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2009 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.

STEPHEN T. DRAFFIN, Code Commissioner, P.O. Box 11489,
Columbia, S.C. 29211

No. 24

(R56, S126)

AN ACT TO AMEND SECTION 56-3-1910, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE ISSUANCE OF SPECIAL LICENSE TAGS TO CERTAIN HANDICAPPED PERSONS, SO AS TO DEFINE THE TERM "HANDICAPPED", DELETE THE TERM "LICENSE TAG" AND REPLACE IT WITH THE TERM "LICENSE PLATE", AND TO REVISE THE CRITERIA FOR THE ISSUANCE OF THE LICENSE PLATE; TO AMEND SECTION 56-3-1950, RELATING TO THE DEFINITION OF THE TERM "HANDICAPPED", AND THE REQUIREMENT THAT A LICENSED PHYSICIAN SHALL CERTIFY THAT A PERSON'S TOTAL AND PERMANENT DISABILITY SUBSTANTIALLY IMPAIRS HIS ABILITY TO WALK, SO AS TO REVISE THE DEFINITION OF THE TERM "HANDICAPPED", TO DELETE THE PROVISION RELATING TO THE CERTIFICATION OF A PERSON WHO IS TOTALLY AND PERMANENTLY DISABLED AND TO DEFINE THE TERM "ACCESS AISLE"; TO AMEND SECTION 56-3-1960, RELATING TO FREE PARKING FOR HANDICAPPED PERSONS, AND THE ISSUANCE AND DISPLAY OF HANDICAPPED LICENSE PLATES AND PLACARDS, SO AS TO DELETE THE PROVISION THAT PROVIDES FOR THE ISSUANCE OF HANDICAPPED LICENSE PLATES, AND TO REVISE THE PROVISIONS REGARDING THE CONTENT, ISSUANCE PROCEDURE, PROPER USE AND DISPLAY OF HANDICAPPED PLACARDS, AND TO PROVIDE PENALTIES FOR VIOLATIONS OF THE PROVISION; TO AMEND SECTION 56-3-1965, RELATING TO MUNICIPALITIES DESIGNATING PARKING SPACES FOR HANDICAPPED PERSONS, SO AS TO REVISE THE PROCEDURES THAT ALLOW A HANDICAPPED PERSON TO PARK IN METERED OR TIMED PARKING PLACES WITHOUT BEING SUBJECT TO PARKING FEES OR FINES; AND TO AMEND SECTION 56-3-2010, RELATING TO THE ISSUANCE OF PERSONALIZED LICENSE PLATES, SO AS TO PROVIDE THAT A PERSON WHO IS QUALIFIED TO RECEIVE THIS LICENSE PLATE AND A HANDICAPPED LICENSE PLATE MAY BE ISSUED A PERSONALIZED LICENSE PLATE THAT INCLUDES A DECAL THAT CONTAINS THE

INTERNATIONAL SYMBOL OF ACCESS; TO AMEND SECTION 56-3-1970, RELATING TO THE UNLAWFUL PARKING OF A VEHICLE IN A PARKING PLACE DESIGNATED FOR HANDICAPPED PERSONS, SO AS TO PROVIDE THAT IT IS ALSO UNLAWFUL FOR CERTAIN PERSONS TO EXERCISE THE PRIVILEGES GRANTED TO A HOLDER OF A LICENSE PLATE OR PLACARD DESIGNATED FOR USE BY A HANDICAPPED PERSON, AND TO INCREASE THE PENALTY FOR A VIOLATION OF THIS PROVISION; AND TO AMEND SECTION 56-3-1975, RELATING TO THE IDENTIFICATION AND MAINTENANCE OF HANDICAPPED PARKING PLACES, SO AS TO PROVIDE THAT A HANDICAPPED PARKING PLACE INCLUDES ALL ACCESS AISLES.

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

License plates for handicapped persons

SECTION 1. Section 56-3-1910 of the 1976 Code is amended to read:

"Section 56-3-1910. (A) As used in this article, 'handicapped' means a person who has one or more of the following conditions:

(1) an inability to ordinarily walk one hundred feet nonstop without aggravating an existing medical condition, including the increase of pain;

(2) an inability to ordinarily walk without the use of, or assistance from a brace, cane, crutch, another person, prosthetic device, wheelchair, or other assistive device;

(3) a restriction by lung disease to the extent that the person's forced expiratory volume for one second when measured by spirometry is less than one liter, or the arterial oxygen tension is less than sixty mm/hg on room air at rest;

(4) requires use of portable oxygen;

(5) a cardiac condition to the extent that the person's functional limitations are classified in severity as Class III or Class IV according to standards established by the American Heart Association. If the person's status improves to a higher level, for example as a result of bypass surgery or transplantation, he no longer meets this criteria;

(6) a substantial limitation in the ability to walk due to an arthritic, neurological, or orthopedic condition, for example,

coordination problems and muscle spasticity due to conditions that include Parkinson's disease, cerebral palsy, or multiple sclerosis; or

(7) blindness.

(B) Upon payment of the regular motor vehicle license fee, the department may issue a license plate with a special number or identification indicating that the license plate was issued to a person certified as permanently handicapped. A license plate issued pursuant to this section must be accompanied by a certification form completed by a licensed physician.

(C)(1) The department must develop a standardized certification form designed to capture criteria related information relating to persons considered handicapped. The form shall indicate whether the applicant meets one or more of the criteria, whether the condition is permanent or temporary, and if temporary, the expected duration.

(2) All persons that have been issued a handicapped license plate as of the effective date of this section will be issued a certificate upon renewal of the license plate. To renew the plate and receive the certificate, the person must be certified as permanently handicapped as provided in this section. Failure to carry a certificate as required by this section by a person that has been issued a handicapped license plate as of the effective date of this section is not a violation of the provisions of this section until after the person renews his license plate.

(D) Forms must be completed by physicians licensed to practice in South Carolina as defined in Section 40-47-5.

(E) The special license plate authorized by this section also may be issued for a vehicle of special design and equipment designed to transport a disabled person who meets the requirements of this section if the vehicle is owned and titled in the name of the disabled person or in the name of a member of his immediate family.

(F) The special license plate authorized by this section also may be issued for a vehicle of special design and equipment designed to transport a disabled person who is certified as meeting the requirements of this section for a vehicle used by an agency, organization, or facility. Proof that the agency, organization, or facility transports a handicapped or disabled person must be in a manner prescribed by the department. A certificate from a licensed physician is not required to apply for the special license plate issued to the agency, organization, or facility.

(G) When processing applications for special license plates pursuant to this section, the department also shall issue a license plate registration certificate that must be carried at all times in the vehicle driven by or transporting the disabled individual. The certificate must

display the name of the individual or organization to which the plate was issued.

(H) Vehicles displaying a special handicapped license plate only may park in designated handicapped parking spaces if that vehicle is driven by or transporting the disabled individual whose name appears on the license plate registration certificate, or if the certificate lists the name of the agency, organization, or facility authorized under subsection (G). The driver of the vehicle displaying the plate must present the registration when requested by law enforcement entities or their duly authorized agents.

(I) A person who qualifies for a license plate under this section and also qualifies as a disabled veteran under Section 56-3-1110 must be issued the license plate provided for in this section free of charge.

(J)(1) Except as provided in item (2), a person violating the provisions of this section is guilty of a misdemeanor and, upon conviction, must be fined not less than five hundred dollars and not more than one thousand dollars or imprisoned for not more than thirty days for each offense.

(2) A person who illegally duplicates, forges, or sells a handicapped license plate or a person who falsifies information on an application form for a handicapped license plate is guilty of a misdemeanor and, upon conviction, must be imprisoned for thirty days and fined not less than five hundred dollars and not more than one thousand dollars."

Definitions

SECTION 2. Section 56-3-1950 of the 1976 Code is amended to read:

"Section 56-3-1950. As used in this article:

(1) 'Handicapped' means a person as defined in Section 56-3-1910.

(2) 'Access aisle' means a designated space for maneuvering a wheelchair or other mobility device when entering or exiting a vehicle, and that is immediately adjacent to a properly designated parking space for handicapped persons, on public or private property. Access aisles must be marked so as to discourage parking in them."

Temporary and permanent parking placards

SECTION 3. Section 56-3-1960 of the 1976 Code is amended to read:

"Section 56-3-1960. (A) A person who is 'handicapped' as defined in Section 56-3-1910 may apply to the department for issuance of a temporary or permanent placard. A person may be issued a temporary placard if the condition causing his handicap is expected to last for at least four months. No applicant may be denied a placard if the applicant follows the procedures established by the department and if the application is accompanied by a certificate from a licensed physician that certifies that the individual is handicapped and whether the handicap is temporary or permanent. The placards must indicate that the person is qualified to use reserved handicapped parking spaces. Applications for placards must be processed through and issued by the department's headquarters. Only one placard may be issued to an applicant. The certification procedure shall adhere to the requirements set forth in Section 56-3-1910. In conjunction with the issuance of a placard, applicants also must be issued a placard registration certificate that must be carried at all times in the vehicle driven by or transporting the handicapped individual. The certificate will display the name of the individual to which the placard was issued. A placard only can be displayed on a vehicle driven by or transporting the disabled individual whose name appears on the placard registration certificate. The department shall charge a fee of one dollar for a placard. An agency, organization, or facility that transports a disabled or handicapped person may receive a placard for each vehicle registered upon proper application and the payment of the appropriate fees.

(B) The placards authorized by this section also may be issued for a vehicle of special design and equipment designed to transport a disabled person who is certified as meeting the requirements of this section for a vehicle used by an agency, organization, or facility that is designed to transport a handicapped or disabled person if the vehicle is titled in the name of the agency, organization, or facility. Proof that the agency, organization, or facility transports a handicapped or disabled person must be in a manner prescribed by the department. A certificate from a licensed physician is not required to apply for placards issued to an agency, organization, or facility. At the time of qualification, applicants qualifying for a placard under this section also must be issued a placard registration certificate that must be carried at all times in the vehicle transporting handicapped or disabled individuals. The certificate will display the name of the agency, organization, or facility to which the placard was issued.

(C) The placards shall conform to specifications set forth in the standards established for compliance with the Americans with

Disabilities Act. The design must incorporate a means for hanging the placard from a vehicle windshield rearview mirror, and:

(1) contain the International Symbol of Access;

(2) be color coded to reflect user status in the following manner:

(a) dark blue - permanently disabled; and

(b) red - temporarily disabled.

(D) Blue and red placards shall contain the qualified user's photograph. The photograph must be taken from the qualified user's driver's license or identification card on file with the department. However, a photograph is not required for a placard issued to an agency, organization, or facility.

(E) Each placard shall contain the placard's expiration date.

(F) When qualified users park in designated spaces, the placard must be displayed in the windshield of the vehicle by hanging it from the rearview mirror. In vehicles in which hanging may not be feasible, the placard must be placed on the side of the dashboard so that it is clearly visible through the windshield. When more than one placard holder is transported in the same vehicle, only one placard needs to be displayed.

(G) Placards used for parking in designated handicapped spaces must be displayed on vehicles driven by or transporting the handicapped individual whose name appears on the placard registration certificate. When parked in designated spaces, the driver of the vehicle displaying the placard must present the placard registration certificate when requested by law enforcement entities or their duly authorized agents.

