmitted to the department from the Department of Motor Vehicles for specialty license plates to support department operations;

(5) restricted interest income, contributions, and donations;

(6) indirect cost recoveries where the department matched a grant using the fund; and

(7) any other source of revenue recognized by the United States Fish and Wildlife Service, where the disposition of such revenue to any other fund could be interpreted as a loss of control or misdirection of funds by the department.

These funds shall be remitted to the State Treasurer and credited to a special account separate and distinct from the general fund.

(B) Revenue shall be expended by the department for the protection, propagation, and management of freshwater fisheries and wildlife, the enforcement of related laws, the administration of the department, and the dissemination of information, facts, and findings the department considers necessary. Revenue may be expended on permanent improvement or deferred maintenance projects consistent with the purposes of the fund.

(C) Interest earned on balances in the fund shall be credited to the fund and expended for those same purposes.

(D) Balances in the fund shall be retained and carried forward annually and may be used to match available federal funds."

Fish and Wildlife Deferred License Fund

SECTION 13. Section 50-9-955 of the 1976 Code, as added by Act 233 of 2010, is amended to read:

"Section 50-9-955. (A) The Fish and Wildlife Deferred License Fund is created for the purpose of receiving revenue generated from the sale of three year hunting and freshwater fishing licenses, permits, stamps, and tags.

(B) Receipts from each license year shall be transferred to the Fish and Wildlife Protection Fund as follows:

(1) fifty percent during the first fiscal year after receipt; and

(2) the balance during the second fiscal year after receipt.

Where applicable, each transfer shall distribute the receipts based on the allocations specified in Section 50-9-920(B).

(C) Interest earned on balances in the fund shall be credited to the fund and transferred to the Fish and Wildlife Protection Fund in the same manner.

(D) Balances in the fund shall be retained and carried forward annually."

Marine Resources Fund

SECTION 14. Section 50-9-960 of the 1976 Code, as added by Act 233 of 2010, is amended to read:

"Section 50-9-960. (A) The Marine Resources Fund is created for the purpose of supporting the department and its effort to conserve marine fisheries. The assets of the fund are derived from the following sources:

(1) revenue from the sale of saltwater licenses, permits, stamps, and tags;

(2) revenue generated from the sale of posters, prints, and related articles;

(3) revenue generated from the sale of property procured with proceeds from the fund and its predecessor funds;

(4) revenue transmitted to the department from the Department of Motor Vehicles for specialty license plates;

(5) restricted interest income, contributions, and donations;

(6) indirect cost recoveries where the department matched a grant using the fund; and

(7) any other source of revenue recognized by the United States Fish and Wildlife Service, where the disposition of such revenue to any other fund could be interpreted as a loss of control or misdirection of funds by the department.

(B) Revenue generated from the sale of:

(1) recreational saltwater privileges shall be expended by the department for purposes authorized pursuant to the South Carolina Marine Resources Act of 2000. The Saltwater Recreational Fishing Advisory Committee shall assist in prioritizing the expenditure of saltwater license funds for:

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

(b) development of recreational saltwater fishing facilities;

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

(d) permanent improvement or deferred maintenance projects consistent with the purposes described herein;

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

(f) an annual report made available on the department website indicating how the previous year's funds were expended;

(2) commercial saltwater privileges, culture and mariculture permits, and marine permits shall be expended for the administration and implementation of programs in the Marine Resources Division and may be expended on permanent improvement or deferred maintenance projects consistent with the purposes of the fund.

(C) Funds generated pursuant to this section shall be remitted to the State Treasurer and credited to a special account separate and distinct from the general fund.

(D) Interest earned on balances in the fund shall be credited to the fund and expended for the same purposes.

(E) Balances in the fund shall be retained and carried forward annually and may be used to match available federal funds."

Marine Resources Deferred License Fund

SECTION 15. Section 50-9-965 of the 1976 Code, as added by Act 233 of 2010, is amended to read:

"Section 50-9-965. (A) The Marine Resources Deferred License Fund is created for the purpose of receiving revenue generated from the sale of three year saltwater licenses, permits, stamps, and tags.

(B) Receipts from each license year shall be transferred to the Marine Resources Fund as follows:

(1) fifty percent during the first fiscal year after receipt; and

(2) the balance during the second fiscal year after receipt. Where applicable, each transfer shall distribute the receipts based on the allocations specified in Section 50-9-920(C).

(C) Interest earned on balances in the fund shall be credited to the fund and transferred to the Marine Resources Fund in the same manner.

(D) Balances in the fund shall be retained and carried forward annually."

Repeal

SECTION 16. Section 50-15-65(E) of the 1976 Code is repealed.

Residency requirements

SECTION 17. Section 50-9-35 of the 1976 Code, as added by Act 233 of 2010, is amended to read:

"Section 50-9-35. Any person licensed by another state as a resident for any purpose is not eligible to apply for, obtain, or hold any South Carolina resident license, permit, stamp, or tag required by this title. It is unlawful to obtain, attempt to obtain, or possess a license, permit, stamp, or tag required by this title while licensed as a resident of another state for any purpose.

Any person who lawfully acquires a resident South Carolina license, permit, stamp, or tag and who during the term of that instrument transfers their domicile outside of this State, may continue the privileges until expiration of that license, permit, stamp, or tag."

Time effective

SECTION 18. This act takes effect July 1, 2013.

Ratified the 11th day of June, 2013.

Approved the 13th day of June, 2013.

No. 95

(R104, H3632)

AN ACT TO AMEND SECTION 42-5-190, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE MAINTENANCE TAX IMPOSED BY THE WORKERS' COMPENSATION COMMISSION ON SELF INSURERS, SO AS TO PROVIDE THAT THE COMMISSION SHALL RETAIN A PORTION OF THE ANNUAL MAINTENANCE TAX REVENUE TO PAY THE SALARIES AND EXPENSES OF THE COMMISSION, TO PROVIDE THAT THE COMMISSION SHALL RETAIN ONE-HALF OF THE INTEREST CHARGED ON DELINQUENT MAINTENANCE TAX FOR THE SAME PURPOSE, AND TO PROVIDE DURATION PROVISIONS AND REPORTING REQUIREMENTS.

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

Workers' Compensation Commission, revenues retained

SECTION 1. Section 42-5-190 of the 1976 Code, as last amended by Act 153 of 1989, is further amended to read:

"Section 42-5-190. Every employer carrying his own risk under the provisions of Section 42-5-20 shall report under oath to the commission the employer's actual cost incurred under the provisions of this title. The report must be made in the form prescribed by the commission by the fifteenth day of the third month following the close of the self-insurer's fiscal year. The commission shall assess against the actual cost incurred a maintenance tax computed by taking two and one-half percent of the actual cost of operating under the provisions of this title as determined by the commission. The assessments must be paid to the commission which shall retain in every fiscal year the greater of fifty percent or two million two hundred thousand dollars of the maintenance tax revenues and use these funds to pay the salaries and expenses of the commission. The balance of the maintenance tax revenues must be remitted to the State Treasurer for the credit of the general fund of the State. In the event of failure to pay the tax within fifteen days of the date set forth in this section, the commission may assess against the self-insurer a penalty of five percent of the unpaid tax. If the self-insurer fails to pay the tax and penalty within fifteen days of notice by the commission, interest must be added to the amount of the deficiency at the rate of five percent for each month or fraction of a month from the date the tax was due originally until the date the deficiency is paid and the commission may initiate proceedings to withdraw the privilege of self-insuring in this State. The total maximum interest to be charged may not exceed twenty-five percent. The penalty under this section is payable to the commission. Fifty percent of the interest must be retained by the commission and used by it as retained maintenance tax revenues are used and the balance of the interest must be remitted to the State Treasurer for the credit of the general fund of the State."

Time effective

SECTION 2. This act takes effect July 1, 2013, and must be terminated five years after the effective date of the act unless otherwise authorized by the General Assembly. Beginning on July 1, 2014, and on each July first thereafter, the South Carolina Workers' Compensation Commission must report to the Chairman of House

Ways and Means Committee, the Chairman of Senate Finance, and the Governor the amount of money the agency has received in the previous fiscal year pursuant to this act.

Ratified the 11th day of June, 2013.

Approved the 13th day of June, 2013.

No. 96

(R51, S323)

AN ACT TO AMEND THE OFFICIAL COMMENT TO SECTION 36-9-101, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE CHAPTER TITLED "UNIFORM COMMERCIAL CODE - SECURED TRANSACTIONS", SO AS TO, INTER ALIA, IDENTIFY THE SPECIFIC VERSION OF THE UNITED STATES BANKRUPTCY CODE REFERENCED THROUGHOUT THE COMMENTS TO CHAPTER 9, TITLE 36; TO AMEND SECTION 36-9-102, RELATING TO THE DEFINITIONS APPLICABLE TO CHAPTER 9, TITLE 36, SO AS TO REVISE EXISTING OR PROVIDE NEW DEFINITIONS FOR CERTAIN TERMS, AND TO MAKE TECHNICAL CORRECTIONS; TO AMEND SECTION 36-9-105, RELATING TO THE CONTROL OF ELECTRONIC CHATTEL PAPER, SO AS TO CLARIFY THE CONDITIONS UNDER WHICH A SECURED PARTY IS DEEMED TO HAVE CONTROL OF ELECTRONIC CHATTEL PAPER; TO AMEND SECTION 36-9-307, RELATING TO THE DEBTOR'S LOCATION, SO AS TO INCLUDE PROVISIONS FOR DESIGNATING A MAIN OFFICE, HOME OFFICE, OR OTHER COMPATIBLE OFFICE; TO AMEND SECTION 36-9-311, RELATING TO THE PERFECTION OF SECURITY INTERESTS IN PROPERTY SUBJECT TO CERTAIN STATUTES, REGULATIONS, AND TREATIES, SO AS TO MAKE A TECHNICAL CORRECTION; TO AMEND SECTION 36-9-316, RELATING TO THE CONTINUED PERFECTION OF A SECURITY INTEREST FOLLOWING A CHANGE IN THE GOVERNING LAW, SO AS TO PROVIDE RULES THAT APPLY TO COLLATERAL TO WHICH A SECURITY INTEREST ATTACHES WITHIN FOUR

MONTHS AFTER A DEBTOR CHANGES LOCATION; TO AMEND SECTION 36-9-317, RELATING TO THE PRIORITY OF INTERESTS, SO AS REVISE THE TERMINOLOGY OF CERTAIN TYPES OF INTERESTS AND PRIORITIES; TO AMEND SECTION 36-9-326, RELATING TO THE PRIORITY OF SECURITY INTERESTS CREATED BY A NEW DEBTOR, SO AS TO CLARIFY PROVISIONS REGARDING THE PERFECTION OF A SECURITY INTEREST; TO AMEND SECTION 36-9-406, RELATING TO THE DISCHARGE OF AN ACCOUNT DEBTOR, SO AS TO CLARIFY PROVISIONS REGARDING A SALE UNDER A DISPOSITION PURSUANT TO SECTION 36-9-610, OR AN ACCEPTANCE OF COLLATERAL PURSUANT TO SECTION 36-9-620; TO AMEND SECTION 36-9-408, RELATING TO RESTRICTIONS ON ASSIGNMENT OF PROMISSORY NOTES, SO AS TO CLARIFY PROVISIONS REGARDING A SALE UNDER A DISPOSITION PURSUANT TO SECTION 36-9-610, OR AN ACCEPTANCE OF COLLATERAL PURSUANT TO SECTION 36-9-620; TO AMEND SECTION 36-9-502, RELATING TO THE CONTENTS OF A FINANCING STATEMENT AND A RECORD OF MORTGAGE AS A FINANCING STATEMENT, SO AS TO CLARIFY PROVISIONS REGARDING THE NAME OF A DEBTOR ON A RECORD OF MORTGAGE AS A FINANCING STATEMENT; TO AMEND SECTION 36-9-503, RELATING TO THE NAME OF A DEBTOR AND SECURED PARTY, SO AS TO REVISE PROVISIONS REGARDING THE PROPER NAME OF A DEBTOR ON A FINANCING STATEMENT; TO AMEND SECTION 36-9-507, RELATING TO THE EFFECT OF CERTAIN EVENTS ON THE EFFECTIVENESS OF A FINANCING STATEMENT, SO AS TO REVISE PROVISIONS REGARDING THE SUFFICIENCY OF THE DEBTOR'S NAME; TO AMEND SECTION 36-9-515, RELATING TO THE DURATION AND EFFECTIVENESS OF A FINANCING STATEMENT, SO AS TO CLARIFY THE EFFECTIVENESS OF CERTAIN INITIALLY FILED FINANCING STATEMENTS; TO AMEND SECTION 36-9-516, AS AMENDED, RELATING TO WHAT CONSTITUTES FILING AND THE EFFECTIVENESS OF FILING, SO AS TO CLARIFY WHEN A DEBTOR IS AN INDIVIDUAL OR AN ORGANIZATION; TO AMEND SECTION 36-9-518, AS AMENDED, RELATING TO A CLAIM CONCERNING AN INACCURATE OR WRONGFULLY FILED RECORD, SO AS TO INCLUDE PROVISIONS REGARDING

THE FILING OF AN INFORMATION STATEMENT; TO AMEND SECTION 36-9-521, REGARDING THE UNIFORM FORM OF A WRITTEN FINANCING STATEMENT AND AMENDMENT, SO AS TO MAKE CONFORMING CHANGES; TO AMEND SECTION 36-9-607, RELATING TO COLLECTION AND ENFORCEMENT BY A SECURED PARTY, SO AS TO REVISE PROVISIONS REGARDING THE SECURED PARTY'S SWORN AFFIDAVIT; BY ADDING PART 8 TO CHAPTER 9, TITLE 36 SO AS TO ENTITLE PART 8 AS "TRANSITION"; AND TO MAKE CORRESPONDING CHANGES TO APPROPRIATE OFFICIAL COMMENTS AS NECESSARY TO REFLECT THE CHANGES TO CHAPTER 9, TITLE 36.

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

Citation

SECTION 1. Section 36-9-101 of the 1976 Code is amended to read:

"Section 36-9-101. This chapter may be cited as 'Uniform Commercial Code-Secured Transactions'."

OFFICIAL COMMENT

1. Source. This Article supersedes former Uniform Commercial Code (UCC) Article 9. As did its predecessor, it provides a comprehensive scheme for the regulation of security interests in personal property and fixtures. For the most part this Article follows the general approach and retains much of the terminology of former Article 9. In addition to describing many aspects of the operation and interpretation of this Article, these Comments explain the material changes that this Article makes to former Article 9. Former Article 9 superseded the wide variety of pre-UCC security devices. Unlike the Comments to former Article 9, however, these Comments dwell very little on the pre-UCC state of the law. For that reason, the Comments to former Article 9 will remain of substantial historical value and interest. They also will remain useful in understanding the background and general conceptual approach of this Article.

Citations to the "Bankruptcy Code" in these Comments are to Title 11 of the United States Code as in effect on July 1, 2010.

2. Background and History. In 1990, the Permanent Editorial Board for the UCC with the support of its sponsors, The American Law Institute and the National Conference of Commissioners on Uniform

State Laws, established a committee to study Article 9 of the UCC. The study committee issued its report as of December 1, 1992, recommending the creation of a drafting committee for the revision of Article 9 and also recommending numerous specific changes to Article 9. Organized in 1993, a drafting committee met fifteen times from 1993 to 1998. This Article was approved by its sponsors in 1998. This Article was conformed to revised Article 1 in 2001 and to amendment to Article 7 in 2003. The sponsors approved amendments to selected section of this Article in 2010.

3. Reorganization and Renumbering; Captions; Style. This Article reflects a substantial reorganization of former Article 9 and renumbering of most sections. New Part 4 deals with several aspects of third-party rights and duties that are unrelated to perfection and priority. Some of these were covered by Part 3 of former Article 9. Part 5 deals with filing (covered by former Part 4) and Part 6 deals with default and enforcement (covered by former Part 5). Appendix I contains conforming revisions to other articles of the UCC, and Appendix II contains model provisions for production-money priority.

This Article also includes headings for the subsections as an aid to readers. Unlike Section captions, which are part of the UCC, see Section 1-107, subsection headings are not a part of the official text itself and have not been approved by the sponsors. Each jurisdiction in which this Article is introduced may consider whether to adopt the headings as a part of the statute and whether to adopt a provision clarifying the effect, if any, to be given to the headings. This Article also has been conformed to current style conventions.

4. Summary of Revisions. Following is a brief summary of some of the more significant revisions of Article 9 that are included in the 1998 revision of this Article.

a. Scope of Article 9. This Article expands the scope of Article 9 in several respects.

Deposit accounts. Section 9-109 includes within this Article's scope deposit accounts as original collateral, except in consumer transactions. Former Article 9 dealt with deposit accounts only as proceeds of other collateral.

Sales of payment intangibles and promissory notes. Section 9-109 also includes within the scope of this Article most sales of "payment intangibles" (defined in Section 9-102 as general intangibles under which an account debtor's principal obligation is monetary) and "promissory notes" (also defined in Section 9-102). Former Article 9 included sales of accounts and chattel paper, but not sales of payment intangibles or promissory notes. In its inclusion of sales of payment

intangibles and promissory notes, this Article continues the drafting convention found in former Article 9; it provides that the sale of accounts, chattel paper, payment intangibles, or promissory notes creates a "security interest." The definition of "account" in Section 9-102 also has been expanded to include various rights to payment that were general intangibles under former Article 9.

Health-care-insurance receivables. Section 9-109 narrows Article 9's exclusion of transfers of interests in insurance policies by carving out of the exclusion "health-care-insurance receivables" (defined in Section 9-102). A health-care-insurance receivable is included within the definition of "account" in Section 9-102.

Nonpossessory statutory agricultural liens. Section 9-109 also brings nonpossessory statutory agricultural liens within the scope of Article 9.

Consignments. Section 9-109 provides that "true" consignments-bailments for the purpose of sale by the bailee-are security interests covered by Article 9, with certain exceptions. See Section 9-102 (defining "consignment"). Currently, many consignments are subject to Article 9's filing requirements by operation of former Section 2-326.

Supporting obligations and property securing rights to payment. This Article also addresses explicitly (i) obligations, such as guaranties and letters of credit, that support payment or performance of collateral such as accounts, chattel paper, and payment intangibles, and (ii) any property (including real property) that secures a right to payment or performance that is subject to an Article 9 security interest. See Sections 9-203, 9-308.

Commercial tort claims. Section 9-109 expands the scope of Article 9 to include the assignment of commercial tort claims by narrowing the exclusion of tort claims generally. However, this Article continues to exclude tort claims for bodily injury and other nonbusiness tort claims of a natural person. See Section 9-102 (defining "commercial tort claim").

Transfers by States and governmental units of States. Section 9-109 narrows the exclusion of transfers by States and their governmental units. It excludes only transfers covered by another statute (other than a statute generally applicable to security interests) to the extent the statute governs the creation, perfection, priority, or enforcement of security interests.

Nonassignable general intangibles, promissory notes, health-care-insurance receivables, and letter-of-credit rights. This Article enables a security interest to attach to letter-of-credit rights, health-care-insurance receivables, promissory notes, and general

intangibles, including contracts, permits, licenses, and franchises, notwithstanding a contractual or statutory prohibition against or limitation on assignment. This Article explicitly protects third parties against any adverse effect of the creation or attempted enforcement of the security interest. See Sections 9-408, 9-409.

Subject to Sections 9-408 and 9-409 and two other exceptions (Sections 9-406, concerning accounts, chattel paper, and payment intangibles, and 9-407, concerning interests in leased goods), Section 9-401 establishes a baseline rule that the inclusion of transactions and collateral within the scope of Article 9 has no effect on non-Article 9 law dealing with the alienability or inalienability of property. For example, if a commercial tort claim is nonassignable under other applicable law, the fact that a security interest in the claim is within the scope of Article 9 does not override the other applicable law's effective prohibition of assignment.

b. Duties of Secured Party. This Article provides for expanded duties of secured parties.

Release of control. Section 9-208 imposes upon a secured party having control of a deposit account, investment property, or a letter-of-credit right the duty to release control when there is no secured obligation and no commitment to give value. Section 9-209 contains analogous provisions when an account debtor has been notified to pay a secured party.

Information. Section 9-210 expands a secured party's duties to provide the debtor with information concerning collateral and the obligations that it secures.

Default and enforcement. Part 6 also includes some additional duties of secured parties in connection with default and enforcement. See, e.g., Section 9-616 (duty to explain calculation of deficiency or surplus in a consumer-goods transaction).

c. Choice of Law. The choice-of-law rules for the law governing perfection, the effect of perfection or nonperfection, and priority are found in Part 3, Subpart 1 (Sections 9-301 through 9-307). See also Section 9-316.

Where to file: Location of debtor. This Article changes the choice-of-law rule governing perfection (i.e., where to file) for most collateral to the law of the jurisdiction where the debtor is located. See Section 9-301. Under former Article 9, the jurisdiction of the debtor's location governed only perfection and priority of a security interest in accounts, general intangibles, mobile goods, and, for purposes of perfection by filing, chattel paper and investment property.

Determining debtor's location. As a baseline rule, Section 9-307 follows former Section 9-103, under which the location of the debtor is the debtor's place of business (or chief executive office, if the debtor has more than one place of business). Section 9-307 contains three major exceptions. First, a "registered organization," such as a corporation or limited liability company, is located in the State under whose law the debtor is organized, e.g., a corporate debtor's State of incorporation. Second, an individual debtor is located at his or her principal residence. Third, there are special rules for determining the location of the United States and registered organizations organized under the law of the United States.

Location of non-U.S. debtors. If, applying the foregoing rules, a debtor is located in a jurisdiction whose law does not require public notice as a condition of perfection of a nonpossessory security interest, the entity is deemed located in the District of Columbia. See Section 9-307. Thus, to the extent that this Article applies to non-U.S. debtors, perfection could be accomplished in many cases by a domestic filing.

Priority. For tangible collateral such as goods and instruments, Section 9-301 provides that the law applicable to priority and the effect of perfection or nonperfection will remain the law of the jurisdiction where the collateral is located, as under former Section 9-103 (but without the confusing "last event" test). For intangible collateral, such as accounts, the applicable law for priority will be that of the jurisdiction in which the debtor is located.

Possessory security interests; agricultural liens. Perfection, the effect of perfection or nonperfection, and priority of a possessory security interest or an agricultural lien are governed by the law of the jurisdiction where the collateral subject to the security interest or lien is located. See Sections 9-301, 9-302.

Goods covered by certificates of title; deposit accounts; letter-of-credit rights; investment property. This Article includes several refinements to the treatment of choice-of-law matters for goods covered by certificates of title. See Section 9-303. It also provides special choice-of-law rules, similar to those for investment property under current Articles 8 and 9, for deposit accounts (Section 9-304), investment property (Section 9-305), and letter-of-credit rights (Section 9-306).

Change in applicable law. Section 9-316 addresses perfection following a change in applicable law.

d. Perfection. The rules governing perfection of security interests and agricultural liens are found in Part 3, Subpart 2 (Sections 9-308 through 9-316).

Deposit accounts; letter-of-credit rights. With certain exceptions, this Article provides that a security interest in a deposit account or a letter-of-credit right may be perfected only by the secured party's acquiring "control" of the deposit account or letter-of-credit right. See Sections 9-312, 9-314. Under Section 9-104, a secured party has "control" of a deposit account when, with the consent of the debtor, the secured party obtains the depositary bank's agreement to act on the secured party's instructions (including when the secured party becomes the account holder) or when the secured party is itself the depositary bank. The control requirements are patterned on Section 8-106, which specifies the requirements for control of investment property. Under Section 9-107, "control" of a letter-of-credit right occurs when the issuer or nominated person consents to an assignment of proceeds under Section 5-114.

Electronic chattel paper. Section 9-102 includes a new defined term: "electronic chattel paper." Electronic chattel paper is a record or records consisting of information stored in an electronic medium (i.e., it is not written). Perfection of a security interest in electronic chattel paper may be by control or filing. See Sections 9-105 (sui generis definition of control of electronic chattel paper), 9-312 (perfection by filing), 9-314 (perfection by control).

Investment property. The perfection requirements for "investment property" (defined in Section 9-102), including perfection by control under Section 9-106, remain substantially unchanged. However, a new provision in Section 9-314 is designed to ensure that a secured party retains control in "repledge" transactions that are typical in the securities markets.

Instruments, agricultural liens, and commercial tort claims. This Article expands the types of collateral in which a security interest may be perfected by filing to include instruments. See Section 9-312. Agricultural liens and security interests in commercial tort claims also are perfected by filing, under this Article. See Sections 9-308, 9-310.

Sales of payment intangibles and promissory notes. Although former Article 9 covered the outright sale of accounts and chattel paper, sales of most other types of receivables also are financing transactions to which Article 9 should apply. Accordingly, Section 9-102 expands the definition of "account" to include many types of receivables (including "health-care-insurance receivables," defined in Section 9-102) that former Article 9 classified as "general intangibles." It thereby subjects to Article 9's filing system sales of more types of receivables than did former Article 9. Certain sales of payment intangibles- primarily bank loan participation transactions-should not

be subject to the Article 9 filing rules. These transactions fall in a residual category of collateral, "payment intangibles" (general intangibles under which the account debtor's principal obligation is monetary), the sale of which is exempt from the filing requirements of Article 9. See Sections 9-102, 9-109, 9-309 (perfection upon attachment). The perfection rules for sales of promissory notes are the same as those for sales of payment intangibles.

Possessory security interests. Several provisions of this Article address aspects of security interests involving a secured party or a third party who is in possession of the collateral. In particular, Section 9-313 resolves a number of uncertainties under former Section 9-305. It provides that a security interest in collateral in the possession of a third party is perfected when the third party acknowledges in an authenticated record that it holds for the secured party's benefit. Section 9-313 also provides that a third party need not so acknowledge and that its acknowledgment does not impose any duties on it, unless it otherwise agrees. A special rule in Section 9-313 provides that if a secured party already is in possession of collateral, its security interest remains perfected by possession if it delivers the collateral to a third party and the collateral is accompanied by instructions to hold it for the secured party or to redeliver it to the secured party. Section 9-313 also clarifies the limited circumstances under which a security interest in goods covered by a certificate of title may be perfected by the secured party's taking possession.

Automatic perfection. Section 9-309 lists various types of security interests as to which no public-notice step is required for perfection (e.g., purchase-money security interests in consumer goods other than automobiles). This automatic perfection also extends to a transfer of a health-care-insurance receivable to a health-care provider. Those transfers normally will be made by natural persons who receive health-care services; there is little value in requiring filing for perfection in that context. Automatic perfection also applies to security interests created by sales of payment intangibles and promissory notes. Section 9-308 provides that a perfected security interest in collateral supported by a "supporting obligation" (such as an account supported by a guaranty) also is a perfected security interest in the supporting obligation, and that a perfected security interest in an obligation secured by a security interest or lien on property (e.g., a real-property mortgage) also is a perfected security interest in the security interest or lien.

e. Priority; Special Rules for Banks and Deposit Accounts. The rules governing priority of security interests and agricultural liens are

found in Part 3, Subpart 3 (Sections 9-317 through 9-342). This Article includes several new priority rules and some special rules relating to banks and deposit accounts (Sections 9-340 through 9-342).

Purchase-money security interests: General; consumer-goods transactions; inventory. Section 9-103 substantially rewrites the definition of purchase-money security interest (PMSI) (although the term is not formally "defined"). The substantive changes, however, apply only to non-consumer-goods transactions. (Consumer transactions and consumer-goods transactions are discussed below in Comment 4.j.) For non-consumer-goods transactions, Section 9-103 makes clear that a security interest in collateral may be (to some extent) both a PMSI as well as a non-PMSI, in accord with the "dual status" rule applied by some courts under former Article 9 (thereby rejecting the "transformation" rule). The definition provides an even broader conception of a PMSI in inventory, yielding a result that accords with private agreements entered into in response to the uncertainty under former Article 9. It also treats consignments as purchase-money security interests in inventory. Section 9-324 revises the PMSI priority rules, but for the most part without material change in substance. Section 9-324 also clarifies the priority rules for competing PMSIs in the same collateral.

Purchase-money security interests in livestock; agricultural liens. Section 9-324 provides a special PMSI priority, similar to the inventory PMSI priority rule, for livestock. Section 9-322 (which contains the baseline first-to-file-or-perfect priority rule) also recognizes special non-Article 9 priority rules for agricultural liens, which can override the baseline first-in-time rule.

Purchase-money security interests in software. Section 9-324 contains a new priority rule for a software purchase-money security interest. (Section 9-102 includes a definition of "software.") Under Section 9-103, a software PMSI includes a PMSI in software that is used in goods that are also subject to a PMSI. (Note also that the definition of "chattel paper" has been expanded to include records that evidence a monetary obligation and a security interest in specific goods and software used in the goods.)

Investment property. The priority rules for investment property are substantially similar to the priority rules found in former Section 9-115, which was added in conjunction with the 1994 revisions to UCC Article 8. Under Section 9-328, if a secured party has control of investment property (Sections 8-106, 9-106), its security interest is senior to a security interest perfected in another manner (e.g., by filing). Also under Section 9-328, security interests perfected by

control generally rank according to the time that control is obtained or, in the case of a security entitlement or a commodity contract carried in a commodity account, the time when the control arrangement is entered into. This is a change from former Section 9-115, under which the security interests ranked equally. However, as between a securities intermediary's security interest in a security entitlement that it maintains for the debtor and a security interest held by another secured party, the securities intermediary's security interest is senior.

Deposit accounts. This Article's priority rules applicable to deposit accounts are found in Section 9-327. They are patterned on and are similar to those for investment property in former Section 9-115 and Section 9-328 of this Article. Under Section 9-327, if a secured party has control of a deposit account, its security interest is senior to a security interest perfected in another manner (i.e., as cash proceeds). Also under Section 9-327, security interests perfected by control rank according to the time that control is obtained, but as between a depositary bank's security interest and one held by another secured party, the depositary bank's security interest is senior. A corresponding rule in Section 9-340 makes a depositary bank's right of set-off generally senior to a security interest held by another secured party. However, if the other secured party becomes the depositary bank's customer with respect to the deposit account, then its security interest is senior to the depositary bank's security interest and right of set-off. Sections 9-327, 9-340.

Letter-of-credit rights. The priority rules for security interests in letter-of-credit rights are found in Section 9-329. They are somewhat analogous to those for deposit accounts. A security interest perfected by control has priority over one perfected in another manner (i.e., as a supporting obligation for the collateral in which a security interest is perfected). Security interests in a letter-of-credit right perfected by control rank according to the time that control is obtained. However, the rights of a transferee beneficiary or a nominated person are independent and superior to the extent provided in Section 5-114. See Section 9-109(c)(4).

Chattel paper and instruments. Section 9-330 is the successor to former Section 9-308. As under former Section 9-308, differing priority rules apply to purchasers of chattel paper who give new value and take possession (or, in the case of electronic chattel paper, obtain control) of the collateral depending on whether a conflicting security interest in the collateral is claimed merely as proceeds. The principal change relates to the role of knowledge and the effect of an indication of a previous assignment of the collateral. Section 9-330 also affords

priority to purchasers of instruments who take possession in good faith and without knowledge that the purchase violates the rights of the competing secured party. In addition, to qualify for priority, purchasers of chattel paper, but not of instruments, must purchase in the ordinary course of business.

Proceeds. Section 9-322 contains new priority rules that clarify when a special priority of a security interest in collateral continues or does not continue with respect to proceeds of the collateral. Other refinements to the priority rules for proceeds are included in Sections 9-324 (purchase-money security interest priority) and 9-330 (priority of certain purchasers of chattel paper and instruments).

Miscellaneous priority provisions. This Article also includes (i) clarifications of selected good-faith-purchase and similar issues (Sections 9-317, 9-331); (ii) new priority rules to deal with the "double debtor" problem arising when a debtor creates a security interest in collateral acquired by the debtor subject to a security interest created by another person (Section 9-325); (iii) new priority rules to deal with the problems created when a change in corporate structure or the like results in a new entity that has become bound by the original debtor's after-acquired property agreement (Section 9-326); (iv) a provision enabling most transferees of funds from a deposit account or money to take free of a security interest (Section 9-332); (v) substantially rewritten and refined priority rules dealing with accessions and commingled goods (Sections 9-335, 9-336); (vi) revised priority rules for security interests in goods covered by a certificate of title (Section 9-337); and (vii) provisions designed to ensure that security interests in deposit accounts will not extend to most transferees of funds on deposit or payees from deposit accounts and will not otherwise "clog" the payments system (Sections 9-341, 9-342).

Model provisions relating to production-money security interests. Appendix II to this Article contains model definitions and priority rules relating to "production-money security interests" held by secured parties who give new value used in the production of crops. Because no consensus emerged on the wisdom of these provisions during the drafting process, the sponsors make no recommendation on whether these model provisions should be enacted.

f. Proceeds. Section 9-102 contains an expanded definition of "proceeds" of collateral which includes additional rights and property that arise out of collateral, such as distributions on account of collateral and claims arising out of the loss or nonconformity of, defects in, or damage to collateral. The term also includes collections on account of "supporting obligations," such as guarantees.

g. Part 4: Additional Provisions Relating to Third-Party Rights. New Part 4 contains several provisions relating to the relationships between certain third parties and the parties to secured transactions. It contains new Sections 9-401 (replacing former Section 9-311) (alienability of debtor's rights), 9-402 (replacing former Section 9-317) (secured party not obligated on debtor's contracts), 9-403 (replacing former Section 9-206) (agreement not to assert defenses against assignee), 9-404, 9-405, and 9-406 (replacing former Section 9-318) (rights acquired by assignee, modification of assigned contract, discharge of account debtor, restrictions on assignment of account, chattel paper, promissory note, or payment intangible ineffective), 9-407 (replacing some provisions of former Section 2A-303) (restrictions on creation or enforcement of security interest in leasehold interest or lessor's residual interest ineffective). It also contains new Sections 9-408 (restrictions on assignment of promissory notes, health-care-insurance receivables ineffective, and certain general intangibles ineffective) and 9-409 (restrictions on assignment of letter-of-credit rights ineffective), which are discussed above.

h. Filing. Part 5 (formerly Part 4) of Article 9 has been substantially rewritten to simplify the statutory text and to deal with numerous problems of interpretation and implementation that have arisen over the years.

Medium-neutrality. This Article is "medium-neutral"; that is, it makes clear that parties may file and otherwise communicate with a filing office by means of records communicated and stored in media other than on paper.

Identity of person who files a record; authorization. Part 5 is largely indifferent as to the person who effects a filing. Instead, it addresses whose authorization is necessary for a person to file a record with a filing office. The filing scheme does not contemplate that the identity of a "filer" will be a part of the searchable records. This approach is consistent with, and a necessary aspect of, eliminating signatures or other evidence of authorization from the system (except to the extent that filing offices may choose to employ authentication procedures in connection with electronic communications). As long as the appropriate person authorizes the filing, or, in the case of a termination statement, the debtor is entitled to the termination, it is largely insignificant whether the secured party or another person files any given record.

Section 9-509 collects in one place most of the rules that determine when a record may be filed. In general, the debtor's authorization is required for the filing of an initial financing statement or an

amendment that adds collateral. With one further exception, a secured party of record's authorization is required for the filing of other amendments. The exception arises if a secured party has failed to provide a termination statement that is required because there is no outstanding secured obligation or commitment to give value. In that situation, a debtor is authorized to file a termination statement indicating that it has been filed by the debtor.

Financing statement formal requisites. The formal requisites for a financing statement are set out in Section 9-502. A financing statement must provide the name of the debtor and the secured party and an indication of the collateral that it covers. Sections 9-503 and 9-506 address the sufficiency of a name provided on a financing statement and clarify when a debtor's name is correct and when an incorrect name is insufficient. Section 9-504 addresses the indication of collateral covered. Under Section 9-504, a super-generic description (e.g., "all assets" or "all personal property") in a financing statement is a sufficient indication of the collateral. (Note, however, that a super-generic description is inadequate for purposes of a security agreement. See Sections 9-108, 9-203.) To facilitate electronic filing, this Article does not require that the debtor's signature or other authorization appear on a financing statement. Instead, it prohibits the filing of unauthorized financing statements and imposes liability upon those who violate the prohibition. See Sections 9-509, 9-626.

Filing-office operations. Part 5 contains several provisions governing filing operations. First, it prohibits the filing office from rejecting an initial financing statement or other record for a reason other than one of the few that are specified. See Sections 9-520, 9-516. Second, the filing office is obliged to link all subsequent records (e.g., assignments, continuation statements, etc.) to the initial financing statement to which they relate. See Section 9-519. Third, the filing office may delete a financing statement and related records from the files no earlier than one year after lapse (lapse normally is five years after the filing date), and then only if a continuation statement has not been filed. See Sections 9-515, 9-519, 9-522. Thus, a financing statement and related records would be discovered by a search of the files even after the filing of a termination statement. This approach helps eliminate filing-office discretion and also eases problems associated with multiple secured parties and multiple partial assignments. Fourth, Part 5 mandates performance standards for filing offices. See Sections 9-519, 9-520, 9-523. Fifth, it provides for the promulgation of filing-office rules to deal with details best left out of

the statute and requires the filing office to submit periodic reports. See Sections 9-526, 9-527.

Defaulting or missing secured parties and fraudulent filings: Defaulting or missing secured parties and fraudulent filings. In some areas of the country, serious problems have arisen from fraudulent financing statements that are filed against public officials and other persons. This Article addresses the fraud problem by providing the opportunity for a debtor to file a termination statement when a secured party wrongfully refuses or fails to provide a termination statement. See Section 9-509. This opportunity also addresses the problem of secured parties that simply disappear through mergers or liquidations. In addition, Section 9-518 affords a statutory method by which a debtor who believes that a filed record is inaccurate or was wrongfully filed may indicate that fact in the files, albeit without affecting the efficacy, if any, of the challenged record.

Extended period of effectiveness for certain financing statements. Section 9-515 contains an exception to the usual rule that financing statements are effective for five years unless a continuation statement is filed to continue the effectiveness for another five years. Under that Section, an initial financing statement filed in connection with a "public-finance transaction" or a "manufactured-home transaction" (terms defined in Section 9-102) is effective for 30 years.

National form of financing statement and related forms. Section 9-521 provides for uniform, national written forms of financing statements and related written records that must be accepted by a filing office that accepts written records.

i. Default and Enforcement. Part 6 of Article 9 extensively revises former Part 5. Provisions relating to enforcement of consumer-goods transactions and consumer transactions are discussed in Comment 4.j.

Debtor, secondary obligor; waiver. Section 9-602 clarifies the identity of persons who have rights and persons to whom a secured party owes specified duties under Part 6. Under that Section, the rights and duties are enjoyed by and run to the "debtor," defined in Section 9-102 to mean any person with a non-lien property interest in collateral, and to any "obligor." However, with one exception (Section 9-616, as it relates to a consumer obligor), the rights and duties concerned affect non-debtor obligors only if they are "secondary obligors." "Secondary obligor" is defined in Section 9-102 to include one who is secondarily obligated on the secured obligation, e.g., a guarantor, or one who has a right of recourse against the debtor or another obligor with respect to an obligation secured by collateral. However, under Section 9-628, the secured party is relieved from any

duty or liability to any person unless the secured party knows that the person is a debtor or obligor. Resolving an issue on which courts disagreed under former Article 9, this Article generally prohibits waiver by a secondary obligor of its rights and a secured party's duties under Part 6. See Section 9-602. However, Section 9-624 permits a secondary obligor or debtor to waive the right to notification of disposition of collateral and, in a non-consumer transaction, the right to redeem collateral, if the secondary obligor or debtor agrees to do so after default.

Rights of collection and enforcement of collateral. Section 9-607 explains in greater detail than former 9-502 the rights of a secured party who seeks to collect or enforce collateral, including accounts, chattel paper, and payment intangibles. It also sets forth the enforcement rights of a depositary bank holding a security interest in a deposit account maintained with the depositary bank. Section 9-607 relates solely to the rights of a secured party vis-a-vis a debtor with respect to collections and enforcement. It does not affect the rights or duties of third parties, such as account debtors on collateral, which are addressed elsewhere (e.g., Section 9-406). Section 9-608 clarifies the manner in which proceeds of collection or enforcement are to be applied.

Disposition of collateral: Warranties of title. Section 9-610 imposes on a secured party who disposes of collateral the warranties of title, quiet possession, and the like that are otherwise applicable under other law. It also provides rules for the exclusion or modification of those warranties.

Disposition of collateral: Notification, application of proceeds, surplus and deficiency, other effects. Section 9-611 requires a secured party to give notification of a disposition of collateral to other secured parties and lienholders who have filed financing statements against the debtor covering the collateral. (That duty was eliminated by the 1972 revisions to Article 9.) However, that Section relieves the secured party from that duty when the secured party undertakes a search of the records and a report of the results is unreasonably delayed. Section 9-613, which applies only to non-consumer transactions, specifies the contents of a sufficient notification of disposition and provides that a notification sent 10 days or more before the earliest time for disposition is sent within a reasonable time. Section 9-615 addresses the application of proceeds of disposition, the entitlement of a debtor to any surplus, and the liability of an obligor for any deficiency. Section 9-619 clarifies the effects of a disposition by a secured party, including the rights of transferees of the collateral.

Rights and duties of secondary obligor. Section 9-618 provides that a secondary obligor obtains the rights and assumes the duties of a secured party if the secondary obligor receives an assignment of a secured obligation, agrees to assume the secured party's rights and duties upon a transfer to it of collateral, or becomes subrogated to the rights of the secured party with respect to the collateral. The assumption, transfer, or subrogation is not a disposition of collateral under Section 9-610, but it does relieve the former secured party of further duties. Former Section 9-504(5) did not address whether a secured party was relieved of its duties in this situation.

Transfer of record or legal title. Section 9-619 contains a new provision making clear that a transfer of record or legal title to a secured party is not of itself a disposition under Part 6. This rule applies regardless of the circumstances under which the transfer of title occurs.

Strict foreclosure. Section 9-620, unlike former Section 9-505, permits a secured party to accept collateral in partial satisfaction, as well as full satisfaction, of the obligations secured. This right of strict foreclosure extends to intangible as well as tangible property. Section 9-622 clarifies the effects of an acceptance of collateral on the rights of junior claimants. It rejects the approach taken by some courts-deeming a secured party to have constructively retained collateral in satisfaction of the secured obligations-in the case of a secured party's unreasonable delay in the disposition of collateral. Instead, unreasonable delay is relevant when determining whether a disposition under Section 9-610 is commercially reasonable.

Effect of noncompliance: "Rebuttable presumption" test. Section 9-626 adopts the "rebuttable presumption" test for the failure of a secured party to proceed in accordance with certain provisions of Part 6. (As discussed in Comment 4.j., the test does not necessarily apply to consumer transactions.) Under this approach, the deficiency claim of a noncomplying secured party is calculated by crediting the obligor with the greater of the actual net proceeds of a disposition and the amount of net proceeds that would have been realized if the disposition had been conducted in accordance with Part 6 (e.g., in a commercially reasonable manner). For non-consumer transactions, Section 9-626 rejects the "absolute bar" test that some courts have imposed; that approach bars a noncomplying secured party from recovering any deficiency, regardless of the loss (if any) the debtor suffered as a consequence of the noncompliance.

"Low-price" dispositions: Calculation of deficiency and surplus. Section 9-615(f) addresses the problem of procedurally regular

dispositions that fetch a low price. Subsection (f) provides a special method for calculating a deficiency if the proceeds of a disposition of collateral to a secured party, a person related to the secured party, or a secondary obligor are "significantly below the range of proceeds that a complying disposition to a person other than the secured party, a person related to the secured party, or a secondary obligor would have brought." ("Person related to" is defined in Section 9-102.) In these situations there is reason to suspect that there may be inadequate incentives to obtain a better price. Consequently, instead of calculating a deficiency (or surplus) based on the actual net proceeds, the deficiency (or surplus) would be calculated based on the proceeds that would have been received in a disposition to a person other than the secured party, a person related to the secured party, or a secondary obligor.

j. Consumer Goods, Consumer-Goods Transactions, and Consumer Transactions. This Article (including the accompanying conforming revisions (see Appendix I)) includes several special rules for "consumer goods," "consumer transactions," and "consumer-goods transactions." Each term is defined in Section 9-102.

(i) Revised Sections 2-502 and 2-716 provide a buyer of consumer goods with enhanced rights to possession of the goods, thereby accelerating the opportunity to achieve "buyer in ordinary course of business" status under Section 1-201.

(ii) Section 9-103(e) (allocation of payments for determining extent of purchase-money status), (f) (purchase-money status not affected by cross-collateralization, refinancing, restructuring, or the like), and (g) (secured party has burden of establishing extent of purchase-money status) do not apply to consumer-goods transactions. Sections 9-103 also provides that the limitation of those provisions to transactions other than consumer-goods transactions leaves to the courts the proper rules for consumer-goods transactions and prohibits the courts from drawing inferences from that limitation.

(iii) Section 9-108 provides that in a consumer transaction a description of consumer goods, a security entitlement, securities account, or commodity account "only by [UCC-defined] type of collateral" is not a sufficient collateral description in a security agreement.

(iv) Sections 9-403 and 9-404 make effective the Federal Trade Commission's anti-holder-in-due-course rule (when applicable), 16 C.F.R. Part 433, even in the absence of the required legend.

(v) The 10-day safe-harbor for notification of a disposition provided by Section 9-612 does not apply in a consumer transaction.

(vi) Section 9-613 (contents and form of notice of disposition) does not apply to a consumer-goods transaction.

(vii) Section 9-614 contains special requirements for the contents of a notification of disposition and a safe-harbor, "plain English" form of notification, for consumer-goods transactions.

(viii) Section 9-616 requires a secured party in a consumer-goods transaction to provide a debtor with a notification of how it calculated a deficiency at the time it first undertakes to collect a deficiency.

(ix) Section 9-620 prohibits partial strict foreclosure with respect to consumer goods collateral and, unless the debtor agrees to waive the requirement in an authenticated record after default, in certain cases requires the secured party to dispose of consumer goods collateral which has been repossessed.

(x) Section 9-626 ("rebuttable presumption" rule) does not apply to a consumer transaction. Section 9-626 also provides that its limitation to transactions other than consumer transactions leaves to the courts the proper rules for consumer transactions and prohibits the courts from drawing inferences from that limitation.

k. Good Faith. Section 9-102 contains a new definition of "good faith" that includes not only "honesty in fact" but also "the observance of reasonable commercial standards of fair dealing." The definition is similar to the ones adopted in connection with other, recently completed revisions of the UCC.

l. Transition Provisions. Part 7 (Sections 9-701 through 9-707) contains transition provisions. Transition from former Article 9 to this Article will be particularly challenging in view of its expanded scope, its modification of choice-of-law rules for perfection and priority, and its expansion of the methods of perfection.

m. Conforming and Related Amendments to Other UCC Articles. Appendix I contains several proposed revisions to the provisions and Comments of other UCC articles. For the most part the revisions are explained in the Comments to the proposed revisions. Cross-references in other UCC articles to Sections of Article 9 also have been revised.

Article 1. Revised Section 1-201 contains revisions to the definitions of "buyer in ordinary course of business," "purchaser," and "security interest."

Articles 2 and 2A. Sections 2-210, 2-326, 2-502, 2-716, 2A-303, and 2A-307 have been revised to address the intersection between Articles 2 and 2A and Article 9.

Article 5. New Section 5-118 is patterned on Section 4-210. It provides for a security interest in documents presented under a letter of

credit in favor of the issuer and a nominated person on the letter of credit.

Article 8. Revisions to Section 8-106, which deals with "control" of securities and security entitlements, conform it to Section 8-302, which deals with "delivery." Revisions to Section 8-110, which deals with a "securities intermediary's jurisdiction," conform it to the revised treatment of a "commodity intermediary's jurisdiction" in Section 9-305. Sections 8-301 and 8-302 have been revised for clarification. Section 8-510 has been revised to conform it to the revised priority rules of Section 9-328. Several Comments in Article 8 also have been revised.

SOUTH CAROLINA REPORTER'S COMMENT

The South Carolina Reporters Notes to Article 9 do not attempt to explain the substantive provisions of the statute or the changes effected by adopting 1999 Official Text. The Official Comment perform those functions. Rather, the South Carolina Reporters Notes address the effect of the 1999 Official Text upon South Carolina case law interpreted under former Article 9 and upon statutes other than the Uniform Commercial Code. See, e.g. Section 36-9-109, Note 2 addressing agricultural liens. In addition, the South Carolina Reporters Notes address Article 9 provisions enacted in South Carolina that are not consistent with the 1999 Official Text. See, e.g., Sections 36-9-109 and 36-9-317 addressing landlords' liens.

Definitions

SECTION 2. Section 36-9-102 of the 1976 Code is amended to read:

"Section 36-9-102. (a) In this chapter:

(1) 'Accession' means goods that are physically united with other goods in such a manner that the identity of the original goods is not lost.

(2) 'Account' except as used in 'account for', means a right to payment of a monetary obligation, whether or not earned by performance, (i) for property that has been or is to be sold, leased, licensed, assigned, or otherwise disposed of, (ii) for services rendered or to be rendered, (iii) for a policy of insurance issued or to be issued, (iv) for a secondary obligation incurred or to be incurred, (v) for energy provided or to be provided, (vi) for the use or hire of a vessel under a charter or other contract, (vii) arising out of the use of a credit or charge card or information contained on or for use with the card, or

(viii) as winnings in a lottery or other game of chance operated or sponsored by a State, governmental unit of a State, or person licensed or authorized to operate the game by a State or governmental unit of a State. The term includes health care insurance receivables. The term does not include (i) rights to payment evidenced by chattel paper or an instrument, (ii) commercial tort claims, (iii) deposit accounts, (iv) investment property, (v) letter-of-credit rights or letters of credit, or (vi) rights to payment for money or funds advanced or sold, other than rights arising out of the use of a credit or charge card or information contained on or for use with the card.

(3) 'Account debtor' means a person obligated on an account, chattel paper, or general intangible. The term does not include persons obligated to pay a negotiable instrument, even if the instrument constitutes part of chattel paper.

(4) 'Accounting', except as used in 'accounting for', means a record:

(A) authenticated by a secured party;

(B) indicating the aggregate unpaid secured obligations as of a date not more than thirty-five days earlier or thirty-five days later than the date of the record; and

(C) identifying the components of the obligations in reasonable detail.

(5) 'Agricultural lien' means an interest, other than a security interest, in farm products:

(A) which secures payment or performance of an obligation for:

(i) goods or services furnished in connection with a debtor's farming operation; or

(ii) rent on real property leased by a debtor in connection with its farming operation;

(B) which is created by statute in favor of a person that:

(i) in the ordinary course of its business furnished goods or services to a debtor in connection with a debtor's farming operation; or

(ii) leased real property to a debtor in connection with the debtor's farming operation; and

(C) whose effectiveness does not depend on the person's possession of the personal property.

(6) 'As-extracted collateral' means:

(A) oil, gas, or other minerals that are subject to a security interest that:

(i) is created by a debtor having an interest in the minerals before extraction; and

(ii) attaches to the minerals as extracted; or

(B) accounts arising out of the sale at the wellhead or minehead of oil, gas, or other minerals in which the debtor had an interest before extraction.

(7) 'Authenticate' means:

(A) to sign; or

(B) with present intent to adopt or accept a record, to attach to or logically associate with the record an electronic sound, symbol, or process.

(8) 'Bank' means an organization that is engaged in the business of banking. The term includes savings banks, savings and loan associations, credit unions, and trust companies.

(9) 'Cash proceeds' means proceeds that are money, checks, deposit accounts, or the like.

(10) 'Certificate of title' means a certificate of title with respect to which a statute provides for the security interest in question to be indicated on the certificate as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the collateral. The term includes another record maintained as an alternative to a certificate of title by the governmental unit that issues certificates of title if a statute permits the security interest in question to be indicated on the record as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the collateral.

(11) 'Chattel paper' means a record or records that evidence both a monetary obligation and a security interest in specific goods, a security interest in specific goods and software used in the goods, a security interest in specific goods and license of software used in the goods, a lease of specific goods, or a lease of specific goods and license of software used in the goods. In this item, 'monetary obligation' means a monetary obligation secured by the goods or owed under a lease of the goods and includes a monetary obligation with respect to software used in the goods.

The term does not include:

(A) charters or other contracts involving the use of hire of a vessel; or

(B) records that evidence a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card.

If a transaction is evidenced by records that include an instrument or series of instruments, the group of records taken together constitutes chattel paper.

(12) 'Collateral' means the property subject to a security interest or agricultural lien. The term includes:

(A) proceeds to which a security interest attaches;

(B) accounts, chattel paper, payment intangibles, and promissory notes that have been sold; and

(C) goods that are the subject of a consignment.

(13) 'Commercial tort claim' means a claim arising in tort with respect to which:

(A) the claimant is an organization; or

(B) the claimant is an individual and the claim:

(i) arose in the course of the claimant's business or profession; and

(ii) does not include damages arising out of personal injury to or the death of an individual.

(14) 'Commodity account' means an account maintained by a commodity intermediary in which a commodity contract is carried for a commodity customer.

(15) 'Commodity contract' means a commodity futures contract, an option on a commodity futures contract, a commodity option, or another contract if the contract or option is:

(A) traded on or subject to the rules of a board of trade that has been designated as a contract market for such a contract pursuant to federal commodities laws; or

(B) traded on a foreign commodity board of trade, exchange, or market, and is carried on the books of a commodity intermediary for a commodity customer.

(16) 'Commodity customer' means a person for which a commodity intermediary carries a commodity contract on its books.

(17) 'Commodity intermediary' means a person that:

(A) is registered as a futures commission merchant under federal commodities law; or

(B) in the ordinary course of its business provides clearance or settlement services for a board of trade that has been designated as a contract market pursuant to federal commodities law.

(18) 'Communicate' means:

(A) to send a written or other tangible record;

(B) to transmit a record by any means agreed upon by the persons sending and receiving the record; or

(C) in the case of transmission of a record to or by a filing office, to transmit a record by any means prescribed by filing-office rule.

(19) 'Consignee' means a merchant to which goods are delivered in a consignment.

(20) 'Consignment' means a transaction, regardless of its form, in which a person delivers goods to a merchant for the purpose of sale and:

(A) the merchant:

(i) deals in goods of that kind under a name other than the name of the person making delivery;

(ii) is not an auctioneer; and

(iii) is not generally known by its creditors to be substantially engaged in selling the goods of others;

(B) with respect to each delivery, the aggregate value of the goods is one thousand dollars or more at the time of delivery;

(C) the goods are not consumer goods immediately before delivery; and

(D) the transaction does not create a security interest that secures an obligation.

(21) 'Consignor' means a person that delivers goods to a consignee in a consignment.

(22) 'Consumer debtor' means a debtor in a consumer transaction.

(23) 'Consumer goods' means goods that are used or bought for use primarily for personal, family, or household purposes.

(24) 'Consumer-goods transaction' means a consumer transaction in which:

(A) an individual incurs an obligation primarily for personal, family, or household purposes; and

(B) a security interest in consumer goods secures the obligation.

(25) 'Consumer obligor' means an obligor who is an individual and who incurred the obligation as part of a transaction entered into primarily for personal, family, or household purposes.

(26) 'Consumer transaction' means a transaction in which (i) an individual incurs an obligation primarily for personal, family, or household purposes, (ii) a security interest secures the obligation, and (iii) the collateral is held or acquired primarily for personal, family, or household purposes. The term includes consumer-goods transactions.

(27) 'Continuation statement' means an amendment of a financing statement which:

(A) identifies, by its file number, the initial financing statement to which it relates; and

(B) indicates that it is a continuation statement for, or that it is filed to continue the effectiveness of, the identified financing statement.

(28) 'Debtor' means:

(A) a person having an interest, other than a security interest or other lien, in the collateral, whether or not the person is an obligor;

(B) a seller of accounts, chattel paper, payment intangibles, or promissory notes; or

(C) a consignee.

(29) 'Deposit account' means a demand, time, savings, passbook, or similar account maintained with a bank. The term does not include investment property or accounts evidenced by an instrument.

(30) 'Document' means a document of title or a receipt of the type described in Section 36-7-201(2).

(31) 'Electronic chattel paper' means chattel paper evidenced by a record or records consisting of information stored in an electronic medium.

(32) 'Encumbrance' means a right, other than an ownership interest, in real property. The term includes mortgages and other liens on real property.

(33) 'Equipment' means goods other than inventory, farm products, or consumer goods.

(34) 'Farm products' means goods, other than standing timber, with respect to which the debtor is engaged in a farming operation and which are:

(A) crops grown, growing, or to be grown, including:

(i) crops produced on trees, vines, and bushes; and

(ii) aquatic goods produced in aquacultural operations;

(B) livestock, born or unborn, including aquatic goods produced in aquacultural operations;

(C) supplies used or produced in a farming operation; or

(D) products of crops or livestock in their unmanufactured states.

(35) 'Farming operation' means raising, cultivating, propagating, fattening, grazing, or any other farming, livestock, or aquacultural operation.

(36) 'File number' means the number assigned to an initial financing statement pursuant to Section 36-9-519(a).

(37) 'Filing office' means an office designated in Section 36-9-501 as the place to file a financing statement.

(38) 'Filing-office rule' means a rule adopted pursuant to Section 36-9-526.

(39) 'Financing statement' means a record or records composed of an initial financing statement and any filed record relating to the initial financing statement.

(40) 'Fixture filing' means the filing of a financing statement covering goods that are or are to become fixtures and satisfying Section 36-9-502(a) and (b). The term includes the filing of a financing statement covering goods of a transmitting utility which are or are to become fixtures.

(41) 'Fixtures' means goods that have become so related to particular real property that an interest in them arises under real property law.

(42) 'General intangible' means any personal property, including things in action, other than accounts, chattel paper, commercial tort claims, deposit accounts, documents, goods, instruments, investment property, letter-of-credit rights, letters of credit, money, and oil, gas, or other minerals before extraction. The term includes payment intangibles and software.

(43) 'Good faith' means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(44) 'Goods' means all things that are movable when a security interest attaches. The term includes (i) fixtures, (ii) standing timber that is to be cut and removed under a conveyance or contract for sale, (iii) the unborn young of animals, (iv) crops grown, growing, or to be grown, even if the crops are produced on trees, vines, or bushes, and (v) manufactured homes. The term also includes a computer program embedded in goods and any supporting information provided in connection with a transaction relating to the program if (i) the program is associated with the goods in such a manner that it customarily is considered part of the goods, or (ii) by becoming the owner of the goods, a person acquires a right to use the program in connection with the goods. The term does not include a computer program embedded in goods that consist solely of the medium in which the program is embedded. The term also does not include accounts, chattel paper, commercial tort claims, deposit accounts, documents, general intangibles, instruments, investment property, letter-of-credit rights, letters of credit, money, or oil, gas, or other minerals before extraction.

(45) 'Governmental unit' means a subdivision, agency, department, county, parish, municipality, or other unit of the government of the United States, a State, or a foreign country. The term includes an organization having a separate corporate existence if the organization is eligible to issue debt on which interest is exempt from income taxation under the laws of the United States.

(46) 'Health care insurance receivable' means an interest in or claim under a policy of insurance which is a right to payment of a monetary obligation for health care goods or services provided.

(47) 'Instrument' means a negotiable instrument or any other writing that evidences a right to the payment of a monetary obligation, is not itself a security agreement or lease, and is of a type that in ordinary course of business is transferred by delivery with any necessary endorsement or assignment. The term does not include (i) investment property, (ii) letters of credit, or (iii) writings that evidence a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card.

(48) 'Inventory' means goods, other than farm products, which:

(A) are leased by a person as lessor;

(B) are held by a person for sale or lease or to be furnished under a contract of service;

(C) are furnished by a person under a contract of service; or

(D) consist of raw materials, work in process, or materials used or consumed in a business.

(49) 'Investment property' means a security, whether certificated or uncertificated, security entitlement, securities account, commodity contract, or commodity account.

(50) 'Jurisdiction of organization', with respect to a registered organization, means the jurisdiction under whose law the organization is organized.

(51) 'Letter-of-credit right' means a right to payment or performance under a letter of credit, whether or not the beneficiary has demanded or is at the time entitled to demand payment or performance. The term does not include the right of a beneficiary to demand payment or performance under a letter of credit.

(52) 'Lien creditor' means:

(A) a creditor that has acquired a lien on the property involved by attachment, levy, or the like;

(B) an assignee for benefit of creditors from the time of assignment;

(C) a trustee in bankruptcy from the date of the filing of the petition; or

(D) a receiver in equity from the time of appointment.

(53) 'Manufactured home' means a structure, transportable in one or more sections which, in the traveling mode, is eight body feet or more in width or forty body feet or more in length, or, when erected on site, is three hundred twenty or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or

without a permanent foundation when connected to the required utilities, and includes plumbing, heating, air-conditioning, and electrical systems contained therein. The term includes any structure that meets all of the requirements of this item except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the United States Secretary of Housing and Urban Development and complies with the standards established under Title 42 of the United States Code.

(54) 'Manufactured-home transaction' means a secured transaction:

(A) that creates a purchase-money security interest in a manufactured home, other than a manufactured home held as inventory; or

(B) in which a manufactured home, other than a manufactured home held as inventory, is the primary collateral.

(55) 'Mortgage' means a consensual interest in real property, including fixtures, which secures payment or performance of an obligation.

(56) 'New debtor' means a person that becomes bound as debtor under Section 36-9-203(d) by a security agreement previously entered into by another person.

(57) 'New value' means (i) money, (ii) money's worth in property, services, or new credit, or (iii) release by a transferee of an interest in property previously transferred to the transferee. The term does not include an obligation substituted for another obligation.

(58) 'Noncash proceeds' means proceeds other than cash proceeds.

(59) 'Obligor' means a person that, with respect to an obligation secured by a security interest in or an agricultural lien on the collateral, (i) owes payment or other performance of the obligation, (ii) has provided property other than the collateral to secure payment or other performance of the obligation, or (iii) is otherwise accountable in whole or in part for payment or other performance of the obligation. The term does not include issuers or nominated persons under a letter of credit.

(60) 'Original debtor', except at used in Section 36-9-310(c), means a person that, as debtor, entered into a security agreement to which a new debtor has become bound under Section 36-9-203(d).

(61) 'Payment intangible' means a general intangible under which the account debtor's principal obligation is a monetary obligation.

(62) 'Person related to', with respect to an individual, means:

(A) the spouse of the individual;

(B) a brother, brother-in-law, sister, or sister-in-law of the individual;

(C) an ancestor or lineal descendant of the individual or the individual's spouse; or

(D) any other relative, by blood or marriage, of the individual or the individual's spouse who shares the same home with the individual.

(63) 'Person related to', with respect to an organization, means:

(A) a person directly or indirectly controlling, controlled by, or under common control with the organization;

(B) an officer or director of, or a person performing similar functions with respect to, the organization;

(C) an officer or director of, or a person performing similar functions with respect to, a person described in subitem (A);

(D) the spouse of an individual described in subitem (A), (B), or (C); or

(E) an individual who is related by blood or marriage to an individual described in subitem (A), (B), (C), or (D) and shares the same home with the individual.

(64) 'Proceeds', except as used in Section 36-9-609(b), means the following property:

(A) whatever is acquired upon the sale, lease, license, exchange, or other disposition of collateral;

(B) whatever is collected on, or distributed on account of, collateral;

(C) rights arising out of collateral;

(D) to the extent of the value of collateral, claims arising out of the loss, nonconformity, or interference with the use of, defects or infringement of rights in, or damage to, the collateral; or

(E) to the extent of the value of collateral and to the extent payable to the debtor or the secured party, insurance payable by reason of the loss or nonconformity of, defects or infringement of rights in, or damage to, the collateral.

(65) 'Promissory note' means an instrument that evidences a promise to pay a monetary obligation, does not evidence an order to pay, and does not contain an acknowledgment by a bank that the bank has received for deposit a sum of money or funds.

(66) 'Proposal' means a record authenticated by a secured party which includes the terms on which the secured party is willing to accept collateral in full or partial satisfaction of the obligation it secures pursuant to Sections 36-9-620, 36-9-621, and 36-9-622.

(67) 'Public-finance transaction' means a secured transaction in connection with which:

(A) debt securities are issued;

(B) all or a portion of the securities issued have an initial stated maturity of at least twenty years; and

(C) the debtor, obligor, secured party, account debtor or other person obligated on collateral, assignor or assignee of a secured obligation, or assignor or assignee of a security interest is a State or a governmental unit of a State.

(68) 'Public organic record' means a record that is available to the public for inspection and is:

(A) a record consisting of the record initially filed with or issued by a State or the United States to form or organize an organization and any record filed with or issued by the State or the United States which amends or restates the initial record;

(B) an organic record of a business trust consisting of the record initially filed with a State and any record filed with the State which amends or restates the initial record, if a statute of the State governing business trusts requires that the record be filed with the State; or

(C) a record consisting of legislation enacted by the legislature of a State or the Congress of the United States which forms or organizes an organization, any record amending the legislation, and any record filed with or issued by the State or the United States which amends or restates the name of the organization.

(69) 'Pursuant to commitment', with respect to an advance made or other value given by a secured party, means pursuant to the secured party's obligation, whether or not a subsequent event of default or other event not within the secured party's control has relieved or may relieve the secured party from its obligation.

(70) 'Record', except as used in 'for record', 'of record', 'record or legal title', and 'record owner', means information that is inscribed on a tangible medium or which is stored in an electronic or other medium and is retrievable in perceivable form.

(71) 'Registered organization' means an organization formed or organized solely under the law of a single State or the United States by the filing of a public organic record with, the issuance of a public organic record by, or the enactment of legislation by the State or the United States. The term includes a business trust that is formed or organized under the law of a single State if a statute of the State governing business trusts requires that the business trust's organic record be filed with the State.

(72) 'Secondary obligor' means an obligor to the extent that the:

(A) obligor's obligation is secondary; or

(B) obligor has a right of recourse with respect to an obligation secured by collateral against the debtor, another obligor, or property of either.

(73) 'Secured party' means a:

(A) person in whose favor a security interest is created or provided for under a security agreement, whether or not any obligation to be secured is outstanding;

(B) person that holds an agricultural lien;

(C) consignor;

(D) person to which accounts, chattel paper, payment intangibles, or promissory notes have been sold;

(E) trustee, indenture trustee, agent, collateral agent, or other representative in whose favor a security interest or agricultural lien is created or provided for; or

(F) person that holds a security interest arising under Section 36-2-401, 36-2-505, 36-2-711(3), 36-2A-508(5), 36-4-210, or 36-5-118.

(74) 'Security agreement' means an agreement that creates or provides for a security interest.

(75) 'Send', in connection with a record or notification, means to:

(A) deposit in the mail, deliver for transmission, or transmit by any other usual means of communication, with postage or cost of transmission provided for, addressed to any address reasonable under the circumstances; or

(B) cause the record or notification to be received within the time that it would have been received if properly sent under subitem (A).

(76) 'Software' means a computer program and any supporting information provided in connection with a transaction relating to the program. The term does not include a computer program that is included in the definition of goods.

(77) '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.

(78) 'Supporting obligation' means a letter-of-credit right or secondary obligation that supports the payment or performance of an account, chattel paper, a document, a general intangible, an instrument, or investment property.

(79) 'Tangible chattel paper' means chattel paper evidenced by a record or records consisting of information that is inscribed on a tangible medium.

(80) 'Termination statement' means an amendment of a financing statement which:

(A) identifies, by its file number, the initial financing statement to which it relates; and

(B) indicates either that it is a termination statement or that the identified financing statement is no longer effective.

(81) 'Transmitting utility' means a person primarily engaged in the business of:

(A) operating a railroad, subway, street railway, or trolley bus;

(B) transmitting communications electrically, electromagnetically, or by light;

(C) transmitting goods by pipeline or sewer; or

(D) transmitting or producing and transmitting electricity, steam, gas, or water.

(b) The following definitions in other chapters apply to this chapter:

'Beneficiary' Section 36-5-102.

'Broker' Section 36-8-102.

'Certificated security' Section 36-8-102.

'Check' Section 36-3-104.

'Clearing corporation' Section 36-8-102.

'Contract for sale' Section 36-2-106.

'Customer' Section 36-4-104.

'Entitlement holder' Section 36-8-102.

'Financial asset' Section 36-8-102.

'Holder in due course' Section 36-3-302.

'Issuer' (with respect to a letter of credit or letter-of-credit right) Section 36-5-103.

'Issuer' (with respect to a security) Section 36-8-201.

'Lease' Section 36-2A-103.

'Lease agreement' Section 36-2A-103.

'Lease contract' Section 36-2A-103.

'Leasehold interest' Section 36-2A-103.

'Lessee' Section 36-2A-103.

'Lessee in ordinary course of business' Section 36-2A-103.

'Lessor' Section 36-2A-103.

'Lessor's residual interest' Section 36-2A-103.

'Letter of credit' Section 36-5-103.

'Merchant' Section 36-2-104.

'Negotiable instrument' Section 36-3-104.
'Note' Section 36-3-104.
'Sale' Section 36-2-106.
'Securities account' Section 36-8-501.
'Securities intermediary' Section 36-8-102.
'Security' Section 36-8-102.
'Security certificate' Section 36-8-102.
'Security entitlement' Section 36-8-102.
'Uncertificated security' Section 36-8-102.

(c) In this chapter:

(1) 'Lease' means a transfer of the right to possession and use of goods for a period in return for consideration. The term includes a sublease unless the context clearly indicates otherwise. The term does include a sale, including a sale on approval or a sale or return, or retention or creation of a security interest.

(2) 'Lease agreement' means the bargain, with respect to the lease, of the lessor and the lessee in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance. Unless the context clearly indicates otherwise, the term includes a sublease agreement.

(3) 'Lease contract' means the total legal obligation that results from the lease agreement and applicable rules of law. Unless the context clearly indicates otherwise, the term includes a sublease contract.

(4) 'Lessor interest' means the interest of the lessor or the lessee under a lease contract.

(5) 'Lessee' means a person who acquires the right to possession and use of goods under a lease. Unless the context clearly indicates otherwise, the term includes a sublessee.

(6) 'Lessee in ordinary course of business' means a person that leases goods in good faith, without knowledge that the lease violates the rights of another person, and in the ordinary course from a person, other than a pawn broker, in the business of selling or leasing goods of that kind. A person leases in ordinary course if the lease to the person comports with the usual or customary practices in the kind of business in which the lessor is engaged or with the lessor's own usual or customary practices. A lessee in the ordinary course of business may lease for cash, by exchange of other property, or on security or unsecured credit, and may acquire goods or documents of title under a preexisting contract. Only a lessee that takes possession of the goods or has a right to recover the goods from the lessor may be a lessee in the ordinary course of business. A person that acquires goods in a

transfer in bulk or has security for or in total or partial satisfaction of a money debt is not a lessee in the ordinary course of business.

(7) 'Lessor' means the person who transfers the right to possession and use of goods under a lease. Unless the context clearly indicates otherwise, the term includes sublessor.

(8) 'Lessor's residual interest' means the lessor's interest in the goods after expiration, termination, or cancellation of the lease contract.

(9) 'Applicant' means a person at whose request or for whose account a letter of credit is issued. The term includes a person who requests an issuer to issue a letter of credit on behalf of another if the person making the request undertakes an obligation to reimburse the issuer.

(10) 'Nominated person' means a person whom the issuer (i) designates or authorizes to pay, accept, negotiate, or otherwise give value under a letter of credit and (ii) undertakes by agreement or custom and practice to reimburse.

(11) 'Proceeds of a letter of credit' means the cash, check accepted draft, or other item of value paid or delivered upon honor or giving of value by the issuer or any nominated person under the letter of credit. The term does not include a beneficiary's drawing rights or documents presented by the beneficiary.

(12) 'Prove' with respect to a fact means to meet the burden of establishing the fact (Section 36-1-201(8)).

(d) Chapter 1 contains general definitions and principles of construction and interpretation applicable throughout this chapter."

OFFICIAL COMMENT

1. Source. All terms that are defined in Article 9 and used in more than one Section are consolidated in this Section. Note that the definition of "security interest" is found in Section 1-201, not in this Article, and has been revised. See Appendix I. Many of the definitions in this Section are new; many others derive from those in former Section 9-105. The following Comments also indicate other Sections of former Article 9 that defined (or explained) terms.

2. Parties to Secured Transactions.

a. "Debtor"; "Obligor"; "Secondary Obligor." Determining whether a person was a "debtor" under former Section 9-105(1)(d) required a close examination of the context in which the term was used. To reduce the need for this examination, this Article redefines "debtor" and adds new defined terms, "secondary obligor" and "obligor." In the context of Part 6 (default and enforcement), these definitions

distinguish among three classes of persons: (i) those persons who may have a stake in the proper enforcement of a security interest by virtue of their non-lien property interest (typically, an ownership interest) in the collateral, (ii) those persons who may have a stake in the proper enforcement of the security interest because of their obligation to pay the secured debt, and (iii) those persons who have an obligation to pay the secured debt but have no stake in the proper enforcement of the security interest. Persons in the first class are debtors. Persons in the second class are secondary obligors if any portion of the obligation is secondary or if the obligor has a right of recourse against the debtor or another obligor with respect to an obligation secured by collateral. One must consult the law of suretyship to determine whether an obligation is secondary. The Restatement (3d), Suretyship and Guaranty ‘1 (1996), contains a useful explanation of the concept. Obligors in the third class are neither debtors nor secondary obligors. With one exception (Section 9-616, as it relates to a consumer obligor), the rights and duties provided by Part 6 affect non-debtor obligors only if they are “secondary obligors.”

By including in the definition of “debtor” all persons with a property interest (other than a security interest in or other lien on collateral), the definition includes transferees of collateral, whether or not the secured party knows of the transfer or the transferee’s identity. Exculpatory provisions in Part 6 protect the secured party in that circumstance. See Sections 9-605 and 9-628. The definition renders unnecessary former Section 9-112, which governed situations in which collateral was not owned by the debtor. The definition also includes a “consignee,” as defined in this Section, as well as a seller of accounts, chattel paper, payment intangibles, or promissory notes.

Secured parties and other lienholders are excluded from the definition of “debtor” because the interests of those parties normally derive from and encumber a debtor’s interest. However, if in a separate secured transaction a secured party grants, as debtor, a security interest in its own interest (i.e., its security interest and any obligation that it secures), the secured party is a debtor in that transaction. This typically occurs when a secured party with a security interest in specific goods assigns chattel paper.

Consider the following examples:

Example 1: Behnfeldt borrows money and grants a security interest in her Miata to secure the debt. Behnfeldt is a debtor and an obligor.

Example 2: Behnfeldt borrows money and grants a security interest in her Miata to secure the debt. Bruno co-signs a negotiable note as maker. As before, Behnfeldt is the debtor and an obligor. As an

accommodation party (see Section 3-419), Bruno is a secondary obligor. Bruno has this status even if the note states that her obligation is a primary obligation and that she waives all suretyship defenses.

Example 3: Behnfeldt borrows money on an unsecured basis. Bruno co-signs the note and grants a security interest in her Honda to secure her obligation. Inasmuch as Behnfeldt does not have a property interest in the Honda, Behnfeldt is not a debtor. Having granted the security interest, Bruno is the debtor. Because Behnfeldt is a principal obligor, she is not a secondary obligor. Whatever the outcome of enforcement of the security interest against the Honda or Bruno's secondary obligation, Bruno will look to Behnfeldt for her losses. The enforcement will not affect Behnfeldt's aggregate obligations.

When the principal obligor (borrower) and the secondary obligor (surety) each has granted a security interest in different collateral, the status of each is determined by the collateral involved.

Example 4: Behnfeldt borrows money and grants a security interest in her Miata to secure the debt. Bruno co-signs the note and grants a security interest in her Honda to secure her obligation. When the secured party enforces the security interest in Behnfeldt's Miata, Behnfeldt is the debtor, and Bruno is a secondary obligor. When the secured party enforces the security interest in the Honda, Bruno is the "debtor." As in Example 3, Behnfeldt is an obligor, but not a secondary obligor.

b. "Secured Party." The secured party is the person in whose favor the security interest has been created, as determined by reference to the security agreement. This definition controls, among other things, which person has the duties and potential liability that Part 6 imposes upon a secured party. The definition of "secured party" also includes a "consignee," a person to which accounts, chattel paper, payment intangibles, or promissory notes have been sold, and the holder of an agricultural lien.

The definition of "secured party" clarifies the status of various types of representatives. Consider, for example, a multi-bank facility under which Bank A, Bank B, and Bank C are lenders and Bank A serves as the collateral agent. If the security interest is granted to the banks, then they are the secured parties. If the security interest is granted to Bank A as collateral agent, then Bank A is the secured party.

c. Other Parties. A "consumer obligor" is defined as the obligor in a consumer transaction. Definitions of "new debtor" and "original debtor" are used in the special rules found in Sections 9-326 and 9-508.

3. Definitions Relating to Creation of a Security Interest.

a. "Collateral." As under former Section 9-105, "collateral" is the property subject to a security interest and includes accounts and chattel paper that have been sold. It has been expanded in this Article. The term now explicitly includes proceeds subject to a security interest. It also reflects the broadened scope of the Article. It includes property subject to an agricultural lien as well as payment intangibles and promissory notes that have been sold.

b. "Security Agreement." The definition of "security agreement" is substantially the same as under former Section 9-105-an agreement that creates or provides for a security interest. However, the term frequently was used colloquially in former Article 9 to refer to the document or writing that contained a debtor's security agreement. This Article eliminates that usage, reserving the term for the more precise meaning specified in the definition.

Whether an agreement creates a security interest depends not on whether the parties intend that the law characterize the transaction as a security interest but rather on whether the transaction falls within the definition of "security interest" in Section 1-201. Thus, an agreement that the parties characterize as a "lease" of goods may be a "security agreement," notwithstanding the parties' stated intention that the law treat the transaction as a lease and not as a secured transaction.

4. Goods-Related Definitions.

a. "Goods"; "Consumer Goods"; "Equipment"; "Farm Products"; "Farming Operation"; "Inventory." The definition of "goods" is substantially the same as the definition in former Section 9-105. This Article also retains the four mutually-exclusive "types" of collateral that consist of goods: "consumer goods," "equipment," "farm products," and "inventory." The revisions are primarily for clarification.

The classes of goods are mutually exclusive. For example, the same property cannot simultaneously be both equipment and inventory. In borderline cases-a physician's car or a farmer's truck that might be either consumer goods or equipment-the principal use to which the property is put is determinative. Goods can fall into different classes at different times. For example, a radio may be inventory in the hands of a dealer and consumer goods in the hands of a consumer. As under former Article 9, goods are "equipment" if they do not fall into another category.

The definition of "consumer goods" follows former Section 9-109. The classification turns on whether the debtor uses or bought the goods for use "primarily for personal, family, or household purposes."

Goods are inventory if they are leased by a lessor or held by a person for sale or lease. The revised definition of "inventory" makes clear that the term includes goods leased by the debtor to others as well as goods held for lease. (The same result should have obtained under the former definition.) Goods to be furnished or furnished under a service contract, raw materials, and work in process also are inventory. Implicit in the definition is the criterion that the sales or leases are or will be in the ordinary course of business. For example, machinery used in manufacturing is equipment, not inventory, even though it is the policy of the debtor to sell machinery when it becomes obsolete or worn. Inventory also includes goods that are consumed in a business (e.g., fuel used in operations). In general, goods used in a business are equipment if they are fixed assets or have, as identifiable units, a relatively long period of use, but are inventory, even though not held for sale or lease, if they are used up or consumed in a short period of time in producing a product or providing a service.

Goods are "farm products" if the debtor is engaged in farming operations with respect to the goods. Animals in a herd of livestock are covered whether the debtor acquires them by purchase or as a result of natural increase. Products of crops or livestock remain farm products as long as they have not been subjected to a manufacturing process. The terms "crops" and "livestock" are not defined. The new definition of "farming operations" is for clarification only.

Crops, livestock, and their products cease to be "farm products" when the debtor ceases to be engaged in farming operations with respect to them. If, for example, they come into the possession of a marketing agency for sale or distribution or of a manufacturer or processor as raw materials, they become inventory. Products of crops or livestock, even though they remain in the possession of a person engaged in farming operations, lose their status as farm products if they are subjected to a manufacturing process. What is and what is not a manufacturing operation is not specified in this Article. At one end of the spectrum, some processes are so closely connected with farming-such as pasteurizing milk or boiling sap to produce maple syrup or sugar-that they would not constitute manufacturing. On the other hand an extensive canning operation would be manufacturing. Once farm products have been subjected to a manufacturing operation, they normally become inventory.

The revised definition of "farm products" clarifies the distinction between crops and standing timber and makes clear that aquatic goods produced in aquacultural operations may be either crops or livestock. Although aquatic goods that are vegetable in nature often would be

crops and those that are animal would be livestock, this Article leaves the courts free to classify the goods on a case-by-case basis. See Section 9-324, Comment 11.

b. "Accession"; "Manufactured Home"; "Manufactured-Home Transaction." Other specialized definitions of goods include "accession" (see the special priority and enforcement rules in Section 9-335), and "manufactured home" (see Section 9-515, permitting a financing statement in a "manufactured-home transaction" to be effective for 30 years). The definition of "manufactured home" borrows from the federal Manufactured Housing Act, 42 U.S.C. '5401 et seq., and is intended to have the same meaning.

c. "As-Extracted Collateral." Under this Article, oil, gas, and other minerals that have not been extracted from the ground are treated as real property, to which this Article does not apply. Upon extraction, minerals become personal property (goods) and eligible to be collateral under this Article. See the definition of "goods," which excludes "oil, gas, and other minerals before extraction." To take account of financing practices reflecting the shift from real to personal property, this Article contains special rules for perfecting security interests in minerals which attach upon extraction and in accounts resulting from the sale of minerals at the wellhead or minehead. See, e.g., Sections 9-301(4) (law governing perfection and priority); 9-501 (place of filing), 9-502 (contents of financing statement), 9-519 (indexing of records). The new term, "as-extracted collateral," refers to the minerals and related accounts to which the special rules apply. The term "at the wellhead" encompasses arrangements based on a sale of the produce at the moment that it issues from the ground and is measured, without technical distinctions as to whether title passes at the "Christmas tree" of a well, the far side of a gathering tank, or at some other point. The term "at. .. the minehead" is comparable.

The following examples explain the operation of these provisions.

Example 5: Debtor owns an interest in oil that is to be extracted. To secure Debtor's obligations to Lender, Debtor enters into an authenticated agreement granting Lender an interest in the oil. Although Lender may acquire an interest in the oil under real-property law, Lender does not acquire a security interest under this Article until the oil becomes personal property, i.e., until is extracted and becomes "goods" to which this Article applies. Because Debtor had an interest in the oil before extraction and Lender's security interest attached to the oil as extracted, the oil is "as-extracted collateral."

Example 6: Debtor owns an interest in oil that is to be extracted and contracts to sell the oil to Buyer at the wellhead. In an authenticated

agreement, Debtor agrees to sell to Lender the right to payment from Buyer. This right to payment is an account that constitutes "as-extracted collateral." If Lender then resells the account to Financer, Financer acquires a security interest. However, inasmuch as the debtor-seller in that transaction, Lender, had no interest in the oil before extraction, Financer's collateral (the account it owns) is not "as-extracted collateral."

Example 7: Under the facts of Example 6, before extraction, Buyer grants a security interest in the oil to Bank. Although Bank's security interest attaches when the oil is extracted, Bank's security interest is not in "as-extracted collateral," inasmuch as its debtor, Buyer, did not have an interest in the oil before extraction.