(H) Placards and placard registration certificates for permanently disabled persons may be issued and renewed for a maximum period of four years and are renewable on the owner's birth date. Placards issued to an agency, organization, or facility must be renewed every four years.

(I) A vehicle displaying a valid out-of-state handicapped license plate or placard or other evidence of handicap issued by the appropriate authority as determined by the department is entitled to the parking privileges provided in this section. Handicapped individuals from other states seeking permanent residence in South Carolina have forty-five days after becoming a resident to obtain South Carolina certification.

(J) Placards issued prior to the effective date of this section must be renewed by the expiration date on the placard or by January 1, 2013, whichever is sooner. To renew the placard and receive the certificate, the person must be certified as permanently handicapped as provided in

Section 56-3-1910. Upon renewal, the department will issue a certificate as required by this section. Failure to carry a certificate as required by this section by a person using a placard issued prior to the effective date of this section is not a violation of the provisions of this section until after the placard is renewed or January 1, 2013, whichever is sooner.

(K)(1) Except as provided in item (2), a person that violates the provisions of this section is guilty of a misdemeanor and, upon conviction, must be fined not less than five hundred dollars nor more than one thousand dollars or imprisoned for not more than thirty days, or both, for each offense.

(2) A person who illegally duplicates, forges, or sells a handicapped placard or a person who falsifies information on an application form for a handicapped placard is guilty of a misdemeanor and, upon conviction, must be imprisoned for thirty days and fined not less than five hundred dollars and not more than one thousand dollars."

Free parking in metered or timed parking places for handicapped persons

SECTION 4. Section 56-3-1965 of the 1976 Code is amended to read:

"Section 56-3-1965. Those municipalities having marked parking spaces shall provide appropriately designated space or spaces reserved for the parking of handicapped persons. A person who is handicapped as defined in this article must be allowed to park in metered or timed parking places without being subject to parking fees or fines. This section does not apply to areas or during times in which the stopping, parking, or standing of all vehicles is prohibited or to areas which are reserved for special types of vehicles. A vehicle must display a distinguishing license plate which must be issued by the department, or a distinguishing placard which must be issued by the department, pursuant to Section 56-3-1960 when parked in metered or timed parking places."

International Symbol of Access decals

SECTION 5. Section 56-3-2010 of the 1976 Code is amended by adding at the end:

"(C) If a person who qualifies for the special license plate issued under this section also qualifies for the handicapped license plate

issued pursuant to Section 56-3-1910, then the license plate issued pursuant to this section also shall include a decal with the International Symbol of Access used on license plates issued pursuant to Section 56-3-1910. The decal only can be used if space is available to place the decal on the license plate without covering any identifying numbers or letters on the license plate."

Parking places designated for handicapped persons

SECTION 6. Section 56-3-1970 of the 1976 Code is amended to read:

"Section 56-3-1970. (A) It is unlawful to park any vehicle in a parking place clearly designated for handicapped persons unless the vehicle bears the distinguishing license plate or placard provided in Section 56-3-1960.

(B) It is unlawful for any person who is not handicapped or who is not transporting a handicapped person to exercise the parking privileges granted handicapped persons pursuant to Sections 56-3-1910, 56-3-1960, and 56-3-1965.

(C) A person violating the provisions of this section is guilty of a misdemeanor and, upon conviction, must be fined not less than five hundred dollars nor more than one thousand dollars or imprisoned for not more than thirty days for each offense."

Access aisles included in handicapped parking places

SECTION 7. Section 56-3-1975 of the 1976 Code is amended to read:

"Section 56-3-1975. Each handicapped parking place must be clearly identified as a handicapped parking place. The handicapped parking place includes all access aisles. If the handicapped parking place is on public property, the marker must be maintained by the political subdivision having jurisdiction over the public property or the street or highway where the handicapped parking place is located. If the handicapped parking place is on private property, the marker must be maintained by the owner of the property."

Time effective

SECTION 8. This act takes effect six months after approval by the Governor.

Ratified the 27th day of May, 2009.

Approved the 2nd day of June, 2009.

No. 25

(R57, S155)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING ARTICLE 7 TO CHAPTER 5, TITLE 63 SO AS TO ENACT THE "MILITARY PARENT EQUAL PROTECTION ACT", TO PROVIDE THAT A MILITARY PARENT'S MILITARY SERVICE SHALL NOT BE CONSIDERED A CHANGE IN CIRCUMSTANCE FOR PURPOSES OF CHILD CUSTODY AND VISITATION, TO PROVIDE THAT THE CUSTODIAL NONMILITARY PARENT MUST REASONABLY ACCOMMODATE THE MILITARY PARENT'S LEAVE SCHEDULE, TO PROVIDE THAT THE FAMILY COURT MAY HOLD AN EXPEDITED TEMPORARY HEARING TO ENSURE THAT THE MILITARY PARENT HAS ACCESS TO A MINOR CHILD, AND TO PROVIDE THAT AN INCREASE OR DECREASE IN EARNING CAPACITY DUE TO MILITARY SERVICE IS NOT CONSIDERED A PERMANENT CHANGE; AND BY ADDING SECTION 15-1-340 SO AS TO PROVIDE THAT A SERVICE MEMBER ENTITLED TO A STAY PURSUANT TO THE SERVICE MEMBERS CIVIL RELIEF ACT MAY SEEK RELIEF AND PROVIDE TESTIMONY BY ELECTRONIC MEANS UNDER CERTAIN CONDITIONS.

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

Military Parent Equal Protection Act

SECTION 1. Chapter 5, Title 63 of the 1976 Code is amended by adding:

"Article 7

Military Parent Equal Protection Act

Section 63-5-900. This article may be cited as the 'Military Parent Equal Protection Act'.

Section 63-5-910. For purposes of this article:

(A)(1) In the case of a parent who is a member of the Army, Navy, Air Force, Marine Corps, Coast Guard, or a Reserve component of these services, 'military service or service' means a deployment for combat operations, a contingency operation, or a natural disaster based on orders that do not permit a family member to accompany the member on the deployment.

(2) In the case of a parent who is a member of the National Guard, 'military service or service' means service under a call to active service authorized by the President of the United States or the Secretary of Defense for a period of more than thirty consecutive days pursuant to 32 U.S.C. 502(f) for purposes of responding to a national emergency declared by the President and supported by federal funds.

'Military service or service' includes a period during which a military parent remains subject to deployment orders and remains deployed on account of sickness, wounds, leave, or other lawful cause.

(B) 'Military parent' means a natural parent or adoptive parent of a child under the age of eighteen whose parental rights have not been terminated by a court of competent jurisdiction.

Section 63-5-920. (A) If a military parent is required to be separated from a child due to military service, a court shall not enter a final order modifying the terms establishing custody or visitation contained in an existing order until ninety days after the military parent is released from military service. A military parent's absence or relocation because of military service must not be the sole factor supporting a change in circumstance or grounds sufficient to support a permanent modification of the custody or visitation terms established in an existing order.

(B) An existing order establishing the terms of custody or visitation in place at the time a military parent is called to military service may be temporarily modified to make reasonable accommodation for the parties because of the military parent's service. A temporary modification automatically terminates when the military parent is released from service and, upon release, the original terms of the

custody or visitation order in place at the time the military parent was called to military service are automatically reinstated.

(C) A temporary modification order issued pursuant to this section must provide that the military parent has custody of the child or reasonable visitation, whichever is applicable pursuant to the original order, with the child during a period of leave granted to the military parent during their military service. If a temporary modification order is not issued pursuant to this section, the nonmilitary custodial parent shall make the child or children reasonably available to the military parent when the military parent has leave to ensure that the military parent has reasonable visitation and is able to visit the child or children.

(D) If there is no existing order establishing the terms of custody or visitation and it appears that military service is imminent, upon motion by either parent, the court shall expedite a temporary hearing to establish temporary custody or visitation to ensure the military parent has access to the child, to establish support, and provide other appropriate relief.

Section 63-5-930. (A) If a military parent is called to military service, either parent may file a notice of activation of military service and petition to modify a support order. In the petition, the parent must cite the basis for modifying the support order and the military parent's change in financial circumstances supporting the petition.

(B) The court shall temporarily modify the amount of child support for the duration of the military parent's military service based on changes in income and earning capacity of the military parent during military service. An increase or decrease in income or earning capacity of a military parent due to military service only may be used to calculate support during the period of military service and must not be considered a permanent increase in wages or earning capacity. The effective date for a temporary modification must be the date the military parent begins military service.

(C) Upon return from military service, the military parent's child support obligation prior to a temporary modification is automatically reinstated, effective on the date the military parent is released from service. Within ninety days of the military parent's release from service, either parent may make a subsequent request for modification to correspond to a change in the military parent's non-service related income or earning capacity. A modification must be based upon the income or earning capacity of the military parent following the period of military service.

(D) Except for modifying a child support obligation during military service pursuant to this section, a military parent's income during military service must not be used to determine the military parent's income or earning capacity.

Section 63-5-940. (A) Military necessity may preclude court adjudication before mobilization, and the parties are encouraged to negotiate mutually agreeable arrangements prior to mobilization.

(B) The nonmilitary parent and the military parent shall cooperate with each other in an effort to reach a mutually agreeable resolution of custody, visitation, and child support. Each party shall provide information to each other in an effort to facilitate agreement on custody, visitation, and child support.

(C) A provision of custody, visitation, or child support agreed to by the parties pursuant to this section must not be deemed a substantial change of circumstances in an action for custody, visitation, or child support, which occurs subsequent to termination of the military parent's military service. A negotiation of the parties concerning custody, visitation, and child support related to the military service conducted pursuant to this section are deemed settlement negotiations and are not admissible in custody, visitation, and child support actions between the parties after termination of the military parent's military service.

Section 63-5-950. In making determinations pursuant to this article, the court may award attorney's fees and costs based on the court's consideration of:

(1) the failure of either party to reasonably accommodate the other party in custody, visitation, and support matters related to a military parent's service;

(2) unreasonable delay caused by either party in resolving custody, visitation, and support matters related to a military parent's service;

(3) failure of either party to timely provide income and earnings information to the other party; and

(4) other factors as the court may consider appropriate and as may be required by law."

Service member's right to proceed

SECTION 2. Chapter 1, Title 15 of the 1976 Code is amended by adding:

"Section 15-1-340. (A) A service member who is entitled to a stay in civil proceedings pursuant to the Service Members Civil Relief Act, 50 U.S.C. App. Section 501, et seq. may elect to proceed while the service member is reasonably unavailable to appear in the geographical location in which the litigation is pursued and may seek relief and provide evidence through video-conferencing, Internet camera, email, or another reasonable electronic means. Testimony presented must be made under oath, in a manner viewable by all parties, and in the presence of a court reporter. In matters when a party who is physically present in the State is permitted to use affidavits or seek temporary relief, the service member may submit testimony by affidavit.

(B) The court must allow a party to proceed pursuant to this section unless an opposing party establishes a compelling reason not to proceed by clear and convincing evidence. The court must allow a party to present evidence pursuant to a method provided by this section unless an opposing party established that the method will cause a substantial injustice, deny effective cross examination, deny the right to confront the witness, or abridge another constitutional right."

Time effective

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

Ratified the 27th day of May, 2009.

Approved the 2nd day of June, 2009.

No. 26

(R59, S184)

AN ACT TO AMEND SECTION 16-11-523, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO CAUSING INJURY TO REAL PROPERTY FOR THE PURPOSE OF OBTAINING NONFERROUS METALS, SO AS TO REVISE THE DEFINITION OF "NONFERROUS METALS" TO INCLUDE THE TERM "COPPER CLAD STEEL WIRE" AND "CATALYTIC CONVERTERS", TO PROVIDE THAT THIS PROVISION ALSO APPLIES TO CAUSING INJURY TO PERSONAL PROPERTY FOR THE PURPOSE OF OBTAINING

NONFERROUS METALS, AND TO MAKE TECHNICAL CHANGES; TO AMEND SECTION 16-17-680, AS AMENDED, RELATING TO THE UNLAWFUL PURCHASE OF NONFERROUS METALS, SO AS TO REVISE THE DEFINITION OF THE TERM "NONFERROUS METALS" TO INCLUDE "COPPER CLAD STEEL WIRE" AND "CATALYTIC CONVERTERS"; BY ADDING SECTION 16-17-685 SO AS TO PROVIDE THAT IT IS UNLAWFUL FOR A PERSON TO TRANSPORT OR HAVE IN HIS POSSESSION CERTAIN QUANTITIES OF NONFERROUS METALS UNDER CERTAIN CIRCUMSTANCES, AND TO PROVIDE PENALTIES FOR VIOLATIONS OF THIS PROVISION; TO AMEND SECTION 40-27-10, RELATING TO A PERSON WHO BUYS JUNK, SO AS TO PROVIDE THAT A PERSON WHO BUYS JUNK THAT CONSISTS OF NONFERROUS METALS MUST COMPLY WITH THE PROVISIONS CONTAINED IN SECTION 16-17-680; TO REPEAL SECTION 40-27-30 RELATING TO THE PURCHASE OF JUNK OUTSIDE OF THE COUNTY IN WHICH THE PLACE OF BUSINESS OF ITS BUYER IS LOCATED; TO AMEND SECTION 40-27-40, RELATING TO PENALTIES ASSOCIATED WITH THE UNLAWFUL PURCHASE OF JUNK, SO AS TO INCREASE THE PENALTY AND PROVIDE THAT EACH VIOLATION OF THE PROVISIONS RELATING TO THE UNLAWFUL PURCHASE OF JUNK CONSTITUTES A SEPARATE OFFENSE; TO AMEND SECTION 56-5-5670, RELATING TO THE DUTIES OF A DEMOLISHER WHO ACQUIRES A VEHICLE FOR THE PURPOSE OF WRECKING, DISMANTLING, OR DEMOLITION, SO AS TO PROVIDE THAT A DEMOLISHER WHO ACQUIRES NONFERROUS METALS IS SUBJECT TO THE PROVISIONS CONTAINED IN SECTION 16-17-680, TO PROVIDE THAT A DEMOLISHER MUST KEEP RECORDS OF ALL VEHICLE PARTS THAT WEIGH MORE THAN TWENTY-FIVE POUNDS, TO REVISE THE TYPE OF INFORMATION THAT MUST BE RECORDED REGARDING THE SELLER OF VEHICLES AND VEHICLES PURCHASED BY A DEMOLISHER, AND TO PROVIDE PENALTIES FOR VIOLATIONS OF THIS SECTION; TO AMEND SECTION 56-5-5850, RELATING TO THE PLACEMENT OF A COLORED TAG ON AN UNATTENDED VEHICLE AS NOTICE THAT THE VEHICLE IS SUBJECT TO FORFEITURE TO THE STATE, SO AS TO PROVIDE THAT A VEHICLE THAT HAS

AT LEAST TWO COLORED TAGS PREVIOUSLY PLACED ON IT IS AN ABANDONED VEHICLE AND MAY BE REMOVED BY A LAW ENFORCEMENT AGENCY AND SOLD; TO AMEND SECTION 56-5-5945, RELATING TO THE DUTIES OF A DEMOLISHER WHO ACQUIRES A VEHICLE FOR THE PURPOSE OF WRECKING, DISMANTLING, OR DEMOLITION, SO AS TO PROVIDE THAT A DEMOLISHER WHO ACQUIRES NONFERROUS METAL IS SUBJECT TO THE PROVISIONS CONTAINED IN SECTION 16-17-680, TO PROVIDE THAT A DEMOLISHER MUST KEEP RECORDS OF ALL VEHICLE PARTS THAT WEIGH MORE THAN TWENTY-FIVE POUNDS, TO REVISE THE TYPE OF INFORMATION THAT MUST BE RECORDED REGARDING THE SELLER OF VEHICLES AND VEHICLE PARTS PURCHASED BY A DEMOLISHER, AND TO PROVIDE PENALTIES FOR VIOLATIONS OF THIS SECTION; TO AMEND SECTION 57-27-20, RELATING TO DEFINITION OF TERMS CONTAINED IN THE JUNKYARD CONTROL ACT, SO AS TO REVISE THE DEFINITION OF THE TERM "JUNK"; AND BY ADDING SECTION 57-27-57 SO AS TO PROVIDE THAT IT IS UNLAWFUL FOR A JUNKYARD OWNER TO ALLOW MOTOR VEHICLES TO BE PARKED ON A HIGHWAY ADJACENT TO ITS PROPERTY.

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

Obtaining nonferrous metals unlawfully

SECTION 1. Section 16-11-523 of the 1976 Code, as added by Act 260 of 2008, is amended to read:

"Section 16-11-523. (A) For purposes of this section, 'nonferrous metals' means metals not containing significant quantities of iron or steel, including copper wire, copper clad steel wire, copper pipe, copper bars, copper sheeting, aluminum, a product that is a mixture of aluminum and copper, catalytic converters, and stainless steel beer kegs or containers.

(B) It is unlawful for a person to wilfully and maliciously cut, mutilate, deface, or otherwise injure any personal or real property, including any fixtures or improvements, for the purpose of obtaining nonferrous metals in any amount.

(C) A person who violates the provisions of this section is guilty of a:

(1) misdemeanor and, upon conviction, must be fined not more than five hundred dollars or imprisoned not more than thirty days, or both, if the direct injury to the property, the amount of loss in value to the property, the amount of repairs necessary to return the property to its condition before the act, or the property loss, including fixtures or improvements, is one thousand dollars or less;

(2) felony and, upon conviction, must be fined in the discretion of the court or imprisoned not more than five years, or both, if the direct injury to the property, the amount of loss in value to the property, the amount of repairs necessary to return the property to its condition before the act, or the property loss, including fixtures or improvements, is more than one thousand dollars but less than five thousand dollars; or

(3) felony and, upon conviction, must be fined in the discretion of the court or imprisoned not more than ten years, or both, if the direct injury to the property, the amount of loss in value to the property, the amount of repairs necessary to return the property to its condition before the act, or the property loss, including fixtures or improvements, is five thousand dollars or more.

(D)(1) A person who violates the provisions of this section and the violation results in great bodily injury to another person is guilty of a felony and, upon conviction, must be imprisoned not more than fifteen years. For purposes of this subsection, 'great bodily injury' means bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.

(2) A person who violates the provisions of this section and the violation results in the death of another person is guilty of a felony and, upon conviction, must be imprisoned not more than thirty years.

(E)(1) A public or private owner of personal or real property is not civilly liable to a person who is injured during the theft or attempted theft, by the person or a third party, of nonferrous metals in any amount.

(2) A public or private owner of personal or real property is not civilly liable for a person's injuries caused by a dangerous condition created as a result of the theft or attempted theft of nonferrous metals in any amount, of the owner when the owner of personal or real property did not know and could not have reasonably known of the dangerous condition.

(3) This subsection does not create or impose a duty of care upon a owner of personal or real property that would not otherwise exist under common law."

Definition

SECTION 2. Section 16-17-680(F)(1) of the 1976 Code, as last amended by Act 260 of 2008, is further amended to read:

"(1) 'Nonferrous metals' means metals not containing significant quantities of iron or steel, including copper wire, cooper clad steel wire, copper pipe, copper bars, copper sheeting, aluminum, a product that is a mixture of aluminum and copper, catalytic converters, and stainless steel beer kegs or containers."

Unlawful transportation of nonferrous metals

SECTION 3. Article 7, Chapter 17, Title 16 of the 1976 Code is amended by adding:

"Section 16-17-685. (A) For purposes of this section:

(1) 'Nonferrous metals' means metals not containing significant quantities of iron or steel, including copper wire, cooper clad steel wire, copper pipe, copper bars, copper sheeting, aluminum, a product that is a mixture of aluminum and copper, catalytic converters, and stainless steel beer kegs or containers.

(2) 'Transportation permit number' means a number provided by a sheriff's office by telephone, fax, or email to a person who requests a permit number for the transportation of nonferrous metals. In order to receive a transportation permit number, a person must provide the person's name, address, and telephone number to the sheriff's office of the county in which the person resides. The sheriff's office must record the person's information along with the transportation permit number. The transportation permit number is valid for no more than forty-eight hours from the time the number is issued, and the sheriff's office must inform the person of this restriction at the time the number is issued.

(3) 'Vehicle used in the ordinary course of business for the purpose of transporting nonferrous metals' includes, but is not limited to, vehicles used by gas, electric, communications, water, plumbing, electrical, and climate conditioning service providers, and their

employees, agents, and contractors, in the course of providing these services.

(B) It is unlawful for a person to transport or have in the person's possession on the highways of this State nonferrous metals of an aggregate weight of more than twenty-five pounds in a vehicle other than a vehicle used in the ordinary course of business for the purpose of transporting nonferrous metals, unless the person:

(1) has in the person's possession a bill of sale signed by:

(a) a holder of a retail license for a business engaged in the sale of nonferrous metals or a mixture of nonferrous metals;

(b) an authorized wholesaler engaged in the sale of nonferrous metals or a mixture of nonferrous metals; or

(c) a registered dealer of scrap metals; or

(2) can present, either orally or in writing, a valid transportation permit number provided by the sheriff of the county in which the person resides.

(C) A bill of sale must clearly identify the material to which it applies, the name and address of the seller, the license plate information of the vehicle in which the material is delivered to the purchaser, identified by license plate number, year, and state of issue, the name and address of the purchaser, the date of sale, and the type and amount of nonferrous metals purchased.

(D) A person who violates the provisions of this section is guilty of a:

(1) misdemeanor and, upon conviction, must be fined not more than two hundred dollars or imprisoned not more than thirty days for a first offense. This offense is triable in magistrates court;

(2) misdemeanor and, upon conviction, must be fined not more than five hundred dollars or imprisoned not more than one year, or both, for a second offense;

(3) misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than three years, or both, for a third or subsequent offense. For an offense to be considered a third or subsequent offense, only those offenses which occurred within a period of ten years, including and immediately preceding the date of the last offense shall constitute a prior offense within the meaning of this section."