5. Receivables-related Definitions.

a. "Account"; "Health-Care-Insurance Receivable"; "As-Extracted Collateral." The definition of "account" has been expanded and reformulated. It is no longer limited to rights to payment relating to goods or services. Many categories of rights to payment that were classified as general intangibles under former Article 9 are accounts under this Article. Thus, if they are sold, a financing statement must be filed to perfect the buyer's interest in them. As used in the definition of "account", a right to payment "arising out of the use of a credit or charge card or information contained on or for use with the card" is the right of a card issuer to payment from its cardholder. A credit-card or charge-card transaction may give rise to other rights to payments; however, those other rights do not "arise out of the use" of the card or information contained on or for use with the card. Among the types of property that are expressly excluded from the definition of account is "a right to payment for money or funds advanced or sold." As defined in Section 1-201, "money" is limited essentially to currency. As used in the exclusion from the definition of "account," however, "funds" is a broader concept (although the term is not defined). For example, when a bank-lender credits a borrower's deposit account for the amount of a loan, the bank's advance of funds is not a transaction giving rise to an account.

The definition of "health-care-insurance receivable" is new. It is a subset of the definition of "account." However, the rules generally applicable to account debtors on accounts do not apply to insurers obligated on health-care-insurance receivables. See Sections 9-404(e), 9-405(d), 9-406(i).

Note that certain accounts also are "as-extracted collateral." See Comment 4.c., Examples 6 and 7.

b. "Chattel Paper"; "Electronic Chattel Paper"; "Tangible Chattel Paper." "Chattel paper" consists of a monetary obligation together with a security interest in or a lease of specific goods if the obligation and security interest or lease are evidenced by "a record or records." The definition has been expanded from that found in former Article 9 to include records that evidence a monetary obligation and a security interest in specific goods and software used in the goods, a security interest in specific goods and license of software used in the goods or a lease of specific goods and license of software used in the goods. The expanded definition covers transactions in which the debtor's or lessee's monetary obligation includes amounts owed with respect to software used in the goods. The monetary obligation with respect to the software need not be owed under a license from the secured party or lessor, and the secured party or lessor need not be a party to the license transaction itself. Among the types of monetary obligations that are included in "chattel paper" are amounts that have been advanced by the secured party or lessor to enable the debtor or lessee to acquire or obtain financing for a license of the software used in the goods.

Charters of vessels are expressly excluded from the definition of chattel paper; they are accounts. The term "charter" as used in this Section includes bareboat charters, time charters, successive voyage charters, contracts of affreightment, contracts of carriage, and all other arrangements for the use of vessels.

Under former Section 9-105, only if the evidence of an obligation consisted of "a writing or writings" could an obligation qualify as chattel paper. In this Article, traditional, written chattel paper is included in the definition of "tangible chattel paper." "Electronic chattel paper" is chattel paper that is stored in an electronic medium instead of in tangible form. The concept of an electronic medium should be construed liberally to include electrical, digital, magnetic, optical, electromagnetic, or any other current or similar emerging technologies. Deleted paragraph here.

c. "Instrument"; "Promissory Note." The definition of "instrument" includes a negotiable instrument. As under former Section 9-105, it also includes any other right to payment of a monetary obligation that is evidenced by a writing of a type that in ordinary course of business is transferred by delivery (and, if necessary, an indorsement or assignment). Except in the case of chattel paper, the fact that an instrument is secured by a security interest or encumbrance on property does not change the character of the instrument as such or convert the combination of the instrument and collateral into a separate

classification of personal property. The definition makes clear that rights to payment arising out of credit-card transactions are not instruments. The definition of "promissory note" is new, necessitated by the inclusion of sales of promissory notes within the scope of Article 9. It explicitly excludes obligations arising out of "orders" to pay (e.g., checks) as opposed to "promises" to pay. See Section 3-104.

d. "General Intangible"; "Payment Intangible." "General intangible" is the residual category of personal property, including things in action, that is not included in the other defined types of collateral. Examples are various categories of intellectual property and the right to payment of a loan of funds that is not evidenced by chattel paper or an instrument. The definition has been revised to exclude commercial tort claims, deposit accounts, and letter-of-credit rights. Each of the three is a separate type of collateral. One important consequence of this exclusion is that tortfeasors (commercial tort claims), banks (deposit accounts), and persons obligated on letters of credit (letter-of-credit rights) are not "account debtors" having the rights and obligations set forth in Sections 9-404, 9-405, and 9-406. In particular, tortfeasors, banks, and persons obligated on letters of credit are not obligated to pay an assignee (secured party) upon receipt of the notification described in Section 9-404(a). See Comment 5.h. Another important consequence relates to the adequacy of the description in the security agreement. See Section 9-108.

"Payment intangible" is a subset of the definition of "general intangible." The sale of a payment intangible is subject to this Article. See Section 9-109(a)(3). Virtually any intangible right could give rise to a right to payment of money once one hypothesizes, for example, that the account debtor is in breach of its obligation. The term "payment intangible," however, embraces only those general intangibles "under which the account debtor's *principal* obligation is a monetary obligation." (Emphasis added.) A debtor's right to payment from another person of amounts received by the other person on the debtor's behalf, including the right of a merchant in a credit-card, debit-card, prepaid card, or other payment-card transaction to payment of amounts received by its bank from the card system in settlement of the transaction, is a "payment intangible". (In contrast, the right of a credit-card issuer to payment arising out of the use of a credit card is an "account.")

In classifying intangible collateral, a court should begin by identifying the particular rights that have been assigned. The account debtor (promisor) under a particular contract may owe several types of monetary obligations as well as other, nonmonetary obligations. If the

promisee's right to payment of money is assigned separately, the right is an account or payment intangible, depending on how the account debtor's obligation arose. When all the promisee's rights are assigned together, an account, a payment intangible, and a general intangible all may be involved, depending on the nature of the rights.

A right to the payment of money is frequently buttressed by ancillary rights, such as rights arising from covenants in a purchase agreement, note, or mortgage requiring insurance on the collateral or forbidding removal of the collateral, rights arising from covenants to preserve the creditworthiness of the promisor, and the lessor's rights with respect to leased goods that arise upon the lessee's default (see Section 2A-523). This Article does not treat these ancillary rights separately from the rights to payment to which they relate. For example, attachment and perfection of an assignment of a right to payment of a monetary obligation, whether it be an account or payment intangible, also carries these ancillary rights. Thus, an assignment of the lessor's right to payment under a lease also transfers the lessor's rights with respect to the leased goods under Section 2A-523. If, taken together, the lessor's rights to payment and with respect to the leased goods are evidenced by chattel paper, then, contrary to *In re Commercial Money Center, Inc.*, 350 B.R. 465 (Bankr. App. 9th Cir. 2006), an assignment of the lessor's right to payment constitutes an assignment of the chattel paper. Although an agreement excluding the lessor's rights with respect to the leased goods from an assignment of the lessor's right to payment may be effective between the parties, the agreement does not affect the characterization of the collateral to the prejudice of creditors of, and purchasers from the assignor.

Every "payment intangible" is also a "general intangible." Likewise, "software" is a "general intangible" for purposes of this Article. See Comment 25. Accordingly, except as otherwise provided, statutory provisions applicable to general intangibles apply to payment intangibles and software.

e. "Letter-of-Credit Right." The term "letter-of-credit right" embraces the rights to payment and performance under a letter of credit (defined in Section 5-102). However, it does not include a beneficiary's right to demand payment or performance. Transfer of those rights to a transferee beneficiary is governed by Article 5. See Sections 9-107, Comment 4, and 9-329, Comments 3 and 4.

f. "Supporting Obligation." This new term covers the most common types of credit enhancements-suretyship obligations (including guarantees) and letter-of-credit rights that support one of the types of collateral specified in the definition. As explained in Comment 2.a.,

suretyship law determines whether an obligation is "secondary" for purposes of this definition. Section 9-109 generally excludes from this Article transfers of interests in insurance policies. However, the regulation of a secondary obligation as an insurance product does not necessarily mean that it is a "policy of insurance" for purposes of the exclusion in Section 9-109. Thus, this Article may cover a secondary obligation (as a supporting obligation), even if the obligation is issued by a regulated insurance company and the obligation is subject to regulation as an "insurance" product.

This Article contains rules explicitly governing attachment, perfection, and priority of security interests in supporting obligations. See Sections 9-203, 9-308, 9-310, and 9-322. These provisions reflect the principle that a supporting obligation is an incident of the collateral it supports.

Collections of or other distributions under a supporting obligation are "proceeds" of the supported collateral as well as "proceeds" of the supporting obligation itself. See Section 9-102 (defining "proceeds") and Comment 13.b. As such, the collections and distributions are subject to the priority rules applicable to proceeds generally. See Section 9-322. However, under the special rule governing security interests in a letter-of-credit right, a secured party's failure to obtain control (Section 9-107) of a letter-of-credit right supporting collateral may leave its security interest exposed to a priming interest of a party who does take control. See Section 9-329 (security interest in a letter-of-credit right perfected by control has priority over a conflicting security interest).

g. "Commercial Tort Claim." This term is new. A tort claim may serve as original collateral under this Article only if it is a "commercial tort claim." See Section 9-109(d). Although security interests in commercial tort claims are within its scope, this Article does not override other applicable law restricting the assignability of a tort claim. See Section 9-401. A security interest in a tort claim also may exist under this Article if the claim is proceeds of other collateral.

h. "Account Debtor." An "account debtor" is a person obligated on an account, chattel paper, or general intangible. The account debtor's obligation often is a monetary obligation; however, this is not always the case. For example, if a franchisee uses its rights under a franchise agreement (a general intangible) as collateral, then the franchisor is an "account debtor." As a general matter, Article 3, and not Article 9, governs obligations on negotiable instruments. Accordingly, the definition of "account debtor" excludes obligors on negotiable instruments constituting part of chattel paper. The principal effect of

this change from the definition in former Article 9 is that the rules in Sections 9-403, 9-404, 9-405, and 9-406, dealing with the rights of an assignee and duties of an account debtor, do not apply to an assignment of chattel paper in which the obligation to pay is evidenced by a negotiable instrument. (Section 9-406(d), however, does apply to promissory notes, including negotiable promissory notes.) Rather, the assignee's rights are governed by Article 3. Similarly, the duties of an obligor on a nonnegotiable instrument are governed by non-Article 9 law unless the nonnegotiable instrument is a part of chattel paper, in which case the obligor is an account debtor.

i. Receivables Under Government Entitlement Programs. This Article does not contain a defined term that encompasses specifically rights to payment or performance under the many and varied government entitlement programs. Depending on the nature of a right under a program, it could be an account, a payment intangible, a general intangible other than a payment intangible, or another type of collateral. The right also might be proceeds of collateral (e.g., crops).

6. Investment-Property-Related Definitions: "Commodity Account"; "Commodity Contract"; "Commodity Customer"; "Commodity Intermediary"; "Investment Property." These definitions are substantially the same as the corresponding definitions in former Section 9-115. "Investment property" includes securities, both certificated and uncertificated, securities accounts, security entitlements, commodity accounts, and commodity contracts. The term investment property includes a "securities account" in order to facilitate transactions in which a debtor wishes to create a security interest in all of the investment positions held through a particular account rather than in particular positions carried in the account. Former Section 9-115 was added in conjunction with Revised Article 8 and contained a variety of rules applicable to security interests in investment property. These rules have been relocated to the appropriate Sections of Article 9. See, e.g., Sections 9-203 (attachment), 9-314 (perfection by control), 9-328 (priority).

The terms "security," "security entitlement," and related terms are defined in Section 8-102, and the term "securities account" is defined in Section 8-501. The terms "commodity account," "commodity contract," "commodity customer," and "commodity intermediary" are defined in this Section. Commodity contracts are not "securities" or "financial assets" under Article 8. See Section 8-103(f). Thus, the relationship between commodity intermediaries and commodity customers is not governed by the indirect-holding-system rules of Part 5 of Article 8. For securities, Article 9 contains rules on security

interests, and Article 8 contains rules on the rights of transferees, including secured parties, on such matters as the rights of a transferee if the transfer was itself wrongful and gives rise to an adverse claim. For commodity contracts, Article 9 establishes rules on security interests, but questions of the sort dealt with in Article 8 for securities are left to other law.

The indirect-holding-system rules of Article 8 are sufficiently flexible to be applied to new developments in the securities and financial markets, where that is appropriate. Accordingly, the definition of "commodity contract" is narrowly drafted to ensure that it does not operate as an obstacle to the application of the Article 8 indirect-holding-system rules to new products. The term "commodity contract" covers those contracts that are traded on or subject to the rules of a designated contract market and foreign commodity contracts that are carried on the books of American commodity intermediaries. The effect of this definition is that the category of commodity contracts that are excluded from Article 8 but governed by Article 9 is essentially the same as the category of contracts that fall within the exclusive regulatory jurisdiction of the federal Commodity Futures Trading Commission.

Commodity contracts are different from securities or other financial assets. A person who enters into a commodity futures contract is not buying an asset having a certain value and holding it in anticipation of increase in value. Rather the person is entering into a contract to buy or sell a commodity at set price for delivery at a future time. That contract may become advantageous or disadvantageous as the price of the commodity fluctuates during the term of the contract. The rules of the commodity exchanges require that the contracts be marked to market on a daily basis; that is, the customer pays or receives any increment attributable to that day's price change. Because commodity customers may incur obligations on their contracts, they are required to provide collateral at the outset, known as "original margin," and may be required to provide additional amounts, known as "variation margin," during the term of the contract.

The most likely setting in which a person would want to take a security interest in a commodity contract is where a lender who is advancing funds to finance an inventory of a physical commodity requires the borrower to enter into a commodity contract as a hedge against the risk of decline in the value of the commodity. The lender will want to take a security interest in both the commodity itself and the hedging commodity contract. Typically, such arrangements are structured as security interests in the entire commodity account in

which the borrower carries the hedging contracts, rather than in individual contracts.

One important effect of including commodity contracts and commodity accounts in Article 9 is to provide a clearer legal structure for the analysis of the rights of commodity clearing organizations against their participants and futures commission merchants against their customers. The rules and agreements of commodity clearing organizations generally provide that the clearing organization has the right to liquidate any participant's positions in order to satisfy obligations of the participant to the clearing corporation. Similarly, agreements between futures commission merchants and their customers generally provide that the futures commission merchant has the right to liquidate a customer's positions in order to satisfy obligations of the customer to the futures commission merchant.

The main property that a commodity intermediary holds as collateral for the obligations that the commodity customer may incur under its commodity contracts is not other commodity contracts carried by the customer but the other property that the customer has posted as margin. Typically, this property will be securities. The commodity intermediary's security interest in such securities is governed by the rules of this Article on security interests in securities, not the rules on security interests in commodity contracts or commodity accounts.

Although there are significant analytic and regulatory differences between commodities and securities, the development of commodity contracts on financial products in the past few decades has resulted in a system in which the commodity markets and securities markets are closely linked. The rules on security interests in commodity contracts and commodity accounts provide a structure that may be essential in times of stress in the financial markets. Suppose, for example that a firm has a position in a securities market that is hedged by a position in a commodity market, so that payments that the firm is obligated to make with respect to the securities position will be covered by the receipt of funds from the commodity position. Depending upon the settlement cycles of the different markets, it is possible that the firm could find itself in a position where it is obligated to make the payment with respect to the securities position before it receives the matching funds from the commodity position. If cross-margining arrangements have not been developed between the two markets, the firm may need to borrow funds temporarily to make the earlier payment. The rules on security interests in investment property would facilitate the use of positions in one market as collateral for loans needed to cover obligations in the other market.

7. Consumer-Related Definitions: "Consumer Debtor"; "Consumer Goods"; "Consumer-goods transaction"; "Consumer Obligor"; "Consumer Transaction." The definition of "consumer goods" (discussed above) is substantially the same as the definition in former Section 9-109. The definitions of "consumer debtor," "consumer obligor," "consumer-goods transaction," and "consumer transaction" have been added in connection with various new (and old) consumer-related provisions and to designate certain provisions that are inapplicable in consumer transactions.

"Consumer-goods transaction" is a subset of "consumer transaction." Under each definition, both the obligation secured and the collateral must have a personal, family, or household purpose. However, "mixed" business and personal transactions also may be characterized as a consumer-goods transaction or consumer transaction. Subparagraph (A) of the definition of consumer-goods transactions and clause (i) of the definition of consumer transaction are primary purposes tests. Under these tests, it is necessary to determine the primary purpose of the obligation or obligations secured. Subparagraph (B) and clause (iii) of these definitions are satisfied if any of the collateral is consumer goods, in the case of a consumer-goods transaction, or "is held or acquired primarily for personal, family, or household purposes," in the case of a consumer transaction. The fact that some of the obligations secured or some of the collateral for the obligation does not satisfy the tests (e.g., some of the collateral is acquired for a business purpose) does not prevent a transaction from being a "consumer transaction" or "consumer-goods transaction."

8. Filing-Related Definitions: "Continuation Statement"; "File Number"; "Filing Office"; "Filing-office Rule"; "Financing Statement"; "Fixture Filing"; "Manufactured-Home Transaction"; "New Debtor"; "Original Debtor"; "Public-Finance Transaction"; "Termination Statement"; "Transmitting Utility." These definitions are used exclusively or primarily in the filing-related provisions in Part 5. Most are self-explanatory and are discussed in the Comments to Part 5. A financing statement filed in a manufactured-home transaction or a public-finance transaction may remain effective for 30 years instead of the 5 years applicable to other financing statements. See Section 9-515(b). The definitions relating to medium neutrality also are significant for the filing provisions. See Comment 9.

The definition of "transmitting utility" has been revised to embrace the business of transmitting communications generally to take account of new and future types of communications technology. The term

designates a special class of debtors for whom separate filing rules are provided in Part 5, thereby obviating the many local fixture filings that would be necessary under the rules of Section 9-501 for a far-flung public- utility debtor. A transmitting utility will not necessarily be regulated by or operating as such in a jurisdiction where fixtures are located. For example, a utility might own transmission lines in a jurisdiction, although the utility generates no power and has no customers in the jurisdiction.

9. Definitions Relating to Medium Neutrality.

a. "Record." In many, but not all, instances, the term "record" replaces the term "writing" and "written." A "record" includes information that is in intangible form (e.g., electronically stored) as well as tangible form (e.g., written on paper). Given the rapid development and commercial adoption of modern communication and storage technologies, requirements that documents or communications be "written," "in writing," or otherwise in tangible form do not necessarily reflect or aid commercial practices.

A "record" need not be permanent or indestructible, but the term does not include any oral or other communication that is not stored or preserved by any means. The information must be stored on paper or in some other medium. Information that has not been retained other than through human memory does not qualify as a record. Examples of current technologies commercially used to communicate or store information include, but are not limited to, magnetic media, optical discs, digital voice messaging systems, electronic mail, audio tapes, and photographic media, as well as paper. "Record" is an inclusive term that includes all of these methods of storing or communicating information. Any "writing" is a record. A record may be authenticated. See Comment 9.b. A record may be created without the knowledge or intent of a particular person.

Like the terms "written" or "in writing," the term "record" does not establish the purposes, permitted uses, or legal effect that a record may have under any particular provision of law. Whatever is filed in the Article 9 filing system, including financing statements, continuation statements, and termination statements, whether transmitted in tangible or intangible form, would fall within the definition. However, in some instances, statutes or filing-office rules may require that a paper record be filed. In such cases, even if this Article permits the filing of an electronic record, compliance with those statutes or rules is necessary. Similarly, a filer must comply with a statute or rule that requires a particular type of encoding or formatting for an electronic record.

This Article sometimes uses the terms "for record," "of record," "record or legal title," and "record owner." Some of these are terms traditionally used in real-property law. The definition of "record" in this Article now explicitly excepts these usages from the defined term. Also, this Article refers to a record that is filed or recorded in real-property recording systems to record a mortgage as a "record of a mortgage." This usage recognizes that the defined term "mortgage" means an interest in real property; it does not mean the record that evidences, or is filed or recorded with respect to, the mortgage.

b. "Authenticate"; "Communicate"; "Send." The terms "authenticate" and "authenticated" generally replace "sign" and "signed." "Authenticated" replaces and broadens the definition of "signed," in Section 1-201, to encompass authentication of all records, not just writings. (to authentication of, e.g., an agreement, demand, or notification mean, of course, authentication of a record containing an agreement, demand, or notification.) The terms "communicate" and "send" also contemplate the possibility of communication by nonwritten media. These definitions include the act of transmitting both tangible and intangible records. The definition of "send" replaces, for purposes of this Article, the corresponding term in Section 1-201. The reference to "usual means of communication" in that definition contemplates an inquiry into the appropriateness of the method of transmission used in the particular circumstances involved.

10. Scope-Related Definitions.

a. Expanded Scope of Article: "Agricultural Lien"; "Consignment"; "Payment Intangible"; "Promissory Note." These new definitions reflect the expanded scope of Article 9, as provided in Section 9-109(a).

b. Reduced Scope of Exclusions: "Governmental Unit"; "Health-Care-Insurance Receivable"; "Commercial Tort Claims." These new definitions reflect the reduced scope of the exclusions, provided in Section 9-109(c) and (d), of transfers by governmental debtors and assignments of interests in insurance policies and commercial tort claims.

11. Choice-of-Law-Related Definitions: "Certificate of Title"; "Governmental Unit"; "Jurisdiction of Organization"; 'Public Organic Record' "Registered Organization"; "State." These new definitions reflect the changes in the law governing perfection and priority of security interests and agricultural liens provided in Part 3, Subpart 1.

Statutes often require applicants for a certificate of title to identify all security interests on the application and require the issuing agency to indicate the identified security interests on the certificate. Some of

these statutes provide that priority over the rights of a lien creditor (i.e., perfection of a security interest) in goods covered by the certificate occurs upon indication of the security interest on the certificate; that is, they provide for the indication of the security interest on the certificate as a 'condition' of perfection. Other statutes contemplate that perfection is achieved upon the occurrence of another act, e.g., delivery of the application to the issuing agency, that "results" in the indication of the security interest on the certificate. A certificate governed by either type of statute can qualify as a 'certificate of title' under this Article. The statute providing for the indication of a security interest need not expressly state the connection between the indication and perfection. For example, a certificate issued pursuant to a statute that requires applicants to identify security interests, requires the issuing agency to indicate the identified security interests on the certificate, but is silent concerning the legal consequences of the indication would be a 'certificate of title' if, under a judicial interpretation of the statute, perfection of a security interest is a legal consequence of the indication. Likewise, a certificate would be a "certificate of title" if another statute provides, expressly or as interpreted, the requisite connection between the indication and perfection. The first sentence of the definition of "certificate of title" includes certificates consisting of tangible records, or electronic records, and of combinations of tangible and electronic records.

In many States, a certificate of title covering goods that are encumbered by a security interest is delivered to the secured party by the issuing authority. To eliminate the need for the issuance of a paper certificate under these circumstances, several States have revised their certificate-of-title statutes to permit or require a State agency to maintain an electronic record that evidences ownership of the goods and in which a security interest in the goods may be noted. The second sentence of the definition provides that such a record is a certificate of title and even if the statute does not expressly state that the record is maintained instead of issuing a paper certificate.

Not every organization that may provide information about itself in the public records is a "registered organization." For example, a general partnership is not a "registered organization," even if it files a statement of partnership authority under Section 303 of the Uniform Partnership Act (1994) or an assumed name ("dba") certificate. This is because such a partnership is not formed or organized by the filing of a record with, or the issuance of a record by, a State or the United States. In contrast, corporations, limited liability companies, and limited partnerships *ordinarily* are "registered organizations."

Not every record concerning a registered organization that is filed with, or issued by, a State or the United State is a "public organic record". For example, a certificate of good standing issued with respect to a corporation or a published index of domestic corporations would not be a "public organic record" because its issuance or publication does not form or organize the corporations named.

When collateral is held in a trust, one must look to non-UCC law to determine whether the trust is a 'registered organization.' Non-UCC law typically distinguishes between statutory trusts and common-law trusts. A statutory trust is formed by the filing of a record, commonly referred to as a certificate of trust, in a public office pursuant to a statute. See, e.g., Uniform Statutory Trust Entity Act § 201 (2009); Delaware Statutory Trust Act, De. Code Ann. tit. 12, § 3801 et seq. A statutory trust is a juridical entity, separate from its trustee and beneficial owners, that may sue and be sued, own property, and transact business in its own name. Inasmuch as a statutory trust is a "legal or commercial entity", it qualifies as a "person other than an individual", and therefore as an "organization", under Section 1-201. A statutory trust that is formed by the filing of a record in a public office is a "registered organization," and the filed record is a 'public organic record' of the statutory trust, if the filed record is available to the public for inspection. (The requirement that a record be "available to the public for inspection" is satisfied if a copy of the relevant record is available for public inspection.)

Unlike a statutory trust, a common-law trust-whether its purpose is donative or commercial-arises from private action without the filing of a record in a public office. See Uniform Trust Code § 401 (2000); Restatement (Third) of Trusts § 10 (2003). Moreover, under traditional law, a common-law trust is not itself a juridical entity and therefore must sue and be sued, own property, and transact business in the name of the trustee acting in the capacity of trustee. A common-law trust that is a "business trust", i.e., that has a business or commercial purpose, is an "organization" under Section 1-201. However, such a trust would not be a "registered organization" if, as is typically the case, the filing of a public record is not needed to form it.

In some states, however, the trustee of a common-law trust that has a commercial or business purpose is required by statute to file a record in a public office following the trust's formation. See, e.g., Mass. Gen. Laws Ch. 182, § 2; Fla. Stat. Ann. § 609.02. A business trust that is required to file its organic record in a public office is a "registered organization" under the second sentence of the definition if the filed record is available to the public for inspection. Any organic record

required to be filed, and filed, with respect to a common-law business trust after the trust is formed is a "public organic record" of the trust. Some statutes require a trust or other organization to file, after formation or organization, a record other than an organic record. See, e.g., N.Y. Gen. Assn's Law, § 18 (requiring associations doing business within New York to file a certificate designating the secretary of state as an agent upon process may be served). This requirement does not render the organization a "registered organization" under the second sentence of the definition, and the record is not a "public organic record".

12. Deposit-Account-Related Definitions: "Deposit Account"; "Bank." The revised definition of "deposit account" incorporates the definition of "bank," which is new. The definition derives from the definitions of "bank" in Sections 4-105(1) and 4A-105(a)(2), which focus on whether the organization is "engaged in the business of banking."

Deposit accounts evidenced by Article 9 "instruments" are excluded from the term "deposit account." In contrast, former Section 9-105 excluded from the former definition "an account evidenced by a certificate of deposit." The revised definition clarifies the proper treatment of nonnegotiable or uncertificated certificates of deposit. Under the definition, an uncertificated certificate of deposit would be a deposit account (assuming there is no writing evidencing the bank's obligation to pay) whereas a nonnegotiable certificate of deposit would be a deposit account only if it is not an "instrument" as defined in this Section (a question that turns on whether the nonnegotiable certificate of deposit is "of a type that in ordinary course of business is transferred by delivery with any necessary indorsement or assignment.")

A deposit account evidenced by an instrument is subject to the rules applicable to instruments generally. As a consequence, a security interest in such an instrument cannot be perfected by "control" (see Section 9-104), and the special priority rules applicable to deposit accounts (see Sections 9-327 and 9-340) do not apply.

The term "deposit account" does not include "investment property," such as securities and security entitlements. Thus, the term also does not include shares in a money-market mutual fund, even if the shares are redeemable by check.

13. Proceeds-Related Definitions: "Cash Proceeds"; "Noncash Proceeds"; "Proceeds." The revised definition of "proceeds" expands the definition beyond that contained in former Section 9-306 and resolves ambiguities in the former Section.

a. Distributions on Account of Collateral. The phrase "whatever is collected on, or distributed on account of, collateral," in subparagraph (B), is broad enough to cover cash or stock dividends distributed on account of securities or other investment property that is original collateral. Compare former Section 9-306 ("Any payments or distributions made with respect to investment property collateral are proceeds."). This Section rejects the holding of Hastie v. FDIC, 2 F.3d 1042 (10th Cir. 1993) (postpetition cash dividends on stock subject to a prepetition pledge are not "proceeds" under Bankruptcy Code Section 552(b)), to the extent the holding relies on the Article 9 definition of "proceeds."

b. Distributions on Account of Supporting Obligations. Under subparagraph (B), collections on and distributions on account of collateral consisting of various credit-support arrangements ("supporting obligations," as defined in Section 9-102) also are proceeds. Consequently, they are afforded treatment identical to proceeds collected from or distributed by the obligor on the underlying (supported) right to payment or other collateral. Proceeds of supporting obligations also are proceeds of the underlying rights to payment or other collateral.

c. Proceeds of Proceeds. The definition of "proceeds" no longer provides that proceeds of proceeds are themselves proceeds. That idea is expressed in the revised definition of "collateral" in Section 9-102. No change in meaning is intended.

d. Proceeds Received by Person Who Did Not Create Security Interest. When collateral is sold subject to a security interest and the buyer then resells the collateral, a question arose under former Article 9 concerning whether the "debtor" had "received" what the buyer received on resale and, therefore, whether those receipts were "proceeds" under former Section 9-306(2). This Article contains no requirement that property be "received" by the debtor for the property to qualify as proceeds. It is necessary only that the property be traceable, directly or indirectly, to the original collateral.

e. Cash Proceeds and Noncash Proceeds. The definition of "cash proceeds" is substantially the same as the corresponding definition in former Section 9-306. The phrase "and the like" covers property that is functionally equivalent to "money, checks, or deposit accounts," such as some money-market accounts that are securities or part of securities entitlements. Proceeds other than cash proceeds are noncash proceeds.

14. Consignment-Related Definitions: "Consignee"; "Consignment"; "Consignor." The definition of "consignment" excludes, in subparagraphs (B) and (C), transactions for which filing

would be inappropriate or of insufficient benefit to justify the costs. A consignment excluded from the application of this Article by one of those subparagraphs may still be a true consignment; however, it is governed by non-Article 9 law. The definition also excludes, in subparagraph (D), what have been called "consignments intended for security." These "consignments" are not bailments but secured transactions. Accordingly, all of Article 9 applies to them. See Sections 1-201(37), 9-109(a)(1). The "consignor" is the person who delivers goods to the "consignee" in a consignment.

The definition of "consignment" requires that the goods be delivered "to a merchant for the purpose of sale." If the goods are delivered for another purpose as well, such as milling or processing, the transaction is a consignment nonetheless because a purpose of the delivery is "sale." On the other hand, if a merchant-processor-bailee will not be selling the goods itself but will be delivering to buyers to which the owner-bailor agreed to sell the goods, the transaction would not be a consignment.

15. "Accounting." This definition describes the record and information that a debtor is entitled to request under Section 9-210.

16. "Document." The definition of "document" is unchanged in substance from the corresponding definitions in former Section 9-105. See Section 1-201(15) and Comment 15.

17. "Encumbrance"; "Mortgage." The definitions of "encumbrance" and "mortgage" are unchanged in substance from the corresponding definitions in former Section 9-105. They are used primarily in the special real-property-related priority and other provisions relating to crops, fixtures, and accessions.

18. "Fixtures." This definition is unchanged in substance from the corresponding definition in former Section 9-313. See Section 9-334 (priority of security interests in fixtures and crops).

19. "Good Faith." This Article expands the definition of "good faith" to include "the observance of reasonable commercial standards of fair dealing." The definition in this Section applies when the term is used in this Article, and the same concept applies in the context of this Article for purposes of the obligation of good faith imposed by Section 1-203. See subsection (c).

20. "Lien Creditor" This definition is unchanged in substance from the corresponding definition in former Section 9-301.

21. "New Value." This Article deletes former Section 9-108. Its broad formulation of new value, which embraced the taking of after-acquired collateral for a pre-existing claim, was unnecessary, counterintuitive, and ineffective for its original purpose of sheltering

after-acquired collateral from attack as a voidable preference in bankruptcy. The new definition derives from Bankruptcy Code Section 547(a). The term is used with respect to temporary perfection of security interests in instruments, certificated securities, or negotiable documents under Section 9-312(e) and with respect to chattel paper priority in Section 9-330.

22. "Person Related To." Section 9-615 provides a special method for calculating a deficiency or surplus when "the secured party, a person related to the secured party, or a secondary obligor" acquires the collateral at a foreclosure disposition. Separate definitions of the term are provided with respect to an individual secured party and with respect to a secured party that is an organization. The definitions are patterned on the corresponding definition in Section 1.301(32) of the Uniform Consumer Credit Code (1974).

23. "Proposal." This definition describes a record that is sufficient to propose to retain collateral in full or partial satisfaction of a secured obligation. See Sections 9-620, 9-621, 9-622.

24. "Pursuant to Commitment." This definition is unchanged in substance from the corresponding definition in former Section 9-105. It is used in connection with special priority rules applicable to future advances. See Section 9-323.

25. "Software." The definition of "software" is used in connection with the priority rules applicable to purchase-money security interests. See Sections 9-103, 9-324. Software, like a payment intangible, is a type of general intangible for purposes of this Article.

26. Terminology: "Assignment" and "Transfer." In numerous provisions, this Article refers to the "assignment" or the "transfer" of property interests. These terms and their derivatives are not defined. This Article generally follows common usage by using the terms "assignment" and "assign" to refer to transfers of rights to payment, claims, and liens and other security interests. It generally uses the term "transfer" to refer to other transfers of interests in property. Except when used in connection with a letter-of-credit transaction (see Section 9-107, Comment 4), no significance should be placed on the use of one term or the other. Depending on the context, each term may refer to the assignment or transfer of an outright ownership interest or to the assignment or transfer of a limited interest, such as a security interest.

SOUTH CAROLINA REPORTER'S COMMENTS

The 2013 amendments defined a new term, "public organic record" and revised the definition of "registered organization." These amendments revise and clarify the rules for determining both whether

an organization qualifies as a registered organization for purposes of Section 36-9-307(e) and (f) and the name of the registered organization under Section 36-9-503(a)(1). Note that under the amended definition of registered organization a business trust subject to Section 33-53-10 qualifies as a registered organization.

Control of electronic chattel paper

SECTION 3. Section 36-9-105 of the 1976 Code is amended to read:

"Section 36-9-105. (a) A secured party has control of electronic chattel paper if a system employed for evidencing the transfer of interests in the chattel paper reliably establishes the secured party as the person to which the chattel paper was assigned.

(b) A system satisfies subsection (a) if the record or records comprising the chattel paper are created, stored, and assigned in such a manner that:

(1) a single authoritative copy of the record or records exists which is unique, identifiable and, except as otherwise provided in items (4), (5), and (6), unalterable;

(2) the authoritative copy identifies the secured party as the assignee of the record or records;

(3) the authoritative copy is communicated to and maintained by the secured party or its designated custodian;

(4) copies or amendments that add or change an identified assignee of the authoritative copy can be made only with the consent of the secured party;

(5) each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy; and

(6) any amendment of the authoritative copy is readily identifiable as authorized or unauthorized."

OFFICIAL COMMENT

1. Source. New.

2. "Control" of Electronic Chattel Paper. This Article covers security interests in "electronic chattel paper," a new term defined in Section 9-102. This Section governs how "control" of electronic chattel paper may be obtained. Subsection (a), which derives from Section 16 of the Uniform Electronic Transactions Act, sets forth the general test for control. Subsection (b) sets forth a safe harbor test that, if satisfied, establishes control under the general test in subsection (a). A secured party's control of electronic chattel paper (i) may substitute

for an authenticated security agreement for purposes of attachment under Section 9-203, (ii) is a method of perfection under Section 9-314, and (iii) is a condition for obtaining special, nontemporal priority under Section 9-330. Because electronic chattel paper cannot be transferred, assigned, or possessed in the same manner as tangible chattel paper, a special definition of control is necessary. In descriptive terms, this Section provides that control of electronic chattel paper is the functional equivalent of possession of "tangible chattel paper" (a term also defined in Section 9-102).

3. Development of Control Systems. This Article leaves to the marketplace the development of systems and procedures, through a combination of suitable technologies and business practices, for dealing with control of electronic chattel paper in a commercial context. Systems that evolve for control of electronic chattel paper may or may not involve a third party custodian of the relevant records. As under UETA, a system must be shown to reliably establish that the secured party is the assignee of the chattel paper. Reliability is a high standard and encompasses the general principles of uniqueness, identifiability, and unalterability found in subsection (b) without setting forth specific guidelines as to how these principles must be achieved. However, these standards applied to determine whether a party is in control of electronic chattel paper should not be more stringent than the standards now applied to determine whether a party is in possession of tangible chattel paper. For example, just as a secured party does not lose possession of tangible chattel paper merely by virtue of the possibility that a person acting on its behalf could wrongfully redeliver the chattel paper to the debtor, so control of electronic chattel paper would not be defeated by the possibility that the secured party's interest could be subverted by the wrongful conduct of a person (such as a custodian) acting on its behalf. This section and the concept of control of electronic chattel paper are not based on the same concepts as are control of deposit accounts (Section 9-104), security entitlements, a type of investment property (Section 9-106), and a letter of credit rights (Section 9-107). The rules for control of those types of collateral are based on existing market practices and legal and regulatory regimes for institutions such as banks and securities intermediaries. Analogous practices for electronic chattel paper are developing nonetheless. The flexible approach adopted by this section, moreover, should not impede the development of these practices and, eventually legal and regulatory regimes, which may become analogous to those for, e.g., investment property.

4.”Authoritative Copy” of Electronic Chattel Paper. One requirement for establishing control under subsection (b) is that a particular copy be an “authoritative copy.” Although other copies may exist, they must be distinguished from the authoritative copy. This may be achieved, for example, through the methods of authentication that are used or by business practices involving the marking of any additional copies. When tangible chattel paper is converted to electronic chattel paper, in order to establish that a copy of the electronic chattel paper is the authoritative copy it may be necessary to show that the tangible chattel paper no longer exists or has been permanently marked to indicate that it is not the authoritative copy.

SOUTH CAROLINA REPORTER’S COMMENT

Section 36-9-105 sets forth the requirements for control of electronic chattel paper. Section 36-9-102(a)(31) defines electronic chattel paper as chattel paper evidenced by a record or records consisting of information stored in an electronic medium. Under Section 36-9-314(a) a secured party can perfect a security interest in electronic chattel paper by obtaining control.

Definitional Cross:

“Chattel paper”	Section 36-9-102(a)(11)
“Communicate”	Section 36-9-102(a)(18)
“Electronic chattel paper”	Section 36-9-102(a)(31)
“Record”	Section 36-9-102(a)(70)

Cross --

1. Control satisfies the evidentiary requirement for the creation of a security interest in electronic chattel paper. Section 36-9-203(b)(3)(D).

2. Control as a method of perfecting a security interest in electronic paper. Section 36-9-314(a).

3. Filing as a method of perfecting a security interest in electronic chattel paper. Section 36-9-312(a).

4. Priority of purchasers of chattel paper. Section 36-9-330.

Location of debtor

SECTION 4. Section 36-9-307 of the 1976 Code is amended to read:

“Section 36-9-307. (a) In this section, ‘place of business’ means a place where a debtor conducts its affairs.

(b) Except as otherwise provided in this section, the following rules determine a debtor’s location:

(1) A debtor who is an individual is located at the individual's principal residence.

(2) A debtor that is an organization and has only one place of business is located at its place of business.

(3) A debtor that is an organization and has more than one place of business is located at its chief executive office.

(c) Subsection (b) applies only if a debtor's residence, place of business, or chief executive office, as applicable, is located in a jurisdiction whose law generally requires information concerning the existence of a nonpossessory security interest to be made generally available in a filing, recording, or registration system as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the collateral. If subsection (b) does not apply, the debtor is located in the District of Columbia.

(d) A person that ceases to exist, have a residence, or have a place of business continues to be located in the jurisdiction specified by subsections (b) and (c).

(e) A registered organization that is organized under the law of a State is located in that State.

(f) Except as otherwise provided in subsection (i), a registered organization that is organized under the law of the United States and a branch or agency of a bank that is not organized under the law of the United States or a State are located in:

(1) the State that the law of the United States designates, if the law designates a State of location;

(2) the State that the registered organization, branch, or agency designates, if the law of the United States authorizes the registered organization, branch, or agency to designate its State of location, including by designating its main office, home office, or other compatible office; or

(3) the District of Columbia, if neither item (1) nor item (2) applies.

(g) A registered organization continues to be located in the jurisdiction specified by subsection (e) or (f) notwithstanding the:

(1) suspension, revocation, forfeiture, or lapse of the registered organization's status as such in its jurisdiction of organization; or

(2) dissolution, winding up, or cancellation of the existence of the registered organization.

(h) The United States is located in the District of Columbia.

(i) A branch or agency of a bank that is not organized under the law of the United States or a State is located in the State in which the

branch or agency is licensed, if all branches and agencies of the bank are licensed in only one State.

(j) A foreign air carrier under the Federal Aviation Act of 1958, as amended, is located at the designated office of the agent upon which service of process may be made on behalf of the carrier.

(k) This section applies only for purposes of this part."

OFFICIAL COMMENT

1. Source. Former Section 9-103(3)(d), substantially revised.

2. General Rules. As a general matter, the location of the debtor determines the jurisdiction whose law governs perfection of a security interest. See Sections 9-301(1), 9-305(c). It also governs priority of a security interest in certain types of intangible collateral, such as accounts, electronic chattel paper, and general intangibles. This Section determines the location of the debtor for choice-of-law purposes, but not for other purposes. See subsection (k).

Subsection (b) states the general rules: An individual debtor is deemed to be located at the individual's principal residence with respect to both personal and business assets. Any other debtor is deemed to be located at its place of business if it has only one, or at its chief executive office if it has more than one place of business.

As used in this Section, a "place of business" means a place where the debtor conducts its affairs. See subsection (a). Thus, every organization, even eleemosynary institutions and other organizations that do not conduct "for profit" business activities, has a "place of business." Under subsection (d), a person who ceases to exist, have a residence, or have a place of business continues to be located in the jurisdiction determined by subsection (b).

The term "chief executive office" is not defined in this Section or elsewhere in the Uniform Commercial Code. "Chief executive office" means the place from which the debtor manages the main part of its business operations or other affairs. This is the place where persons dealing with the debtor would normally look for credit information, and is the appropriate place for filing. With respect to most multi-state debtors, it will be simple to determine which of the debtor's offices is the "chief executive office." Even when a doubt arises, it would be rare that there could be more than two possibilities. A secured party in such a case may protect itself by perfecting under the law of each possible jurisdiction.

Similarly, the term "principal residence" is not defined. If the security interest in question is a purchase-money security interest in consumer goods which is perfected upon attachment, see Section

9-309(1), the choice of law may make no difference. In other cases, when a doubt arises, prudence may dictate perfecting under the law of each jurisdiction that might be the debtor's "principal residence."

Questions sometimes arise about the location of the debtor with respect to collateral held in a common-law trust. A typical common-law trust is not itself a juridical entity capable of owning property and so would not be a 'debtor' as defined in Section 9-102. Rather, the debtor with respect to property held in a common-law trust typically is the trustee of the trust acting in the capacity of trustee. (The beneficiary would be a 'debtor' with respect to its beneficial interest in the trust, but not with respect to the property held in the trust). If a common-law trust has multiple trustees located in different jurisdictions, a secured party who perfects by filing would be well advised to file a financing statement in each jurisdiction in which a trustee is located, as determined under Section 9-307. Filing in all relevant jurisdictions would insure perfection and minimize any priority complications that otherwise might arise.

The general rules are subject to several exceptions, each of which is discussed below.

3. Non-U.S. Debtors. Under the general rules of this Section, a non-U.S. debtor normally would be located in a foreign jurisdiction and, as a consequence, foreign law would govern perfection. When foreign law affords no public notice of security interests, the general rule yields unacceptable results.

Accordingly, subsection (c) provides that the normal rules for determining the location of a debtor (i.e., the rules in subsection (b)) apply only if they yield a location that is "a jurisdiction whose law generally requires information concerning the existence of a nonpossessory security interest to be made generally available in a filing, recording, or registration system as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the collateral." The phrase "generally requires" is meant to include legal regimes that generally require notice in a filing or recording system as a condition of perfecting nonpossessory security interests, but which permit perfection by another method (e.g., control, automatic perfection, temporary perfection) in limited circumstances. A jurisdiction that has adopted this Article or an earlier version of this Article is such a jurisdiction. If the rules in subsection (b) yield a jurisdiction whose law does not generally require notice in a filing or registration system, and none of the special rules in subsections (e), (f), (i), and (j) applies, the debtor is located in the District of Columbia.

Example 1: Debtor is an English corporation with 7 offices in the United States and its chief executive office in London, England. Debtor creates a security interest in its accounts. Under subsection (b)(3), Debtor would be located in England. However, subsection (c) provides that subsection (b) applies only if English law generally conditions perfection on giving public notice in a filing, recording, or registration system. Otherwise, Debtor is located in the District of Columbia. Under Section 9-301(1), perfection, the effect of perfection, and priority are governed by the law of the jurisdiction of the debtor's location-here, England or the District of Columbia (depending on the content of English law).

Example 2: Debtor is an English corporation with 7 offices in the United States and its chief executive office in London, England. Debtor creates a security interest in equipment located in London. Under subsection (b)(3) Debtor would be located in England. However, subsection (c) provides that subsection (b) applies only if English law generally conditions perfection on giving public notice in a filing, recording, or registration system. Otherwise, Debtor is located in the District of Columbia. Under Section 9-301(1), perfection is governed by the law of the jurisdiction of the debtor's location, whereas, under Section 9-301(3), the law of the jurisdiction in which the collateral is located-here, England-governs priority.

The foregoing discussion assumes that each transaction bears an appropriate relation to the forum State. In the absence of an appropriate relation, the forum State's entire UCC, including the choice-of-law provisions in Article 9 (Sections 9-301 through 9-307), will not apply. See Section 9-109, Comment 9.

4. Registered Organizations Organized Under Law of a State. Under subsection (e), a registered organization (defined in Section 9-102 so as to ordinarily include corporations, limited partnerships, limited liability companies, and statutory trusts) organized under the law of a "State" (defined in Section 9-102) is located in its State of organization. The term "registered organization" includes a business trust described in the second sentence of the term's definition. See Section 9-102. The trust's public organic record, typically the trust agreement, usually will indicate the jurisdiction under whose law the trust is organized. Subsection (g) makes clear that events affecting the status of a registered organization, such as the dissolution of a corporation or revocation of its charter, do not affect its location for purposes of subsection (e). However, certain of these events may result in, or be accompanied by, a transfer of collateral from the registered organization to another debtor. This Section does not determine

whether a transfer occurs, nor does it determine the legal consequences of any transfer.

Determining the registered organization-debtor's location by reference to the jurisdiction of organization could provide some important side benefits for the filing systems. A jurisdiction could structure its filing system so that it would be impossible to make a mistake in a registered organization-debtor's name on a financing statement. For example, a filer would be informed if a filed record designated an incorrect corporate name for the debtor. Linking filing to the jurisdiction of organization also could reduce pressure on the system imposed by transactions in which registered organizations cease to exist-as a consequence of merger or consolidation, for example. The jurisdiction of organization might prohibit such transactions unless steps were taken to ensure that existing filings were refiled against a successor or terminated by the secured party.

5. Registered Organizations Organized Under Law of United States; Branches and Agencies of Banks Not Organized Under Law of United States. Subsection (f) specifies the location of a debtor that is a registered organization organized under the law of the United States. It defers to law of the United States, to the extent that that law determines, or authorizes the debtor to determine, the debtor's location. Thus, if the law of the United States designates a particular State as the debtor's location, that State is the debtor's location for purposes of this Article's choice-of-law rules. Similarly, if the law of the United States authorizes the registered organization to designate its State of location, the State that the registered organization designates is the State in which it is located for purposes of this Article's choice-of-law rules. In other cases, the debtor is located in the District of Columbia.

Subsection (f) also determines the location of branches and agencies of banks that are not organized under the law of the United States or a State. However, if all the branches and agencies of the bank are licensed only in one State, then they are located in that State. See subsection (i).

6. United States. To the extent that Article 9 governs (see Sections 1-105, 9-109(c)), the United States is located in the District of Columbia for purposes of this Article's choice-of-law rules. See subsection (h).

7. Foreign Air Carriers. Subsection (j) follows former Section 9-103(3)(d). To the extent that it is applicable, the Convention on the International Recognition of Rights in Aircraft (Geneva Convention) supersedes state legislation on this subject, as set forth in Section 9-311(b), but some nations are not parties to that Convention.

SOUTH CAROLINA REPORTER'S COMMENT

Section 36-9-307 sets forth the rules for determining the location of the debtor. These rules are critical under current law because in most cases the debtor's location will determine the jurisdiction in which a secured party must file to perfect a nonpossessory security interest. See Section 36-9-301(1). Perhaps the most significant location of the debtor rule is set forth in Section 36-9-307(e). Under that provision a registered organization, which includes corporations, limited partnerships, and limited liability companies see Section 36-9-102(a)(71) and Official Comment 11, is located in the State under the law of which the entity was organized. For example, a corporation incorporated under the law of South Carolina, but with its chief executive office and all of its equipment in North Carolina, is located in South Carolina. As a result, the law of South Carolina controls the perfection of a nonpossessory security interest upon the equipment and a secured party would be required to file its financing statement in South Carolina.

Definitional Cross:

"Chief executive office"	See Section 36-9-307, Official Comment 2
"Debtor"	Section 36-9-102(a)(28)
"Registered Organization"	Section 36-9-102(a)(71)

Cross --

Law applicable to perfection of nonpossessory security interest determined by location of the debtor. Section 36-9-301(1) and (3)(c).

Perfection of security interests in property subject to certain statutes, regulations, and treaties

SECTION 5. Section 36-9-311 of the 1976 Code is amended to read:

"Section 36-9-311. (a) Except as otherwise provided in subsection (d), the filing of a financing statement is not necessary or effective to perfect a security interest in property subject to:

(1) a statute, regulation, or treaty of the United States whose requirements for a security interest's obtaining priority over the rights of a lien creditor with respect to the property preempt Section 36-9-310(a);

(2) Chapter 19, Title 56, Protection of title to and interests in motor vehicles, and Chapter 23, Title 50, Filing of watercraft and outboard motors, but during any period in which collateral is inventory

held for sale by a person who is in the business of selling goods of that kind, the filing provisions of this chapter, Part 5, apply to a security interest in that collateral created by him as debtor; or

(3) a statute of another jurisdiction which provides for a security interest to be indicated on a certificate of title as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the property.

(b) Compliance with the requirements of a statute, regulation, or treaty described in subsection (a) for obtaining priority over the rights of a lien creditor is equivalent to the filing of a financing statement under this chapter. Except as otherwise provided in subsection (d) and Sections 36-9-313 and 36-9-316(d) and (e) for goods covered by a certificate of title, a security interest in property subject to a statute, regulation, or treaty described in subsection (a) may be perfected only by compliance with those requirements, and a security interest so perfected remains perfected notwithstanding a change in the use or transfer of possession of the collateral.

(c) Except as otherwise provided in subsection (d) and Section 36-9-316(d) and (e), duration and renewal of perfection of a security interest perfected by compliance with the requirements prescribed by a statute, regulation, or treaty described in subsection (a) are governed by the statute, regulation, or treaty. In other respects, the security interest is subject to this chapter.

(d) During any period in which collateral subject to a statute specified in subsection (a)(2) is inventory held for sale or lease by a person or leased by that person as lessor and that person is in the business of selling goods of that kind, this section does not apply to a security interest in that collateral created by that person."

OFFICIAL COMMENT

1. Source. Former Section 9-302(3), (4).

2. Federal Statutes, Regulations, and Treaties. Subsection (a)(1) exempts from the filing provisions of this Article transactions as to which a system of filing-state or federal-has been established under federal law. Subsection (b) makes clear that when such a system exists, perfection of a relevant security interest can be achieved only through compliance with that system (i.e., filing under this Article is not a permissible alternative).

An example of the type of federal statute referred to in subsection (a)(1) is 49 U.S.C. 44107-11, for civil aircraft of the United States. The Assignment of Claims Act of 1940, as amended, provides for notice to contracting and disbursing officers and to sureties on bonds

but does not establish a national filing system and therefore is not within the scope of subsection (a)(1). An assignee of a claim against the United States may benefit from compliance with the Assignment of Claims Act. But regardless of whether the assignee complies with that Act, the assignee must file under this Article in order to perfect its security interest against creditors and transferees of its assignor.

Subsection (a)(1) provides explicitly that the filing requirement of this Article defers only to federal statutes, regulations, or treaties whose requirements for a security interest's obtaining priority over the rights of a lien creditor preempt Section 9-310(a). The provision eschews reference to the term "perfection," inasmuch as Section 9-308 specifies the meaning of that term and a preemptive rule may use other terminology.

3. State Statutes. Subsections (a)(2) and (3) exempt from the filing requirements of this Article transactions covered by State certificate-of-title statutes covering motor vehicles and the like. The description of certificate-of-title statutes in subsections (a)(2) and (a)(3) tracks the language of the definition of "certificate of title" in Section 9-102. For a discussion of the operation of state certificate-of- title statutes in interstate contexts, see the Comments to Section 9-303.

Some states have enacted central filing statutes with respect to secured transactions in kinds of property that are of special importance in the local economy. Subsection (a)(2) defers to these statutes with respect to filing for that property.

4. Inventory Covered by Certificate of Title. Under subsection (d), perfection of a security interest in the inventory of a dealer is governed by the normal perfection rules, even if the inventory is covered by a certificate of title. Under former Section 9-302(3), a secured party who financed a dealer may have needed to perfect by filing for goods held for sale and by compliance with a certificate-of-title statute for goods held for lease. In some cases, this may have required notation on thousands of certificates. The problem would have been compounded by the fact that dealers, particularly of automobiles, often do not know whether a particular item of inventory will be sold or leased. Under subsection (d), notation is both unnecessary and ineffective.

The filing and other perfection provisions of this Article apply to goods covered by a certificate of title only "during any period in which collateral is inventory held for sale or lease or leased." If the debtor takes goods of this kind out of inventory and uses them, say, as equipment, a filed financing statement would not remain effective to perfect a security interest.

5. Compliance with Perfection Requirements of Other Statute. Subsection (b) makes clear that compliance with the perfection requirements (i.e., the requirements for obtaining priority over a lien creditor), but not other requirements, of a statute, regulation, or treaty described in subsection (a) is sufficient for perfection under this Article. Perfection of a security interest under such a statute, regulation, or treaty has all the consequences of perfection under this Article.

The interplay of this Section with certain certificate-of-title statutes may create confusion and uncertainty. For example, statutes under which perfection does not occur until a certificate of title is issued will create a gap between the time that the goods are covered by the certificate under Section 9-303 and the time of perfection. If the gap is long enough, it may result in turning some unobjectionable transactions into avoidable preferences under Bankruptcy Code Section 547. (The preference risk arises if more than thirty days passes between the time a security interest attaches (or the debtor receives possession of the collateral, in the case of a purchase-money security interest) and the time it is perfected.) Accordingly, the Legislative Note to this Section instructs the legislature to amend the applicable certificate-of-title statute to provide that perfection occurs upon receipt by the appropriate State official of a properly tendered application for a certificate of title on which the security interest is to be indicated.

Under some certificate-of-title statutes, including the Uniform Motor Vehicle Certificate of Title and Anti-Theft Act, perfection generally occurs upon delivery of specified documents to a state official but may, under certain circumstances, relate back to the time of attachment. This relation- back feature can create great difficulties for the application of the rules in Sections 9-303 and 9-311(b). Accordingly, the Legislative Note also recommends to legislatures that they remove any relation-back provisions from certificate-of-title statutes affecting security interests.

6. Compliance with Perfection Requirements of Other Statute as Equivalent to Filing. Under Subsection (b), compliance with the perfection requirements (i.e., the requirements for obtaining priority over a lien creditor) of a statute, regulation, or treaty described in subsection (a) "is equivalent to the filing of a financing statement."

The quoted phrase appeared in former Section 9-302(3). Its meaning was unclear, and many questions arose concerning the extent to which and manner in which Article 9 rules referring to "filing" were applicable to perfection by compliance with a certificate-of-title statute. This Article takes a variety of approaches for applying Article 9's

filing rules to compliance with other statutes and treaties. First, as discussed above in Comment 5, it leaves the determination of some rules, such as the rule establishing time of perfection (Section 9-516(a)), to the other statutes themselves. Second, this Article explicitly applies some Article 9 filing rules to perfection under other statutes or treaties. See, e.g., Section 9-505. Third, this Article makes other Article 9 rules applicable to security interests perfected by compliance with another statute through the "equivalent to. .. filing" provision in the first sentence of Section 9-311(b). The third approach is reflected for the most part in occasional Comments explaining how particular rules apply when perfection is accomplished under Section 9-311(b). See, e.g., Section 9-310, Comment 4; Section 9-315, Comment 6; Section 9-317, Comment 8. The absence of a Comment indicating that a particular filing provision applies to perfection pursuant to Section 9-311(b) does not mean the provision is inapplicable.

7. Perfection by Possession of Goods Covered by Certificate-of-Title Statute. A secured party who holds a security interest perfected under the law of State A in goods that subsequently are covered by a State B certificate of title may face a predicament. Ordinarily, the secured party will have four months under State B's Section 9-316(c) and (d) in which to (re)perfect as against a purchaser of the goods by having its security interest noted on a State B certificate. This procedure is likely to require the cooperation of the debtor and any competing secured party whose security interest has been noted on the certificate. Comment 4(e) to former Section 9-103 observed that "that cooperation is not likely to be forthcoming from an owner who wrongfully procured the issuance of a new certificate not showing the out-of-state security interest, or from a local secured party finding himself in a priority contest with the out-of-state secured party." According to that Comment, "[t]he only solution for the out-of-state secured party under present certificate of title statutes seems to be to reperfect by possession, i.e., by repossessing the goods." But the "solution" may not have worked: Former Section 9-302(4) provided that a security interest in property subject to a certificate-of-title statute "can be perfected only by compliance therewith."

Sections 9-316(d) and (e), 9-311(c), and 9-313(b) of this Article resolve the conflict by providing that a security interest that remains perfected solely by virtue of Section 9-316(e) can be (re)perfected by the secured party's taking possession of the collateral. These Sections contemplate only that taking possession of goods covered by a certificate of title will work as a method of perfection. None of these

Sections creates a right to take possession. Section 9-609 and the agreement of the parties define the secured party's right to take possession.

SOUTH CAROLINA REPORTER'S COMMENT

Section 36-9-311(a)(1) provides that statutes, regulations, or treaties of the United States which impose requirements for the priority of a security interest over a lien creditor preempt the perfection rules of Article 9. In addition, this sections 36-9-311(a)(2) and (3) provide that state certificate of title statutes govern the perfection of security interests in covered goods. With two exceptions, Section 36-9-311(b) provides that a security interest subject to a statute, regulation, or treaty described in subsection (a) can be perfected only by complying with the requirements of the statute, regulation, or treaty. The first exception to this rule applies when goods covered by a certificate of title statute entered this state subject to a security interest perfected under the law of another state. Section 36-9-311(b), 36-9-313(b), and 36-9-316(d) and (e) provide that the secured party can perfect in this state by taking possession of the goods. The second exception applies when goods covered by a certificate of title statute are inventory held for sale or lease by a person in the business of selling or leasing goods of that kind. Section 36-9-311(d)

South Carolina has two certificate of title statutes that control the perfection of security interests. Sections 56-19-610-720, S.C. Code Ann. (2006 Revised, as amended) govern the perfection of security interests in motor vehicles. Section 50-23-140, S.C. Code Ann., as amended, governs the perfection of security interests on watercraft and outboard motors.

Article 9 envisions that a state certificate of title statute that provides that perfection occurs when the appropriate state authority receives an application for a certificate of title which discloses the security interest, rather than when the authority issues the certificate. See Section 36-9-311, Official Comment 5. The South Carolina certificate of title statutes conform to this exception. See Sections 56-19-230 and 50-23-140(c) S.C. Code Ann. (1976 and Supp. 1999).

Article 9 further envisions that when certificate of title legislation perfection will not relate back to a point in time earlier than the date upon which the State officials received the application. See Section 36-9-311, Official Comment 5. The current South Carolina certificate of title statutes do not conform to this expectation. Under section 56-19-630 S. C. Code Ann. (1976) the perfection of a security interest in a motor vehicle relates back to the date on which the security interest

was created if delivery of the application to the Department of Highways and Public Transportation is completed within ten days after the creation of the security interest. Under section 50-23-140(c) S.C. Code Ann. (Supp. 1999) the perfection of a security interest in a watercraft or an outboard motor relates back to the date the security interest was created if delivery of the application is completed within twenty days after the creation of the security interest. The relation-back for the perfection of non-purchase-money security interests and a twenty day relation back period measured from the date on which the debtor receives delivery of the collateral for purchase-money security interests. See Section 36-9-317(e)

Definitional Cross:

"Certificate of title"	Section 36-9-102(a)(10)
"Financing statement"	Section 36-9-102(a)(39)
"Inventory"	Section 36-9-102(a)(48)
"Lien creditor"	Section 36-9-102(a)(52)
"Security interest"	Section 36-1-201(37)

Cross --

1. Provisions of certificate-of-title statute relating to the perfection of security interests in motor vehicles. Sections 56-19-630 and 650. S.C. Code Ann. (1976 and Supp. 1999).

2. Provisions of certificate-of-title statute relating to the perfection of security interests in watercraft and outboard motors. Section 50-23-140 S. C. Code Ann. (Supp. 1999).

3. Perfection by possession of a security interest on goods subject to a certificate-of-title statute when the goods enter South Carolina subject to a security interest perfected under the law of another jurisdiction. Sections 36-9-313(b), 36-9-316(d) and (e).

Continued perfection of security interest following change in governing law

SECTION 6. Section 36-9-316 of the 1976 Code is amended to read:

"Section 36-9-316. (a) A security interest perfected pursuant to the law of the jurisdiction designated in Section 36-9-301(1) or 36-9-305(c) remains perfected until the earliest of the:

(1) time perfection would have ceased under the law of that jurisdiction;

(2) expiration of four months after a change of the debtor's location to another jurisdiction; or

(3) expiration of one year after a transfer of collateral to a person that thereby becomes a debtor and is located in another jurisdiction.

(b) If a security interest described in subsection (a) becomes perfected under the law of the other jurisdiction before the earliest time or event described in that subsection, it remains perfected thereafter. If the security interest does not become perfected under the law of the other jurisdiction before the earliest time or event, it becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

(c) A possessory security interest in collateral, other than goods covered by a certificate of title and as-extracted collateral consisting of goods, remains continuously perfected if:

(1) the collateral is located in one jurisdiction and subject to a security interest perfected under the law of that jurisdiction;

(2) thereafter the collateral is brought into another jurisdiction; and

(3) upon entry into the other jurisdiction, the security interest is perfected under the law of the other jurisdiction.

(d) Except as otherwise provided in subsection (e), a security interest in goods covered by a certificate of title which is perfected by any method under the law of another jurisdiction when the goods become covered by a certificate of title from this State remains perfected until the security interest would have become unperfected under the law of the other jurisdiction had the goods not become so covered.

(e) A security interest described in subsection (d) becomes unperfected as against a purchaser of the goods for value and is deemed never to have been perfected as against a purchaser of the goods for value if the applicable requirements for perfection under Section 36-9-311(b) or 36-9-313 are not satisfied before the earlier of the:

(1) time the security interest would have become unperfected under the law of the other jurisdiction had the goods not become covered by a certificate of title from this State; or

(2) expiration of four months after the goods had become so covered.

(f) A security interest in deposit accounts, letter-of-credit rights, or investment property which is perfected under the law of the bank's jurisdiction, the issuer's jurisdiction, a nominated person's jurisdiction, the securities intermediary's jurisdiction, or the commodity intermediary's jurisdiction, as applicable, remains perfected until the earlier of the:

(1) time the security interest would have become unperfected under the law of that jurisdiction; or

(2) expiration of four months after a change of the applicable jurisdiction to another jurisdiction.

(g) If a security interest described in subsection (f) becomes perfected under the law of the other jurisdiction before the earlier of the time or the end of the period described in that subsection, it remains perfected thereafter. If the security interest does not become perfected under the law of the other jurisdiction before the earlier of that time or the end of that period, it becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

(h) The following rules apply to collateral to which a security interest attaches within four months after the debtor changes its location to another jurisdiction:

(1) A financing statement filed before the change pursuant to the law of the jurisdiction designated in Section 36-9-301(1) or 36-9-305(c) is effective to perfect a security interest in the collateral if the financing statement would have been effective to perfect a security interest in the collateral had the debtor not changed its location.

(2) If a security interest perfected by a financing statement that is effective under item (1) becomes perfected under the law of the other jurisdiction before the earlier of the time the financing statement would have become ineffective under the law of the jurisdiction designated in Section 36-9-301(1) or 36-9-305(c) or the expiration of the four-month period, it remains perfected thereafter. If the security interest does not become perfected under the law of the other jurisdiction before the earlier time or event, it becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

(i) If a financing statement naming an original debtor is filed pursuant to the law of the jurisdiction designated in Section 36-9-301(1) or 36-9-305(c) and the new debtor is located in another jurisdiction, the following rules apply:

(1) The financing statement is effective to perfect a security interest in collateral acquired by the new debtor before, and within four months after, the new debtor becomes bound under Section 36-9-203(d), if the financing statement would have been effective to perfect a security interest in the collateral had the collateral been acquired by the original debtor.

(2) A security interest perfected by the financing statement and which becomes perfected under the law of the other jurisdiction before the earlier of the time the financing statement would have become ineffective under the law of the jurisdiction designated in Section

36-9-301(1) or 36-9-305(c) or the expiration of the four-month period remains perfected thereafter. A security interest that is perfected by the financing statement but which does not become perfected under the law of the other jurisdiction before the earlier time or event becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value."

OFFICIAL COMMENT

1. Source. Former Section 9-103(1)(d), (2)(b), (3)(e), as modified.

2. Continued Perfection. Subsections a-g deal with continued perfection of security interests that have been perfected under the law of another jurisdiction. The fact that the law of a particular jurisdiction ceases to govern perfection under Sections 9-301 through 9-307 does not necessarily mean that a security interest perfected under that law automatically becomes unperfected. To the contrary: This Section generally provides that a security interest perfected under the law of one jurisdiction remains perfected for a fixed period of time (four months or one year, depending on the circumstances), even though the jurisdiction whose law governs perfection changes. However, cessation of perfection under the law of the original jurisdiction cuts short the fixed period. The four-month and one-year periods are long enough for a secured party to discover in most cases that the law of a different jurisdiction governs perfection and to reperfect (typically by filing) under the law of that jurisdiction. If a secured party properly reperfects a security interest before it becomes unperfected under subsection (a), then the security interest remains perfected continuously thereafter. See subsection (b).

Example 1: Debtor is a general partnership whose chief executive office is in Pennsylvania. Lender perfects a security interest in Debtor's equipment by filing in Pennsylvania on May 15, 2002. On April 1, 2005, without Lender's knowledge, Debtor moves its chief executive office to New Jersey. Lender's security interest remains perfected for four months after the move. See subsection (a)(2).

Example 2: Debtor is a general partnership whose chief executive office is in Pennsylvania. Lender perfects a security interest in Debtor's equipment by filing in Pennsylvania on May 15, 2002. On April 1, 2007, without Lender's knowledge, Debtor moves its chief executive office to New Jersey. Lender's security interest remains perfected only through May 14, 2007, when the effectiveness of the filed financing statement lapses. See subsection (a)(1). Although, under these facts, Lender would have only a short period of time to discover that Debtor had relocated and to reperfect under New Jersey

law, Lender could have protected itself by filing a continuation statement in Pennsylvania before Debtor relocated. By doing so, Lender would have prevented lapse and allowed itself the full four months to discover Debtor's new location and refile there or, if Debtor is in default, to perfect by taking possession of the equipment.

Example 3: Under the facts of Example 2, Lender files a financing statement in New Jersey before the effectiveness of the Pennsylvania financing statement lapses. Under subsection (b), Lender's security interest is continuously perfected beyond May 14, 2007, for a period determined by New Jersey's Article 9.

Subsection (a)(3) allows a one-year period in which to reperfect. The longer period is necessary, because, even with the exercise of due diligence, the secured party may be unable to discover that the collateral has been transferred to a person located in another jurisdiction. In any event, the period is cut short if the financing statement becomes ineffective under the law of the jurisdiction in which it is filed.

Example 4: Debtor is a Pennsylvania corporation. On January 1, Lender perfects a security interest in Debtor's equipment by filing in Pennsylvania. Debtor's shareholders decide to "reincorporate" in Delaware. On March 1, they form a Delaware corporation (Newcorp) into which they merge Debtor. The merger effectuates a transfer of the collateral from Debtor to Newcorp, which thereby becomes a debtor and is located in another jurisdiction. Under subsection (a)(3), the security interest remains perfected for one year after the merger. If a financing statement is filed in Delaware against Newcorp within the year following the merger, then the security interest remains perfected thereafter for a period determined by Delaware's Article 9.

Note that although Newcorp is a "new debtor" as defined in Section 9-102, the application of subsection (a)(3) is not limited to transferees who are new debtors. Note also that, under Section 9-507, the financing statement naming Debtor remains effective even though Newcorp has become the debtor.

Subsection (a) addresses security interests that are perfected (i.e., that have attached and as to which any required perfection step has been taken) before the debtor changes its location. Subsection (h) applies to security interests that have not attached before the location changes. See Comment 7.

3. Retroactive Unperfection. Subsection (b) sets forth the consequences of the failure to reperfect before perfection ceases under subsection (a): the security interest becomes unperfected prospectively and, as against purchasers for value, including buyers and secured

parties, but not as against donees or lien creditors, retroactively. The rule applies to agricultural liens, as well. See also Section 9-515 (taking the same approach with respect to lapse). Although this approach creates the potential for circular priorities, the alternative-retroactive unperfection against lien creditors-would create substantial and unjustifiable preference risks.

Example 5: Under the facts of Example 4, six months after the merger, Buyer bought from Newcorp some equipment formerly owned by Debtor. At the time of the purchase, Buyer took subject to Lender's perfected security interest, of which Buyer was unaware. See Section 9-315(a)(1). However, subsection (b) provides that if Lender fails to reperfect in Delaware within a year after the merger, its security interest becomes unperfected and is deemed never to have been perfected against Buyer. Having given value and received delivery of the equipment without knowledge of the security interest and before it was perfected, Buyer would take free of the security interest. See Section 9-317(b).

Example 6: Under the facts of Example 4, one month before the merger, Debtor created a security interest in certain equipment in favor of Financer, who perfected by filing in Pennsylvania. At that time, Financer's security interest is subordinate to Lender's. See Section 9-322(a)(1). Financer reperfects by filing in Delaware within a year after the merger, but Lender fails to do so. Under subsection (b), Lender's security interest is deemed never to have been perfected against Financer, a purchaser for value. Consequently, under Section 9-322(a)(2), Financer's security interest is now senior.

Of course, the expiration of the time period specified in subsection (a) does not of itself prevent the secured party from later reperfecting under the law of the new jurisdiction. If the secured party does so, however, there will be a gap in perfection, and the secured party may lose priority as a result. Thus, in Example 7, if Lender perfects by filing in Delaware more than one year under the merger, it will have a new date of filing and perfection for purposes of Section 9-322(a)(1). Financer's security interest, whose perfection dates back to the filing in Pennsylvania under subsection (b), will remain senior.

4. Possessory Security Interests. Subsection (c) deals with continued perfection of possessory security interests. It applies not only to security interests perfected solely by the secured party's having taken possession of the collateral. It also applies to security interests perfected by a method that includes as an element of perfection the secured party's having taken possession, such as perfection by taking delivery of a certificated security in registered form, see Section

9-313(a), and perfection by obtaining control over a certificated security. See Section 9-314(a).

5. Goods Covered by Certificate of Title. Subsections (d) and (e) address continued perfection of a security interest in goods covered by a certificate of title. The following examples explain the operation of those subsections.

Example 7: Debtor's automobile is covered by a certificate of title issued by Illinois. Lender perfects a security interest in the automobile by complying with Illinois' certificate-of-title statute. Thereafter, Debtor applies for a certificate of title in Indiana. Six months thereafter, Creditor acquires a judicial lien on the automobile. Under Section 9-303(b), Illinois law ceases to govern perfection; rather, once Debtor delivers the application and applicable fee to the appropriate Indiana authority, Indiana law governs. Nevertheless, under Indiana's Section 9-316(d), Lender's security interest remains perfected until it would become unperfected under Illinois law had no certificate of title been issued by Indiana. (For example, Illinois' certificate-of-title statute may provide that the surrender of an Illinois certificate of title in connection with the issuance of a certificate of title by another jurisdiction causes a security interest noted thereon to become unperfected.) If Lender's security interest remains perfected, it is senior to Creditor's judicial lien.

Example 8: Under the facts in Example 7, five months after Debtor applies for an Indiana certificate of title, Debtor sells the automobile to Buyer. Under subsection (e)(2), because Lender did not reperfect within the four months after the goods became covered by the Indiana certificate of title, Lender's security interest is deemed never to have been perfected against Buyer. Under Section 9-317(b), Buyer is likely to take free of the security interest. Lender could have protected itself by perfecting its security interest either under Indiana's certificate-of-title statute, see Section 9-311, or, if it had a right to do so under an agreement or Section 9-610, by taking possession of the automobile. See Section 9-313(b).

The results in Examples 7 and 8 do not depend on the fact that the original perfection was achieved by notation on a certificate of title. Subsection (d) applies regardless of the method by which a security interest is perfected under the law of another jurisdiction when the goods became covered by a certificate of title from this State.

Section 9-337 affords protection to a limited class of persons buying or acquiring a security interest in the goods while a security interest is perfected under the law of another jurisdiction but after this State has issued a clean certificate of title.

6. Deposit Accounts, Letter-of-Credit Rights, and Investment Property. Subsections (f) and (g) address changes in the jurisdiction of a bank, issuer of an uncertificated security, issuer of or nominated person under a letter of credit, securities intermediary, and commodity intermediary. The provisions are analogous to those of subsections (a) and (b).

7. Security Interests that Attach after Debtor Changes Location. In contrast to subsections (a) and (b), which address security interests that are perfected (i.e., that have attached and as to which any required perfection step has been taken) before the debtor changes its location, subsection (h) addresses security interests that attach four months after the debtor changes its location. Under subsection (h), a filed financing statement that would have been effective to perfect a security interest in the collateral if the debtor had not changed its location is effective to perfect a security interest in collateral acquired within four months after the relocation.

Example 9: Debtor, an individual whose principal residence is in Pennsylvania, grants to Lender a security interest in Debtor's existing and after-acquired inventory. Lender perfects the security interest by filing a proper financing statement in Pennsylvania on January 2, 2014. On March 31, 2014, Debtor's principal residence is relocated to New Jersey. Upon the relocation, New Jersey law governs perfection of a security interest in Debtor's inventory. See Sections 9-301, 9-307. Under New Jersey's Section 9-316(a), Lender's security interest in Debtor's inventory on hand at the time of the relocation remains perfected for four months thereafter. Had Debtor not relocated, the financing statement filed in Pennsylvania would have been effective to perfect Lender's security interest in inventory acquired by the Debtor after March 31, 2014. Accordingly, under subsection (h), the financing statement is effective to perfect Lender's security interest in inventory that Debtor acquires within the four months after Debtor's location changed. In Example 9, Lender's security interest in the inventory acquired within the four months after Debtor's relocation will be perfected when it attaches. It will remain perfected if, before the expiration of the four-month period, the security interest is perfected under the law of New Jersey. Otherwise, the security interest will become unperfected at the end of the four-month period and will be considered never to have been perfected as against a purchaser for value. See subsection (h)(2).

8. Collateral Acquired by New Debtor. Subsection (i) is similar to subsection (h). Whereas subsection (h) addresses security interests that attach within four months after a debtor changes its location,

subsection (i) addresses security interests that attach within four months after a new debtor becomes bound as debtor by a security agreement entered into by another person. Subsection (i) also addresses collateral acquired by the new debtor before it becomes bound.

Example 10: Debtor, a Pennsylvania corporation, grants to Lender a security interest in Debtor's existing and after-acquired inventory. Lender perfects the security interest by filing a proper financing statement in Pennsylvania on January 2, 2014. On March 31, 2014, Debtor merges into Survivor, a Delaware corporation. Because Survivor is located in Delaware, Delaware law governs perfection of a security interest in Survivor's inventory. See Sections 9-301, 9-307. Under Delaware's Section 9-316(a), Lender's security interest in the inventory that Survivor acquired from Debtor remains perfected for one year after the transfer. See Comment 2. By virtue of the merger, Survivor becomes bound as debtor by Debtor's security agreement. See Section 9-203(d). As a consequence, Lender's security interest attaches to all of Survivor's inventory under Section 9-203, and Lender's collateral now includes inventory in which Debtor never had an interest. The financing statement filed in Pennsylvania against Debtor is effective under Delaware's Section 9-316(i) to perfect Lender's security interest in inventory that Survivor acquired before, and within the four months after, becoming bound as debtor by Debtor's security agreement. This is because the financing statement filed in Pennsylvania would have been effective to perfect Lender's security interest in this collateral had Debtor, rather than Survivor, acquired it. If the financing statement is effective, Lender's security interest in the collateral that Survivor acquired before, and within four months after, Survivor became bound as debtor will be perfected upon attachment. It will remain perfected if, before the expiration of the four-month period, the security interest is perfected under Delaware law. Otherwise, the security interest will become unperfected at the end of the four-month period and will be considered never to have been perfected as against a purchaser for value.

9. Agricultural Liens. This Section does not apply to agricultural liens.

Example 11: Supplier holds an agricultural lien on corn. The lien arises under an Iowa statute. Supplier perfects by filing a financing statement in Iowa, where the corn is located. See Section 9-302. Debtor stores the corn in Missouri. Assume the Iowa agricultural lien survives or an agricultural lien arises under Missouri law (matters that this Article does not govern). Once the corn is located in Missouri,

Missouri becomes the jurisdiction whose law governs perfection. See Section 9-302. Thus, the agricultural lien will not be perfected unless Supplier files a financing statement in Missouri.

SOUTH CAROLINA REPORTER'S COMMENT

Subpart 1 of Part 3, Section 36-9-301 to 36-9-307, provides the choice of law rules for the perfection of security interests. Under Section 36-9-301(1) the law of the jurisdiction in which the debtor is located typically controls the perfection of security interests by filing. Under Section 36-9-301(2) the law of the jurisdiction in which the collateral is located controls the perfection of possessory security interests. Section 36-9-316 determines whether a security interest properly perfected in one jurisdiction continues perfected when there has been a change in the location of the debtor or of the collateral. When there has been a change in the debtor's location, subsections 36-9-316(a)(1) and (2) provide that filing in the initial location is effective to perfect the security interest until the earlier of the time it lapsed in the new jurisdiction or four months. Under Subsection 36-9-316(a)(3) if the collateral is transferred to a "new debtor" located in another jurisdiction, a filing in the debtor's jurisdiction remains effective for one year. Subsection 36-9-312(6) provides for the continuous perfection of possessory security interests when the collateral is relocated to another jurisdiction.

The 2013 amendments add two subsections to Section 33-9-316. Section 36-9-316(h) addresses the effect of a filed financing statement upon collateral acquired by a debtor within four months after the debtor changes its location to another jurisdiction. Section 36-9-316(i) addresses the effect of a financing statement filed in one jurisdiction against an original debtor upon collateral acquired by a new debtor located in a different jurisdiction. See Sections 36-9-203(d) and (2), 36-9-508, and 36-9-326.

Definitional Cross:

"As-extracted collateral"	Section 36-9-102(a)(6)
"Bank's jurisdiction"	Section 36-9-304(b)
"Certificate of title"	Section 36-9-102(a)(10)
"Collateral"	Section 36-9-102(a)(12)
"Commodity intermediary's jurisdiction"	Section 36-9-305(b)
"Debtor"	Section 36-9-102(a)(28)
"Debtor's location"	Section 36-9-307
"Deposit account"	Section 36-9-102(a)(29)
"Goods"	Section 36-9-102(a)(44)

"Investment property"	Section 36-9-102(a)(49)
"Issuer's jurisdiction"	See Section 36-9-306(b), [Section 36-5-116 1995 Revision]
"Letter-of-credit rights"	Section 36-9-102(a)(51)
"New debtor"	Section 36-9-102(a)(56)
"Nominated person's jurisdiction"	See Section 36-9-306(b), [Section 36-5-116 1995 Revision]
"Purchaser"	Section 36-1-201(33)
"Securities intermediary's jurisdiction"	Section 36-8-110(e)
"Security interest"	Section 36-1-201(37)
"Value"	Section 36-1-201(44)

Cross --

1. Choice of law rules for perfection of security interests by filing. Sections 36-9-301(1), (3), and (4).

2. Choice of rules for perfection of security interests by possession. Section 36-9-301(2).

3. Choice of law rules for perfection of security interests on goods covered by a certificate of title. Section 36-9-303.

4. Choice of law rules for perfection of security interests in deposit accounts. Section 36-9-304.

5. Choice of law rules for perfection of security interests in investment property. Section 36-9-305.

6. Choice of law rules for perfection of security interests in letter-of-credit rights. Section 36-9-306.

7. Location of the debtor. Section 36-9-307.

8. When a person becomes bound as a "new debtor" Section 36-9-203(d).

9. The effect of being bound as a "new debtor" Section 36-9-203(e).

10. The effectiveness of a financing statement naming the original debtor to perfect a security interest in collateral acquired by the "new debtor" Section 36-9-508.

11. Priority of security interest in collateral of a "new debtor" perfected by a filing effective solely under Section 36-9-508. Section 36-9-326.

Interests that take priority over or take free of security interest or agricultural lien

SECTION 7. Section 36-9-317 of the 1976 Code is amended to read:

"Section 36-9-317. (a) A security interest or agricultural lien is subordinate to the rights of:

(1) a person entitled to priority under Section 36-9-322; and

(2) except as otherwise provided in subsection (e), a person that becomes a lien creditor before the earlier of the time:

(A) the security interest or agricultural lien is perfected; or

(B) one of the conditions specified in Section 36-9-203(b)(3) is met and a financing statement covering the collateral is filed.

(b) Except as otherwise provided in subsection (e), a buyer, other than a secured party, of tangible chattel paper, documents, goods, instruments, or a certificated security takes free of a security interest or agricultural lien if the buyer gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

(c) Except as otherwise provided in subsection (e), a lessee of goods takes free of a security interest or agricultural lien if the lessee gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

(d) A licensee of a general intangible or a buyer, other than a secured party, of collateral other than tangible chattel paper, tangible documents, goods, instruments, or a certificated security takes free of a security interest if the licensee or buyer gives value without knowledge of the security interest and before it is perfected.

(e) Except as otherwise provided in Sections 36-9-320 and 36-9-321, if a person files a financing statement with respect to a purchase-money security interest before or within twenty days after the debtor receives delivery of the collateral, the security interest takes priority over the rights of a buyer, lessee, or lien creditor which arise between the time the security interest attaches and the time of filing."

OFFICIAL COMMENT

1. Source. Former Sections 9-301, 2A-307(2).

2. Scope of This Section. As did former Section 9-301, this Section lists the classes of persons who take priority over, or take free of, an unperfected security interest. Section 9-308 explains when a security interest or agricultural lien is "perfected." A security interest that has attached (see Section 9-203) but as to which a required perfection step has not been taken is "unperfected." Certain provisions have been moved from former Section 9-301. The definition of "lien creditor" now appears in Section 9-102, and the rules governing priority in future advances are found in Section 9-323.