Purchase of junk consisting of nonferrous metals

SECTION 4. Section 40-27-10 of the 1976 Code is amended to read:

"Section 40-27-10. Any person buying junk shall keep a book that he shall keep open to the inspection of all persons, wherein he shall set down the name and address, city, and street of every person selling junk and an itemized statement of all junk bought from such person and the date of purchase. Any person buying junk that consists of nonferrous metals, as defined by Section 16-17-680 is subject to the provisions of Section 16-17-680."

Repeal

SECTION 5. Section 40-27-30 of the 1976 Code is repealed.

Penalties

SECTION 6. Section 40-27-40 of the 1976 Code is amended to read:

"Section 40-27-40. A person violating a provision of this article shall be fined a sum not exceeding five hundred dollars or imprisoned not exceeding thirty days. Each violation constitutes a separate offense."

Duties of a demolisher

SECTION 7. Section 56-5-5670 of the 1976 Code is amended to read:

"Section 56-5-5670. (A) A demolisher who purchases or otherwise acquires a vehicle for purposes of wrecking, dismantling, or demolishing is not required to obtain a certificate of title for the vehicle in his own name. After the vehicle has been demolished, processed, or changed so that it physically is no longer a vehicle, the demolisher must surrender for cancellation the certificate of title, auction sales receipt, or disposal authority certificate. The Department of Motor Vehicles must issue forms, rules, and regulations governing the surrender of auction sales receipts, disposal authority certificates, and certificates of title as appropriate.

(B) A demolisher who purchases or otherwise acquires nonferrous metals as defined by Section 16-17-680 must comply with and is subject to the provisions of Section 16-17-680.

(C) A demolisher must keep an accurate and complete record of all abandoned vehicles and vehicle parts with a total weight of twenty-five pounds or more purchased or received by him in the course of his business. These records must contain the name and address of the

person from whom the vehicle or vehicle parts were purchased or received, a photo or copy of the person's driver's license or other government issued picture identification card that legibly shows the person's name and address, the date when the purchases or receipts occurred, and the year, make, model, and identification number of the vehicle or vehicle parts, if ascertainable, along with any other identifying features. The records are open for inspection by any police officer at any time during normal business hours. Any record required by this section must be kept by the demolisher for at least one year after the transaction to which it applies.

(D) A person who violates the provisions of this section is guilty of a misdemeanor and, upon conviction, must be fined not more than five hundred dollars for each offense not to exceed five thousand dollars for the same set of transactions or occurrences, or imprisoned for not more than sixty days, or both. Each violation constitutes a separate offense."

Unattended vehicles

SECTION 8. Section 56-5-5850 of the 1976 Code is amended to read:

"Section 56-5-5850. (A) When any vehicle is left unattended on a highway or on other public or private property without the consent of the owner or person in control of the property, an officer may place a colored tag on the vehicle which is notice to the owner, the person in possession of the vehicle, or any lienholder that it may be considered to be derelict or abandoned and is subject to forfeiture to the State.

(B) The colored tag serves as the only legal notice that the vehicle will be moved to a designated place to be sold if the vehicle is not removed by the owner or person in control of the vehicle. The vehicle must be removed within the following times from the date the tag is placed on the vehicle:

(1) forty-eight hours if it is located on a highway, or

(2) seven days if it is located on other public or private property.

(C) A vehicle that has had at least two colored tags previously placed on it is an abandoned vehicle for purposes of this article and may be removed immediately by a law enforcement agency to a designated place to be sold.

(D) Abandoned or derelict vehicles must be disposed of pursuant to Sections 29-15-10 and 56-5-5635."

Duties of a demolisher

SECTION 9. Section 56-5-5945 of the 1976 Code is amended to read:

"Section 56-5-5945. (A) A demolisher who purchases or otherwise acquires a vehicle for purposes of wrecking, dismantling, or demolition shall not be required to obtain a certificate of title for the vehicle in his own name. After the vehicle has been demolished, processed, or changed so that it physically is no longer a vehicle, the demolisher shall surrender for cancellation the certificate of title or sales receipt issued under Section 56-5-5850.

(B) A demolisher who purchases or otherwise acquires nonferrous metals as defined by Section 16-17-680 must comply with and is subject to the provisions of Section 16-17-680.

(C) A demolisher shall keep an accurate and complete record of all vehicles and vehicle parts with a total weight of twenty-five pounds or more purchased or received by him in the course of his business. These records shall contain the name and address of the person from whom the vehicle or vehicle parts were purchased or received, a photo or copy of the person's driver's license or other government issued picture identification card that legibly shows the person's name and address, the date when purchases or receipts occurred, and the year, make, model, and identification number of the vehicle or vehicle parts, if ascertainable, along with any other identifying features. The records shall be open for inspection by any law enforcement officer at any time during normal business hours. Any record required by this section shall be kept by the demolisher for at least one year after the transaction to which it applies.

(D) A person who violates the provisions of this section is guilty of a misdemeanor and, upon conviction, must be fined not more than five hundred dollars for each offense not to exceed five thousand dollars for the same set of transactions or occurrences, or imprisoned for not more than sixty days, or both. Each violation constitutes a separate offense."

Definition

SECTION 10. Section 57-27-20(a) of the 1976 Code is amended to read:

"(a) The term 'junk' means old or scrap copper, brass, rope, rags, batteries, paper, trash, rubber debris, waste, junked, dismantled, or

wrecked automobiles, trucks and other motor vehicles, or parts of them, iron, steel, and other old or scrap ferrous or nonferrous material."

Parking of motor vehicles adjacent to junkyards

SECTION 11. Chapter 27, Title 57 of the 1976 Code is amended by adding:

"Section 57-27-57. It is unlawful for a junkyard owner to allow motor vehicles to be parked on a highway adjacent to its property."

Savings clause

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

Severability clause

SECTION 13. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this act, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

Time effective

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

Ratified the 27th day of May, 2009.

Approved the 2nd day of June, 2009.

No. 27

(R61, S301)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTIONS 38-9-225 AND 38-9-230 SO AS TO ENACT PROVISIONS REQUIRING CERTAIN INSURERS TO FILE A STATEMENT OF ACTUARIAL OPINION AND ACTUARIAL OPINION SUMMARY ANNUALLY AND PROVIDE FOR THE CONFIDENTIALITY OF THESE DOCUMENTS; TO AMEND SECTION 38-5-120, RELATING TO THE REVOCATION OR SUSPENSION OF LICENSE OF AN INSURER AND ITS OFFICERS AND AGENTS FOR THE PUBLICATION OF THE NOTICE, SO AS TO PROVIDE A PROCEDURE FOR AN AGGRIEVED INSURER TO REQUEST A HEARING BEFORE THE DIRECTOR OR HIS DESIGNEE AND PROVIDE RECOURSE THROUGH JUDICIAL REVIEW; TO AMEND SECTION 38-9-330, RELATING TO THE DEFINITION OF "COMPANY ACTION LEVEL EVENT", SO AS TO REDEFINE THE TERM; AND TO AMEND SECTION 38-21-95, RELATING TO APPROVAL FOR ACQUISITION OF A DOMESTIC INSURER BY A CONTROLLING PRODUCER IN ANOTHER STATE, SO AS TO DELETE THE APPLICABILITY TO FOREIGN PRODUCERS AND CORRECT INCORRECT REFERENCES.

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

Insurance company to submit actuarial opinion

SECTION 1. Article 1, Chapter 9, Title 38 of the 1976 Code is amended by adding:

"Section 38-9-225. (A) Each property and casualty insurance company doing business in this State, unless otherwise exempted by the director or his designee, shall submit annually the opinion of an actuary entitled 'Statement of Actuarial Opinion'. This opinion must be filed in accordance with the appropriate NAIC Property and Casualty Annual Statement Instructions.

(B)(1) Each property and casualty insurance company domiciled in this State that is required to submit a statement of Actuarial Opinion shall submit annually an Actuarial Opinion Summary, written by the company's Appointed Actuary. This Actuarial Opinion Summary must be filed in accordance with the appropriate NAIC Property and Casualty Annual Statement Instructions and must be considered as a document supporting the Actuarial Opinion required in subsection (A).

(2) A company licensed but not domiciled in this State shall provide the Actuarial Opinion Summary upon request.

(C)(1) An Actuarial Report and underlying workpapers as required by the appropriate NAIC Property and Casualty Annual Statement Instructions must be prepared to support each Actuarial Opinion.

(2) If the insurance company fails to provide a supporting Actuarial Report or workpapers, or both, at the request of the director or his designee or the director or his designee determines that the supporting Actuarial Report or workpapers provided by the insurer is otherwise unacceptable to the director or his designee, the director or his designee may engage a qualified actuary at the expense of the insurer to review the opinion and the basis for the opinion and prepare the supporting Actuarial Report or workpapers, or both.

(D) The Appointed Actuary is not liable for damages to a person, other than the insurer and the director or his designee, for any act, error, omission, decision, or conduct with respect to the actuary's opinion, except in cases of fraud or wilful misconduct on the part of the Appointed Actuary.

Section 38-9-230. (A) The Statement of Actuarial Opinion must be provided with the Annual Statement in accordance with the appropriate NAIC Property and Casualty Annual Statement Instructions and must be treated as a public document.

(B)(1) Documents, materials, or other information in the possession or control of the department that are considered an Actuarial Report, workpapers, or Actuarial Opinion Summary provided in support of the opinion, and any other material provided by the company to the director or his designee in connection with the Actuarial Report, workpapers, or Actuarial Opinion Summary, are confidential by law and privileged, are exempt from disclosure under applicable law, are not subject to subpoena, and are not subject to discovery or admissible in evidence in any private civil action.

(2) This provision may not be construed to limit the director or his designee's authority to release the documents to the Actuarial Board for Counseling and Discipline so long as the material is required for the purpose of professional disciplinary proceedings and that the Actuarial Board for Counseling and Discipline establishes procedures satisfactory to the director or his designee for preserving the confidentiality of the documents, nor may this section be construed to limit the director or his designee's authority to use the documents, materials, or other information in furtherance of a regulatory or legal action brought as part of the director or his designee's official duties.

(C) Neither the director nor a person who received documents, materials, or other information while acting under the authority of the director is permitted or required to testify in a private civil action concerning confidential documents, materials, or information subject to subsection (B).

(D) In order to assist in the performance of the director's duties, the director may:

(1) share documents, materials, or other information, including the confidential and privileged documents, materials, or information subject to subsection (B) with other state, federal, and international regulatory agencies, with the National Association of Insurance Commissioners and its affiliates and subsidiaries, and with state, federal, and international law enforcement authorities, provided that the recipient agrees to maintain the confidentiality and privileged status of the document, material, or other information and has the legal authority to maintain confidentiality;

(2) receive documents, materials, or information, including otherwise confidential and privileged documents, materials, or information, from the National Association of Insurance Commissioners and its affiliates and subsidiaries, and from regulatory and law enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential or privileged any document, material, or information received with notice or the

understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material, or information; and

(3) enter into agreements governing sharing and use of information consistent with subsections (B), (C), and (D).

(E) A waiver of an applicable privilege or a claim of confidentiality in the documents, materials, or information shall not occur as a result of disclosure to the director under this section or as a result of sharing as authorized in subsection (D)."

Hearing may be requested

SECTION 2. Section 38-5-120 of the 1976 Code is amended by adding at the end:

"(D) The insurer may request a hearing on an order or a decision made by the director or his designee pursuant to the provisions of this title. The insurer or other parties must be served with notice of the hearing stating the time and place of the hearing and the grounds upon which the director based the order; the hearing must occur not less than ten days nor more than thirty days following the notice and must be conducted at the offices of the South Carolina Department of Insurance unless otherwise designated by the director. The director or his designee shall hold all hearings in private unless the insurer requests a public hearing. After a hearing by the director or his designee, an order or a decision made, issued, or executed by the director or his designee is subject to review in accordance with Section 38-3-210 under the appellate procedures of the South Carolina Administrative Law Court, as provided by law."

Company Action Level Event

SECTION 3. Section 38-9-330(A) of the 1976 Code is amended to read:

"(A) A 'Company Action Level Event' includes any of the following events:

(1) filing of an RBC Report which indicates that Total Adjusted Capital is greater than, or equal to, Regulatory Action Level RBC, but is less than Company Action Level RBC;

(2) filing of an RBC Report which indicates that a life and health insurer has Total Adjusted Capital which is greater than, or

equal to, its Company Action Level RBC, but is less than the product of its Authorized Control Level RBC and 2.5 and has a negative trend;

(3) filing of an RBC Report which indicates that a property and casualty insurer has Total Adjusted Capital which is greater than, or equal to, its Company Action Level RBC, but is less than the product of its Authorized Control Level RBC and 3.0 and triggers the trend test determined in accordance with the trend test calculation included in the NAIC Property and Casualty RBC instructions; or

(4) issuance of an Adjusted RBC Report that indicates the event in item (1), (2), or (3) of this subsection, provided that the insurer does not challenge the Adjusted RBC Report pursuant to Section 38-9-370. If the insurer challenges an Adjusted RBC Report, then the Company Action Level Event occurs upon notification that an administrative law judge has rejected the challenge."

Acquisition condition

SECTION 4. Section 38-21-95 of the 1976 Code is amended to read:

"Section 38-21-95. (A) An acquisition of a domestic insurer, whether a member of a holding company system or not, by a controlling producer may not be approved by the director or his designee unless the acquiring party demonstrates, to the satisfaction of the director or his designee compliance with the requirements contained in subsection (B) of this section. For the purposes of this section, 'controlling producer' means a broker that:

(1) places business on behalf of an insured with a licensed insurer;

(2) controls or seeks to control a domestic insurer as that term is defined in Section 38-21-10(2); and

(3) places, in any calendar year, an aggregate amount of gross written premium with the controlled insurer which is equal to or greater than five percent of the admitted assets of the controlled insurer as reported in the insurer's quarterly statement filed as of September thirtieth of the prior year.

(B) Approval of the acquisition of a domestic insurer, whether a member of a holding company system or not, by a controlling producer may not be approved unless the following requirements are met:

(1) A controlled insurer may not accept business from a controlling producer and a controlling producer may not place business with a controlled insurer unless there is a written contract between the controlling producer and the controlled insurer specifying the

responsibilities of each party, which contract has been approved by the board of directors of the controlled insurer and which contains a provision:

(a) that the controlled insurer may terminate the contract for cause, upon written notice to the controlling producer. The controlled insurer shall suspend the authority of the controlling producer to write business during the pendency of any dispute regarding the cause for the termination;

(b) that the controlling producer shall render accounts to the controlled insurer detailing all material transactions, including information necessary to support all commissions, charges, and other fees received by, or owing to, the controlling producer;

(c) that the controlling producer shall remit all funds due under the terms of the contract to the controlled insurer on at least a monthly basis. The due date must be fixed so that premiums or installments of it collected must be remitted no later than ninety days after the effective date of any policy placed with the controlled insurer under this contract;

(d) that all funds collected for the controlled insurer's account must be held by the controlling producer in a fiduciary capacity, in one or more appropriately identified bank accounts in banks that are members of the Federal Reserve System;

(e) that the controlling producer shall maintain separately identifiable records of business written for the controlled insurer;

(f) that the contract may not be assigned in whole or in part by the controlling producer;

(g) that the controlled insurer shall provide the controlling producer with its underwriting standards, rules, procedures, manuals setting forth the rates to be charged, and the conditions for the acceptance or rejection of risks. The controlling producer shall adhere to the standards, rules, procedures, rates, and conditions. The standards, rules, procedures, rates, and conditions must be the same as those applicable to comparable business placed with the controlled insurer by a producer other than the controlling producer;

(h) establishing the rates and terms of the controlling producer's commissions, charges, or other fees and the purposes for those charges or fees. The rates of the commissions, charges, and other fees must be no greater than those applicable to comparable business placed with the controlled insurer by producers other than controlling producers. For purposes of this subitem and subitem (g), examples of 'comparable business' include the same lines of insurance, same kinds

of insurance, same kinds of risks, similar policy limits, and similar quality of business;

(i) that, if the contract provides that the controlling producer, on insurance business placed with the insurer, is to be compensated contingent upon the insurer's profits on that business, then that compensation must not be determined and paid until at least five years after the premiums on liability insurance are earned and at least one year after the premiums are earned on any other insurance. The commissions may not be paid until the adequacy of the controlled insurer's reserves on remaining claims has been independently verified pursuant to subsection (B)(3)(a);

(j) limiting the controlling producer's writings in relation to the controlled insurer's surplus and total writings. The controlled insurer may establish a different limit for each line or subline of business. The controlled insurer shall notify the controlling producer when the applicable limit is approached and may not accept business from the controlling producer if the limit is reached. The controlling producer may not place business with the controlled insurer if it has been notified by the controlled insurer that the limit has been reached; and

(k) that the controlling producer may negotiate but does not bind reinsurance on behalf of the controlled insurer on business the controlling producer places with the controlled insurer, except that the controlling producer may bind facultative reinsurance contracts pursuant to obligatory facultative agreements if the contract with the controlled insurer contains underwriting guidelines including, for both reinsurance assumed and ceded, a list of reinsurers with which these automatic agreements are in effect, the coverages and amounts or percentages that may be reinsured, and commission schedules.

(2) Each controlled insurer shall have an audit committee of the board of directors composed of independent directors. The audit committee shall meet annually with management, the controlled insurer's independent certified public accountants, and an independent casualty actuary, or other independent loss reserve specialist acceptable to the director or his designee to review the adequacy of the controlled insurer's loss reserves.

(3)(a) In addition to another required loss reserve certification, the controlled insurer shall file annually, on April first of each year, with the director or his designee an opinion of an independent casualty actuary, or other independent loss reserve specialist acceptable to the director or his designee, reporting loss ratios for each line or subline of business written and attesting to the adequacy of loss reserves

established for losses incurred and outstanding as of year-end, including incurred but not reported losses, on business placed by the controlling producer.

(b) The controlled insurer shall report annually to the director or his designee the amount of commissions paid to the controlling producer, the percentage the amount represents of the net premiums written, and comparable amounts and percentages paid to noncontrolling producers for placements of the same kinds of insurance.

(4) The controlling producer, before the effective date of the policy, shall deliver written notice to the prospective insured disclosing the relationship between the controlling producer and the controlled insurer, except that, if the business is placed through a subproducer who is not a controlling producer, the controlling producer shall retain in his records a signed commitment from the subproducer that the subproducer is aware of the relationship between the controlled insurer and the controlling producer and that the subproducer has or will notify the insured.

(5)(a) If the director or his designee believes that the controlling producer or other person has not materially complied with this section, or regulation or order promulgated pursuant to the provisions of this section, after notice and opportunity to be heard, the director or his designee may order the controlling producer to cease placing business with the controlled insurer.

(b) If it was found that because of the material noncompliance that the controlled insurer or any policyholder of it has suffered any loss or damage, the director or his designee may maintain a civil action or intervene in an action brought by or on behalf of the controlled insurer or policyholder for recovery of compensatory damages for the benefit of the controlled insurer or policyholder or other appropriate relief.

(c) If an order for liquidation or rehabilitation of the controlled insurer has been entered pursuant to Chapter 27, Title 38, and the receiver appointed under that order believes that the controlling producer or another person has not materially complied with this section, or regulation or order promulgated under it, and the controlled insurer suffered any loss or damage from it, the receiver may maintain a civil action for recovery of damages or other appropriate sanctions for the benefit of the controlled insurer.

(d) Nothing contained in this section affects the right of the director or his designee to impose other penalties provided for in the insurance law.

(e) Nothing contained in this section is intended to or in any manner alters or affects the rights of policyholders, claimants, creditors, or other third parties."

Time effective

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

Ratified the 27th day of May, 2009.

Approved the 2nd day of June, 2009.

No. 28

(R62, S323)

AN ACT TO AMEND SECTION 38-90-20, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO LICENSING OF A CAPTIVE INSURANCE COMPANY, SO AS TO PROHIBIT A CAPTIVE INSURANCE COMPANY FROM WRITING WORKERS' COMPENSATION INSURANCE ON A DIRECT BASIS, AND TO AUTHORIZE AN ADDITIONAL PROCESSING FEE FOR AN APPLICATION TO BE CHARGED AS DETERMINED APPROPRIATE BY THE DIRECTOR OR HIS DESIGNEE GIVEN THE NATURE OF THE APPLICATION BEING INVESTIGATED; TO AMEND SECTION 38-90-40, AS AMENDED, RELATING TO CAPITALIZATION REQUIREMENTS FOR CAPTIVE INSURANCE COMPANIES, SO AS TO AUTHORIZE A REDUCTION IN REQUIRED TRUST FUNDS FOR A BRANCH CAPTIVE INSURANCE COMPANY THAT POSTS SECURITY FOR LOSS RESERVES ON BRANCH BUSINESS TO A FRONT COMPANY; TO AMEND SECTION 38-90-55, RELATING TO INCORPORATION OF A CAPTIVE REINSURANCE COMPANY, SO AS TO CHANGE MANDATORY TO PRECATORY CONSIDERATION BY THE DIRECTOR OF FACTORS IN ARRIVING AT A FINDING; TO AMEND SECTION 38-90-60, AS AMENDED, RELATING TO INCORPORATION OPTIONS AND REQUIREMENTS OF CERTAIN TYPES OF CAPTIVE INSURANCE COMPANIES,