3. Competing Security Interests. Section 9-322 states general rules for determining priority among conflicting security interests and refers to other Sections that state special rules of priority in a variety of

situations. The security interests given priority under Section 9-322 and the other Sections to which it refers take priority in general even over a perfected security interest. A fortiori they take priority over an unperfected security interest.

4. Filed but Unattached Security Interest vs. Lien Creditor. Under former Section 9-301(1)(b), a lien creditor's rights had priority over an unperfected security interest. Perfection required attachment (former Section 9-303) and attachment required the giving of value (former Section 9-203). It followed that, if a secured party had filed a financing statement but had not yet given value, an intervening lien creditor whose lien arose after filing but before attachment of the security interest acquired rights that are senior to those of the secured party who later gives value. This result comported with the nemo dat concept: When the security interest attached, the collateral was already subject to the judicial lien.

On the other hand, this result treated the first secured advance differently from all other advances. The special rule for future advances in former Section 9-301(4) (substantially reproduced in Section 9-323(b)) afforded priority to a discretionary advance made by a secured party within 45 days after the lien creditor's rights arose as long as the secured party was "perfected" when the lien creditor's lien arose-i.e., as long as the advance was not the first one and an earlier advance had been made.

Subsection (a)(2) revises former Section 9-301(1)(b) and treats the first advance the same as subsequent advances. That is, a judicial lien that arises after a financing statement is filed and before the security interest attaches and becomes perfected is subordinate to all advances secured by the security interest, even the first advance, except as otherwise provided in Section 9-323(b). However, if the security interest becomes unperfected (e.g., because the effectiveness of the filed financing statement lapses) before the judicial lien arises, the security interest is subordinate. If a financing statement is filed but a security interest does not attach, then no priority contest arises. The lien creditor has the only claim to the property.

5. Security Interest of Consignor or Receivables Buyer vs. Lien Creditor. Section 1-201 defines "security interest" to include the interest of most true consignors of goods and the interest of most buyers of certain receivables (accounts, chattel paper, payment intangibles, and promissory notes). A consignee of goods or a seller of accounts or chattel paper each is deemed to have rights in the collateral which a lien creditor may reach, as long as the competing security interest of the consignor or buyer is unperfected. This is so even

though, as between the consignor and the debtor-consignee, the latter has only limited rights, and, as between the buyer and debtor-seller, the latter does not have any rights in the collateral. See Sections 9-318 (seller), 9-319 (consignee). Security interests arising from sales of payment intangibles and promissory notes are automatically perfected. See Section 9-309. Accordingly, a subsequent judicial lien always would be subordinate to the rights of a buyer of those types of receivables.

6. Purchasers Other Than Secured Parties. Subsections (b), (c), and (d) afford priority over an unperfected security interest to certain purchasers (other than secured parties) of collateral. They derive from former Sections 9-301(1)(c), 2A-307(2), and 9-301(d). Former Section 9-301(1)(c) and (1)(d) provided that unperfected security interests are "subordinate" to the rights of certain purchasers. But, as former Comment 9 suggested, the practical effect of subordination in this context is that the purchaser takes free of the security interest. To avoid any possible misinterpretation, subsections (b) and (d) of this Section use the phrase "takes free."

Subsection (b) governs goods, as well as intangibles of the type whose transfer is effected by physical delivery of the representative piece of paper (tangible chattel paper, documents, instruments, and security certificates). To obtain priority, a buyer must both give value and receive delivery of the collateral without knowledge of the existing security interest and before perfection. Even if the buyer gave value without knowledge and before perfection, the buyer would take subject to the security interest if perfection occurred before physical delivery of the collateral to the buyer. Subsection (c) contains a similar rule with respect to lessees of goods. Note that a lessee of goods in ordinary course of business takes free of all security interests created by the lessor, even if perfected. See Section 9-321.

Normally, there will be no question when a buyer of chattel paper, documents, instruments, or security certificates "receives delivery" of the property. See Section 1-201 (defining " delivery"). However, sometimes a buyer or lessee of goods, such as complex machinery, takes delivery of the goods in stages and completes assembly at its own location. Under those circumstances, the buyer or lessee "receives delivery" within the meaning of subsections (b) and (c) when, after an inspection of the portion of the goods remaining with the seller or lessor, it would be apparent to a potential lender to the seller or lessor that another person might have an interest in the goods.

The rule of subsection (b) obviously is not appropriate where the collateral consists of intangibles and there is no representative piece of

paper whose physical delivery is the only or the customary method of transfer. Therefore, with respect to such intangibles (including accounts, electronic chattel paper, general intangibles, and investment property other than certificated securities), subsection (d) gives priority to any buyer who gives value without knowledge, and before perfection, of the security interest. A licensee of a general intangible takes free of an unperfected security interest in the general intangible under the same circumstances. Note that a licensee of a general intangible in ordinary course of business takes rights under a nonexclusive license free of security interests created by the licensor, even if perfected. See Section 9-321.

Unless Section 9-109 excludes the transaction from this Article, a buyer of accounts, chattel paper, payment intangibles, or promissory notes is a " secured party" (defined in Section 9-102), and subsections (b) and (d) do not determine priority of the security interest created by the sale. Rather, the priority rules generally applicable to competing security interests apply. See Section 9-322.

7. Agricultural Liens. Subsections (a), (b), and (c) subordinate unperfected agricultural liens in the same manner in which they subordinate unperfected security interests.

8. Purchase-Money Security Interests. Subsection (e) derives from former Section 9-301(2). It provides that, if a purchase-money security interest is perfected by filing no later than 20 days after the debtor receives delivery of the collateral, the security interest takes priority over the rights of buyers, lessees, or lien creditors which arise between the time the security interest attaches and the time of filing. Subsection (e) differs from former Section 9-301(2) in two significant respects. First, subsection (e) protects a purchase-money security interest against all buyers and lessees, not just against transferees in bulk. Second, subsection (e) conditions this protection on filing within 20, as opposed to ten, days after delivery.

Section 9-311(b) provides that compliance with the perfection requirements of a statute or treaty described in Section 9-311(a) "is equivalent to the filing of a financing statement." It follows that a person who perfects a security interest in goods covered by a certificate of title by complying with the perfection requirements of an applicable certificate-of-title statute "files a financing statement" within the meaning of subsection(e).

SOUTH CAROLINA REPORTER'S COMMENT

Section 36-9-317 provides the priority rules applicable to unperfected security interests. South Carolina has adopted an inconsistent amendment to the Official Text of Section 9-317.

Section 9-317(a)(2) of the 1999 Official Text provides that an unperfected security interest is subordinate to the rights of a person who becomes a lien creditor before the earlier of (1) the time a security interest is perfected or (2) a financing statement is filed covering the collateral and the parties have satisfied the evidentiary requirement for attachment of a security interest under Section 9-203(b)(3)(D). South Carolina has revised Section 9-317(a)(2) to provide that an unperfected security interest is subordinate to both the holder of an unperfected security interest and a landlord who obtains a lien for distraint before the earlier of the time the secured party perfects or files a financing statement covering the collateral. See also Section 36-9-109(d)(1) (priority conflict between a landlord's lien and a security interest is governed by Section 36-9-317). A landlord does not acquire a lien for distraint until there is actual levy of a distress warrant. Burnett v. Bourkedes, 240 S.C. 144, 125 S.C. 2d 10, 15 (1962). Therefore under Section 36-9-317(a)(2) a secured party will be entitled to priority over a landlord seeking to collect rent through distraint if the secured party files a financing statement covering the collateral or perfects its security interest before the actual levy of the distress warrant. The revision in Section 36-9-317(a)(2) was adopted to reaffirm the holding in In Re J.M. Smith Corp., 341 S.C. 442, 535 S.E. 2d 131 (2000).

Definitional Cross:

"Account"	Section 36-9-102(a)(2)
"Agricultural lien"	Section 36-9-102(a)(5)
"Certificated security"	Section 36-9-102(a)(4)
"Collateral"	Section 36-9-102(a)(12)
"Delivery"	Section 36-1-201(14)
"Document"	Sections 36-9-102(a)(30), 36-7-102(1)(e), 36-1-201(15)
"Electronic chattel paper"	Section 36-9-102(a)(31)
"Financing statement"	Section 36-9-102(a)(39)
"General intangible"	Section 36-9-102(a)(42)
"Goods"	Section 36-9-102(a)(44)
"Instrument"	Section 36-9-102(a)(47)
"Investment property"	Section 36-9-102(a)(49)
"Knowledge"	Section 36-1-201(25)
"Lessee"	Section 36-2A-103(1)(n)
"Licensee"	See Section 36-9-321(a)
"Lien creditor"	Section 36-9-102(a)(52)

"Purchase-money security interest"	Section 36-9-103
"Security interest"	Section 36-1-201(37)
"Tangible chattel paper"	Section 36-9-102(a)(79)

Cross --

1. A perfected security interest or agricultural lien has priority over an unperfected security interest or agricultural lien. Section 36-9-322(a)(2).

2. When a security interest is perfected. Section 36-9-308(a).

3. When a agricultural lien is perfected. Section 36-9-308(b).

4. Priority of perfected security interest over a lien creditor with respect to future advances. Section 36-9-323(b).

5. Priority of buyers of goods over perfected security interests. Section 36-9-320.

6. Priority of licensees in the ordinary course over perfected security interests. Section 36-9-321(b).

7. Priority of lessees in the ordinary course over perfected security interests. Section 36-9-321(c).

Priority of security interests created by new debtor

SECTION 8. Section 36-9-326 of the 1976 Code is amended to read:

"Section 36-9-326. (a) Subject to subsection (b), a security interest that is created by a new debtor in collateral in which the new debtor has or acquires rights and is perfected solely by a filed financing statement that would be ineffective to perfect the security interest but for the application of Section 36-9-316(i)(1) or Section 36-9-508 is subordinate to a security interest in the same collateral which is perfected other than by such a filed financing statement.

(b) The other provisions of this part determine the priority among conflicting security interests in the same collateral perfected by filed financing statements described in subsection (a). However, if the security agreements to which a new debtor became bound as debtor were not entered into by the same original debtor, the conflicting security interests rank according to priority in time of the new debtor's having become bound."

OFFICIAL COMMENT

1. Source. New.

2. Subordination of Security Interests Created by New Debtor. This Section addresses the priority contests that may arise when a new

debtor becomes bound by the security agreement of an original debtor and each debtor has a secured creditor.

Subsection (a) subordinates the original debtor's secured party's security interest perfected against the new debtor by a filed financing statement that would be ineffective to perfect the security interest but for Section 9-508 or, if the original debtor and new debtor are located in different jurisdictions, Section 9-316(i)(1). The security interest is subordinated to security interests in the same collateral perfected by another method, e.g., by filing against the new debtor. This section does not subordinate a security interest perfected by a new initial financing statement providing the name of the new debtor, even if the initial financing statement is filed to maintain the effectiveness of a financing statement under the circumstances described in Section 9-508(b). Nor does it subordinate a security interest perfected by a financing statement filed against the original debtor which remains effective against collateral transferred by the original debtor to the new debtor. See Section 9-508(c). Concerning priority contests involving transferred collateral, see Sections 9-325 and 9-507.

Example 1: SP-X holds a perfected-by-filing security interest in X Corp's existing and after-acquired inventory, and SP-Z holds a perfected-by-possession security interest in an item of Z Corp's inventory. Both X Corp and Z Corp are located in the same jurisdiction under Section 9-307. Z Corp becomes bound as debtor by X Corp's security agreement (e.g., Z Corp buys X Corp's assets and assumes its security agreement). See Section 9-203(d). But for Section 9-508, SP-X's financing statement would be ineffective to perfect a security interest in the item of inventory in which Z Corp has rights. However, subsection (a) provides that SP-X's perfected security interest is subordinate to SP-Z's, regardless of whether SP-X's financing statement was filed before SP-Z perfected its security interest.

Example 2: SP-X holds a perfected-by-filing security interest in X Corp's existing and after-acquired inventory, and SP-Z holds a perfected-by-filing security interest in Z Corp's existing and after-acquired inventory. Both X Corp and Z Corp are located in the same jurisdiction under Section 9-307. Z Corp becomes bound as debtor by X Corp's security agreement. Immediately thereafter, and before the effectiveness of SP-X's financing statement lapses, Z Corp acquires a new item of inventory. But for Section 9-508, SP-X's financing statement would be ineffective to perfect a security interest in the new item of inventory in which Z Corp has rights. However, because SP-Z's security interest was perfected by a filing whose

effectiveness does not depend on Section 9-316(i)(1) or 9-508, subsection (a) subordinates SP-X's perfected security interest to SP-Z's. This would be the case even if SP-Z filed after Z Corp became bound by X Corp's security agreement, and regardless of which financing statement was filed first. The same result would obtain if X Corp and Z Corp were located in different locations. SP-X's security interest would be perfected by a financing statement that would be ineffective but for Section 9-316(i)(1), whereas the effectiveness of SP-Z's filing does not depend on Section 9-316(i)(1) or 9-508.

3. Other Priority Rules. Subsection (b) addresses the priority among security interests created by the original debtor (X Corp). By invoking the other priority rules of this subpart, as applicable, subsection (b) preserves the relative priority of security interests created by the original debtor.

Example 3: Under the facts of Example 2, SP-Y also holds a perfected-by-filing security interest in X Corp's existing and after-acquired inventory. SP-Y filed after SP-X. Inasmuch as both SP-X's and SP-Y's security interests in inventory acquired by Z Corp after it became bound would be unperfected but for the application of Section 9-508, the normal priority rules determine their relative priorities. Under the "first-to-file-or-perfect" rule of Section 9-322(a)(1), SP-X has priority over SP-Y.

Example 4: Under the facts of Example 3, after Z Corp became bound by X Corp's security agreement, SP-Y promptly filed a new initial financing statement against Z Corp. SP-X's security interest remains perfected only by virtue of its original filing against X Corp which "would be ineffective to perfect the security interest but for the application of Section 9-508." Because SP-Y's security interest is perfected by the filing of a financing statement whose effectiveness does not depend on Section 9-508 or Section 9-316(i)(1), subsection (a) subordinates SP-X's security interest to SP-Y's. If both SP-X and SP-Y file a new initial financing statement against Z Corp, then the "first-to-file-or-perfect" rule of Section 9-322(a)(1) governs their priority inter se as well as their priority against SP-Z.

The second sentence of subsection (b) effectively limits the applicability of the first sentence to situations in which a new debtor has become bound by more than one security agreement entered into by the same original debtor. When the new debtor has become bound by security agreements entered into by different original debtors, the second sentence provides that priority is based on priority in time of the new debtor's becoming bound.

Example 5: Under the facts of Example 2, SP-W holds a perfected-by-filing security interest in W Corp's existing and after-acquired inventory. After Z Corp became bound by X Corp's security agreement in favor of SP-X, Z Corp became bound by W Corp's security agreement. Under subsection (b), SP-W's security interest in inventory acquired by Z Corp is subordinate to that of SP-X, because Z Corp became bound under SP-X's security agreement before it became bound under SP-W's security agreement. This is the result regardless of which financing statement (SP-X's or SP-W's) was filed first.

The second sentence of subsection (b) reflects the generally accepted view that priority based on the first-to-file rule is inappropriate for resolving priority disputes when the filings were made against different debtors. Like subsection (a) and the first sentence of subsection (b), however, the second sentence of subsection (b) relates only to priority conflicts among security interests that would be unperfected but for the application of Section 9-316(i)(1) or Section 9-508.

Example 6: Under the facts of Example 5, after Z Corp became bound by W Corp's security agreement, SP-W promptly filed a new initial financing statement against Z Corp. At that time, SP-X's security interest was perfected only pursuant to its original filing against X Corp which "would be ineffective to perfect the security interest but for the application of Section 9-508." Because SP-W's security interest is perfected by the filing of a financing statement whose effectiveness does not depend on Section 9-316(i)(1) or Section 9-508, subsection (a) subordinates SP-X's security interest to SP-w'S. If both SP-X and SP-W file a new initial financing statement against Z Corp, then the "first-to-file-or-perfect" rule of Section 9-322(a)(1) governs their priority inter se as well as their priority against SP-Z.

SOUTH CAROLINA REPORTER'S COMMENT

Section 36-9-326 resolves priority conflicts that arise when a person becomes bound by a security agreement entered into by another person. To illustrate, assume that on February 1, A Corporation entered into a security agreement with SP-1 that granted SP-1 a security interest upon SP-1's current and after acquired inventory. On February 1, SP-1 properly filed a financing statement covering A Corporation's inventory. Effective April 1 A Corporation was merged with B Corporation with B Corporation surviving the merger. Under applicable corporate law B Corporation became generally obligated for A Corporation's obligations including the debt owed to SP-1. Under applicable corporate law B Corporation also acquired all of A

Corporation's assets. On May 1 B Corporation entered into a security agreement with SP-2 granting SP-2 a security interest upon B Corporation's current and after acquired inventory. On May 1, SP-2 properly filed a financing statement covering B Corporation's inventory. On July 1, following defaults upon both the security agreement with SP-1 and SP-2 a priority dispute arose over inventory acquired by B Corporation after the effective date of the merger.

Under Section 36-9-203(d)(2) B Corporation qualified as a "new debtor" and was bound by the security agreement entered into by A Corporation and SP-1. As a result, under Section 36-9-203(e) the security agreement entered into by A Corporation was effective to give SP-1 a security interest in the post-merger inventory acquired by B Corporation. Under Section 36-9-508 SP-1's filed financing statement was effective to perfect SP-1's security interest in inventory acquired by B Corporation for four months following the merger.

Although SP-1 holds a perfected security interest in B Corporation's post-merger inventory and SP-1 filed before SP-2, SP-1's financing statement is effective solely under section 9-508. As a result, Section 36-9-325(a) subordinates SP-1's security interest to the security interest B Corporation granted SP-2.

The 2013 amendments revised Section 36-9-326 to incorporate the amendment to Section 36-9-316(i) and clarifies when a security interest created by a new debtor is subordinated.

Definitional Cross:

"Collateral"	Section 36-9-102(a)(12)
"Debtor"	Section 36-9-102(a)(28)
"Financing Statement"	Section 36-9-102(a)(39)
"New debtor"	Section 36-9-102(a)(56)
"Original debtor"	Section 36-9-102(a)(60)
"Security interest"	Section 36-1-201(37)

Cross --

1. Requirements for becoming bound as a new debtor to a security agreement entered into by an original debtor. Section 36-9-203(d).

2. The effect of becoming bound as a new debtor. Section 36-9-203(e).

3. Effectiveness of a financing statement filed under the name of the original debtor to perfect a security interest in collateral acquired by the new debtor. Section 36-9-508.

4. When a financing statement filed under the name of the original debtor becomes seriously misleading. Section 36-9-506.

5. Effectiveness of financing statement with respect to collateral sold or otherwise disposed of. Section 36-9-325.

6. Priority of perfected security interest in collateral sold or otherwise disposed of. Section 36-9-325.

Discharge of account debtor, notification, identification, and proof of assignment, restrictions on assignment of accounts, chattel paper, payment intangibles, and promissory notes ineffective

SECTION 9. Section 36-9-406 of the 1976 Code is amended to read:

"Section 36-9-406. (a) Subject to subsections (b) through (i), an account debtor on an account, chattel paper, or a payment intangible may discharge its obligation by paying the assignor until, but not after, the account debtor receives a notification, authenticated by the assignor or the assignee, that the amount due or to become due has been assigned and that payment is to be made to the assignee. After receipt of the notification, the account debtor may discharge its obligation by paying the assignee and may not discharge the obligation by paying the assignor.

(b) Subject to subsection (h), notification is ineffective under subsection (a):

(1) if it does not reasonably identify the rights assigned;

(2) to the extent that an agreement between an account debtor and a seller of a payment intangible limits the account debtor's duty to pay a person other than the seller and the limitation is effective under law other than this chapter; or

(3) at the option of an account debtor, if the notification notifies the account debtor to make less than the full amount of any installment or other periodic payment to the assignee, even if:

(A) only a portion of the account, chattel paper, or payment intangible has been assigned to that assignee;

(B) a portion has been assigned to another assignee; or

(C) the account debtor knows that the assignment to that assignee is limited.

(c) Subject to subsection (h), if requested by the account debtor, an assignee shall seasonably furnish reasonable proof that the assignment has been made. Unless the assignee complies, the account debtor may discharge its obligation by paying the assignor, even if the account debtor has received a notification under subsection (a).

(d) Except as otherwise provided in subsection (e) and Sections 36-2A-303 and 36-9-407, and subject to subsection (h), a term in an agreement between an account debtor and an assignor or in a promissory note is ineffective to the extent that it:

(1) prohibits, restricts, or requires the consent of the account debtor or person obligated on the promissory note to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in, the account, chattel paper, payment intangible, or promissory note; or

(2) provides that the assignment or transfer or the creation, attachment, perfection, or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the account, chattel paper, payment intangible, or promissory note.

(e) Subsection (d) does not apply to the sale of a payment intangible or promissory note, other than a sale under a disposition pursuant to Section 36-9-610 or an acceptance of collateral pursuant to Section 36-9-620.

(f) Except as otherwise provided in Sections 36-2A-303 and 36-9-407 and subject to subsections (h) and (i), a rule of law, statute, or regulation that prohibits, restricts, or requires the consent of a government, governmental body or official, or account debtor to the assignment or transfer of, or creation of a security interest in, an account or chattel paper is ineffective to the extent that the rule of law, statute, or regulation:

(1) prohibits, restricts, or requires the consent of the government, governmental body or official, or account debtor to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in the account or chattel paper; or

(2) provides that the assignment or transfer or the creation, attachment, perfection, or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the account or chattel paper.

(g) Subject to subsection (h), an account debtor may not waive or vary its option under subsection (b)(3).

(h) This section is subject to law other than this chapter which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.

(i) This section does not apply to an assignment of a health care insurance receivable.

(j) Subsection (d) does not apply to the assignment, transfer, or creation of a security interest in a:

(1) claim or right to receive compensation for injuries or sickness as described in 26 U.S.C. Section 104(a)(1) or (2), as amended; or

(2) claim or right to receive benefits under a special needs trust as described in 42 U.S.C. Section 1396p(d)(4), as amended."

OFFICIAL COMMENT

1. Source. Former Section 9-318(3), (4).

2. Account Debtor's Right to Pay Assignor Until Notification. Subsection (a) provides the general rule concerning an account debtor's right to pay the assignor until the account debtor receives appropriate notification. The revision makes clear that once the account debtor receives the notification, the account debtor cannot discharge its obligation by paying the assignor. It also makes explicit that payment to the assignor before notification, or payment to the assignee after notification, discharges the obligation. No change in meaning from former Section 9-318 is intended. Nothing in this Section conditions the effectiveness of a notification on the identity of the person who gives it. An account debtor that doubts whether the right to payment has been assigned may avail itself of the procedures in subsection (c). See Comment 4.

An effective notification under subsection (a) must be authenticated. This requirement normally could be satisfied by sending notification on the notifying person's letterhead or on a form on which the notifying person's name appears. In each case the printed name would be a symbol adopted by the notifying person for the purpose of identifying the person and adopting the notification. See Section 9-102 (defining "authenticate").

Subsection (a) applies only to account debtors on accounts, chattel paper, and payment intangibles. (Section 9-102 defines the term "account debtor" more broadly, to include those obligated on all general intangibles.) Although subsection (a) is more precise than its predecessor, it probably does not change the rule that applied under former Article 9. Former Section 9-318(3) referred to the account debtor's obligation to "pay," indicating that the subsection was limited to account debtors on accounts, chattel paper, and other payment obligations.

3. Limitations on Effectiveness of Notification. Subsection (b) contains some special rules concerning the effectiveness of a notification under subsection (a).

Subsection (b)(1) tracks former Section 9-318(3) by making ineffective a notification that does not reasonably identify the rights assigned. A reasonable identification need not identify the right to payment with specificity, but what is reasonable also is not left to the arbitrary decision of the account debtor. If an account debtor has doubt

as to the adequacy of a notification, it may not be safe in disregarding the notification unless it notifies the assignee with reasonable promptness as to the respects in which the account debtor considers the notification defective.

Subsection (b)(2), which is new, applies only to sales of payment intangibles. It makes a notification ineffective to the extent that other law gives effect to an agreement between an account debtor and a seller of a payment intangible that limits the account debtor's duty to pay a person other than the seller. Payment intangibles are substantially less fungible than accounts and chattel paper. In some (e.g., commercial bank loans), account debtors customarily and legitimately expect that they will not be required to pay any person other than the financial institution that has advanced funds.

It has become common in financing transactions to assign interests in a single obligation to more than one assignee. Requiring an account debtor that owes a single obligation to make multiple payments to multiple assignees would be unnecessarily burdensome. Thus, under subsection (b)(3), an account debtor that is notified to pay an assignee less than the full amount of any installment or other periodic payment has the option to treat the notification as ineffective, ignore the notice, and discharge the assigned obligation by paying the assignor. Some account debtors may not realize that the law affords them the right to ignore certain notices of assignment with impunity. By making the notification ineffective at the account debtor's option, subsection (b)(3) permits an account debtor to pay the assignee in accordance with the notice and thereby to satisfy its obligation pro tanto. Under subsection (g), the rights and duties created by subsection (b)(3) cannot be waived or varied.

4. Proof of Assignment. Subsection (c) links payment with discharge, as in subsection (a). It follows former Section 9-318(3) in referring to the right of the account debtor to pay the assignor if the requested proof of assignment is not seasonably forthcoming. Even if the proof is not forthcoming, the notification of assignment would remain effective, so that, in the absence of reasonable proof of the assignment, the account debtor could discharge the obligation by paying either the assignee or the assignor. Of course, if the assignee did not in fact receive an assignment, the account debtor cannot discharge its obligation by paying a putative assignee who is a stranger. The observations in Comment 3 concerning the reasonableness of an identification of a right to payment also apply here. An account debtor that questions the adequacy of proof submitted by an assignee would be well advised to promptly inform the assignee of the defects.

An account debtor may face another problem if its obligation becomes due while the account debtor is awaiting reasonable proof of the assignment that it has requested from the assignee. This Section does not excuse the account debtor from timely compliance with its obligations. Consequently, an account debtor that has received a notification of assignment and who has requested reasonable proof of the assignment may discharge its obligation by paying the assignor at the time (or even earlier if reasonably necessary to avoid risk of default) when a payment is due, even if the account debtor has not yet received a response to its request for proof. On the other hand, after requesting reasonable proof of the assignment, an account debtor may not discharge its obligation by paying the assignor substantially in advance of the time that the payment is due unless the assignee has failed to provide the proof seasonably.

5. Contractual Restrictions on Assignment. Former Section 9-318(4) rendered ineffective an agreement between an account debtor and an assignor which prohibited assignment of an account (whether outright or to secure an obligation) or prohibited a security assignment of a general intangible for the payment of money due or to become due. Subsection (d) essentially follows former Section 9-318(4), but expands the rule of free assignability to chattel paper (subject to Sections 2A-303 and 9-407) and promissory notes and explicitly overrides both restrictions and prohibitions of assignment. The policies underlying the ineffectiveness of contractual restrictions under this Section build on common-law developments that essentially have eliminated legal restrictions on assignments of rights to payment as security and other assignments of rights to payment such as accounts and chattel paper. Any that might linger for accounts and chattel paper are addressed by new subsection (f). See Comment 6.

Former Section 9-318(4) did not apply to a sale of a payment intangible (as described in the former provision, "a general intangible for money due or to become due") but did apply to an assignment of a payment intangible for security. Subsection (e) continues this approach and also makes subsection (d) inapplicable to sales of promissory notes. Section 9-408 addresses anti-assignment clauses with respect to sales of payment intangibles and promissory notes.

Like former Section 9-318(4), subsection (d) provides that anti-assignment clauses are "ineffective." The quoted term means that the clause is of no effect whatsoever; the clause does not prevent the assignment from taking effect between the parties and the prohibited assignment does not constitute a default under the agreement between the account debtor and assignor. However, subsection (d) does not

override terms that do not directly prohibit, restrict, or require consent to an assignment but which might, nonetheless, present a practical impairment of the assignment. Properly read, however, subsection (d) reaches only covenants that prohibit, restrict, or require consents to assignments; it does not override all terms that might "impair" an assignment in fact.

Example: Buyer enters into an agreement with Seller to buy equipment that Seller is to manufacture according to Buyer's specifications. Buyer agrees to make a series of prepayments during the construction process. In return, Seller agrees to set aside the prepaid funds in a special account and to use the funds solely for the manufacture of the designated equipment. Seller also agrees that it will not assign any of its rights under the sale agreement with Buyer. Nevertheless, Seller grants to Secured Party a security interest in its accounts. Seller's antiassignment agreement is ineffective under subsection (d); its agreement concerning the use of prepaid funds, which is not a restriction or prohibition on assignment, is not. However, if Secured Party notifies Buyer to make all future payments directly to Secured Party, Buyer will be obliged to do so under subsection (a) if it wishes the payments to discharge its obligation. Unless Secured Party releases the funds to Seller so that Seller can comply with its use-of- funds covenant, Seller will be in breach of that covenant.

In the example, there appears to be a plausible business purpose for the use-of-funds covenant. However, a court may conclude that a covenant with no business purpose other than imposing an impediment to an assignment actually is a direct restriction that is rendered ineffective by subsection (d).

6. Legal Restrictions on Assignment. Former Section 9-318(4), like subsection (d) of this Section, addressed only contractual restrictions on assignment. The former Section was grounded on the reality that legal, as opposed to contractual, restrictions on assignments of rights to payment had largely disappeared. New subsection (f) codifies this principle of free assignability for accounts and chattel paper. For the most part the discussion of contractual restrictions in Comment 5 applies as well to legal restrictions rendered ineffective under subsection (f).

7. Multiple Assignments. This Section, like former Section 9-318, is not a complete codification of the law of assignments of rights to payment. In particular, it is silent concerning many of the ramifications for an account debtor in cases of multiple assignments of the same right. For example, an assignor might assign the same

receivable to multiple assignees (which assignments could be either inadvertent or wrongful). Or, the assignor could assign the receivable to assignee-1, which then might re-assign it to assignee-2, and so forth. The rights and duties of an account debtor in the face of multiple assignments and in other circumstances not resolved in the statutory text are left to the common-law rules. See, e.g., Restatement (2d), Contracts 338(3), 339. The failure of former Article 9 to codify these rules does not appear to have caused problems.

8. Consumer Account Debtors. Subsection (h) is new. It makes clear that the rules of this Section are subject to other law establishing special rules for consumer account debtors.

9. Account Debtors on Health-Care-Insurance Receivables. Subsection (i) also is new. The obligation of an insurer with respect to a health-care-insurance receivable is governed by other law. Section 9-408 addresses contractual and legal restrictions on the assignment of a health-care-insurance receivable.

SOUTH CAROLINA REPORTER'S COMMENT

Section 36-9-406 addresses two issues. The first issue is to whom an account debtor must make payment in order to discharge its obligation. The second issue is the extent to which certain restrictions upon the assignment of an interest in accounts, chattel paper, payment intangibles, and promissory notes are ineffective.

Subsection (a) provides that an account debtor can discharge its obligation by paying the assignor until the account debtor receives an authenticated notification from the assignor or assignee that the right payment has been assigned. As a general rule, after receipt of the notification of assignment subsection (a) provides that an account debtor can discharge its obligation only by paying the assignee. Under subsection (c), however, the account debtor can request reasonable proof of the assignment from the assignee and until it receives the proof, the account debtor can discharge its obligation by paying the assignor. Subsection (b) sets forth the requirements for an effective notification of assignment.

Subsection (d) and (f) set forth the rules for determining whether restrictions upon certain assignments are ineffective. Subsection (d) addresses contractual restrictions and subsection (f) addresses restrictions imposed by a rule of law, statute, or regulation.

Under subsection (d)(1) terms in an agreement between an account debtor and assignor or in a promissory note are ineffective to the extent they prohibit, restrict, or require the account debtor or person obligated on a note to consent to an assignment transfer, or creation, perfection,

or enforcement of a security interest in accounts, chattel paper, payment intangibles, or promissory notes. Subsection (d)(2) renders ineffective a contractual provision under which an assignment or transfer or creation, perfection, or enforcement of security interest in accounts,, chattel paper, payment intangibles, or promissory notes a breach or event of default. The scope of subsection (d), however, is limited by subsections (e) and (i). Subsection (e) provides that subsection (d) does not apply to sales of payment intangibles and promissory notes. Moreover, subsection (i) provides that subsection (d) does not apply to assignments of accounts that constitute health-care-insurance receivables.

Subsection (f) renders ineffective a rule of law, statute, or regulation that prohibits, restricts, or requires a government official or the account debtor to consent to the assignment or transfer of, or creation of a security interest in an account or chattel paper. Under subsection (f)(1) such restrictions are ineffective to prevent the assignment or transfer of, or the creation, perfection, or enforcement of a security interest in an account or chattel paper. Under subsection (f)(2) such restrictions are ineffective to establish a default, breach, right to terminate, or provide remedy under the account or chattel paper. Subsection (i) limits the scope of subsection (f) by rendering it inapplicable to assignments of health-care- insurance receivables. An example of a statutory restriction on assignments may be ineffective under subsection (f) is prohibition upon the assignment of a right to benefits under the Employment Security Law. Section 41-3920, S.C. Code Ann. (1976). One could argue, however, that such assignments are excluded from Article 9 under Section 36-9-109(d)(3) and that Subsection 36-9-406(f) does not apply to render the restriction ineffective.

Definitional Cross:

“Account”	Section 36-9-102(a)(2)
“Account debtor”	Section 36-9-102(a)(3)
“Agreement”	Section 36-1-201(3)
“Authenticate”	Section 36-9-102(a)(7)
“Chattel paper”	Section 36-9-102(a)(11)
“Health-care-insurance receivable”	Section 36-9-102(a)(46)
“Notification”	Section 36-1-201(26)
“Payment intangible”	Section 36-9-102(a)(61)
“Promissory note”	Section 36-9-102(a)(65)

Restrictions on assignment of promissory notes, health care insurance receivables, and certain general intangibles ineffective

SECTION 10. Section 36-9-408 of the 1976 Code is amended to read:

"Section 36-9-408. (a) Except as otherwise provided in subsection (b), a term in a promissory note or in an agreement between an account debtor and a debtor which relates to a health care insurance receivable or a general intangible, including a contract, permit, license, or franchise, and which term prohibits, restricts, or requires the consent of the person obligated on the promissory note or the account debtor to, the assignment or transfer of, or creation, attachment, or perfection of a security interest in, the promissory note, health care insurance receivable, or general intangible, is ineffective to the extent that the term:

(1) would impair the creation, attachment, or perfection of a security interest; or

(2) provides that the assignment or transfer or the creation, attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the promissory note, health care insurance receivable, or general intangible.

(b) Subsection (a) applies to a security interest in a payment intangible or promissory note only if the security interest arises out of a sale of the payment intangible or promissory note, other than a sale under a disposition pursuant to Section 36-9-610 or an acceptance of collateral pursuant to Section 36-9-620.

(c) A rule of law, statute, or regulation that prohibits, restricts, or requires the consent of a government, governmental body or official, person obligated on a promissory note, or account debtor to the assignment or transfer of, or creation of a security interest in, a promissory note, health care insurance receivable, or general intangible, including a contract, permit, license, or franchise between an account debtor and a debtor, is ineffective to the extent that the rule of law, statute, or regulation:

(1) would impair the creation, attachment, or perfection of a security interest; or

(2) provides that the assignment or transfer or the creation, attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right

of termination, or remedy under the promissory note, health care insurance receivable, or general intangible.

(d) To the extent that a term in a promissory note or in an agreement between an account debtor and a debtor which relates to a health care insurance receivable or general intangible or a rule of law, statute, or regulation described in subsection (c) would be effective under law other than this chapter but is ineffective under subsection (a) or (c), the creation, attachment, or perfection of a security interest in the promissory note, health care insurance receivable, or general intangible:

(1) is not enforceable against the person obligated on the promissory note or the account debtor;

(2) does not impose a duty or obligation on the person obligated on the promissory note or the account debtor;

(3) does not require the person obligated on the promissory note or the account debtor to recognize the security interest, pay or render performance to the secured party, or accept payment or performance from the secured party;

(4) does not entitle the secured party to use or assign the debtor's rights under the promissory note, health care insurance receivable, or general intangible, including any related information or materials furnished to the debtor in the transaction giving rise to the promissory note, health care insurance receivable, or general intangible;

(5) does not entitle the secured party to use, assign, possess, or have access to any trade secrets or confidential information of the person obligated on the promissory note or the account debtor; and

(6) does not entitle the secured party to enforce the security interest in the promissory note, health care insurance receivable, or general intangible.

(e) Subsections (a) and (c) do not apply to the assignment, transfer, or creation of a security interest in a:

(1) claim or right to receive compensation for injuries or sickness as described in 26 U.S.C. Section 104(a)(1) or (2), as amended; or

(2) claim or right to receive benefits under a special needs trust as described in 42 U.S.C. Section 1396p(d)(4), as amended."

OFFICIAL COMMENT

1. Source. New.

2. Free Assignability. This Section makes ineffective any attempt to restrict the assignment of a general intangible, health-care-insurance receivable, or promissory note, whether the restriction appears in the terms of a promissory note or the agreement between an account debtor

and a debtor (subsection (a)) or in a rule of law, including a statute or governmental rule or regulation (subsection (c)). This result allows the creation, attachment, and perfection of a security interest in a general intangible, such as an agreement for the nonexclusive license of software, as well as sales of certain receivables, such as a health-care-insurance receivable (which is an "account"), payment intangible, or promissory note, without giving rise to a default or breach by the assignor or from triggering a remedy of the account debtor or person obligated on a promissory note. This enhances the ability of certain debtors to obtain credit. On the other hand, subsection (d) protects the other party-the "account debtor" on a general intangible or the person obligated on a promissory note-from adverse effects arising from the security interest. It leaves the account debtor's or obligated person's rights and obligations unaffected in all material respects if a restriction rendered ineffective by subsection (a) or (c) would be effective under law other than Article 9.

Example 1: A term of an agreement for the nonexclusive license of computer software prohibits the licensee from assigning any of its rights as licensee with respect to the software. The agreement also provides that an attempt to assign rights in violation of the restriction is a default entitling the licensor to terminate the license agreement. The licensee, as debtor, grants to a secured party a security interest in its rights under the license and in the computers in which it is installed. Under this Section, the term prohibiting assignment and providing for a default upon an attempted assignment is ineffective to prevent the creation, attachment, or perfection of the security interest or entitle the licensor to terminate the license agreement. However, under subsection (d), the secured party (absent the licensor's agreement) is not entitled to enforce the license or to use, assign, or otherwise enjoy the benefits of the licensed software, and the licensor need not recognize (or pay any attention to) the secured party. Even if the secured party takes possession of the computers on the debtor's default, the debtor would remain free to remove the software from the computer, load it on another computer, and continue to use it, if the license so permits. If the debtor does not remove the software, other law may require the secured party to remove it before disposing of the computer. Disposition of the software with the computer could violate an effective prohibition on enforcement of the security interest. See subsection (d).

3. Nature of Debtor's Interest. Neither this Section nor any other provision of this Article determines whether a debtor has a property interest. The definition of the term "security interest" provides that it is

an "interest in personal property." See Section 1-201(37). Ordinarily, a debtor can create a security interest in collateral only if it has "rights in the collateral." See Section 9-203(b). Other law determines whether a debtor has a property interest ("rights in the collateral") and the nature of that interest. For example, the nonexclusive license addressed in Example 1 may not create any property interest whatsoever in the intellectual property (e.g., copyright) that underlies the license and that effectively enables the licensor to grant the license. The debtor's property interest may be confined solely to its interest in the promises made by the licensor in the license agreement (e.g., a promise not to sue the debtor for its use of the software).

4. Scope: Sales of Payment Intangibles and Other General Intangibles; Assignments Unaffected by this Section. Subsections (a) and (c) render ineffective restrictions on assignments only "to the extent" that the assignments restrict the "creation, attachment, or perfection of a security interest," including sales of payment intangibles and promissory notes. This Section does not render ineffective a restriction on an assignment that does not create a security interest. For example, if the debtor in Comment 2, Example 1 purported to assign the license to another entity that would use the computer software itself, other law would govern the effectiveness of the anti-assignment provisions.

Subsection (a) applies to a security interest in payment intangibles only if the security interest arises out of sale of the payment intangibles. Contractual restrictions directed to security interests in payment intangibles which secure an obligation are subject to Section 9-406(d). Subsection (a) also deals with sales of promissory notes which also create security interests. See Section 9-109(a). Subsection (c) deals with all security interests in payment intangibles or promissory notes, whether or not arising out of a sale.

Subsection (a) does not render ineffective any term, and subsection (c) does not render ineffective any law, statute or regulation, that restricts outright sales of general intangibles other than payment intangibles. They deal only with restrictions on security interests. The only sales of general intangibles that create security interests are sales of payment intangibles.

5.Terminology: "Account Debtor"; "Person Obligated on a Promissory Note." This Section uses the term "account debtor" as it is defined in Section 9-102. The term refers to the party, other than the debtor, to a general intangible, including a permit, license, franchise, or the like, and the person obligated on a health-care-insurance receivable, which is a type of account. The definition of "account debtor" does not

limit the term to persons who are obligated to pay under a general intangible. Rather, the term includes all persons who are obligated on a general intangible, including those who are obligated to render performance in exchange for payment. In some cases, e.g., the creation of a security interest in a franchisee's rights under a franchise agreement, the principal payment obligation may be owed by the debtor (franchisee) to the account debtor (franchisor). This Section also refers to a "person obligated on a promissory note," inasmuch as those persons do not fall within the definition of " account debtor."

Example 2: A licensor and licensee enter into an agreement for the nonexclusive license of computer software. The licensee's interest in the license agreement is a general intangible. If the licensee grants to a secured party a security interest in its rights under the license agreement, the licensee is the debtor and the licensor is the account debtor. On the other hand, if the licensor grants to a secured party a security interest in its right to payment (an account) under the license agreement, the licensor is the debtor and the licensee is the account debtor. (This Section applies to the security interest in the general intangible but not to the security interest in the account, which is not a health-care-insurance receivable.)

6. Effects on Account Debtors and Persons Obligated on Promissory Notes. Subsections (a) and (c) affect two classes of persons. These subsections affect account debtors on general intangibles and health-care-insurance receivables and persons obligated on promissory notes. Subsection (c) also affects governmental entities that enact or determine rules of law. However, subsection (d) ensures that these affected persons are not affected adversely. That provision removes any burdens or adverse effects on these persons for which any rational basis could exist to restrict the effectiveness of an assignment or to exercise any remedies. For this reason, the effects of subsections (a) and (c) are immaterial insofar as those persons are concerned.

Subsection (a) does not override terms that do not directly prohibit, restrict, or require consent to an assignment but which might, nonetheless, present a practical impairment of the assignment. Properly read, however, this Section, like Section 9-406(d), reaches only covenants that prohibit, restrict, or require consents to assignments; it does not override all terms that might "impair" an assignment in fact.

Example 3: A licensor and licensee enter into an agreement for the nonexclusive license of valuable business software. The license agreement includes terms (i) prohibiting the licensee from assigning its rights under the license, (ii) prohibiting the licensee from disclosing to

anyone certain information relating to the software and the licensor, and (iii) deeming prohibited assignments and prohibited disclosures to be defaults. The licensee wishes to obtain financing and, in exchange, is willing to grant a security interest in its rights under the license agreement. The secured party, reasonably, refuses to extend credit unless the licensee discloses the information that it is prohibited from disclosing under the license agreement. The secured party cannot determine the value of the proposed collateral in the absence of this information. Under this Section, the terms of the license prohibiting the assignment (grant of the security interest) and making the assignment a default are ineffective. However, the nondisclosure covenant is not a term that prohibits the assignment or creation of a security interest in the license. Consequently, the nondisclosure term is enforceable even though the practical effect is to restrict the licensee's ability to use its rights under the license agreement as collateral.

The nondisclosure term also would be effective in the factual setting of Comment 2, Example 1. If the secured party's possession of the computers loaded with software would put it in a position to discover confidential information that the debtor was prohibited from disclosing, the licensor should be entitled to enforce its rights against the secured party. Moreover, the licensor could have required the debtor to obtain the secured party's agreement that (i) it would immediately return all copies of software loaded on the computers and that (ii) it would not examine or otherwise acquire any information contained in the software. This Section does not prevent an account debtor from protecting by agreement its independent interests that are unrelated to the "creation, attachment, or perfection" of a security interest. In Example 1, moreover, the secured party is not in possession of copies of software by virtue of its security interest or in connection with enforcing its security interest in the debtor's license of the software. Its possession is incidental to its possession of the computers, in which it has a security interest. Enforcing against the secured party a restriction relating to the software in no way interferes with its security interest in the computers.

7. Effect in Assignor's Bankruptcy. This Section could have a substantial effect if the assignor enters bankruptcy. Roughly speaking, Bankruptcy Code Section 552 invalidates security interests in property acquired after a bankruptcy petition is filed, except to the extent that the postpetition property constitutes proceeds of prepetition collateral.

Example 4: A debtor is the owner of a cable television franchise that, under applicable law, cannot be assigned without the consent of the municipal franchisor. A lender wishes to extend credit to the debtor,

provided that the credit is secured by the debtor's "going business" value. To secure the loan, the debtor grants a security interest in all its existing and after-acquired property. The franchise represents the principal value of the business. The municipality refuses to consent to any assignment for collateral purposes. If other law were given effect, the security interest in the franchise would not attach; and if the debtor were to enter bankruptcy and sell the business, the secured party would receive but a fraction of the business's value. Under this Section, however, the security interest would attach to the franchise. As a result, the security interest would attach to the proceeds of any sale of the franchise while a bankruptcy is pending. However, this Section would protect the interests of the municipality by preventing the secured party from enforcing its security interest to the detriment of the municipality.

8. Effect Outside of Bankruptcy. The principal effects of this Section will take place outside of bankruptcy. Compared to the relatively few debtors that enter bankruptcy, there are many more that do not. By making available previously unavailable property as collateral, this Section should enable debtors to obtain additional credit. For purposes of determining whether to extend credit, under some circumstances a secured party may ascribe value to the collateral to which its security interest has attached, even if this Section precludes the secured party from enforcing the security interest without the agreement of the account debtor or person obligated on the promissory note. This may be the case where the secured party sees a likelihood of obtaining that agreement in the future. This may also be the case where the secured party anticipates that the collateral will give rise to a type of proceeds as to which this Section would not apply.

Example 5: Under the facts of Example 4, the debtor does not enter bankruptcy. Perhaps in exchange for a fee, the municipality agrees that the debtor may transfer the franchise to a buyer. As consideration for the transfer, the debtor receives from the buyer its check for part of the purchase price and its promissory note for the balance. The security interest attaches to the check and promissory note as proceeds. See Section 9-315(a)(2). This Section does not apply to the security interest in the check, which is not a promissory note, health-care-insurance receivable, or general intangible. Nor does it apply to the security interest in the promissory note, inasmuch as it was not sold to the secured party.

9. Contrary Federal Law. This Section does not override federal law to the contrary. However, it does reflect an important policy judgment that should provide a template for future federal law reforms.

SOUTH CAROLINA REPORTER'S COMMENT

Section 36-9-408 renders certain restrictions upon the assignment of promissory notes, health-care-insurance receivables, and general intangibles ineffective for limited purposes. Under Section 36-9-408 covered restrictions are ineffective to prevent the creation or perfection of a security interest, but remain effective to prevent the enforcement of the security interest. In this regard, Section 36-9-408 contrasts sharply with Section 36-9-406.

Subsection (a) addresses contractual restrictions upon alienation. It apples to terms that prohibit, restrict, or require consent to assign or transfer, or create or perfect a security interest in a promissory note, health-care-insurance receivable or general intangible. Subsection (b), however, limits the scope of subsection (a) by providing that subsection (a) applies to a security interest in a payment intangible or promissory note only if the security interest arose from a sale of the payment intangible or note. Under subsection (a)(1) such restrictions are ineffective to give rise to a default or breach.

Subsection (c) address restraints on alienation that arise from a rule of law, statute, or regulation. Subsection (c) applies to legal restraints that prohibit, restrict, or require the consent of a government official or account debtor to assign or transfer, or create a security interest in a promissory note, health-care-insurance receivable, or general intangible. Under subsection (c)(1) such restraints are ineffective to the extent they impair the creation, attachment, or perfection of a security interest. Under subsection (c)(2) the restraints are ineffective to give rise to a default or breach under the promissory note, health-care-insurance receivable, or general intangible. An example of a statutory restriction that is ineffective under subsection (c) is the prohibition against transferring a license to operate a cemetery company set forth in Section 39-55-205, S.C. Code Ann. (1976).

Subsection (d) makes clear the limited effect of finding a restraint ineffective under subsection (a) or (c). The intent of subsection (d) is to insure account debtors and persons obligated on promissory notes are not adversely affected. For example, although subsection (c)(1) renders Section 39-55-205 ineffective to prevent a secured party from taking a security interest in a debtor's cemetery license, subsection (d)(6) precludes the secured party from enforcing the security interest.

Definitional Cross:

"Account debtor"	Section 36-9-102(a)(3)
"Agreement"	Section 36-1-201(3)
"General intangible"	Section 36-9-102(a)(42)

"Health-care-insurance receivable"	Section 36-9-102(a)(46)
"Promissory note"	Section 36-9-102(a)(65)
"Security interest"	Section 36-1-201(37)

Cross --

Contractual and legal restrictions upon alienation of interests in accounts, chattel paper, payment intangibles, and promissory notes. Section 36-9-406(d)--(j).

Contents of financing statement, record of mortgage as financing statement, time of filing financing statement

SECTION 11. Section 36-9-502 of the 1976 Code is amended to read:

"Section 36-9-502. (a) Subject to subsection (b), a financing statement is sufficient only if it:

(1) provides the name of the debtor;

(2) provides the name of the secured party or a representative of the secured party; and

(3) indicates the collateral covered by the financing statement.

(b) Except as otherwise provided in Section 36-9-501(b), to be sufficient, a financing statement that covers as-extracted collateral or timber to be cut, or which is filed as a fixture filing and covers goods that are or are to become fixtures, must satisfy subsection (a) and also:

(1) indicate that it covers this type of collateral;

(2) indicate that it is to be filed for record in the real property records;

(3) provide a description of the real property to which the collateral is related sufficient to give constructive notice of a mortgage under the law of this State if the description were contained in a record of the mortgage of the real property; and

(4) if the debtor does not have an interest of record in the real property, provide the name of a record owner.

(c) A record of a mortgage is effective, from the date of recording, as a financing statement filed as a fixture filing or as a financing statement covering as-extracted collateral or timber to be cut only if the:

(1) record indicates the goods or accounts that it covers;

(2) goods are or are to become fixtures related to the real property described in the record or the collateral is related to the real property described in the record and is as-extracted collateral or timber to be cut;

(3) record satisfies the requirements for a financing statement in this section, but the:

(A) record need not indicate that it is to be filed in the real property records; and

(B) record sufficiently provides the name of a debtor who is an individual if it provides the individual name of the debtor or the surname and first personal name of the debtor, even if the debtor is an individual to whom Section 36-9-503(a)(6) applies; and

(4) record is duly recorded.

(d) A financing statement may be filed before a security agreement is made or a security interest otherwise attaches."

OFFICIAL COMMENT

1. Source. Former Section 9-402(1), (5), (6).

2. "Notice Filing." This Section adopts the system of "notice filing." What is required to be filed is not, as under pre-UCC chattel mortgage and conditional sales acts, the security agreement itself, but only a simple record providing a limited amount of information (financing statement). The financing statement may be filed before the security interest attaches or thereafter. See subsection (d). See also Section 9-308(a) (contemplating situations in which a financing statement is filed before a security interest attaches).

The notice itself indicates merely that a person may have a security interest in the collateral indicated. Further inquiry from the parties concerned will be necessary to disclose the complete state of affairs. Section 9-210 provides a statutory procedure under which the secured party, at the debtor's request, may be required to make disclosure. However, in many cases, information may be forthcoming without the need to resort to the formalities of that Section.

Notice filing has proved to be of great use in financing transactions involving inventory, accounts, and chattel paper, because it obviates the necessity of refiling on each of a series of transactions in a continuing arrangement under which the collateral changes from day to day. However, even in the case of filings that do not necessarily involve a series of transactions (e.g., a loan secured by a single item of equipment), a financing statement is effective to encompass transactions under a security agreement not in existence and not contemplated at the time the notice was filed, if the indication of collateral in the financing statement is sufficient to cover the collateral concerned. Similarly, a financing statement is effective to cover after-acquired property of the type indicated and to perfect with respect to future advances under security agreements, regardless of whether

after-acquired property or future advances are mentioned in the financing statement and even if not in the contemplation of the parties at the time the financing statement was authorized to be filed.

3. Debtor's Signature; Required Authorization. Subsection (a) sets forth the simple formal requirements for an effective financing statement. These requirements are: (1) the debtor's name; (2) the name of a secured party or representative of the secured party; and (3) an indication of the collateral.

Whereas former Section 9-402(1) required the debtor's signature to appear on a financing statement, this Article contains no signature requirement. The elimination of the signature requirement facilitates paperless filing. (However, as PEB Commentary No. 15 indicates, a paperless financing statement was sufficient under former Article 9.) Elimination of the signature requirement also makes the exceptions provided by former Section 9-402(2) unnecessary.

The fact that this Article does not require that an authenticating symbol be contained in the public record does not mean that all filings are authorized. Rather, Section 9-509(a) entitles a person to file an initial financing statement, an amendment that adds collateral, or an amendment that adds a debtor only if the debtor authorizes the filing, and Section 9-509(d) entitles a person other than the debtor to file a termination statement only if the secured party of record authorizes the filing. Of course, a filing has legal effect only to the extent it is authorized. See Section 9-510.

Law other than this Article, including the law with respect to ratification of past acts, generally determines whether a person has the requisite authority to file a record under this Article. See Section 1-103. However, under Section 9-509(b), the debtor's authentication of (or becoming bound by) a security agreement ipso facto constitutes the debtor's authorization of the filing of a financing statement covering the collateral described in the security agreement. The secured party need not obtain a separate authorization.

Section 9-625 provides a remedy for unauthorized filings. Making an unauthorized filing also may give rise to civil or criminal liability under other law. In addition, this Article contains provisions that assist in the discovery of unauthorized filings and the amelioration of their practical effect. For example, Section 9-518 provides a procedure whereby a person may add to the public record a statement to the effect that a financing statement indexed under the person's name was wrongfully filed, and Section 9-509(d) entitles any person to file a termination statement if the secured party of record fails to comply with its obligation to file or send one to the debtor, the debtor

authorizes the filing, and the termination statement so indicates. However, the filing office is neither obligated nor permitted to inquire into issues of authorization. See Section 9-520(a).

4. Certain Other Requirements. Subsection (a) deletes other provisions of former Section 9-402(1) because they seems unwise (real-property description for financing statements covering crops), unnecessary (adequacy of copies of financing statements), or both (copy of security agreement as financing statement). In addition, the filing office must reject a financing statement lacking certain other information formerly required as a condition of perfection (e.g., an address for the debtor or secured party). See Sections 9-516(b), 9-520(a). However, if the filing office accepts the record, it is effective nevertheless. See Section 9-520(c).

5. Real-Property-Related Filings. Subsection (b) contains the requirements for financing statements filed as fixture filings and financing statements covering timber to be cut or minerals and minerals-related accounts constituting as-extracted collateral. A description of the related real property must be sufficient to reasonably identify it. See Section 9-108. This formulation rejects the view that the real property description must be by metes and bounds, or otherwise conforming to traditional real-property practice in conveyancing, but, of course, the incorporation of such a description by reference to the recording data of a deed, mortgage or other instrument containing the description should suffice under the most stringent standards. The proper test is that a description of real property must be sufficient so that the financing statement will fit into the real-property search system and be found by a real-property searcher. Under the optional language in subsection (b)(3), the test of adequacy of the description is whether it would be adequate in a record of a mortgage of the real property. As suggested in the Legislative Note, more detail may be required if there is a tract indexing system or a land registration system.

If the debtor does not have an interest of record in the real property, a real-property-related financing statement must show the name of a record owner, and Section 9-519(d) requires the financing statement to be indexed in the name of that owner. This requirement also enables financing statements covering as-extracted collateral or timber to be cut and financing statements filed as fixture filings to fit into the real-property search system.

6. Record of Mortgage Effective as Financing Statement. Subsection (c) explains when a record of a mortgage is effective as a financing statement filed as a fixture filing or to cover timber to be cut or

as-extracted collateral. Use of the term "record of a mortgage" recognizes that in some systems the record actually filed is not the record pursuant to which a mortgage is created. Moreover, "mortgage" is defined in Section 9-102 as an "interest in real property," not as the record that creates or evidences the mortgage or the record that is filed in the public recording systems. A record creating a mortgage may also create a security interest with respect to fixtures (or other goods) in conformity with this Article. A single agreement creating a mortgage on real property and a security interest in chattels is common and useful for certain purposes. Under subsection (c), the recording of the record evidencing a mortgage (if it satisfies the requirements for a financing statement) constitutes the filing of a financing statement as to the fixtures (but not, of course, as to other goods). Section 9-515(g) makes the usual five-year maximum life for financing statements inapplicable to mortgages that operate as fixture filings under Section 9-502(c). Such mortgages are effective for the duration of the real-property recording.

Of course, if a combined mortgage covers chattels that are not fixtures, a regular financing statement filing is necessary with respect to the chattels, and subsection (c) is inapplicable. Likewise, a financing statement filed as a "fixture filing" is not effective to perfect a security interest in personal property other than fixtures.

In some cases it may be difficult to determine whether goods are or will become fixtures. Nothing in this Part prohibits the filing of a "precautionary" fixture filing, which would provide protection in the event goods are determined to be fixtures. The fact of filing should not be a factor in the determining whether goods are fixtures. Cf. Section 9-505(b).

SOUTH CAROLINA REPORTER'S COMMENT

Section 36-9-502 sets forth the requirements for a sufficient financing statement. Subsection (a) states the requirements all financing statements must meet. Subsection (b) sets forth additional requirements for fixture filings and financing statements covering as-extracted collateral and timber to be cut.

Subsection (a) provides that a financing statement is sufficient only if it provides the name of the debtor, provides the name of the secured party or representative of the secured party, and indicates the collateral covered. Note that in contrast to former Section 36-9-402(1), current law does not condition the effectiveness of a financing statement upon its being signed by the debtor. Subsection (a), however, must be read in conjunction with Section 36-9-516(b) and Section 36-9-520(a).

Under Section 36-9-520(a) a filing office is required to refuse to accept a financing statement for filing if the financing statement fails to meet the requirements of Section 36-9-516(b). Therefore, a filing office must refuse to accept a financing statement that meets the requirements of Section 36-9-502(a) but fails to meet the requirements of Section 36-9-516(b). If the filing office refuses to accept such a financing statement for filing, the financing statement will not be effective to perfect a security interest. Nevertheless, if the filing office accepts such a financing statement for filing, under Section 36-9-520(c) the financing statement is effective. The priority of a security interest perfected by a filed financing statement that does not meet the requirements of Section 36-9-516(b) may be subordinated under Section 36-9-338.

The 2013 amendments amended the provisions of Section 36-9-502(c) that define the requirements that a mortgage recorded in the office of the register of deeds must meet in order to be effective as a financing statement filed as a fixture filing or covering as extracted collateral. Under revised Section 36-9-502(c)(3)(B), if the debtor is an individual, a mortgage sufficiently provides the name of the debtor if it provides that individual name of the debtor or the debtor's surname and first personal name, even if the debtor is an individual subject to the "drivers license" rule of Section 36-9-504(a)(4).

Definitional Cross:

"Account"	Section 36-9-102(a)(2)
"As-extracted collateral"	Section 36-9-102(a)(6)
"Collateral"	Section 36-9-102(a)(12)
"Debtor"	Section 36-9-102(a)(28)
"Financing statement"	Section 36-9-102(a)(39)
"Fixture filing"	Section 36-9-102(a)(40)
"Fixtures"	Section 36-9-102(a)(41)
"Goods"	Section 36-9-102(a)(44)
"Mortgage"	Section 36-9-102(a)(55)
"Secured party"	Section 36-9-102(a)(73)
"Security agreement"	Section 36-9-102(a)(74)

Cross --

1. Sufficiency of the name of the debtor. Section 36-9-503(a)--(c).

2. Failure to indicate the representative capacity of a secured party or representative of a secured party does not affect the sufficiency of a financing statement. Section 36-9-503(d).

3. Sufficiency of indication of type of collateral covered. Section 36-9-504.

4. Effect of errors and omissions upon the sufficiency of a financing statement. Section 36-9-505.

5. Duration of the effectiveness of a financing statement. Section 36-9-515.

6. Grounds upon which a filing office is required to refuse to accept a financing statement for filing. Sections 36-9-516(b) and 36-9-520(a).

7. Priority of security interests perfected by filing a financing statement which was effective under Section 36-9-502, but failed to meet the requirements of Section 36-9-516(b). Section 36-9-338.

8. Form of a financing statement. Section 36-9-521.

Name of debtor and secured party

SECTION 12. Section 36-9-503 of the 1976 Code is amended to read:

"Section 36-9-503. (a) A financing statement sufficiently provides the name of the debtor:

(1) except as otherwise provided in item (3), if the debtor is a registered organization or the collateral is held in a trust that is a registered organization, only if the financing statement provides the name that is stated to be the registered organization's name on the public organic record most recently filed with or issued or enacted by the registered organization's jurisdiction of organization which purports to state, amend, or restate the registered organization's name;

(2) subject to subsection (f), if the collateral is being administered by the personal representative of a decedent, only if the financing statement provides, as the name of the debtor, the name of the decedent and, in a separate part of the financing statement, indicates that the collateral is being administered by a personal representative;

(3) if the collateral is held in a trust that is not a registered organization, only if the financing statement:

(A) provides, as the name of the debtor, if:

(i) the organic record of the trust specifies a name for the trust, the name specified; or

(ii) the organic record of the trust does not specify a name for the trust, the name of the settlor or testator; and

(B) in a separate part of the financing statement if:

(i) the name is provided in accordance with subparagraph (A)(i), indicates that the collateral is held in a trust; or

(ii) the name is provided in accordance with subitem (A)(ii), provides additional information sufficient to distinguish the trust from other trusts having one or more of the same settlors or the same testator and indicates that the collateral is held in a trust, unless the additional information so indicates;

(4) subject to subsection (g), if the debtor is an individual to whom this State has issued a driver's license or identification card that has not expired, only if the financing statement provides the name of the individual that is indicated on the driver's license or identification card;

(5) if the debtor is an individual to whom item (4) does not apply, only if the financing statement provides the individual name of the debtor or the surname and first personal name of the debtor; and

(6) in other cases:

(A) if the debtor has a name, only if the financing statement provides the organization's name of the debtor; and

(B) if the debtor does not have a name, only if it provides the names of the partners, members, associates, or other persons comprising the debtor, in a manner that each name provided would be sufficient if the person named were the debtor.

(b) A financing statement that provides the name of the debtor in accordance with subsection (a) is not rendered ineffective by the absence of:

(1) a trade name or other name of the debtor; or

(2) unless required under subsection (a)(6)(B), names of partners, members, associates, or other persons comprising the debtor.

(c) A financing statement that provides only the debtor's trade name does not sufficiently provide the name of the debtor.

(d) Failure to indicate the representative capacity of a secured party or representative of a secured party does not affect the sufficiency of a financing statement.

(e) A financing statement may provide the name of more than one debtor and the name of more than one secured party.

(f) The name of the decedent indicated on the order appointing the personal representative of the decedent issued by the court having jurisdiction over the collateral is sufficient as the 'name of the decedent' under subsection (a)(2).

(g) If this State has issued to an individual more than one driver's license or identification card of a kind described in subsection (a)(4), the one that was issued most recently is the one to which subsection (a)(4) refers.

(h) In this section, the 'name of the settlor or testator' means:

(1) if the settlor is a registered organization, the name that is stated to be the settlor's name on the public organic record most recently filed with or issued or enacted by the settlor's jurisdiction of organization which purports to state, amend, or restate the settlor's name; or

(2) in other cases, the name of the settlor or testator indicated in the trust's organic record."

OFFICIAL COMMENT

1. Source. Subsections (a)(6)(A), (b), and (c) derive from former Section 9-402(7); otherwise, new.

2. Debtor's Name. The requirement that a financing statement provide the debtor's name is particularly important. Financing statements are indexed under the name of the debtor, and those who wish to find financing statements search for them under the debtor's name. Subsection (a) explains what the debtor's name is for purposes of a financing statement.

a. Registered Organizations. As a general matters, if the debtor is a "registered organization" (defined in Section 9-102 so as to ordinarily include corporations, limited partnerships, limited liability companies, and statutory trusts), then the debtor's name is the name shown on the "public organic record" of the debtor's "jurisdiction of organization" (both also defined in Section 9-102). Subsections (a)(2) and (a)(3) contain special rules for decedent's estates and common-law trusts. (Subsection (a)(1) applies to business trusts that are registered organizations.) Note that, even if the name provided in an initial financing statement is correct, the filing office nevertheless must reject the financing statement if it does not identify an individual debtor's last name (e.g., if it is not clear whether the debtor's name is Perry Mason or Mason Perry). See Section 9-516(b)(3)(C).

b. Collateral Held in a Trust. When a financing statement covers collateral that is held in a trust that is a registered organization, subsection (a)(1) governs the name of the debtor. If, however, the collateral is held in a trust that is not a registered organization, subsection (a)(3) applies. (As used in this Article, collateral "held in a trust" includes collateral as to which the trust is the debtor as well as collateral as to which the trustee is the debtor.) This subsection adopts a convention that generally results in the name of the trust or the name of the trust's settlor being provided as the name of the debtor on the financing statement, even if, as typically is the case with common-law trusts, the "debtor" (defined in Section 9-102) is a trustee acting with respect to the collateral. This convention provides more accurate

information and eases the burden for searchers, who otherwise would have difficulty with respect to debtor trustees that are large financial institutions. More specifically, if a trust's organic record specifies a name for the trust, subsection (a)(3) requires the financing statement to provide, as the name of the debtor, the name for the trust specified in the organic record. In addition, the financing statement must indicate, in a separate part of the financing statement, that the collateral is held in a trust. If the organic record of the trust does not specify a name for the trust, the name required for the financing statement is the name of the settlor or, in the case of a testamentary trust, the testator, in each case as determined under subsection (h). In addition, the financing statement must provide sufficient additional information to distinguish the trust from other trusts having one or more of the same settlors or the same testator. In many cases, an indication of the date on which the trust was settled will satisfy this requirement. If neither the name nor the additional information indicates that the collateral is held in a trust, the financing statement must indicate that fact, but not as part of the debtor's name. Neither the indication that the collateral held in a trust nor the additional information that distinguishes the trust from other trusts having one or more of the same settlors or the same testator is part of the debtor's name. Nevertheless, a financing statement that fails to provide, in a separate part of the financing statement, any required indication or additional information does not sufficiently provide the name of the debtor under Sections 9-502(a) and 9-503(a)(3), does not "substantially satisfy the requirements" of Part 5 within the meaning of Section 9-506(a) and so is ineffective.

d. Individuals. This Article provides alternative approaches towards the requirement for providing the name of a debtor who is an individual.

Alternative A. Alternative A distinguishes between two groups of individual debtors. For debtors holding an unexpired driver's license issued by the State where the financing statement is filed (ordinarily the State where the debtor maintains the debtor's principal residence), Alternative A requires that a financing statement provide the name indicated on the license. When a debtor does not hold an unexpired driver's license issued by the relevant State, the requirement can be satisfied in either of two ways. A financing statement is sufficient if it provides the "individual name" of the debtor. Alternatively, a financing statement is sufficient if it provides the debtor's surname (i.e., family name) and first personal name (i.e., first name other than the surname).

Alternative B. Alternative B provides three ways in which a financing statement may sufficiently provide the name of an individual who is a debtor. The "individual name" of the debtor is sufficient, as is the debtor's surname and first personal name. If the individual holds an unexpired driver's license issued by the State where the financing statement is filed (ordinarily the State of the debtor's principal residence), the name indicated on the driver's license also is sufficient.
Name indicated on the driver's license. A financing statement does not "provide the name of the individual which is indicated" on the debtor's driver's license unless the name it provides is the same as the name indicated on the license. This is the case even if the name indicated on the debtor's driver's license contains an error.

Example 1: Debtor, an individual whose principal residence is in Illinois, grants a security interest to SP in certain business equipment. SP files a financing statement with the Illinois filing office. The financing statement provides the name appearing on Debtor's Illinois driver's license, "Joseph Allan Jones." Regardless of which Alternative is in effect in Illinois, this filing would be sufficient under Illinois' Section 9-503(a),even if Debtor's correct middle name is Alan, not Allan. A filing against "Joseph A. Jones" or "Joseph Jones" would not "provide the name of the individual which is indicated" on the debtor's driver's license. However, these filings might be sufficient if Alternative A is in effect in Illinois and Jones has no current (i.e., unexpired) Illinois driver's license, or if Illinois has enacted Alternative B.

Determining the name that should be provided on the financing statement must not be done mechanically. The order in which the components of an individual's name appear on a driver's license differs among the States. Had the debtor in Example 1 obtained a driver's license from a different State, the license might have indicated the name as "Jones Joseph Allan." Regardless of the order on the driver's license, the debtor's surname must be provided in the part of the financing statement designated for the surname.

Alternatives A and B both refer to a license issued by "this State." Perfection of a security interest by filing ordinarily is determined by the law of the jurisdiction in which the debtor is located. Sec Section 9-301(1). (Exceptions to the general rule are found in Section 9-301(3) and (4), concerning fixture filings, timber to be cut, and as-extracted collateral.) A debtor who is an individual ordinarily is located at the individual's principal residence. See Section 9-307(b). (An exception appears in Section 9-307(c).) Thus, a given State's Section 9-503 ordinarily will apply during any period when the debtor's principal

residence is located in that State, even if during that time the debtor holds or acquires a driver's license from another State.

When a debtor's principal residence changes, the location of the debtor under Section 9-307 also changes and perfection by filing ordinarily will be governed by the law of the debtor's new location. As a consequence of the application of that jurisdiction's Section 9-316, a security interest that is perfected by filing under the law of the debtor's former location will remain perfected for four months after the relocation, and thereafter if the secured party perfects under the law of the debtor's new location. Likewise, a financing statement filed in the former location may be effective to perfect a security interest that attaches after the debtor relocates. See Section 9-316(h).

Individual name of the debtor. Article 9 does not determine the "individual name" of a debtor. Nor does it determine which element or elements in a debtor's name constitute the surname. In some cases, determining the "individual name" of a debtor may be difficult, as may determining the debtor's surname. This is because in the case of individuals, unlike registered organizations, there is no public organic record to which reference can be made and from which the name and its components can be definitively determined. Names can take many forms in the United States. For example, whereas a surname is often colloquially referred to as a "last name," the sequence in which the elements of a name are presented is not determinative. In some cultures, the surname appears first, while in others it may appear in a location that is neither first nor last. In addition, some surnames are composed of multiple elements that, taken together, constitute a single surname. These elements may or may not be separated by a space or connected by a hyphen, "i," or "y." In other instances, some or all of the same elements may not be part of the surname. In some cases, a debtor's entire name might be composed of only a single clement, which should be provided in the part of the financing statement designated for the surname.

In disputes as to whether a financing statement sufficiently provides the "individual name" of a debtor, a court should refer to any non-UCC law concerning names. However, case law about names may have developed in contexts that implicate policies different from those of Article 9. A court considering an individual's name for purposes of determining the sufficiency of a financing statement is not necessarily bound by cases that were decided in other contexts and for other purposes. Individuals are asked to provide their names on official documents such as tax returns and bankruptcy petitions. An individual may provide a particular name on an official document in response to

instructions relating to the document rather than because the name is actually the individual's name. Accordingly, a court should not assume that the name an individual provides on an official document necessarily constitutes the "individual name" for purposes of the sufficiency of the debtor's name on a financing statement. Likewise, a court should not assume that the name as presented on an individual's birth certificate is necessarily the individual's current name.

In applying non-UCC law for purposes of determining the sufficiency of a debtor's name on a financing statement, a court should give effect to the instruction in Section l-103(a)(l) that the UCC "must be liberally construed and applied to promote its underlying purposes and policies," which include simplifying and clarifying the law governing commercial transactions. Thus, determination of a debtor's name in the context of the Article 9 filing system must take into account the needs of both filers and searchers. Filers need a simple and predictable system in which they can have a reasonable degree of confidence that, without undue burden, they can determine a name that will be sufficient so as to permit their financing statements to be effective. Likewise, searchers need a simple and predictable system in which they can have a reasonable degree of confidence that, without undue burden, they will discover all financing statements pertaining to the debtor in question. The court also should take into account the purpose of the UCC to make the law uniform among the various jurisdictions. See Section l-103(a)(3). Of course, once an individual debtor's name has been determined to be sufficient for purposes of Section 9-503, a financing statement that provides a variation of that name, such as a "nickname" that does not constitute the debtor's name, does not sufficiently provide the name of the debtor under this section. Cf. Section 9-503(c) (a financing statement providing only a debtor's trade name is not sufficient). If there is any doubt about an individual debtor's name, a secured party may choose to file one or more financing statements that provide a number of possible names for the debtor and a searcher may similarly choose to search under a number of possible names. Note that, even if the name provided in an initial financing statement is correct, the filing office nevertheless must reject the financing statement if it does not identify an individual debtor's surname (e.g., if it is not clear whether the debtor's surname is Perry or Mason). See Section 9-516(b)(3)(C).

3. Secured Party's Name. New subsection (d) makes clear that when the secured party is a representative, a financing statement is sufficient if it names the secured party, whether or not it indicates any representative capacity. Similarly, a financing statement that names a

representative of the secured party is sufficient, even if it does not indicate the representative capacity.

Example 2: Debtor creates a security interest in favor of Bank X, Bank Y, and Bank Z, but not to their representative, the collateral agent (Bank A). The collateral agent is not itself a secured party. See Section 9-102. Under Sections 9-502(a) and 9-503(d), however, a financing statement is effective if it names as secured party Bank A and not the actual secured parties, even if it omits Bank A's representative capacity.

Each person whose name is provided in an initial financing statement as the name of the secured party or representative of the secured party is a secured party of record. See Section 9-511.

4. Multiple Names. Subsection (e) makes explicit what is implicit under former Article 9: a financing statement may provide the name of more than one debtor and secured party. See Section 1-102(5)(a) (words in the singular include the plural). With respect to records relating to more than one debtor, see Section 9-520(d). With respect to financing statements providing the name of more than one secured party, see Sections 9-509(e) and 9-510(b).

SOUTH CAROLINA REPORTER'S COMMENT

Section 36-9-503 sets forth the standards for determining whether a financing statement sufficiently provides the name of the debtor. Subsection (a)(1) provides that if a debtor is a registered corporation, such as a corporation, limited partnership, or limited liability company, the financing statement is sufficient only if it provides the name of the debtor indicated on the public record which establishes that debtor was organized. Subsection (c) clarifies former law by expressly providing that a financing statement that provides only the debtor's trade name is not sufficient.

The 2013 amendments substantially revised the requirements in Section 36-9-503 that a financing statement must meet to sufficiently provide the name of the debtor. The amendments utilize Alternative A from the Uniform Code Commissioners for determining the requirements for providing the name of a debtor who is an individual.

Definitional Cross:

"Debtor"	Section 36-9-102(a)(28)
"Financing statement"	Section 36-9-102(a)(39)
"Organization"	Section 36-1-201(28)
"Registered organization"	Section 36-9-102(a)(71)
"Secured party"	Section 36-9-102(a)(73)

Effect of certain events on effectiveness of financing statement

SECTION 13. Section 36-9-507 of the 1976 Code is amended to read:

"Section 36-9-507. (a) A filed financing statement remains effective with respect to collateral that is sold, exchanged, leased, licensed, or otherwise disposed of and in which a security interest or agricultural lien continues, even if the secured party knows of or consents to the disposition.

(b) Except as otherwise provided in subsection (c) and Section 36-9-508, a financing statement is not rendered ineffective if, after the financing statement is filed, the information provided in the financing statement becomes seriously misleading under Section 36-9-506.

(c) If the name that a filed financing statement provides for a debtor becomes insufficient as the name of the debtor pursuant to Section 36-9-503(a) so that the financing statement becomes seriously misleading pursuant to Section 36-9-506:

(1) the financing statement is effective to perfect a security interest in collateral acquired by the debtor before, or within four months after, the filed financing statement becomes seriously misleading; and

(2) the financing statement is not effective to perfect a security interest in collateral acquired by the debtor more than four months after the filed financing statement becomes seriously misleading, unless an amendment to the financing statement which renders the financing statement not seriously misleading is filed within four months after the financing statement became seriously misleading."

OFFICIAL COMMENT

1. Source. Former Section 9-402(7).

2. Scope of Section. This Section deals with situations in which the information in a proper financing statement becomes inaccurate after the financing statement is filed. Compare Section 9-338, which deals with situations in which a financing statement contains a particular kind of information concerning the debtor (i.e., the information described in Section 9-516(b)(5)) that is incorrect at the time it is filed.

3. Post-Filing Disposition of Collateral. Under subsection (a), a financing statement remains effective even if the collateral is sold or otherwise disposed of. This subsection clarifies the third sentence of former Section 9-402(7) by providing that a financing statement remains effective following the disposition of collateral only when the

security interest or agricultural lien continues in that collateral. This result is consistent with the conclusion of PEB Commentary No. 3. Normally, a security interest does continue after disposition of the collateral. See Section 9-315(a). Law other than this Article determines whether an agricultural lien survives disposition of the collateral.

As a consequence of the disposition, the collateral may be owned by a person other than the debtor against whom the financing statement was filed. Under subsection (a), the secured party remains perfected even if it does not correct the public record. For this reason, any person seeking to determine whether a debtor owns collateral free of security interests must inquire as to the debtor's source of title and, if circumstances seem to require it, search in the name of a former owner. Subsection (a) addresses only the sufficiency of the information contained in the financing statement. A disposition of collateral may result in loss of perfection for other reasons. See Section 9-316.

Example: Dee Corp. is an Illinois corporation. It creates a security interest in its equipment in favor of Secured Party. Secured Party files a proper financing statement in Illinois. Dee Corp. sells an item of equipment to Bee Corp., a Pennsylvania corporation, subject to the security interest. The security interest continues, see Section 9-315(a), and remains perfected, see Section 9-507(a), notwithstanding that the financing statement is filed under "D" (for Dee Corp.) and not under "B." However, because Bee Corp. is located in Pennsylvania and not Illinois, see Section 9-307, unless Secured Party perfects under Pennsylvania law within one year after the transfer, its security interest will become unperfected and will be deemed to have been unperfected against purchasers of the collateral. See Section 9-316.

4. Other Post-Filing Changes. Subsection (b) provides that, as a general matter, post-filing changes that render a financing statement seriously misleading have no effect on a financing statement. The financing statement remains effective. It is subject to two exceptions: Section 9-508 and Section 9-507(c). Section 9-508 addresses the effectiveness of a financing statement filed against an original debtor when a new debtor becomes bound by the original debtor's security agreement. It is discussed in the Comments to that Section. Section 9-507(c) addresses cases in which a filed financing statement provides a name that, at the time of filing, satisfies the requirements of Section 9-503(a) with respect to the named debtor but, at a later time, no longer does so.

Example 1: Debtor, an individual whose principal residence is in California, grants a security interest to SP in certain business

equipment. SP files a financing statement with the California filing office. Alternative A is in effect in California. The financing statement provides the name appearing on Debtor's California driver's license, "James McGinty," Debtor obtains a court order changing his name to "Roger McGuinn" but does not change his driver's license. Even after the court order issues, the name provided for the debtor in the financing statement is sufficient under Section 9-503(a). Accordingly, Section 9-507(c) does not apply.

The same result would follow if Alternative B is in effect in California.

Under Section 9-503(a)(6) (Alternative A), if the debtor holds a current (i.e., unexpired) driver's license issued by the State where the financing statement is filed, the name required for the financing statement is the name indicated on the license that was issued most recently by that State. If the debtor does not have a current driver's license issued by that State, then the debtor's name is determined under subsection (a)(5). It follows that a debtor's name may change, and a financing statement providing the name on the debtor's then-current driver's license may become seriously misleading, if the license expires and the debtor's name under subsection (a)(5) is different. The same consequences may follow if a debtor's driver's license is renewed and the names on the licenses differ.

Example 2: The facts are as in Example I. Debtor's driver's license expires one year after the entry of the court order changing Debtor's name. Debtor does not renew the license. Upon expiration of the license, the name required for sufficiency by Section 9-503(a) is the individual name of the debtor or the debtor's surname and first personal name. The name "James McGinty'' has become insufficient.

Example 3: The facts are as in Example I. Before the license expires, Debtor renews the license. The name indicated on the new license is "Roger McGuinn." Upon issuance of the new license, "James McGinty" becomes insufficient as the debtor's name under Section 9-503(a).

The same results would follow if Alternative B is in effect in California (assuming that, following the issuance of the court order, "James McGinty" is neither the individual name of the debtor nor the debtor's surname and first personal name).

Even if the name provided as the name of the debtor becomes insufficient under Section 9-503(a), the filed financing statement does not become seriously misleading, and Section 9-507(c) does not apply, if the financing statement can be found by searching under the debtor's "correct" name, using the filing office's standard search logic. See

Section 9-506. Any name that satisfies Section 9-503(a) at the time of the search is a "correct name" for these purposes. Thus, assuming that a search of the records of the California filing office under "Roger McGuinn," using the filing office's standard search logic, would not disclose a financing statement naming "James McGinty," the financing statement in Examples 2 and 3 has become seriously misleading and Section 9-507(c) applies.

If a filed financing statement becomes seriously misleading because the name it provides for a debtor becomes insufficient, the financing statement, unless amended to provide a sufficient name for the debtor, is effective only to perfect a security interest in collateral acquired by the debtor before, or within four months after, the change. If an amendment that provides a sufficient name is filed within four months after the change, the financing statement as amended would be effective also with respect to collateral acquired more than four months after the change. If an amendment that provides a sufficient name is filed more than four months after the change, the financing statement as amended would be effective also with respect to collateral acquired more than four months after the change, but only from the time of the filing of the amendment.

If a name change renders a filed financing statement seriously misleading, the financing statement is not effective as to collateral acquired more than four months after the change, unless before the expiration of the four months an amendment is filed that specifies the debtor's new correct name (or provides an incorrect name that renders the financing statement not seriously misleading under Section 9-506). As under former Section 9-402(7), the original financing statement would continue to be effective with respect to collateral acquired before the name change as well as collateral acquired within the four-month period.

SOUTH CAROLINA REPORTER'S COMMENT

Section 36-9-507 addresses the effect that certain post-filing events have upon the continued effectiveness of a filed financing statement. Subsection (a) provides that a financing statement remains effective to perfect a security interest that continues in collateral that a debtor has sold or otherwise disposed of. With two exceptions, subsection (b) provides that a filed financing statement is not rendered ineffective because after the filing the information provided in the financing statement became seriously misleading. The first exception arises when a debtor so changes its name that it filed financing statement becomes seriously misleading under Section 36-9-506. In that situation

the filed financing statement is not effective to perfect a security interest in collateral acquired more than four months after the name change. The second exception can arise when a new debtor becomes bound by a security agreement entered into by the original debtor and the secured party has filed under the name of the original debtor. Section 36-9-508(b) provides that if the difference between the names of original debtor and the new debtor causes the filed financing statement to be seriously misleading, that financing statement is not effective to perfect a security interest in collateral acquired by the new debtor more than four months after it became bound as a new debtor.