SO AS TO CHANGE MANDATORY TO PRECATORY CONSIDERATION BY THE DIRECTOR OF FACTORS IN ARRIVING AT A FINDING; TO AMEND SECTION 38-90-70, AS AMENDED, RELATING TO REPORTS REQUIRED TO BE SUBMITTED BY A CAPTIVE INSURANCE COMPANY TO THE DIRECTOR, SO AS TO AUTHORIZE THE DIRECTOR TO GRANT AN EXTENSION OR WAIVE THE REQUIREMENTS OF THIS SECTION; TO AMEND SECTION 38-90-75, RELATING TO DISCOUNTING OF LOSS AND LOSS ADJUSTMENT EXPENSE RESERVES, SO AS TO PROVIDE THE SECTION APPLIES TO A CAPTIVE INSURANCE COMPANY, DELETE THE MANNER IN WHICH THE RESERVES WERE DISCOUNTED, AND PROVIDE THAT THIS PROCESS MAY BE ACCOMPLISHED WITH PRIOR WRITTEN APPROVAL BY THE DIRECTOR; TO AMEND SECTION 38-90-80, AS AMENDED, RELATING TO INSPECTIONS AND EXAMINATIONS OF A CAPTIVE INSURANCE COMPANY, SO AS TO INCREASE FROM THREE TO FIVE YEARS THE INTERVAL OF THE INSPECTIONS AND EXAMINATIONS AND AUTHORIZE THE DIRECTOR TO WAIVE THE REQUIREMENT FOR A VISIT TO CERTAIN COMPANIES; TO AMEND SECTION 38-90-90, RELATING TO SUSPENSION OR REVOCATION OF THE LICENSE OF A CAPTIVE INSURANCE COMPANY, SO AS TO AUTHORIZE THE DIRECTOR TO IMPOSE A FINE INSTEAD OF REVOKING OR SUSPENDING A LICENSE; TO AMEND SECTION 38-90-130, RELATING TO THE PROHIBITION OF A CAPTIVE INSURANCE COMPANY FROM PARTICIPATING IN A PLAN, POOL, ASSOCIATION, OR GUARANTY OR INSOLVENCY FUND, SO AS TO AUTHORIZE A COMPANY TO PARTICIPATE IN A POOL FOR THE PURPOSE OF COMMERCIAL RISK SHARING UNDER CERTAIN CIRCUMSTANCES; TO AMEND SECTION 38-90-180, AS AMENDED, RELATING TO THE APPLICABILITY OF CERTAIN PROVISIONS TO CAPTIVE INSURANCE COMPANIES, SO AS TO MAKE THE PROVISIONS OF CHAPTERS 26 AND 27 APPLICABLE TO CAPTIVE INSURANCE COMPANIES; TO AMEND SECTION 38-90-440, AS AMENDED, RELATING TO LICENSING OF A SPECIAL PURPOSE FINANCIAL CAPTIVE INSURANCE COMPANY, SO AS TO PROVIDE THE BASIS FOR CALCULATING A PROCESSING FEE, AND CLARIFY THAT SIX THOUSAND

DOLLARS BASED ON A MINIMUM FEE OF TWELVE THOUSAND DOLLARS IS PAYABLE UPON FILING OF THE APPLICATION; TO AMEND SECTION 38-90-450, AS AMENDED, RELATING TO THE ORGANIZATION REQUIREMENTS OF A SPECIAL PURPOSE FINANCIAL CAPTIVE INSURANCE COMPANY, SO AS TO CHANGE FROM MANDATORY TO PRECATORY CONSIDERATION BY THE DIRECTOR WHEN ISSUING A CERTIFICATE; AND TO AMEND SECTION 38-90-560, RELATING TO EXAMINATIONS BY THE DIRECTOR OF A SPECIAL PURPOSE FINANCIAL CAPTIVE INSURANCE COMPANY, SO AS TO INCREASE FROM THREE TO FIVE YEARS THE INTERVAL THAT A COMPANY MUST BE INSPECTED AND DELETE THE AUTHORITY OF THE DIRECTOR TO ENLARGE THE PERIOD OF INSPECTION UNDER CERTAIN CIRCUMSTANCES.

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

Licensing of captive insurance companies

SECTION 1. Section 38-90-20(A) of the 1976 Code, as last amended by Act 73 of 2003, is further amended to read:

"(A) A captive insurance company, when permitted by its articles of incorporation, articles of organization, operating agreement, or charter, may apply to the director for a license to provide any and all insurance, except workers' compensation insurance written on a direct basis, authorized by this title; however:

(1) a pure captive insurance company may not insure any risks other than those of its parent, affiliated companies, controlled unaffiliated business, or a combination of them;

(2) an association captive insurance company may not insure any risks other than those of the member organizations of its association and their affiliated companies;

(3) an industrial insured captive insurance company may not insure any risks other than those of the industrial insureds that comprise the industrial insured group and their affiliated companies;

(4) in general, a special purpose captive insurance company only may insure the risks of its parent. Notwithstanding any other provisions of this chapter, a special purpose captive insurance company may

provide insurance or reinsurance, or both, for risks as approved by the director;

(5) a captive insurance company may not provide personal motor vehicle or homeowner's insurance coverage written on a direct basis;

(6) a captive insurance company may not accept or cede reinsurance except as provided in Section 38-90-110."

Fee

SECTION 2. Section 38-90-20(D)(1) of the 1976 Code, as last amended by Act 73 of 2003, is further amended to read:

"(1) A captive insurance company shall pay to the department a nonrefundable fee of two hundred dollars for processing its application for license. In addition, the director may retain legal, financial, and examination services from outside the department to examine and investigate the application, the reasonable cost of which may be charged against the applicant or the director may use internal resources to examine and investigate the application for a fee of two thousand four hundred dollars or such other amount that is determined to be appropriate by the director or his designee given the nature of the application being investigated."

Trust fund required

SECTION 3. Section 38-90-40(E) of the 1976 Code, as last amended by Act 332 of 2006, is further amended to read:

"(E) In the case of a branch captive insurance company, as security for the payment of liabilities attributable to branch operations, the director shall require that a trust fund, funded by an irrevocable letter of credit or other acceptable asset, be established and maintained in the United States for the benefit of United States policyholders and United States ceding insurers under insurance policies issued or reinsurance contracts issued or assumed, by the branch captive insurance company through its branch operations. The amount of the security may be no less than the capital and surplus required by this chapter and the reserves on these insurance policies or reinsurance contracts, including reserves for losses, allocated loss adjustment expenses, incurred but not reported losses and unearned premiums with regard to business written through branch operations; however, the director may permit a branch

captive insurance company that is required to post security for loss reserves on branch business by its reinsurer or front company to reduce the funds in the trust account required by this section by the same amount so long as the security remains posted with the reinsurer or front company. If the form of security selected is a letter of credit, the letter of credit must be established by, or issued or confirmed by, a bank chartered in this State or a member bank of the Federal Reserve System."

Certificate to be issued

SECTION 4. Section 38-90-55(C) of the 1976 Code, as added by Act 58 of 2001, is amended to read:

"(C) Before the articles of incorporation are transmitted to the Secretary of State, the incorporators shall petition the director to issue a certificate finding that the establishment and maintenance of the proposed corporation promotes the general good of this State. In arriving at this finding the director may consider:

(1) the character, reputation, financial standing, and purposes of the incorporators;

(2) the character, reputation, financial responsibility, insurance experience, and business qualifications of the officers and directors; and

(3) other factors the director considers advisable."

Director to issue certificate

SECTION 5. Section 38-90-60(D), (F), and (G) of the 1976 Code, as last amended by Act 73 of 2003 and Act 291 of 2004, is further amended to read:

"(D) In the case of a captive insurance company formed as a corporation, a nonprofit corporation, or a limited liability company, before the articles of incorporation or articles of organization are transmitted to the Secretary of State, the incorporators or organizers shall petition the director to issue a certificate setting forth a finding that the establishment and maintenance of the proposed entity will promote the general good of the State. In arriving at this finding the director may consider:

(1) the character, reputation, financial standing, and purposes of the incorporators or organizers;

(2) the character, reputation, financial responsibility, insurance experience, and business qualifications of the officers and directors or managers; and

(3) other aspects as the director considers advisable.

(F) In the case of a captive insurance company formed as a reciprocal insurer, the organizers shall petition the director to issue a certificate setting forth the director's finding that the establishment and maintenance of the proposed association will promote the general good of the State. In arriving at this finding the director may consider:

(1) the character, reputation, financial standing, and purposes of the incorporators or organizers;

(2) the character, reputation, financial responsibility, insurance experience, and business qualifications of the officers and directors or managers; and

(3) other aspects the director considers advisable.

(G) In the case of a captive insurance company licensed as a branch captive insurance company, the alien captive insurance company shall petition the director to issue a certificate setting forth the director's finding that the licensing and maintenance of the branch operations will promote the general good of the State. In arriving at this finding, the director or his designee may consider the character, reputation, financial responsibility, insurance experience, and business qualifications of the officers and directors or managers of the alien captive insurance company and other aspects the director considers advisable. The alien captive insurance company may register to do business in this State after the director's certificate has been issued."

Annual report

SECTION 6. Section 38-90-70(A) of the 1976 Code is amended to read:

"(A) A captive insurance company may not be required to make an annual report except as provided in this chapter. The director has the authority to waive or grant an extension to the requirements of this section."

Losses discounted

SECTION 7. Section 38-90-75 of the 1976 Code, as added by Act 58 of 2001, is amended to read:

"Section 38-90-75. (A) A captive insurance company may discount its loss and loss adjustment expense reserves with prior written approval by the director or his designee.

(B) A captive insurance company shall file annually an actuarial opinion on loss and loss adjustment expense reserves provided by an independent actuary. The actuary may not be an employee of the captive company or its affiliates.

(C) The director may disallow the discounting of loss and loss adjustment expense reserves if a captive insurance company violates a provision of this title."

Director to visit captive insurance company

SECTION 8. Section 38-90-80(A) of the 1976 Code is amended to read:

"(A) At least once every five years, and whenever the director determines it to be prudent, the director personally, or by a competent person appointed by the director, shall visit each captive insurance company and thoroughly inspect and examine its affairs to ascertain its financial condition, its ability to fulfill its obligations, and whether it has complied with this chapter. The director may waive the requirement for a visit to the captive insurance company for pure captive insurance companies and for special purpose captive insurance companies. The expenses and charges of the examination must be paid to the State by the company or companies examined and the department shall issue its warrants for the proper charges incurred in all examinations."

Fines may be imposed

SECTION 9. Section 38-90-90 of the 1976 Code is amended by adding an appropriately lettered subsection to read:

"(C) Instead of suspending or revoking the license of a captive insurance company, the director may impose fines as provided for in Section 38-2-10."

Limitations on captive insurance company

SECTION 10. Section 38-90-130 of the 1976 Code is amended to read:

"Section 38-90-130. A captive insurance company, including a captive insurance company organized as a reciprocal insurer under this chapter, may not join or contribute financially to a plan, pool, association, or guaranty or insolvency fund in this State, and a captive insurance company, or its insured or its parent or any affiliated company or any member organization of its association, or in the case of a captive insurance company organized as a reciprocal insurer, a subscriber of the company, may not receive a benefit from a plan, pool, association, or guaranty or insolvency fund for claims arising out of the operations of such captive insurance company. Subject to the prior written approval of the director or his designee, participation in a pool for the purpose of commercial risk sharing is not prohibited under this section."

Applicability

SECTION 11. Section 38-90-180(A) of the 1976 Code, as last amended by Act 291 of 2004, is further amended to read:

"(A) Except as otherwise provided in this section, the terms and conditions set forth in Chapters 26 and 27 of this title pertaining to insurance reorganizations, receiverships, and injunctions apply in full to captive insurance companies formed or licensed under this chapter."

Fee

SECTION 12. Section 38-90-440(G)(1) of the 1976 Code, as last amended by Act 332 of 2006, is further amended to read:

"(1) a nonrefundable fee of two hundred dollars for processing its application for license. In addition, the director may retain legal, financial, and examination services from outside the department to examine and investigate the application, the reasonable cost of which may be charged against the applicant. The director also may use internal resources to examine and investigate the application based upon an hourly rate for the services performed or the usual and customary fee charged by the financial services industry for similar

work subject to a minimum fee of twelve thousand dollars, six thousand dollars of which is payable upon filing of the application and the remainder upon licensure;"

Issuance of certificate to SPFC insurance company

SECTION 13. Section 38-90-450(E) of the 1976 Code, as added by Act 291 of 2004, is amended to read:

"(E) Before transmitting its organizational documents to the Secretary of State, the incorporators or organizers shall petition the director to issue a certificate setting forth a finding that the establishment and maintenance of the proposed SPFC promotes the general good of the State. In arriving at this finding the director may consider:

(1) the character, reputation, financial standing, and purposes of the incorporators or organizers;

(2) the character, reputation, financial responsibility, insurance experience, and business qualifications of the officers, directors, partners, members, manager, or organizers, as applicable;

(3) other aspects as the director considers advisable."

Director or designee to visit a SPFC insurance company

SECTION 14. Section 38-90-560(A) of the 1976 Code, as added by Act 291 of 2004, is amended to read:

"(A) At least once every five years, and whenever the director determines it to be prudent, the director or his designee shall visit each SPFC and thoroughly inspect and examine its affairs to ascertain its financial condition, its ability to fulfill its obligations, and whether it has complied with this article. The expenses and charges of the examination must be paid to the State by the company or companies examined, and the department shall issue its warrants for the proper charges incurred in all examinations."

Time effective

SECTION 15. This act takes effect upon approval by the Governor.

Ratified the 27th day of May, 2009.

Approved the 2nd day of June, 2009.

No. 29

(R63, S345)

AN ACT TO AMEND SECTION 8-11-65, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO LEAVES OF ABSENCE TO BE AN ORGAN DONOR, SO AS TO PROVIDE THAT THE NUMBER OF DAYS A PERSON MAY MISS EACH YEAR TO DONATE THEIR ORGANS MUST BE COUNTED IN A CALENDAR YEAR INSTEAD OF A FISCAL YEAR; TO AMEND SECTION 8-11-120, AS AMENDED, RELATING TO THE POSTING OF STATE AGENCY JOB VACANCIES WITH THE EMPLOYMENT SECURITY COMMISSION AND THE STATE BUDGET AND CONTROL BOARD BEFORE THE VACANCY IS FILLED, SO AS TO REVISE AND SIMPLIFY THE REQUIREMENTS FOR PROVIDING NOTICE OF THE VACANCY, INCLUDING, BUT NOT LIMITED TO, REQUIRING POSTING AT LEAST FIVE DAYS BEFORE THE JOB IS FILLED; BY ADDING SECTION 8-11-33 SO AS TO PROVIDE CERTAIN CIRCUMSTANCES UNDER WHICH A STATE EMPLOYEE'S PAY MAY BE WITHHELD; TO AMEND SECTION 8-11-196, AS AMENDED, RELATING TO HIRING EMPLOYEES TO FILL TEMPORARY GRANT POSITIONS, SO AS TO APPLY CERTAIN PROVISIONS OF THIS SECTION TO ALL STATE AGENCIES RATHER THAN ONLY TO PUBLIC INSTITUTIONS OF HIGHER EDUCATION; AND TO AUTHORIZE THE STATE OFFICE OF HUMAN RESOURCES TO AMEND POLICIES, REGULATIONS, AND PROCESSES AS NEEDED TO IMPLEMENT AND TRANSITION TO THE SOUTH CAROLINA ENTERPRISE INFORMATIONAL SYSTEM.

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

Calculating leave of absence for organ donation

SECTION 1. Section 8-11-65(A) of the 1976 Code, as added by Act 347 of 2002, is amended to read:

"(A) All officers and employees of this State or a political subdivision of this State who wish to be an organ donor and who accrue annual or sick leave as part of their employment are entitled to leaves of absence from their respective duties without loss of pay, time, leave, or efficiency rating for one or more periods not exceeding an aggregate of thirty regularly scheduled workdays in any one calendar year during which they may engage in the donation of their organs. Saturdays, Sundays, and state holidays may not be included in the thirty-day aggregate unless the particular Saturday, Sunday, or holiday to be included is a regularly scheduled workday for the officer or employee involved."

State agency job vacancy postings

SECTION 2. Section 8-11-120 of the 1976 Code, as last amended by Act 484 of 1990, is further amended to read:

"Section 8-11-120. In addition to any other requirement provided by law, when a job vacancy occurs in any state office, agency, department, or other division of the executive branch of state government, the appointing authority must post a notice with the Office of Human Resources of the State Budget and Control Board and the South Carolina Employment Security Commission at least five working days before employing a person to fill the vacancy. The posting must give notice of the job vacancy, describe the duties to be performed by a person employed in that position, and include any other information required by law.

For purposes of this section, 'appointing authority' shall have the same meaning as in Section 8-11-220."

Withholding or deducting pay from a state employee's wages

SECTION 3. Article 1, Chapter 11, Title 8 of the 1976 Code is amended by adding:

"Section 8-11-33. Notwithstanding any other provision of law, a state agency that has its payroll processed by the Office of the

Comptroller General is authorized to withhold or deduct any portion of a state employee's wages when:

(1) the State of South Carolina or a state agency that has its payroll processed by the Office of the Comptroller General in its role as an employer is required or empowered to do so by state or federal law; or

(2) an overpayment of wages to an employee as a result of a miscalculation or other bona fide error has occurred.

Prior to any deduction being made pursuant to this section, the employee must receive advance written notice of the deduction, the reason for the deduction, and the actual dollar amount or percentage of wages which will be deducted during one or more pay periods."

Hiring employees to fill temporary grant positions

SECTION 4. Section 8-11-196(3) of the 1976 Code, as added by Act 356 of 2002, is amended to read:

"(3) positions established under this provision must be limited to and must not exist beyond the duration of the time-limited project, grant, or a subsequent renewal of it. However, at the discretion of any agency, other funds may be used to fund continued employment between the expiration of one grant or time-limited project and the subsequent renewal of the same or similar grant or time-limited project. When the grant, time-limited project, or a subsequent renewal ends, temporary grant or time-limited project employees must be terminated and their positions will cease to exist. Temporary grant or time-limited project employees will be exempt from the provisions of Sections 8-17-310 through 8-17-380. State agencies and institutions must terminate all temporary grant or time-limited project positions when funding is terminated, or is insufficient to continue payments under the conditions of the grant or time-limited project;"

Implementation and transition to the South Carolina Enterprise Informational System

SECTION 5. In order to implement and transition to the South Carolina Enterprise Informational System, the State Office of Human Resources is authorized to amend or modify human resource policies, regulations, and processes as it determines efficient to implement and transition to the South Carolina Enterprise Informational System. Any changes or modifications adopted by the State Office of Human Resources shall be published in the State Register and published on the

official State Office of Human Resources website prior to the changes or modifications taking effect.

Time effective

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

Ratified the 27th day of May, 2009.

Approved the 2nd day of June, 2009.

No. 30

(R66, S363)

AN ACT TO AMEND SECTION 23-41-20, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO DEFINITIONS FOR PURPOSES OF THE ARSON REPORTING-IMMUNITY ACT, SO AS TO ADD CERTAIN PUBLIC SAFETY OFFICIALS TO THE LIST OF AGENCIES AUTHORIZED TO RECEIVE INFORMATION FROM AN INSURANCE COMPANY.

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

Arson Reporting-Immunity Act, definitions

SECTION 1. Section 23-41-20(a) of the 1976 Code is amended by adding an appropriately numbered item to read:

"( ) the Fire Chief, Sheriff, or Chief of Police having jurisdiction over the arson investigation."

Time effective

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

Ratified the 27th day of May, 2009.

Approved the 2nd day of June, 2009.

No. 31

(R71, S463)

AN ACT TO AMEND SECTION 44-36-10, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE PURPOSE AND FUNCTIONS OF THE ALZHEIMER'S DISEASE REGISTRY, SO AS TO EXPAND THE TYPES OF DATA COLLECTED BY THE ALZHEIMER'S DISEASE REGISTRY, AND TO PROVIDE FOR THE AUTHORIZATION OF STUDIES ABOUT ALZHEIMER'S DISEASE AND THE CAREGIVERS OF PERSONS WITH ALZHEIMER'S DISEASE.

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

Alzheimer's Disease Registry; data collection expanded; studies and research authorized

SECTION 1. Section 44-36-10 of the 1976 Code is amended to read:

"Section 44-36-10. (A) There is established within the University of South Carolina School of Public Health the Alzheimer's Disease Registry to provide a central information data base on individuals with Alzheimer's disease or related disorders to assist in the development of public policy and planning.

(B) The functions of the registry include, but are not limited to:

(1) collecting data to evaluate the incidence, prevalence, and causes of Alzheimer's disease and related disorders in South Carolina;

(2) providing information for policy planning purposes; and

(3) providing nonidentifying data to support research on Alzheimer's disease and related disorders.

(C) In gathering data the registry shall rely upon, to the extent possible, data from existing sources; however, the registry may contact families and physicians of persons reported to the registry for the purpose of gathering additional data and providing information on available public and private resources. The registry is authorized to

conduct follow-back studies, prospective studies of the progression and treatment of Alzheimer's disease and related disorders, and research on caregiving for individuals with Alzheimer's disease or a related disorder, on services used by individuals with Alzheimer's disease or a related disorder, and on causes of Alzheimer's disease and related disorders that examine risks associated with area of residence. Patient contact following data received from the State Budget and Control Board Office of Research and Statistics must be done in accordance with regulations approved by the South Carolina Data Oversight Council and promulgated by the Office of Research and Statistics. Caregivers must provide informed consent to participate in research on caregiving."

Time effective

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

Ratified the 27th day of May, 2009.

Approved the 2nd day of June, 2009.

No. 32

(R74, S593)

AN ACT TO AMEND SECTION 16-23-430, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE PROHIBITION ON THE CARRYING OF WEAPONS ON SCHOOL PROPERTY, SO AS TO PROVIDE AN EXCEPTION FOR PERSONS WHO ARE AUTHORIZED TO CARRY A CONCEALED WEAPON WHEN THE WEAPON IS INSIDE A MOTOR VEHICLE AND SECURED; AND TO AMEND SECTION 16-23-420, AS AMENDED, RELATING TO THE PROHIBITION ON THE CARRYING OR DISPLAYING OF FIREARMS IN PUBLIC BUILDINGS AND ADJACENT AREAS, SO AS TO PROVIDE AN EXCEPTION ON SCHOOL PROPERTY FOR PERSONS WHO ARE AUTHORIZED TO CARRY A CONCEALED WEAPON WHEN THE WEAPON IS INSIDE A MOTOR VEHICLE AND SECURED.