Definitional Cross:

"Agricultural lien"	Section 36-9-102(a)(5)
"Collateral"	Section 36-9-102(a)(12)
"Debtor"	Section 36-9-102(a)(28)
"Financing statement"	Section 36-9-102(a)(39)
"New debtor"	Section 36-9-102(a)(56)
"Original debtor"	Section 36-9-102(a)(60)
"Security interest"	Section 36-1-201(37)

Cross --

1. A security interest or agricultural lien continues in collateral notwithstanding a sale or other disposition unless the secured party has authorized the disposition free of the security interest or agricultural lien. Section 36-9-315(a).

2. If the collateral is transferred to a person located in another jurisdiction a secured party who filed against the transferor in the jurisdiction where the transferor was located must file against the transferee in the jurisdiction where the transferee is located within one year of the transfer in order to retain a perfected security interest in the transferred collateral. Section 36-9-316(a)(3). Note that a transferee who takes subject to a security interest under Section 36-9-315(a)(1) becomes a debtor. See Section 36-9-315(a)(1) Section 36-9-102, Official Comment 2.a. As a debtor, the transferee authorized the secured party to file an initial financing statement against the transferee. Section 36-9-509(c).

3. Buyer in ordinary course of business takes free of a perfected security interest created by the buyer's seller. Section 36-9-320(a).

4. A licensee in ordinary course of business takes its rights in a nonexclusive license free of a security interest created by the licensor. Section 36-9-321(b).

5. A lessee in ordinary course of business takes free of a perfected security interest created by the lessor. Section 36-9-321(c).

6. Priority of security interests in transferred collateral. Section 36-9-325.

7. Rules for determining whether a change in the debtor's name renders a filed financing statement seriously misleading. Section 36-9-506(b) and (c).

8. When a new debtor becomes bound by a security agreement entered into by an original debtor. Section 36-9-203(d) and (e).

9. When a filing against an original debtor perfects a security interest in collateral acquired by a new debtor. Section 36-9-508.

10. Priority of security interests created by a new debtor. Section 36-9-326.

Duration and effectiveness of financing statement, effect of lapsed financing statement

SECTION 14. Section 36-9-515 of the 1976 Code is amended to read:

"Section 36-9-515. (a) Except as otherwise provided in subsections (b), (e), (f), and (g), a filed financing statement is effective for a period of five years after the date of filing.

(b) Except as otherwise provided in subsections (e), (f), and (g), an initial financing statement filed in connection with a public-finance transaction or manufactured-home transaction is effective for a period of thirty years after the date of filing if it indicates that it is filed in connection with a public-finance transaction or manufactured-home transaction.

(c) The effectiveness of a filed financing statement lapses on the expiration of the period of its effectiveness unless before the lapse a continuation statement is filed pursuant to subsection (d). Upon lapse, a financing statement ceases to be effective and any security interest or agricultural lien that was perfected by the financing statement becomes unperfected, unless the security interest is perfected otherwise. If the security interest or agricultural lien becomes unperfected upon lapse, it is deemed never to have been perfected as against a purchaser of the collateral for value.

(d) A continuation statement may be filed only within six months before the expiration of the five-year period specified in subsection (a) or the thirty-year period specified in subsection (b), whichever is applicable.

(e) Except as otherwise provided in Section 36-9-510, upon timely filing of a continuation statement, the effectiveness of the initial

financing statement continues for a period of five years commencing on the day on which the financing statement would have become ineffective in the absence of the filing. Upon the expiration of the five-year period, the financing statement lapses in the same manner as provided in subsection (c), unless, before the lapse, another continuation statement is filed pursuant to subsection (d). Succeeding continuation statements may be filed in the same manner to continue the effectiveness of the initial financing statement.

(f) If a debtor is a transmitting utility and a filed initial financing statement so indicates, the financing statement is effective until a termination statement is filed.

(g) A record of a mortgage that is effective as a financing statement filed as a fixture filing under Section 36-9-502(c) remains effective as a financing statement filed as a fixture filing until the mortgage is released or satisfied of record or its effectiveness otherwise terminates as to the real property."

OFFICIAL COMMENT

1. Source. Former Section 9-403(2), (3), (6).

2. Period of Financing Statement's Effectiveness. Subsection (a) states the general rule: a financing statement is effective for a five-year period unless its effectiveness is continued under this Section or terminated under Section 9-513. Subsection (b) provides that if the financing statement relates to a public-finance transaction or a manufactured-home transaction and so indicates, the financing statement is effective for 30 years. These financings typically extend well beyond the standard, five-year period. Under subsection (f), a financing statement filed against a transmitting utility remains effective indefinitely, until a termination statement is filed. Likewise, under subsection (g), a mortgage effective as a fixture filing remains effective until its effectiveness terminates under real-property law.

3. Lapse. When the period of effectiveness under subsection (a) or (b) expires, the effectiveness of the financing statement lapses. The last sentence of subsection (c) addresses the effect of lapse. The deemed retroactive unperfection applies only with respect to purchasers for value; unlike former Section 9-403(2), it does not apply with respect to lien creditors.

Example 1: SP-1 and SP-2 both hold security interests in the same collateral. Both security interests are perfected by filing. SP-1 filed first and has priority under Section 9-322(a)(1). The effectiveness of SP-1's filing lapses. As long as SP-2's security interest remains perfected thereafter, SP-2 is entitled to priority over SP-1's security

interest, which is deemed never to have been perfected as against a purchaser for value (SP-2). See Section 9-322(a)(2).

Example 2: SP holds a security interest perfected by filing. On July 1, LC acquires a judicial lien on the collateral. Two weeks later, the effectiveness of the financing statement lapses. Although the security interest becomes unperfected upon lapse, it was perfected when LC acquired its lien. Accordingly, notwithstanding the lapse, the perfected security interest has priority over the rights of LC, who is not a purchaser. See Section 9-317(a)(2).

4. Effect of Debtor's Bankruptcy. Under former Section 9-403(2), lapse was tolled if the debtor entered bankruptcy or another insolvency proceeding. Nevertheless, being unaware that insolvency proceedings had been commenced, filing offices routinely removed records from the files as if lapse had not been tolled. Subsection (c) deletes the former tolling provision and thereby imposes a new burden on the secured party: to be sure that a financing statement does not lapse during the debtor's bankruptcy. The secured party can prevent lapse by filing a continuation statement, even without first obtaining relief from the automatic stay. See Bankruptcy Code Section 362(b)(3). Of course, if the debtor enters bankruptcy before lapse, the provisions of this Article with respect to lapse would be of no effect to the extent that federal bankruptcy law dictates a contrary result (e.g., to the extent that the Bankruptcy Code determines rights as of the date of the filing of the bankruptcy petition).

5. Continuation Statements. Subsection (d) explains when a continuation statement may be filed. A continuation statement filed at a time other than that prescribed by subsection (d) is ineffective, see Section 9-510(c), and the filing office may not accept it. See Sections 9-520(a), 9-516(b). Subsection (e) specifies the effect of a continuation statement and provides for successive continuation statements.

SOUTH CAROLINA REPORTER'S COMMENT

Section 36-9-515 addresses issues concerning the duration of the effectiveness of a filed financing statement. As a general rule, subsection (a) provides that a financing statement remains effective for five years from the date of filing. This rule, however, is subject to a number of exceptions. Under subsection (b) an initial financing statement filed in a public-financing transactions or a manufactured-home transaction is effective for 30 years. Moreover, in a manufactured-home transaction a secured party would typically perfect under the certificate of title statute in which case that statute rather than Article 9 would control the duration of the perfected status

of the security interest. See Section 36-9-311(c). Under subsection (f) if a debtor is a transmitting utility, a filed financing statement remains effective until a termination statement is filed. Under subsection (g) a mortgage recorded in lieu of a fixture filing remains effective until the mortgage is released or satisfied of record.

Subsection (c) provides that the effectiveness of a filed financing statement lapses upon the expiration of its period of effectiveness unless a continuation statement is properly filed. Upon the lapse of its financing statement a secured party's security interest or agricultural lien becomes unperfected. Moreover, a security interest or agricultural lien that becomes unperfected upon lapse, is deemed to have never been perfected against a purchaser of the collateral for value.

Under subsections (d) and (e) a secured party can avoid lapse by filing a continuation statement. The continuation statement must be filed within the final six months of the effective period of the financing statement. The continuation statement will extend the effectiveness of the financing statement for five years. Succeeding continuation statements may be filed.

Section 36-9-515 does not include a provision comparable to former Section 36-9-403(2) that tolled the lapse of a financing statement when a debtor entered a bankruptcy or insolvency proceeding.

Definitional Cross:

"Agricultural lien"	Section 36-9-102(a)(5)
"Collateral"	Section 36-9-102(a)(12)
"Continuation statement"	Section 36-9-102(a)(27)
"Financing statement"	Section 36-9-102(a)(39)
"Fixture filing"	Section 36-9-102(a)(40)
"Manufactured-home transaction"	Sections 36-9-102(a)(54)
"Mortgage"	Section 36-9-102(a)(55)
"Public-finance transaction"	Section 36-9-102(a)(67)
"Purchaser"	Section 36-1-201(33)
"Termination statement"	Section 36-9-102(a)(80)
"Transmitting utility"	Section 36-9-102(a)(81)
"Value"	Section 36-1-201(44)

Cross --

1. A continuation statement not filed within the six-month period proscribed by Section 36-9-515(d) is ineffective. Section 36-9-510(c).

2. A "manufactured home" as defined in Section 36-9-102(a)(53) would qualify as either a "house trailer" under Section 56-19-10(10), S.C. Code Ann. (Supp. 1999) or as a "mobile home" under Section 56-19-10(30), S.C. Code Ann. (Supp. 1999). In either case, a security interest would be perfected under the Certificate of Title Statute. See

Section 56-19-620, S.C. Code Ann. (1976). As a result, under Section 36-9-311(c) the Certificate of Title Statute rather than Section 36-9-515(b) would control the duration of the perfection of a security interest in a manufactured home. The Certificate of Title Statute does not limit the duration of a perfected security interest.

What constitutes filing, effectiveness of filing

SECTION 15. Section 36-9-516 of the 1976 Code, as last amended by Act 161 of 2005, is further amended to read:

"Section 36-9-516. (a) Except as otherwise provided in subsection (b), communication of a record to a filing office and tender of the filing fee or acceptance of the record by the filing office constitutes filing.

(b) Filing does not occur with respect to a record that a filing office refuses to accept because:

(1) the record is not communicated by a method or medium of communication authorized by the filing office;

(2) an amount equal to or greater than the applicable filing fee is not tendered;

(3) the filing office is unable to index the record because:

(A) in the case of an initial financing statement, the record does not provide a name for the debtor;

(B) in the case of an amendment or information statement, the record:

(i) does not identify the initial financing statement as required by Section 36-9-512 or 36-9-518, as applicable; or

(ii) identifies an initial financing statement whose effectiveness has lapsed under Section 36-9-515;

(C) in the case of an initial financing statement that provides the name of a debtor identified as an individual or an amendment that provides a name of a debtor identified as an individual which was not previously provided in the financing statement to which the record relates, the record does not identify the debtor's surname; or

(D) in the case of a record filed or recorded in the filing office described in Section 36-9-501(a)(1), the record does not provide a sufficient description of the real property to which it relates;

(4) in the case of an initial financing statement or an amendment that adds a secured party of record, the record does not provide a name and mailing address for the secured party of record;

(5) in the case of an initial financing statement or an amendment that provides a name of a debtor which was not previously provided in

the financing statement to which the amendment relates, the record does not:

(A) provide a mailing address for the debtor;

(B) indicate whether the name provided as the name of the debtor is the name of an individual or an organization;

(6) in the case of an assignment reflected in an initial financing statement under Section 36-9-514(a) or an amendment filed under Section 36-9-514(b), the record does not provide a name and mailing address for the assignee;

(7) in the case of a continuation statement, the record is not filed within the six-month period prescribed by Section 36-9-515(d);

(8) in the case of a record presented for filing at the Office of the Secretary of State, the Secretary of State determines that the record is not created pursuant to this chapter or is otherwise intended for an improper purpose, such as to defraud, hinder, harass, or otherwise wrongfully interfere with a person; or

(9) in the case of a record presented for filing at the Office of the Secretary of State, the same person or entity is listed as both debtor and secured party, the collateral described is not within the scope of this chapter, or that the record is being filed for a purpose other than a transaction that is within the scope of this chapter.

(c) For purposes of subsection (b):

(1) a record does not provide information if the filing office is unable to read or decipher the information; and

(2) a record that does not indicate that it is an amendment or identify an initial financing statement to which it relates, as required by Section 36-9-512, 36-9-514, or 36-9-518, is an initial financing statement.

(d) A record that is communicated to the filing office with tender of the filing fee, but which the filing office refuses to accept for a reason other than one set forth in subsection (b), is effective as a filed record except as against a purchaser of the collateral which gives value in reasonable reliance upon the absence of the record from the files."

OFFICIAL COMMENT

1. Source. Subsection (a): former Section 9-403(1); the remainder is new.

2. What Constitutes Filing. Subsection (a) deals generically with what constitutes filing of a record, including an initial financing statement and amendments of all kinds (e.g., assignments, termination statements, and continuation statements). It follows former Section 9-403(1), under which either acceptance of a record by the filing office

or presentation of the record and tender of the filing fee constitutes filing.

3. Effectiveness of Rejected Record. Subsection (b) provides an exclusive list of grounds upon which the filing office may reject a record. See Section 9-520(a). Although some of these grounds would also be grounds for rendering a filed record ineffective (e.g., an initial financing statement does not provide a name for the debtor), many others would not be (e.g., an initial financing statement does not provide a mailing address for the debtor or secured party of record). Neither this Section nor Section 9-520 requires or authorizes the filing office to determine, or even consider, the accuracy of information provided in a record.

A financing statement or other record that is communicated to the filing office but which the filing office refuses to accept provides no public notice, regardless of the reason for the rejection. However, this Section distinguishes between records that the filing office rightfully rejects and those that it wrongfully rejects. A filer is able to prevent a rightful rejection by complying with the requirements of subsection (b). No purpose is served by giving effect to records that justifiably never find their way into the system, and subsection (b) so provides.

Subsection (d) deals with the filing office's unjustified refusal to accept a record. Here, the filer is in no position to prevent the rejection and as a general matter should not be prejudiced by it. Although wrongfully rejected records generally are effective, subsection (d) contains a special rule to protect a third-party purchaser of the collateral (e.g., a buyer or competing secured party) who gives value in reliance upon the apparent absence of the record from the files. As against a person who searches the public record and reasonably relies on what the public record shows, subsection (d) imposes upon the filer the risk that a record failed to make its way into the filing system because of the filing office's wrongful rejection of it. (Compare Section 9-517, under which a misindexed financing statement is fully effective.) This risk is likely to be small, particularly when a record is presented electronically, and the filer can guard against this risk by conducting a postfiling search of the records. Moreover, Section 9-520(b) requires the filing office to give prompt notice of its refusal to accept a record for filing.

4. Method or Medium of Communication. Rejection pursuant to subsection (b)(1) for failure to communicate a record properly should be understood to mean noncompliance with procedures relating to security, authentication, or other communication-related requirements that the filing office may impose. Subsection (b)(1) does not authorize

a filing office to impose additional substantive requirements. See Section 9-520, Comment 2.

5. Address for Secured Party of Record. Under subsection (b)(4) and Section 9-520(a), the lack of a mailing address for the secured party of record requires the filing office to reject an initial financing statement. The failure to include an address for the secured party of record no longer renders a financing statement ineffective. See Section 9-502(a). The function of the address is not to identify the secured party of record but rather to provide an address to which others can send required notifications, e.g., of a purchase-money security interest in inventory or of the disposition of collateral. Inasmuch as the address shown on a filed financing statement is an "address that is reasonable under the circumstances," a person required to send a notification to the secured party may satisfy the requirement by sending a notification to that address, even if the address is or becomes incorrect. See Section 9-102 (definition of "send"). Similarly, because the address is "held out by [the secured party] as the place for receipt of such communications [i.e., communications relating to security interests]," the secured party is deemed to have received a notification delivered to that address. See Section 1-201(26).

6. Uncertainty Concerning Individual Debtor's Surname. Subsection (b)(3)(C) requires the filing office to reject an initial financing statement or amendment adding an individual debtor if the office cannot index the record because it does not identify the debtor's surname (e.g., it is unclear whether the debtor's name is Elton or John).

7. Inability of Filing Office to Read or Decipher Information. Under subsection (c)(1), if the filing office cannot read or decipher information, the information is not provided by a record for purposes of subsection (b).

8. Classification of Records. For purposes of subsection (b), a record that does not indicate it is an amendment or identify an initial financing statement to which it relates is deemed to be an initial financing statement. See subsection (c)(2).

9. Effectiveness of Rejectable But Unrejected Record. Section 9-520(a) requires the filing office to refuse to accept an initial financing statement for a reason set forth in subsection (b). However, if the filing office accepts such a financing statement nevertheless, the financing statement generally is effective if it complies with the requirements of Section 9-502(a) and (b). See Section 9-520(c). Similarly, an otherwise effective financing statement generally remains so even though the information in the financing statement becomes incorrect. See Section 9-507(b). (Note that if the information required

by subsection (b)(5) is incorrect when the financing statement is filed, Section 9-338 applies.)

SOUTH CAROLINA REPORTER'S COMMENT

Section 36-9-516(b) sets forth the requirements an initial financing statement or other record must meet in order to be accepted for filing. Section 36-9-520 (a) provides that a filing office must refuse to accept for filing a record that fails to meet those requirements. Section 36-9-520(a) further provides that the filing office can refuse to accept a record for filing only for the reasons listed in Section 36-9-516(b).

The requirements of Section 36-9-516(b) are more demanding than the requirements for a sufficient financing statement under Section 36-9-502(a). If a filing office accepts and files a financing statement which is sufficient under Section 36-9-502(a) but fails to meet the requirements of Section 36-9-516(b), Section 36-9-520(c) provides that the filing is effective.

Section 36-9-516(d) applies when a filing office wrongfully refuses to accept a sufficient financing statement or other record for filing for a reason other than one listed in subsection (b). Under subsection (d) the financing statement or other record is effective as a filed record except against a purchaser which gave value in reasonable reliance upon the absence of a filed record.

Definitional Cross:

"Collateral"	Section 36-9-102(a)(12)
"Continuation statement"	Section 36-9-102(a)(27)
"Debtor"	Section 36-9-102(a)(28)
"Filing office"	Section 36-9-102(a)(37)
"Financing statement"	Section 36-9-102(a)(39)
"Jurisdiction of organization"	Section 36-9-102(a)(50)
"Organization"	Section 36-1-201(28)
"Purchaser"	Section 36-1-201(33)
"Record"	Section 36-9-102(a)(70)
"Secured party of record"	Section 36-9-511
"Value"	Section 36-9-201(44)

Cross --

1. Requirements for a sufficient financing statement. Section 36-9-502(a) and (b).

2. A filing office is required to refuse to file a record that fails to meet the requirements of Section 36-9-516(b). Section 36-9-520(a).

3. A filing office is required to accept for filing a sufficient record which meets the requirements of Section 36-9-516(b). Section 36-9-520(a).

4. Limitations on priority afforded to a security interest perfected by a financing statement which failed to meet the requirements of Section 36-9-516(b) but was accepted for filing. Sections 36-9-520(c) and 36-9-338.

Claim concerning inaccurate or wrongfully filed record

SECTION 16. Section 36-9-518 of the 1976 Code, as last amended by Act 161 of 2005, is further amended to read:

"Section 36-9-518. (a) A person may file in the filing office an information statement with respect to a record indexed there under the person's name if the person believes that the record is inaccurate or was wrongfully filed.

(b) An information statement under subsection (a) must:

(1) identify the record to which it relates by:

(A) the file number assigned to the initial financing statement to which the record relates; and

(B) if the information statement relates to a record filed or recorded in a filing office described in Section 36-9-501(a)(1), the date and time that the initial financing statement was filed or recorded and the information specified in Section 36-9-502(b);

(2) indicate that it is an information statement; and

(3) provide the basis for the person's belief that the record is inaccurate and indicate the manner in which the person believes the record should be amended to cure any inaccuracy or provide the basis for the person's belief that the record was wrongfully filed.

(c) A person may file in the filing office an information statement with respect to a record filed there if the person is a secured party of record with respect to the financing statement to which the record relates and believes that the person that filed the record was not entitled to do so under Section 36-9-509(d). The filing of an information statement does not affect the effectiveness of an initial financing statement or other filed record.

(d) An information statement under subsection (c) must:

(1) identify the record to which it relates by:

(A) the file number assigned to the initial financing statement to which the record relates; and

(B) if the information statement relates to a record filed or recorded in a filing office described in Section 36-9-501(a)(1), the date and time that the initial financing statement was filed or recorded and the information specified in Section 36-9-502(b);

(2) indicate that it is an information statement; and

(3) provide the basis for the person's belief that the person that filed the record was not entitled to do so pursuant to Section 36-9-509(d).

(e) In the case of an information statement alleging that a previously filed record was filed wrongfully and that it should have been rejected pursuant to Section 36-9-516(b)(8) or (9), the Secretary of State, without undue delay, shall determine if the contested record was filed wrongfully and should have been rejected. To determine if the record was filed wrongfully, the Secretary of State may require the person filing the information statement and the secured party to provide additional relevant information requested by the Secretary of State including an original or a copy of a security agreement that is related to the record. If the Secretary of State finds that the record was filed wrongfully and should have been rejected pursuant to Section 36-9-516(b)(8) or (9), the Secretary of State shall cancel the record and it is void and of no effect."

OFFICIAL COMMENT

1. Source. New.

2. Information Statements. Former Article 9 did not afford a nonjudicial means for a debtor to indicate that a financing statement or other record was inaccurate or wrongfully filed. Subsection (a) affords the debtor the right to file an information statement. Among other requirements, the information statement must provide the basis for the debtor's belief that the public record should be corrected. See subsection (b). These provisions, which resemble the analogous remedy in the Fair Credit Reporting Act, 15 U.S.C. '1681i, afford an aggrieved person the opportunity to state its position on the public record. They do not permit an aggrieved person to change the legal effect of the public record. Thus, although a filed information statement becomes part of the "financing statement," as defined in Section 9-102, the filing does not affect the effectiveness of the initial financing statement or any other filed record. See subsection (e). Sometimes a person files a termination statement or other record relating to a filed financing statement without being entitled to do so. A secured party of record with respect to the financing statement who believes that such a record has been filed may, but need not, file an information statement indicating that the person that filed the record was not entitled to do so. See subsection (c). An information statement has no legal effect. Its sole purpose is to provide some limited public notice that the efficacy of a filed record is disputed. If

the person that filed the record was not entitled to do so, the filed record is ineffective, regardless of whether the secured party of record files an information statement. Likewise, if the person that filed the record was entitled to do so, the filed record is effective, even if the secured party of record - even one who is aware of the unauthorized filing of a record - has no duty to file one. Just as searchers bear the burden of determining whether the filing of initial financing statement was authorized, searchers bear the burden of determining whether the filing of every subsequent record was authorized. Inasmuch as the filing of an information statement has no legal effect, this section does not provide a mechanism by which a secured party can correct an error that it discovers in its own financing statement.

This Section does not displace other provisions of this Article that impose liability for making unauthorized filings or failing to file or send a termination statement (see Section 9-625(e)), nor does it displace any available judicial remedies.

3. Resort to Other Law. This Article cannot provide a satisfactory or complete solution to problems caused by misuse of the public records. The problem of "bogus" filings is not limited to the UCC filing system but extends to the real-property records, as well. A summary judicial procedure for correcting the public record and criminal penalties for those who misuse the filing and recording systems are likely to be more effective and put less strain on the filing system than provisions authorizing or requiring action by filing and recording offices.

SOUTH CAROLINA REPORTER'S COMMENT

Under Section 36-9-518 a person who believes that a record indexed under the person's name is inaccurate or was wrongfully filed can file a correction statement. A correction statement sets forth the basis for the person's belief that the filed record is inaccurate or improperly filed. The filing of a correction statement does not affect the effectiveness of an initial financing statement or other filed record.

The 2013 amendments provide for the filing of "information statements" instead of "correction statements." Under revised Section 36-9-518, both debtors and secured parties of record may file information statements.

Definitional Cross:

"Correction statement"	Section 36-9-518(b)
"File number"	Section 36-9-102(a)(36)
"Filing office"	Section 36-9-102(a)(37)
"Financing statement"	Section 36-9-102(a)(39)
"Person"	Section 36-1-201(3)

"Record" Section 36-9-102(a)(70)

Cross --

Grounds on which filing office is required to refuse to accept a record for filing. Section 36-9-516(b).

Debtor's right to recover damages for an unauthorized filing or the refusal to send or file a termination statement. Section 36-9-625(b), (c)(3), and (4).

Uniform form of written financing statement and amendment

SECTION 17. Section 36-9-521 of the 1976 Code is amended to read:

"Section 36-9-521. (a) A filing office that accepts written records may not refuse to accept a written initial financing statement in the following form and format except for a reason set forth in Section 36-9-516(b):

UCC FINANCING STATEMENT
FOLLOW INSTRUCTIONS

A. NAME & PHONE OF CONTACT AT FILER (optional)
_____
B. EMAIL CONTACT AT FILER (optional)
_____
C. SEND ACKNOWLEDGMENT TO: (Name and Address)
_____

THE ABOVE SPACE IS FOR
FILING OFFICE USE ONLY

1. DEBTOR'S NAME: Provide only one Debtor name (1a or 1b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the Individual Debtor's name will not fit in line 1b, leave all of item 1 blank, check here [ ] and provide the Individual Debtor information in item 10 of the Financing Statement Addendum (Form UCC1Ad)
1a. ORGANIZATION'S NAME
_____
1b. INDIVIDUAL'S SURNAME FIRST PERSONAL NAME
_____ _____

ADDITIONAL NAME(S)/INITIAL(S) THAT ARE PART OF THE NAME OF THIS DEBTOR SUFFIX

_____ _____

1c. MAILING ADDRESS

_____

CITY STATE POSTAL CODE COUNTRY

_____ _____ _____ _____

2. DEBTOR'S NAME: Provide only one Debtor name (2a or 2b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the Individual Debtor's name will not fit in line 2b, leave all of item 2 blank, check here [ ] and provide the Individual Debtor information in item 10 of the Financing Statement Addendum (Form UCC1Ad)

2a. ORGANIZATION'S NAME

_____

OR

2b. INDIVIDUAL'S SURNAME FIRST PERSONAL NAME

_____ _____

ADDITIONAL NAME(S)/INITIAL(S) THAT ARE PART OF THE NAME OF THIS DEBTOR SUFFIX

_____ _____

2c. MAILING ADDRESS

_____

CITY STATE POSTAL CODE COUNTRY

_____ _____ _____ _____

3. SECURED PARTY'S NAME (or NAME of ASSIGNEE of ASSIGNOR SECURED PARTY): Provide only one Secured Party name (3a or 3b)

3a. ORGANIZATION'S NAME

_____

OR

3b. INDIVIDUAL'S SURNAME FIRST PERSONAL NAME

_____ _____

ADDITIONAL NAME(S)/INITIAL(S) SUFFIX

_____

_____

3c. MAILING ADDRESS

_____

CITY STATE POSTAL CODE COUNTRY

_____ _____ _____ _____

4. COLLATERAL: This financing statement covers the following collateral:

_____

5. Check only if applicable and check only one box:
Collateral is [ ] held in a Trust (see UCC1Ad, Item 17 and Instructions)
[ ] being administered by a Decedent's Personal Representative
6a. Check only if applicable and check only one box:
[ ] Public-Finance Transaction [ ] Manufactured-Home Transaction
[ ] A Debtor is a Transmitting Utility
6b. Check only if applicable and check only one box:
[ ] Agricultural Lien [ ] Non-UCC Filing
7. ALTERNATIVE DESIGNATION (if applicable): [ ] Lessee/Lessor
[ ] Consignee/Consignor [ ] Seller/Buyer [ ] Bailee/Bailor
[ ] Licensee/Licensor
8. OPTIONAL FILER REFERENCE DATA:

_____

[UCC FINANCING STATEMENT (Form UCC1)]
UCC FINANCING STATEMENT ADDENDUM
FOLLOW INSTRUCTIONS

9. NAME OF FIRST DEBTOR: Same as item 1a or 1b on Financing Statement; if line 1b was left blank because Individual Debtor name did not fit, check here [ ]
9a. ORGANIZATION'S NAME

_____

OR
9b. INDIVIDUAL'S SURNAME

_____

FIRST PERSONAL NAME

_____

ADDITIONAL NAME(S)/INITIAL(S) SUFFIX

_____

THE ABOVE SPACE IS FOR
FILING OFFICE USE ONLY

10. DEBTOR'S NAME: Provide (10a or 10b) only one additional Debtor name or Debtor name that did not fit in line 1b or 2b of the Financing Statement (Form UCC1)(use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name) and enter the mailing address in line 10c

10a. ORGANIZATION'S NAME

_____

OR

10b. INDIVIDUAL'S SURNAME FIRST PERSONAL NAME

_____ _____

ADDITIONAL NAME(S)/INITIAL(S) THAT ARE PART OF THE NAME OF THIS DEBTOR SUFFIX

_____ _____

10c. MAILING ADDRESS

_____

CITY STATE POSTAL CODE COUNTRY

_____ _____ _____ _____

11. [ ] ADDITIONAL SECURED PARTY'S NAME or
[ ] ASSIGNOR SECURED PARTY'S NAME: Provide only one name (11a or 11b)

11a. ORGANIZATION'S NAME

_____

OR

11b. INDIVIDUAL'S SURNAME FIRST PERSONAL NAME

_____ _____

ADDITIONAL NAME(S)/INITIAL(S) SUFFIX

_____ _____

11c. MAILING ADDRESS

_____

CITY STATE POSTAL CODE COUNTRY

_____ _____ _____ _____

12. ADDITIONAL SPACE FOR ITEM 4 (Collateral)

_____

13. [ ] This FINANCING STATEMENT is to be filed [for record] (or recorded) in the REAL ESTATE RECORDS (if applicable)

14. This FINANCING STATEMENT:
[ ] covers timber to be cut [ ] covers as-extracted collateral [ ] is filed as a fixture filing

15. Name and address of a RECORD OWNER of real estate described in item 16 (if Debtor does not have a record interest):

_____

16. DESCRIPTION OF REAL ESTATE

_____

17. MISCELLANEOUS

_____

[UCC FINANCING STATEMENT ADDENDUM (Form UCC1Ad)]

(b) A filing office that accepts written records may not refuse to accept a written record in the following form and format except for a reason set forth in Section 36-9-516(b):

UCC FINANCING STATEMENT AMENDMENT
FOLLOW INSTRUCTIONS

A. NAME & PHONE OF CONTACT AT FILER (optional)

_____

B. EMAIL CONTACT AT FILER (optional)

_____

C. SEND ACKNOWLEDGMENT TO: (Name and Address)

_____

_____

THE ABOVE SPACE IS FOR
FILING OFFICE USE ONLY

1a. INITIAL FINANCING STATEMENT FILE NUMBER

_____

1b. [ ] This FINANCING STATEMENT AMENDMENT is to be filed [for record] (or recorded) in the REAL ESTATE RECORDS
Filer: attach Amendment Addendum (Form UCC3Ad) and provide Debtor's name in item 13
2. [ ] TERMINATION: Effectiveness of the Financing Statement identified above is terminated with respect to the security interest(s) of Secured Party authorizing this Termination Statement
3. [ ] ASSIGNMENT (full or partial): Provide name of Assignee in item 7a or 7b, and address of Assignee in item 7c and name of Assignor in item 9 For partial assignment, complete items 7 and 9 and also indicate affected collateral in item 8
4. [ ] CONTINUATION: Effectiveness of the Financing Statement identified above with respect to the security interest(s) of Secured Party authorizing this Continuation Statement is continued for the additional period provided by applicable law
5. [ ] PARTY INFORMATION CHANGE:
Check one of these two boxes:
This Change affects [ ] Debtor or [ ] Secured Party of record
AND

Check one of these three boxes to:
[ ] CHANGE name and/or address: Complete item 6a or 6b; and item 7a or 7b and item 7c
[ ] ADD name: Complete item 7a or 7b, and item 7c
[ ] DELETE name: Give record name to be deleted in item 6a or 6b
6. CURRENT RECORD INFORMATION: Complete for Party Information Change - provide only one name (6a or 6b)
6a. ORGANIZATION'S NAME

_____
OR
6b. INDIVIDUAL'S SURNAME FIRST PERSONAL NAME

_____ _____
ADDITIONAL NAME(S)/INITIAL(S) SUFFIX

_____ _____
7. CHANGED OR ADDED INFORMATION: Complete for Assignment or Party Information Change - provide only one name (7a or 7b) (use exact full name; do not omit, modify, or abbreviate any part of the Debtor's name)
7a. ORGANIZATION'S NAME

_____
OR
7b. INDIVIDUAL'S SURNAME FIRST PERSONAL NAME

_____ _____
ADDITIONAL NAME(S)/INITIAL(S) THAT ARE PART OF THE NAME OF THIS DEBTOR SUFFIX

_____ _____
7c. MAILING ADDRESS

_____
CITY STATE POSTAL CODE COUNTRY

_____ _____ _____ _____
8. [ ] COLLATERAL CHANGE:
Also check one of these four boxes:
[ ] ADD collateral [ ] DELETE collateral [ ] RESTATE covered collateral
[ ] ASSIGN collateral
Indicate collateral:
9. NAME OF SECURED PARTY OF RECORD AUTHORIZING THIS AMENDMENT: Provide only one name (9a or 9b) (name of Assignor, if this is an Assignment)
If this is an Amendment authorized by a DEBTOR, check here [ ] and provide name of authorizing Debtor

9a. ORGANIZATION'S NAME

_____

OR

9b. INDIVIDUAL'S SURNAME FIRST PERSONAL NAME

_____ _____

ADDITIONAL NAME(S)/INITIAL(S) SUFFIX

_____ _____

10. OPTIONAL FILER REFERENCE DATA

_____

[UCC FINANCING STATEMENT AMENDMENT (Form UCC3)]
UCC FINANCING STATEMENT AMENDMENT ADDENDUM
FOLLOW INSTRUCTIONS

11. INITIAL FINANCING STATEMENT FILE NUMBER: Same as item 1a on Amendment form

_____

12. NAME OF PARTY AUTHORIZING THIS AMENDMENT: Same as item 9 on Amendment form
12a. ORGANIZATION'S NAME

_____

OR

12b. INDIVIDUAL'S SURNAME FIRST PERSONAL NAME

_____ _____

ADDITIONAL NAME(S)/INITIAL(S) SUFFIX

_____ _____

THE ABOVE SPACE IS FOR
FILING OFFICE USE ONLY

13. Name of DEBTOR on related financing statement (Name of a current Debtor of record required for indexing purposes only in some filing offices - see Instruction item 13): Provide only one Debtor name (13a or 13b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); see Instructions if name does not fit
13a. ORGANIZATION'S NAME

_____

OR

13b. INDIVIDUAL'S SURNAME FIRST PERSONAL NAME

_____ _____

ADDITIONAL NAME(S)/INITIAL(S) SUFFIX

_____ _____

14. ADDITIONAL SPACE FOR ITEM 8 (Collateral)

_____

15. This FINANCING STATEMENT AMENDMENT: [ ] covers timber to be cut [ ] covers as-extracted collateral [ ] is filed as a fixture filing
16. Name and address of a RECORD OWNER of real estate described in item 17 (if Debtor does not have a record interest):

_____

17. DESCRIPTION OF REAL ESTATE

_____

18. MISCELLANEOUS

_____

[UCC FINANCING STATEMENT AMENDMENT ADDENDUM (Form UCC3Ad)]

UCC FINANCING STATEMENT AMENDMENT
FOLLOW INSTRUCTIONS

A. NAME & PHONE OF CONTACT AT FILER (optional)

_____

B. EMAIL CONTACT AT FILER (optional)

_____

C. SEND ACKNOWLEDGMENT TO: (Name and Address)

_____

THE ABOVE SPACE IS FOR
FILING OFFICE USE ONLY

1a. INITIAL FINANCING STATEMENT FILE NUMBER

_____

1b. [ ] This FINANCING STATEMENT AMENDMENT is to be filed [for record] (or recorded) in the REAL ESTATE RECORDS
Filer: attach Amendment Addendum (Form UCC3Ad) and provide Debtor's name in item 13
2. [ ] TERMINATION: Effectiveness of the Financing Statement identified above is terminated with respect to the security interest(s) of Secured Party authorizing this Termination Statement
3. [ ] ASSIGNMENT (full or partial): Provide name of Assignee in item 7a or 7b, and address of Assignee in item 7c and name of Assignor in item 9 For partial assignment, complete items 7 and 9 and also indicate affected collateral in item 8
4. [ ] CONTINUATION: Effectiveness of the Financing Statement identified above with respect to the security interest(s) of Secured Party

authorizing this Continuation Statement is continued for the additional period provided by applicable law
5. [ ] PARTY INFORMATION CHANGE:
Check one of these two boxes:
This Change affects [ ] Debtor or [ ] Secured Party of record
AND
Check one of these three boxes to:
[ ] CHANGE name and/or address: Complete item 6a or 6b; and item 7a or 7b and item 7c
[ ] ADD name: Complete item 7a or 7b, and item 7c
[ ] DELETE name: Give record name to be deleted in item 6a or 6b
6. CURRENT RECORD INFORMATION: Complete for Party Information Change - provide only one name (6a or 6b)
6a. ORGANIZATION'S NAME

_____
OR
6b. INDIVIDUAL'S SURNAME FIRST PERSONAL NAME

_____ _____
ADDITIONAL NAME(S)/INITIAL(S) SUFFIX

_____ _____
7. CHANGED OR ADDED INFORMATION: Complete for Assignment or Party Information Change - provide only one name (7a or 7b) (use exact full name; do not omit, modify, or abbreviate any part of the Debtor's name)
7a. ORGANIZATION'S NAME

_____
OR
7b. INDIVIDUAL'S SURNAME FIRST PERSONAL NAME

_____ _____
ADDITIONAL NAME(S)/INITIAL(S) THAT ARE PART OF THE NAME OF THIS DEBTOR SUFFIX

_____ _____
7c. MAILING ADDRESS

_____
CITY STATE POSTAL CODE COUNTRY

_____ _____ _____ _____
8. [ ] COLLATERAL CHANGE:
Also check one of these four boxes:
[ ] ADD collateral [ ] DELETE collateral [ ] RESTATE covered collateral
[ ] ASSIGN collateral
Indicate collateral:

9. NAME OF SECURED PARTY OF RECORD AUTHORIZING THIS AMENDMENT: Provide only one name (9a or 9b) (name of Assignor, if this is an Assignment)
If this is an Amendment authorized by a DEBTOR, check here [ ] and provide name of authorizing Debtor
9a. ORGANIZATION'S NAME

_____
OR
9b. INDIVIDUAL'S SURNAME FIRST PERSONAL NAME

_____ _____
ADDITIONAL NAME(S)/INITIAL(S) SUFFIX

_____ _____
10. OPTIONAL FILER REFERENCE DATA

_____
[UCC FINANCING STATEMENT AMENDMENT (Form UCC3)]
UCC FINANCING STATEMENT AMENDMENT ADDENDUM
FOLLOW INSTRUCTIONS

11. INITIAL FINANCING STATEMENT FILE NUMBER: Same as item 1a on Amendment form

_____
12. NAME OF PARTY AUTHORIZING THIS AMENDMENT: Same as item 9 on Amendment form
12a. ORGANIZATION'S NAME

_____
OR
12b. INDIVIDUAL'S SURNAME FIRST PERSONAL NAME

_____ _____
ADDITIONAL NAME(S)/INITIAL(S) SUFFIX

_____ _____
THE ABOVE SPACE IS FOR
FILING OFFICE USE ONLY

13. Name of DEBTOR on related financing statement (Name of a current Debtor of record required for indexing purposes only in some filing offices - see Instruction item 13): Provide only one Debtor name (13a or 13b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); see Instructions if name does not fit
13a. ORGANIZATION'S NAME

_____
OR

13b. INDIVIDUAL'S SURNAME FIRST PERSONAL NAME

_____ _____

ADDITIONAL NAME(S)/INITIAL(S) SUFFIX

_____

14. ADDITIONAL SPACE FOR ITEM 8 (Collateral)

_____

15. This FINANCING STATEMENT AMENDMENT: [ ] covers timber to be cut [ ] covers as-extracted collateral [ ] is filed as a fixture filing

16. Name and address of a RECORD OWNER of real estate described in item 17 (if Debtor does not have a record interest):

_____

17. DESCRIPTION OF REAL ESTATE

_____

18. MISCELLANEOUS

_____

[UCC FINANCING STATEMENT AMENDMENT ADDENDUM (Form UCC3Ad)]"

OFFICIAL COMMENT

1. Source. New.

2. "Safe Harbor" Written Forms. Although Section 9-520 limits the bases upon which the filing office can refuse to accept records, this Section provides sample written forms that must be accepted in every filing office in the country, as long as the filing office's rules permit it to accept written communications. By completing one of the forms in this Section, a secured party can be certain that the filing office is obligated to accept it.

The forms in this Section are based upon national financing statement forms that were in use under former Article 9. Those forms were developed over an extended period and reflect the comments and suggestions of filing officers, secured parties and their counsel, and service companies. The formatting of those forms and of the ones in this Section has been designed to reduce error by both filers and filing offices.

A filing office that accepts written communications may not reject, on grounds of form or format, a filing using these forms. Although filers are not required to use the forms, they are encouraged and can be expected to do so, inasmuch as the forms are well designed and avoid the risk of rejection on the basis of form or format. As their use expands, the forms will rapidly become familiar to both filers and

filing-office personnel. Filing offices may and should encourage the use of these forms by declaring them to be the "standard" (but not exclusive) forms for each jurisdiction, albeit without in any way suggesting that alternative forms are unacceptable.

The multi-purpose form in subsection (b) covers changes with respect to the debtor, the secured party, the collateral, and the status of the financing statement (termination and continuation). A single form may be used for several different types of amendments at once (e.g., both to change a debtor's name and continue the effectiveness of the financing statement).

SOUTH CAROLINA REPORTER'S COMMENT

Section 36-9-521 sets forth forms that a filing office is required to accept provided that the office accepts written records and the forms include the information required under Section 36-9-516(b).

Collection and enforcement by secured party

SECTION 18. Section 36-9-607 of the 1976 Code is amended to read:

"Section 36-9-607. (a) If so agreed, and in any event after default, a secured party:

(1) may notify an account debtor or other person obligated on collateral to make payment or otherwise render performance to or for the benefit of the secured party;

(2) may take any proceeds to which the secured party is entitled under Section 36-9-315;

(3) may enforce the obligations of an account debtor or other person obligated on collateral and exercise the rights of the debtor with respect to the obligation of the account debtor or other person obligated on collateral to make payment or otherwise render performance to the debtor, and with respect to any property that secures the obligations of the account debtor or other person obligated on the collateral;

(4) if it holds a security interest in a deposit account perfected by control under Section 36-9-104(a)(1), may apply the balance of the deposit account to the obligation secured by the deposit account; and

(5) if it holds a security interest in a deposit account perfected by control under Section 36-9-104(a)(2) or (3), may instruct the bank to pay the balance of the deposit account to or for the benefit of the secured party.

(b) If necessary to enable a secured party to exercise under subsection (a)(3) the right of a debtor to enforce a mortgage nonjudicially, the secured party may record in the office in which a record of the mortgage is recorded:

(1) a copy of the security agreement that creates or provides for a security interest in the obligation secured by the mortgage; and

(2) the secured party's sworn affidavit in recordable form stating that:

(A) a default has occurred with respect to the obligation secured by the mortgage; and

(B) the secured party is entitled to enforce the mortgage nonjudicially.

(c) A secured party shall proceed in a commercially reasonable manner if the secured party:

(1) undertakes to collect from or enforce an obligation of an account debtor or other person obligated on collateral; and

(2) is entitled to charge back uncollected collateral or otherwise to full or limited recourse against the debtor or a secondary obligor.

(d) A secured party may deduct from the collections made pursuant to subsection (c) reasonable expenses of collection and enforcement, including reasonable attorney's fees and legal expenses incurred by the secured party.

(e) This section does not determine whether an account debtor, bank, or other person obligated on collateral owes a duty to a secured party."

OFFICIAL COMMENT

1. Source. Former Section 9-502; subsections (b), (d), and (e) are new.

2. Collections: In General. Collateral consisting of rights to payment is not only the most liquid asset of a typical debtor's business but also is property that may be collected without any interruption of the debtor's business This situation is far different from that in which collateral is inventory or equipment, whose removal may bring the business to a halt. Furthermore, problems of valuation and identification, present with collateral that is tangible personal property, frequently are not as serious in the case of rights to payment and other intangible collateral. Consequently, this Section, like former Section 9-502, recognizes that financing through assignments of intangibles lacks many of the complexities that arise after default in other types of financing. This Section allows the assignee to liquidate collateral by collecting whatever may become due on the collateral, whether or not

the method of collection contemplated by the security arrangement before default was direct (i.e., payment by the account debtor to the assignee, "notification" financing) or indirect (i.e., payment by the account debtor to the assignor, " nonnotification" financing).

3. Scope. The scope of this Section is broader than that of former Section 9-502. It applies not only to collections from account debtors and obligors on instruments but also to enforcement more generally against all persons obligated on collateral. It explicitly provides for the secured party's enforcement of the debtor's rights in respect of the account debtor' s (and other third parties') obligations and for the secured party's enforcement of supporting obligations with respect to those obligations. (Supporting obligations are components of the collateral under Section 9-203(f) .) The rights of a secured party under subsection (a) include the right to enforce claims that the debtor may enjoy against others. For example, the claims might include a breach-of-warranty claim arising out of a defect in equipment that is collateral or a secured party's action for an injunction against infringement of a patent that is collateral. Those claims typically would be proceeds of original collateral under Section 9-315.

4. Collection and Enforcement Before Default. Like Part 6 generally, this Section deals with the rights and duties of secured parties following default. However, as did former Section 9-502 with respect to collection rights, this Section also applies to the collection and enforcement rights of secured parties even if a default has not occurred, as long as the debtor has so agreed. It is not unusual for debtors to agree that secured parties are entitled to collect and enforce rights against account debtors prior to default.

5. Collections by Junior Secured Party. A secured party who holds a security interest in a right to payment may exercise the right to collect and enforce under this Section, even if the security interest is subordinate to a conflicting security interest in the same right to payment. Whether the junior secured party has priority in the collected proceeds depends on whether the junior secured party qualifies for priority as a purchaser of an instrument (e.g., the account debtor's check) under Section 9-330(d), as a holder in due course of an instrument under Sections 3-305 and 9-331(a), or as a transferee of money under Section 9-332(a). See Sections 9-330, Comment 7; 9-331, Comment 5; and 9-332.

6. Relationship to Rights and Duties of Persons Obligated on Collateral. This Section permits a secured party to collect and enforce obligations included in collateral in its capacity as a secured party. It is not necessary for a secured party first to become the owner of the

collateral pursuant to a disposition or acceptance. However, the secured party's rights, as between it and the debtor, to collect from and enforce collateral against account debtors and others obligated on collateral under subsection (a) are subject to Section 9-341, Part 4, and other applicable law. Neither this Section nor former Section 9-502 should be understood to regulate the duties of an account debtor or other person obligated on collateral. Subsection (e) makes this explicit. For example, the secured party may be unable to exercise the debtor's rights under an instrument if the debtor is in possession of the instrument, or under a non-transferable letter of credit if the debtor is the beneficiary. Unless a secured party has control over a letter-of-credit right and is entitled to receive payment or performance from the issuer or a nominated person under Article 5, its remedies with respect to the letter-of-credit right may be limited to the recovery of any identifiable proceeds from the debtor. This Section establishes only the baseline rights of the secured party vis-a-vis the debtor-the secured party is entitled to enforce and collect after default or earlier if so agreed.

7. Deposit Account Collateral. Subsections (a)(4) and (5) set forth the self-help remedy for a secured party whose collateral is a deposit account. Subsection (a)(4) addresses the rights of a secured party that is the bank with which the deposit account is maintained. That secured party automatically has control of the deposit account under Section 9-104(a)(1). After default, and otherwise if so agreed, the bank/secured party may apply the funds on deposit to the secured obligation.

If a security interest of a third party is perfected by control (Section 9-104(a)(2) or (a)(3)), then after default, and otherwise if so agreed, the secured party may instruct the bank to pay out the funds in the account. If the third party has control under Section 9-104(a)(3), the depositary institution is obliged to obey the instruction because the secured party is its customer. See Section 4-401. If the third party has control under Section 9-104(a)(2), the control agreement determines the depositary institution's obligation to obey.

If a security interest in a deposit account is unperfected, or is perfected by filing by virtue of the proceeds rules of Section 9-315, the depositary institution ordinarily owes no obligation to obey the secured party's instructions. See Section 9-341. To reach the funds without the debtor's cooperation, the secured party must use an available judicial procedure.

8. Rights Against Mortgagor of Real Property. Subsection (b) addresses the situation in which the collateral consists of a mortgage

note (or other obligation secured by a mortgage on real property). After the debtor's (mortgagee's) default, the secured party (assignee) may wish to proceed with a nonjudicial foreclosure of the mortgage securing the note but may be unable to do so because it has not become the assignee of record. The assignee/ secured party may not have taken a recordable assignment at the commencement of the transaction (perhaps the mortgage note in question was one of hundreds assigned to the secured party as collateral). Having defaulted, the mortgagee may be unwilling to sign a recordable assignment. This Section enables the secured party (assignee) to become the assignee of record by recording in the applicable real-property records the security agreement and an affidavit certifying default. Of course, the secured party's rights derive from those of its debtor. Subsection (b) would not entitle the secured party to proceed with a foreclosure unless the mortgagor also were in default or the debtor (mortgagee) otherwise enjoyed the right to foreclose.

9. Commercial Reasonableness. Subsection (c) provides that the secured party's collection and enforcement rights under subsection (a) must be exercised in a commercially reasonable manner. These rights include the right to settle and compromise claims against the account debtor. The secured party's failure to observe the standard of commercial reasonableness could render it liable to an aggrieved person under Section 9-625, and the secured party's recovery of a deficiency would be subject to Section 9-626. Subsection (c) does not apply if, as is characteristic of most sales of accounts, chattel paper, payment intangibles, and promissory notes, the secured party (buyer) has no right of recourse against the debtor (seller) or a secondary obligor. However, if the secured party does have a right of recourse, the commercial-reasonableness standard applies to collection and enforcement even though the assignment to the secured party was a "true" sale. The obligation to proceed in a commercially reasonable manner arises because the collection process affects the extent of the seller's recourse liability, not because the seller retains an interest in the sold collateral (the seller does not).

10. Attorney's Fees and Legal Expenses. The phrase "reasonable attorney's fees and legal expenses," which appears in subsection (d), includes only those fees and expenses incurred in proceeding against account debtors or other third parties. The secured party's right to recover these expenses from the collections arises automatically under this Section. The secured party also may incur other attorney's fees and legal expenses in proceeding against the debtor or obligor. Whether the secured party has a right to recover those fees and

expenses depends on whether the debtor or obligor has agreed to pay them, as is the case with respect to attorney's fees and legal expenses under Sections 9-608(a)(1)(A) and 9-615(a)(1). The parties also may agree to allocate a portion of the secured party's overhead to collection and enforcement under subsection (d) or Section 9-608(a).

SOUTH CAROLINA REPORTER'S COMMENT

Section 36-9-607 addresses a secured party's rights on default when the collateral consists of accounts, payment intangibles, promissory notes, and deposit accounts and when the secured party has a security interest in a supporting obligation. Under subsection (a)(1) the secured party is authorized to instruct an account debtor or other person obligated upon the collateral to make payment to or for the benefit of the secured party. Under subsection (a)(2) the secured party is authorized to take any proceeds to which it is entitled under Section 36-9-315. Under subsection (a)(3) the secured party is entitled to enforce the obligations of the account debtor or other person obligated upon the collateral. Under subsections (a)(4) and (5) a secured party with control of a deposit account may apply the balance of the deposit account toward the secured obligation or instruct the bank at which the account is maintained to pay the balance to or for the benefit of the secured party.

Subsection (b) provides a method by which a secured party holding a security interest in a promissory note secured by a real estate mortgage can obtain a nonjudicial foreclosure of the mortgage without obtaining and recording an assignment of the mortgage. The provision does not extend to a judicial foreclosure and to obtain that remedy the secured party would have to obtain an assignment of the mortgage.

Subsection (c) requires a secured party to proceed in commercially reasonable manner in collecting or enforcing an obligation of an account debtor or other person obligated upon the collateral unless the secured party has no right of recourse against the debtor or a secondary obligor.

Subsection (e) provides that Section 36-9-607 does not determine whether an account debtor, bank, or person obligated on the collateral owes a duty to the secured party. For example, a secured party who obtains a security interest in a letter of credit supporting a debtor's accounts receivable because the letter of credit is a supporting obligation may not be entitled to receive payment from the issuer.

Definitional Cross:

"Account debtor"	Section 36-9-102(a)(3)
"Collateral"	Section 36-9-102(a)(12)

"Debtor"	Section 36-9-102(a)(28)
"Deposit account"	Section 36-9-102(a)(29)
"Mortgage"	Section 36-9-102(a)(55)
"Obligor"	Section 36-9-102(a)(59)
"Notifies"	Section 36-1-201(26)
"Proceeds"	Section 36-9-102(a)(64)
"Secured party"	Section 36-9-102(a)(73)
"Security agreement"	Section 36-9-102(a)(74)

Cross --

1. The attachment of a security interest in collateral gives the secured party a security interest in a supporting obligation for the collateral. Section 36-9-203(f).

2. Perfection of a security interest in collateral also perfects a security interest in a supporting obligation. Section 36-9-308(d).

3. A security interest attaches to identifiable proceeds of collateral. Sections 36-9-203(f) and 36-9-315(a)(2).

4. Perfection of a security interest in proceeds. Section 36-9-315(c)--(e).

5. Requirements for control of deposit accounts. Section 36-9-104.

6. The rights of an assignee of an account against an account debtor. Sections 36-9-403, 36-9-404, and 36-9-405.

7. Limits upon the rights of secured party with a security interest in a letter-of-credit right perfected by control to enforce the drawing rights of the beneficiary against the issuer or nominated person. See Section 36-9-329, Official Comment 3 and 4.

8. Application of proceeds realized upon enforcement or collection from account debtor's or other persons obligated on the collateral. Section 36-9-608.

Transition for 2013 revisions

SECTION 19. Chapter 9, Tile 36 of the 1976 Code is amended by adding:

"Part 8

Transition

Section 36-9-802. (a) Except as otherwise provided in this part, this act applies to a transaction or lien within its scope, even if the transaction or lien was entered into or created before this act takes effect.

(b) This act does not affect an action, case, or proceeding commenced before this act takes effect.

Section 36-9-803. (a) A security interest that is a perfected security interest immediately before this act takes effect is a perfected security interest under Chapter 9, Title 36 as amended by this act if, when this act takes effect, the applicable requirements for attachment and perfection under Chapter 9, Title 36 as amended by this act are satisfied without further action.

(b) Except as otherwise provided in Section 36-9-805, if, immediately before this act takes effect, a security interest is a perfected security interest, but the applicable requirements for perfection under Chapter 9, Title 36 as amended by this act are not satisfied when this act takes effect, the security interest remains perfected thereafter only if the applicable requirements for perfection under Chapter 9, Title 36 as amended by this act are satisfied within one year after this act takes effect.

Section 36-9-804. A security interest that is an unperfected security interest immediately before this act takes effect becomes a perfected security interest:

(1) without further action, when this act takes effect if the applicable requirements for perfection under Chapter 9, Title 36 as amended by this act are satisfied before or at that time; or

(2) when the applicable requirements for perfection are satisfied if the requirements are satisfied after that time.

Section 36-9-805. (a) The filing of a financing statement before this act takes effect is effective to perfect a security interest to the extent the filing would satisfy the applicable requirements for perfection under Chapter 9, Title 36, as amended by this act.

(b) This act does not render ineffective an effective financing statement that, before this act takes effect, is filed and satisfies the applicable requirements for perfection under the law of the jurisdiction governing perfection as provided in Chapter 9, Title 36 as it existed before this act. However, except as otherwise provided in subsections (c) and (d) and Section 36-9-806, the financing statement ceases to be effective:

(1) if the financing statement is filed in this State, at the time the financing statement would have ceased to be effective had this act not taken effect; or

(2) if the financing statement is filed in another jurisdiction, at the earlier of:

(A) the time the financing statement would have ceased to be effective under the law of that jurisdiction; or

(B) June 30, 2018.

(c) The filing of a continuation statement after this act takes effect does not continue the effectiveness of a financing statement filed before this act takes effect. However, upon the timely filing of a continuation statement after this act takes effect and in accordance with the law of the jurisdiction governing perfection as provided in Part 3, the effectiveness of a financing statement filed in the same office in that jurisdiction before this act takes effect continues for the period provided by the law of that jurisdiction.

(d) Subsection (b)(2)(B) applies to a financing statement that, before this act takes effect, is filed against a transmitting utility and satisfies the applicable requirements for perfection under the law of the jurisdiction governing perfection as provided in Chapter 9, Title 36 as it existed before this act, only to the extent that Chapter 9, Title 36, as amended by this act provides that the law of a jurisdiction other than the jurisdiction in which the financing statement is filed governs perfection of a security interest in collateral covered by the financing statement.

(e) A financing statement that includes a financing statement filed before this act takes effect and a continuation statement filed after this act takes effect is effective only to the extent that it satisfies the requirements of Part 5 as amended by this act for an initial financing statement. A financing statement that indicates that the debtor is a decedent's estate indicates that the collateral is being administered by a personal representative within the meaning of Section 36-9-503(a)(2) as amended by this act. A financing statement that indicates that the debtor is a trust or is a trustee acting with respect to property held in trust indicates that the collateral is held in a trust within the meaning of Section 36-9-503(a)(3) as amended by this act.

Section 36-9-806. (a) The filing of an initial financing statement in the office specified in Section 36-9-501 continues the effectiveness of a financing statement filed before this act takes effect if:

(1) the filing of an initial financing statement in that office would be effective to perfect a security interest under this act;

(2) the preeffective-date financing statement was filed in an office in another State; and

(3) the initial financing statement satisfies subsection (c).

(b) The filing of an initial financing statement under subsection (a) continues the effectiveness of the preeffective-date financing statement:

(1) if the initial financing statement is filed before this act takes effect, for the period provided in former Section 36-9-515 with respect to an initial financing statement; and

(2) if the initial financing statement is filed after this act takes effect, for the period provided in Section 36-9-515 as amended by this act with respect to an initial financing statement.

(c) To be effective for purposes of subsection (a), an initial financing statement must:

(1) satisfy the requirements of Part 5 as amended by this act for an initial financing statement;

(2) identify the preeffective-date financing statement by indicating the office in which the financing statement was filed and providing the dates of filing and file numbers, if any, of the financing statement and of the most recent continuation statement filed with respect to the financing statement; and

(3) indicate that the preeffective-date financing statement remains effective.

Section 36-9-807. (a) In this section, 'preeffective-date financing statement' means a financing statement filed before this act takes effect.

(b) After this act takes effect, a person may add or delete collateral covered by, continue or terminate the effectiveness of, or otherwise amend the information provided in, a preeffective-date financing statement only in accordance with the law of the jurisdiction governing perfection as provided in Chapter 9, Title 36, as amended by this act. However, the effectiveness of a preeffective-date financing statement also may be terminated in accordance with the law of the jurisdiction in which the financing statement is filed.

(c) Except as otherwise provided in subsection (d), if the law of this State governs perfection of a security interest, the information in a preeffective-date financing statement may be amended after this act takes effect only if:

(1) the preeffective-date financing statement and an amendment are filed in the office specified in Section 36-9-501;

(2) an amendment is filed in the office specified in Section 36-9-501 concurrently with, or after the filing in that office of, an initial financing statement that satisfies Section 36-9-806(c); or

(3) an initial financing statement that provides the information as amended and satisfies Section 36-9-806(c) is filed in the office specified in Section 36-9-501.

(d) If the law of this State governs perfection of a security interest, the effectiveness of a preeffective-date financing statement may be continued only under Section 36-9-805(c) and (e) or 36-9-806.

(e) Whether or not the law of this State governs perfection of a security interest, the effectiveness of a preeffective-date financing statement filed in this State may be terminated after this act takes effect by filing a termination statement in the office in which the preeffective-date financing statement is filed, unless an initial financing statement that satisfies Section 36-9-806(c) has been filed in the office specified by the law of the jurisdiction governing perfection as provided in Part 3 as the office in which to file a financing statement.

Section 36-9-808. A person may file an initial financing statement or a continuation statement under this part if the:

(1) secured party of record authorizes the filing; and

(2) filing is necessary under this part to:

(A) continue the effectiveness of a financing statement filed before this act takes effect; or

(B) perfect or continue the perfection of a security interest.

Section 36-9-809. This act determines the priority of conflicting claims to collateral. However, if the relative priorities of the claims were established before this act takes effect, former Chapter 9, Title 36 determines priority."

Time effective

SECTION 20. This act takes effect on July 1, 2013.

Ratified the 4th day of June, 2013.

Approved the 7th day of June, 2013.

No. 97

(R118, S310)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 40-29-95 SO AS TO REQUIRE THE MANUFACTURED HOUSING BOARD TO CONSIDER THE FINANCIAL RESPONSIBILITY OF AN APPLICANT FOR LICENSURE BY THE BOARD, TO PROVIDE THE BOARD SHALL PROMULGATE RELATED REGULATIONS, TO PROVIDE THAT A MANUFACTURED HOUSING RETAIL DEALER WHO FAILS TO MEET CERTAIN FINANCIAL RESPONSIBILITY REQUIREMENTS SHALL APPEAR BEFORE THE BOARD, AND TO PROVIDE THAT THE BOARD MAY RESTRICT OR MODIFY THE ACTIVITIES OF A LICENSEE WHO FAILS TO MEET THESE FINANCIAL RESPONSIBILITY REQUIREMENTS; BY ADDING SECTION 40-29-325 SO AS TO PROVIDE A LICENSED MANUFACTURED HOUSING RETAIL DEALER SHALL INCLUDE ITS DEALER LICENSE NUMBER ON CERTAIN ADVERTISEMENTS FOR THE MANUFACTURED HOUSING BY THE DEALER; TO AMEND SECTION 40-29-200, RELATING TO APPLICATIONS FOR LICENSURE AND RENEWAL, SO AS TO PROVIDE AN APPLICANT FOR LICENSURE AS A RETAIL DEALER SHALL PROVIDE A FINANCIAL STATEMENT REVIEWED BY A LICENSED CERTIFIED PUBLIC ACCOUNTANT TO THE BOARD, TO PROVIDE THE HOLDER OF A LIEN ON A MANUFACTURED HOME IS NOT SUBJECT TO THE PROVISIONS OF CHAPTER 29, TITLE 40 FOR THE SALE, EXCHANGE, OR TRANSFER BY LEASE-PURCHASE OF A REPOSSESSED MANUFACTURED HOME MADE THROUGH A LICENSED MANUFACTURED HOME RETAILER OR A SALE MADE THROUGH THE FORECLOSURE PROCESS, AND TO PROVIDE FOR THE DENIAL OF A LICENSE TO AN APPLICANT CONVICTED OF CERTAIN CRIMES, AND TO MAKE A CONFORMING CHANGE; AND TO AMEND SECTION 40-29-230, RELATING TO VIOLATIONS OF SURETY BOND, CLAIM, AND RELEASE REQUIREMENTS FOR APPLICANTS FOR LICENSURE BY THE BOARD, SO AS TO INCLUDE THE INABILITY OF AN APPLICANT TO SATISFY REQUISITE FINANCIAL RESPONSIBILITY

GUIDELINES AS A BASIS FOR INCREASING THE AMOUNT OF THE REQUIRED SURETY BOND OR OTHER APPROVED SECURITY.

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

Financial responsibility requirements

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

"Section 40-29-95. (A) The board shall consider the financial responsibility of an applicant as determined by this section and regulations promulgated by the board.

(B) A retail dealer applicant who fails to possess cash or cash equivalency in an amount equal to or greater than one hundred fifty thousand dollars or a credit score of less than seven hundred must appear before the board.

(C) Should the board license an applicant who is unable to meet the financial responsibility guidelines of this section or the regulations of the board, then the board may modify or restrict the activities of the licensee."

Dealer license number required in certain advertisements

SECTION 2. Chapter 29, Title 40 of the 1976 Code is amended by adding:

"Section 40-29-325. Licensed manufactured housing retail dealers shall include their dealer license number on any print, Internet, or email advertisement by the retail dealer for the sale of a manufactured home located in South Carolina."

Application requirements, certain lienholder conveyance exempt

SECTION 3. Section 40-29-200 of the 1976 Code is amended to read:

"Section 40-29-200. (A) All licenses expire June thirtieth of each even-numbered year following the date of issue, unless sooner revoked or suspended.

(B) An applicant for licensure shall:

(1) demonstrate financial responsibility as required by Section 40-29-95;

(2) for a retail dealer, provide a financial statement reviewed by a licensed certified public accountant;

(3) not have engaged illegally in the licensed classification;

(4) demonstrate familiarity with the regulations adopted by the board concerning the classification for which application is made;

(5) if a corporation, have complied with the laws of South Carolina regarding qualification for doing business in this State or have been incorporated in South Carolina and have and maintain a registered agent and a registered office in this State;

(6) submit proof of registration with the Department of Revenue and submit a current tax identification number;

(7) where applicable, pass an examination administered by the board or its designated test provider in the license classification for which application is made;

(8) where applicable, complete training as prescribed by the board.

(C) A manufactured housing license is not required for a licensed real estate salesman or licensed real estate broker who negotiates or attempts to negotiate for any legal entity the listing, sale, purchase, exchange, lease, or other disposition of a used manufactured or mobile home in conjunction with the listing, sale, purchase, exchange, lease, or other disposition of real estate upon which the used manufactured or mobile home is located.

(D) The holder of a lien on a manufactured home who sells, exchanges, or transfers by lease-purchase a repossessed manufactured home subject to the lien is not subject to the provisions of this chapter if the sale, exchange, or transfer is through a licensed manufactured home retail dealer. A sale by a lienholder conducted through the foreclosure process of Section 29-3-610, et seq. may not be subject to the provisions of this chapter.

(E) A license must be issued in only one person's name who may be the individual owner, stockholder, copartner, manufactured home retail salesman or other representative of a manufactured home manufacturer, manufactured home retail dealer, or other entity required to be licensed. It is the duty of a manufactured home retail dealer and manufactured home manufacturer to conspicuously display the licenses in the established place of business. Manufactured home retail salesmen and manufactured home contractors, installers, and repairers are required to carry their licenses on their persons at all times when

they are doing business in this State, and they must be shown upon request.

(F) The board may deny a license to an applicant who submits an application meeting the requirements of this chapter if the applicant has been convicted in a court of competent jurisdiction of a violent crime as defined in Section 16-1-60, a felony directly related to any aspect of the business of manufactured housing, or a felony, an essential element of which is dishonesty, reasonably related to any aspect of the business of manufactured housing.

(G) No person may be issued a license as a manufactured home retail dealer unless the person can show proof satisfactory to the board of two years' experience in the manufactured home industry or other relevant experience acceptable to the board.

(H) Notwithstanding any other provision of law, the board may not grant reciprocity or issue a license to an applicant:

(1) whose license in another state is currently restricted in any way, including probationary or other conditions, or was surrendered in lieu of disciplinary action or was revoked;

(2) who has disciplinary action pending against him in another state; or

(3) who is currently under sentence, including probation or parole, for a violation of Section 16-1-60, a felony directly related to any aspect of the business of manufactured housing, or a felony, an essential element of which is dishonesty, reasonably related to any aspect of the business of manufactured housing.

(I)(1) An applicant may be granted an apprentice salesperson license for up to one hundred twenty days. An apprentice salesperson license may not be issued to an applicant if the applicant has ever been:

(a) denied any type of license issued pursuant to this chapter;

(b) subject to suspension or revocation of a license issued pursuant to this chapter; or

(c) subject to any disciplinary action taken in accordance with this chapter.

(2) An applicant is subject to all of the requirements of this chapter and regulations promulgated pursuant to this chapter, except that an applicant is not required to complete the training, testing, and bond requirements established for a regular retail salesperson license."

Surety bonds and other required security

SECTION 4. Section 40-29-230(B)(3) of the 1976 Code is amended to read:

"(3) The board, upon a finding of a violation by a licensee or that an applicant is unable to meet the financial responsibility guidelines, may further require the licensee to increase the amount of a surety bond or other approved security. An increase must be proportioned to the seriousness of the offense, the repeat nature of the licensee's violations, or related to the financial condition of an applicant. The total amount may not exceed an additional seventy-five thousand dollars for manufacturers, fifty thousand dollars for dealers, twenty thousand dollars for salespersons, and ten thousand dollars for manufactured home contractors, installers, and repairers. The board, after one year, may reduce an increased surety bond or other approved security when satisfied that violations have been cured by appropriate corrective action and that the licensee is otherwise in good standing. The bonds cannot be reduced below amounts provided in this section."

Time effective

SECTION 5. This act takes effect upon approval by the Governor.

Ratified the 19th day of June, 2013.

Approved the 20th day of June, 2013.

No. 98

(R119, H3360)

AN ACT TO AMEND SECTIONS 57-5-10, 57-5-70, AND 57-5-80, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE COMPOSITION OF THE STATE HIGHWAY SYSTEM, ADDITIONS TO THE STATE HIGHWAY SECONDARY SYSTEM, AND THE DELETION AND REMOVAL OF ROADS FROM THE STATE HIGHWAY SECONDARY SYSTEM, SO AS TO PROVIDE THAT ALL HIGHWAYS WITHIN THE STATE HIGHWAY SYSTEM SHALL BE CONSTRUCTED TO THE DEPARTMENT OF TRANSPORTATION STANDARDS, TO PROVIDE THE FUNDING SOURCES THAT THE DEPARTMENT MAY USE TO CONSTRUCT AND MAINTAIN THESE HIGHWAYS, TO

REVISE THE PROCEDURE AND ENTITIES TO WHICH THE DEPARTMENT MAY TRANSFER ROADS WITHIN THE STATE HIGHWAY SECONDARY SYSTEM, AND TO REVISE THE PROCEDURE WHEREBY THE DEPARTMENT MAY ADD A COUNTY OR MUNICIPAL ROAD TO THE STATE HIGHWAY SYSTEM; BY ADDING SECTION 11-43-165 SO AS TO PROVIDE THAT DURING EACH FISCAL YEAR, THE DEPARTMENT OF TRANSPORTATION SHALL TRANSFER FIFTY MILLION DOLLARS FROM NONTAX SOURCES TO THE SOUTH CAROLINA TRANSPORTATION INFRASTRUCTURE BANK TO BE USED TO FINANCE CERTAIN PROJECTS, TO PROVIDE THAT GENERAL REVENUE APPROPRIATED TO THE DEPARTMENT FOR "HIGHWAY ENGINEERING PERMANENT IMPROVEMENTS" IS EXEMPT FROM ACROSS-THE-BOARD REDUCTIONS, AND TO PROVIDE THAT THE IMPLEMENTATION OF THIS SECTION IS CONTINGENT UPON FIFTY MILLION DOLLARS BEING APPROPRIATED TO THE DEPARTMENT OF TRANSPORTATION IN THE 2013-2014 GENERAL APPROPRIATIONS ACT FOR THE PURPOSES PROVIDED IN THIS SECTION; BY ADDING SECTION 12-36-2647 SO AS TO PROVIDE THAT FIFTY PERCENT OF THE REVENUES OF CERTAIN SALES, USE, AND CASUAL EXCISE TAXES DERIVED ON THE SALE, USE, OR TITLING OF MOTOR VEHICLES REQUIRED TO BE LICENSED AND REGISTERED BY THE DEPARTMENT OF MOTOR VEHICLES MUST BE CREDITED TO THE STATE NON-FEDERAL AID HIGHWAY FUND AND USED EXCLUSIVELY FOR CERTAIN PURPOSES; AND TO PROVIDE THAT THERE IS TRANSFERRED TO THE DEPARTMENT OF TRANSPORTATION AN AMOUNT NOT TO EXCEED FIFTY MILLION DOLLARS TO BE USED BY THE DEPARTMENT FOR BRIDGE REPLACEMENT AND REHABILITATION WHICH SHALL SERVE AS THE MATCH REQUIREMENT FOR CERTAIN ACTIVE FEDERAL AID ELIGIBLE BRIDGE REPLACEMENT PROJECTS AND PRIORITIZED REHABILITATION PROJECTS.

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

Funding sources for the state highway system

SECTION 1. Section 57-5-10 of the 1976 Code is amended to read:

"Section 57-5-10. The state highway system shall consist of a statewide system of connecting highways that shall be constructed to the Department of Transportation's standards and that shall be maintained by the department in a safe and serviceable condition as state highways. The department may utilize funding sources including, but not limited to, the State Non-Federal Aid Highway Fund and the State Highway Fund as established by Section 57-11-20 in carrying out the provisions of this section. The complete state highway system shall mean the system of state highways as now constituted, consisting of the roads, streets, and highways designated as state highways or designated for construction or maintenance by the department pursuant to law, together with the roads, streets, and highways added to the state highway system by the Commission of the Department of Transportation, and the roads, streets, and highways that may be added to the system pursuant to law. Roads and highways in the state highway system are classified into three classifications:

(1) interstate system of highways;
(2) state highway primary system; and
(3) state highway secondary system."

Highway transfers to the state highway system

SECTION 2. Section 57-5-70 of the 1976 Code is amended to read:

"Section 57-5-70. A county or municipality and the department may by mutual consent agree to transfer a road from the county or municipal road system to the state highway system. The transfer may be of the road 'as is', without further improvement to the road or upon such terms and conditions as the parties mutually agree. Notification of the transfer must be given to the county's legislative delegation. If the department determines that a road in the county or municipal road system is necessary for the interconnectivity of the state highway system, and the municipality or county does not consent to the transfer, the department may initiate a condemnation action to acquire the road, or a portion of it, and the county or municipality is not required to make any further improvements to it."

Highway transfers from the state secondary system

SECTION 3. Section 57-5-80 of the 1976 Code is amended to read:

"Section 57-5-80. The department may transfer from the state highway secondary system any road under its jurisdiction, determined by the department to be of low traffic importance, to one of the parties indicated in this section if mutual consent is reached between the department and the party that the road is being transferred to:

(a) a county or municipality;
(b) a school;
(c) a governmental agency;
(d) a nongovernmental entity; or
(e) a person.

In all cases, the county or municipality shall have right of first refusal to accept roads into their maintenance responsibility when roads are considered for transfer from the state highway system to a nongovernmental entity or person and in no case may a state road be transferred to a nongovernmental entity unless all persons and businesses located on that road are in agreement with the transfer. Maintenance responsibility for roads transferred from the state highway system pursuant to the provisions of this section shall transfer from the jurisdiction of the department to the jurisdiction of the county or municipality, school, governmental agency, nongovernmental entity, or person, effective upon notice from the department of official action removing the road from the state highway system. Notification of the transfer must be given to the county's legislative delegation."

South Carolina Transportation Infrastructure Bank

SECTION 4. A. Article 1, Chapter 43, Title 11 of the 1976 Code is amended by adding:

"Section 11-43-165. Each fiscal year, the South Carolina Department of Transportation shall transfer fifty million dollars from nontax sources to the South Carolina Transportation Infrastructure Bank. The department may transfer the total amount in one lump sum or it may transfer the amount quarterly in four equal installments. The general fund revenue appropriated to the department for 'Highway Engineering Permanent Improvements' in the annual general appropriations act is exempt from any across-the-board reductions. The transferred funds must be used solely by the bank to finance bridge

replacement, rehabilitation projects, and expansion and improvements to existing mainline interstates. The department shall submit a list of bridge and road projects to the bank for its consideration. Transferred funds may not be used for projects approved by the bank before July 1, 2013. The bank shall submit all projects proposed to be financed by this section to the Joint Bond Review Committee as provided in Section 11-43-180, prior to approving a project for financing."

B. This section takes effect July 1, 2013. Implementation of Section 11-43-165 is contingent upon fifty million dollars being appropriated to the South Carolina Department of Transportation in the 2013-2014 General Appropriations Act for the purposes provided for in Section 11-43-165.

Sources of revenue used for highway construction and maintenance

SECTION 5. A. The General Assembly finds that:

(1) before a motor vehicle may be licensed and registered by the South Carolina Department of Motor Vehicles for the privilege of using the public highways of this State, that department either collects or confirms the collection of any applicable sales, use, and casual excise taxes due on the vehicle;

(2) without the required registration and licensing it is unlawful for a motor vehicle to use the public highways of this State; and

(3) the revenue of the sales, use, and casual excise tax required to be paid before a motor vehicle may be registered and licensed in this State is included within the "sources of revenue" that may be pledged to secure highway bonds pursuant to Section 13(6)(a), Article X of the Constitution of this State.

B. Article 25, Chapter 36, Title 12 of the 1976 Code is amended by adding:

"Section 12-36-2647. Notwithstanding the provisions of Section 59-21-1010, fifty percent of the revenues of sales, use, and casual excise taxes derived pursuant to Sections 12-36-2620(1) and 12-36-2640(1) on the sale, use, or titling of a motor vehicle required to be licensed and registered by the South Carolina Department of Motor Vehicles, otherwise required to be credited as provided pursuant to Section 59-21-1010, instead must be credited to the State Non-Federal

Aid Highway Fund established pursuant to Section 57-11-20. Revenues credited to the State Non-Federal Aid Highway Fund pursuant to this section must be used exclusively for highway, road, and bridge maintenance, construction, and repair."

C. This section takes effect July 1, 2013.

Transfer of revenue to the Department of Transportation

SECTION 6. A. There is transferred to the Department of Transportation an amount of unobligated Fiscal Year 2012-2013 general fund revenue not to exceed $50,000,000, which is in excess of the $159,845,460 designated as the source of revenue to fund the appropriations in Proviso 118.17 of the Fiscal Year 2013-2014 General Appropriations Act, to be used solely by the department for bridge replacement and rehabilitation. The revenue is deemed to have occurred and is available for use after September 1, 2013, following the Comptroller General's close of the state's books on Fiscal Year 2012-2013. These funds shall serve as the match requirement for active federal aid eligible bridge replacement projects currently programmed in the Statewide Transportation Improvement Program (STIP) and Section 57-1-370(B)(8) prioritized rehabilitation projects approved by the commission for future inclusion in the STIP as of February 21, 2013.

B. This section takes effect July 1, 2013.

Savings clause

SECTION 7. The repeal or amendment by this act of any law, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

Time effective

SECTION 8. Unless otherwise provided, this act takes effect upon approval by the Governor.

Ratified the 19th day of June, 2013.

Approved the 24th day of June, 2013.

No. 99

(R122, H3717)

AN ACT TO AMEND SECTION 16-3-1700, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO DEFINITIONS FOR PURPOSES OF THE OFFENSES OF HARASSMENT AND STALKING, SO AS TO INCLUDE IN THE PURVIEW OF THE OFFENSES PERSONS WHO COMMIT THE OFFENSES WHILE SUBJECT TO THE TERMS OF A RESTRAINING ORDER ISSUED BY THE FAMILY COURT; TO AMEND SECTIONS 16-3-1710, 16-3-1720, AND 16-3-1730, ALL AS AMENDED, RELATING TO PENALTIES FOR HARASSMENT IN THE SECOND DEGREE, HARASSMENT IN THE FIRST DEGREE, AND STALKING, RESPECTIVELY, ALL SO AS TO INCLUDE PERSONS SUBJECT TO A RESTRAINING ORDER ISSUED BY THE FAMILY COURT; TO AMEND SECTION 20-4-60, AS AMENDED, RELATING TO ORDERS OF PROTECTION FROM DOMESTIC ABUSE, SO AS TO PROVIDE A PROCEDURE FOR VACATING AN ORDER OF PROTECTION AND DESTRUCTION OF THE RECORDS OF THE ORDER WHEN MUTUAL ORDERS OF PROTECTION HAVE BEEN ENTERED THAT DO NOT COMPLY WITH THE PROVISIONS OF THE STATUTE; AND TO AMEND SECTION 16-3-1760, AS AMENDED, RELATING TO EMERGENCY HEARINGS FOR TEMPORARY RESTRAINING ORDERS, SO AS TO PROVIDE A PROCEDURE FOR VACATING A TEMPORARY RESTRAINING ORDER AND DESTRUCTION OF THE RECORDS OF THE ORDER WHEN AN ORDER WAS IMPROPERLY ISSUED DUE TO UNKNOWN FACTS.

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

Harassment and stalking, definitions, inclusion of family court restraining orders

SECTION 1. Section 16-3-1700 of the 1976 Code, as last amended by Act 106 of 2005, is further amended by adding an appropriately lettered subsection at the end to read:

"( ) A person who commits the offense of harassment in any degree or stalking, as defined in this section, while subject to the terms of a restraining order issued by the family court may be charged with a violation of this article and, upon conviction, may be sentenced pursuant to the provisions of Section 16-3-1710, 16-3-1720, or 16-3-1730."

Harassment, penalties, inclusion of family court restraining orders

SECTION 2. Section 16-3-1710(B) of the 1976 Code, as last amended by Act 106 of 2005, is further amended to read:

"(B) A person convicted of harassment in the second degree is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars, imprisoned not more than one year, or both if:

(1) the person has a prior conviction of harassment or stalking within the preceding ten years; or

(2) at the time of the harassment an injunction or restraining order, including a restraining order issued by the family court, was in effect prohibiting the harassment."

Harassment, penalties, inclusion of family court restraining orders

SECTION 3. Section 16-3-1720(B) of the 1976 Code, as last amended by Act 106 of 2005, is further amended to read:

"(B) A person who engages in harassment in the first degree when an injunction or restraining order, including a restraining order issued by the family court, is in effect prohibiting this conduct is guilty of a misdemeanor and, upon conviction, must be fined not more than two thousand dollars, imprisoned not more than three years, or both."

Stalking, penalties, inclusion of family court restraining orders

SECTION 4. Section 16-3-1730(B) of the 1976 Code, as last amended by Act 106 of 2005, is further amended to read:

"(B) A person who engages in stalking when an injunction or restraining order, including a restraining order issued by the family court, is in effect prohibiting this conduct is guilty of a felony and, upon conviction, must be fined not more than seven thousand dollars, imprisoned not more than ten years, or both."

Orders of protection, vacating the order, destruction of records

SECTION 5. Section 20-4-60 of the 1976 Code, as last amended by Act 319 of 2008, is further amended by adding at the end:

"(F) If mutual orders of protection have been entered that do not comply with the provisions of this section a petitioner may request the order be vacated and all records of the order be destroyed."

Temporary restraining orders, vacating the order, destruction of records

SECTION 6. Section 16-3-1760 of the 1976 Code, as last amended by Act 106 of 2005, is further amended by adding at the end:

"(E) Upon motion of a party, the court may determine that a temporary restraining order was improperly issued due to unknown facts. The court may order the temporary restraining order vacated and all records of the improperly issued restraining order destroyed."

Time effective

SECTION 7. This act takes effect upon approval by the Governor.

Ratified the 19th day of June, 2013.

Approved the 20th day of June, 2013.

If the last act shown on the opposite page is not complete, it will be continued in the next Advance Sheet.

JAMES H. HARRISON
Code Commissioner
P. O. Box 11489
Columbia, S.C. 29211