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

Concealed weapons, school property exception

SECTION 1. Section 16-23-430 of the 1976 Code is amended to read:

"Section 16-23-430. (A) It shall be unlawful for any person, except state, county, or municipal law enforcement officers or personnel authorized by school officials, to carry on his person, while on any elementary or secondary school property, a knife, with a blade over two inches long, a blackjack, a metal pipe or pole, firearms, or any other type of weapon, device, or object which may be used to inflict bodily injury or death.

(B) This section does not apply to a person who is authorized to carry a concealed weapon pursuant to Article 4, Chapter 31, Title 23 when the weapon remains inside an attended or locked motor vehicle and is secured in a closed glove compartment, closed console, closed trunk, or in a closed container secured by an integral fastener and transported in the luggage compartment of the vehicle.

(C) A person who violates the provisions of this section is guilty of a felony and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than five years, or both. Any weapon or object used in violation of this section may be confiscated by the law enforcement division making the arrest."

Concealed weapons, school property exception

SECTION 2. Section 16-23-420(A) of the 1976 Code, as last amended by Act 294 of 2004, is further amended to read:

"Section 16-23-420. (A) It is unlawful for a person to possess a firearm of any kind on any premises or property owned, operated, or controlled by a private or public school, college, university, technical college, other post-secondary institution, or in any publicly owned building, without the express permission of the authorities in charge of the premises or property. The provisions of this subsection related to any premises or property owned, operated, or controlled by a private or public school, college, university, technical college, or other post-secondary institution, do not apply to a person who is authorized to carry a concealed weapon pursuant to Article 4, Chapter 31, Title 23 when the weapon remains inside an attended or locked motor vehicle and is secured in a closed glove compartment, closed console, closed

trunk, or in a closed container secured by an integral fastener and transported in the luggage compartment of the vehicle."

Time effective

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

Ratified the 27th day of May, 2009.

Approved the 2nd day of June, 2009.

No. 33

(R76, S668)

AN ACT TO AMEND SECTION 53-5-10, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO LEGAL HOLIDAYS, SO AS TO INCLUDE THE TWENTY-FOURTH DAY OF DECEMBER AS A LEGAL HOLIDAY; AND TO REPEAL SECTION 53-5-20 RELATING TO CHRISTMAS EVE DECLARED AS A HOLIDAY FOR STATE EMPLOYEES.

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

Christmas Eve as legal holiday

SECTION 1. Section 53-5-10 of the 1976 Code, as last amended by Act 246 of 2000, is further amended to read:

"Section 53-5-10. The first day of January--New Year's Day, the third Monday of January--Martin Luther King, Jr. Day, the third Monday in February--George Washington's birthday/President's Day, the tenth day of May--Confederate Memorial Day, the last Monday of May--National Memorial Day, the fourth day of July--Independence Day, the first Monday in September--Labor Day, the eleventh day of November--Veterans Day, National Thanksgiving Day and the day after, and the twenty-fourth, twenty-fifth, and twenty-sixth days of December in each year are legal holidays.

The holiday schedules of public colleges and universities, including technical colleges, shall not be in violation of this section so long as the number of holidays provided for in this section are not exceeded."

Repeal

SECTION 2. Section 53-5-20 of the 1976 Code is repealed.

Time effective

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

Ratified the 27th day of May, 2009.

Approved the 2nd day of June, 2009.

No. 34

(R78, S696)

AN ACT TO AMEND SECTION 59-18-930, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE REQUIRED ADVERTISEMENT OF THE RESULTS OF A SCHOOL'S REPORT CARD IN A LOCAL NEWSPAPER, SO AS TO ALLOW THE REQUIRED ADVERTISEMENT TO BE WAIVED IF AN AUDITED NEWSPAPER OF GENERAL CIRCULATION IN A SCHOOL DISTRICT'S GEOGRAPHIC AREA HAS PREVIOUSLY PUBLISHED THE ENTIRE SCHOOL REPORT CARD RESULTS AS A NEWS ITEM.

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

Advertisement of school district report card results; waiver

SECTION 1. Section 59-18-930 of the 1976 Code, as last amended by Act 353 of 2008, is further amended to read:

"Section 59-18-930. (A) The State Department of Education must issue the executive summary of the report card annually to all schools and districts of the State no later than November first. The executive

summary shall be printed in black and white, be no more than two pages, use graphical displays whenever possible, and contain National Assessment of Educational Progress (NAEP) scores as well as national scores. The report card summary must be made available to all parents of the school and the school district.

(B) The school, in conjunction with the district board, also must inform the community of the school's report card by advertising the results in at least one South Carolina daily newspaper of general circulation in the area. This notice must be published within forty-five days of receipt of the report cards issued by the State Department of Education and must be a minimum of two columns by ten inches (four and one-half by ten inches) with at least a twenty-four point bold headline.

(C) If an audited newspaper of general circulation in a school district's geographic area has previously published the entire school report card results as a news item, the requirement of subsection (B) may be waived."

Time effective

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

Ratified the 27th day of May, 2009.

Approved the 2nd day of June, 2009.

No. 35

(R80, S704)

AN ACT TO AMEND SECTION 7-7-270, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE DESIGNATION OF VOTING PRECINCTS IN GEORGETOWN COUNTY, SO AS TO REDESIGNATE A MAP NUMBER ON WHICH LINES OF THESE PRECINCTS ARE DELINEATED AND MAINTAINED BY THE OFFICE OF RESEARCH AND STATISTICS OF THE STATE BUDGET AND CONTROL BOARD AND TO CORRECT ARCHAIC REFERENCES.

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

Precinct map number redesignated

SECTION 1. Section 7-7-270(B) of the 1976 Code, as last amended by Act 223 of 2004, is further amended to read:

"(B) The precinct lines defining the above precincts in Georgetown 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 P-43-09 and as shown on copies of the official map provided by the office to the Georgetown County Board of Elections and Registration."

Reference corrected

SECTION 2. Section 7-7-270(C) of the 1976 Code is amended to read:

"(C) The polling places for the precincts provided in this section must be established by the Georgetown County Board of Elections and Registration subject to approval by a majority of the Georgetown County Legislative Delegation."

Time effective

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

Ratified the 27th day of May, 2009.

Approved the 2nd day of June, 2009.

No. 36

(R89, H3022)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, SO AS TO ENACT THE "UNIFORM EXPUNGEMENT OF CRIMINAL RECORDS ACT" BY ADDING ARTICLE 9 TO CHAPTER 22, TITLE 17 SO AS TO PROVIDE A PROCEDURE FOR THE UNIFORM

EXPUNGEMENT OF CRIMINAL RECORDS, TO PROVIDE THAT APPLICATIONS FOR EXPUNGEMENT OF CRIMINAL RECORDS MUST BE ADMINISTERED BY THE SOLICITOR'S OFFICE IN EACH CIRCUIT, TO PROVIDE FOR THE DEVELOPMENT OF AN EXPUNGEMENT FORM, AND TO CREATE A UNIFORM FEE FOR EXPUNGMENT; TO AMEND SECTION 17-1-40, AS AMENDED, RELATING TO THE REQUIREMENT FOR THE DESTRUCTION OF CRIMINAL RECORDS WHEN A CHARGE IS DISMISSED OR THE PERSON IS FOUND NOT GUILTY OF THE CHARGE, SO AS TO ALLOW CERTAIN DETENTION AND CORRECTIONAL FACILITIES TO RETAIN THOSE RECORDS UNDER CERTAIN CIRCUMSTANCES, TO PROVIDE THE CIRCUMSTANCES UNDER WHICH THOSE RECORDS MAY BE RELEASED, AND TO PROVIDE A PENALTY FOR THE UNLAWFUL RELEASE OF THOSE RECORDS; BY ADDING SECTION 17-1-45 SO AS TO REQUIRE SOUTH CAROLINA COURT ADMINISTRATION TO INCLUDE NOTICE ON ALL BOND PAPERWORK AND COURTESY SUMMONS WHEN A PERSON MAY HAVE HIS RECORD EXPUNGED; TO AMEND SECTION 22-5-910, RELATING TO THE EXPUNGEMENT OF CRIMINAL RECORDS, SO AS TO CLARIFY THAT FIRST OFFENSE CRIMES CARRYING A PENALTY OF NOT MORE THAN THIRTY DAYS IMPRISONMENT OR A FINE OF FIVE HUNDRED DOLLARS, OR BOTH, ARE ELIGIBLE TO BE EXPUNGED; TO AMEND SECTION 22-5-920, RELATING TO CONVICTION AS A YOUTHFUL OFFENDER, SO AS TO CHANGE THE WAITING PERIOD BEFORE A YOUTHFUL OFFENDER MAY APPLY TO HAVE HIS CRIMINAL ARREST AND CONVICTION EXPUNGED FROM FIFTEEN YEARS OF THE CONVICTION TO FIVE YEARS FROM THE COMPLETION OF THE SENTENCE; TO AMEND SECTION 44-53-450, RELATING TO CONDITIONAL DISCHARGE OF A PERSON FOUND GUILTY OF CERTAIN FIRST OFFENSE CONTROLLED SUBSTANCES OFFENSES, SO AS TO DELETE THE REQUIREMENT THAT THE PERSON MAY NOT BE OVER THE AGE OF TWENTY-FIVE TO HAVE HIS RECORD EXPUNGED PURSUANT TO THIS SECTION; AND TO DELAY THE IMPLEMENTATION OF THE TRAFFIC EDUCATION PROGRAM AS PROVIDED IN ACT 176 OF 2008.

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

Citation of act

SECTION 1. This act may be cited as the "Uniform Expungement of Criminal Records Act".

Uniform expungement of criminal records

SECTION 2. Chapter 22, Title 17 of the 1976 Code is amended by adding:

"Article 9

Uniform Expungement of Criminal Records

Section 17-22-910. Applications for expungement of all criminal records must be administered by the solicitor's office in each circuit in the State as authorized pursuant to:

(1) Section 34-11-90(e), first offense misdemeanor fraudulent check;

(2) Section 44-53-450(b), conditional discharge for simple possession of marijuana or hashish;

(3) Section 22-5-910, first offense conviction in magistrates court;

(4) Section 22-5-920, youthful offender act;

(5) Section 56-5-750(f), first offense failure to stop when signaled by a law enforcement vehicle;

(6) Section 17-22-150(a), pretrial intervention;

(7) Section 17-1-40, criminal records destruction, except as provided in Section 17-22-950;

(8) Section 20-7-8525, juvenile expungements;

(9) Section 17-22-530(a), alcohol education program; and

(10) any other statutory authorization.

Section 17-22-920. The clerk of court shall direct all inquiries concerning the expungement process to the corresponding solicitor's office to make application for expungement.

Section 17-22-930. A person applying to expunge a criminal record shall obtain the appropriate blank expungement order form from the solicitor's office in the judicial circuit where the charge originated. The use of this form is mandatory and to the exclusion of all other expungement forms.

Section 17-22-940. (A) In exchange for an expungement service that is provided by the solicitor's office, the applicant is responsible for payment to the solicitor's office of an administrative fee in the amount of two hundred fifty dollars per individual order, which must be retained by that office and used to defray the costs associated with the expungement process, except as provided in subsection (B). The two hundred fifty dollar fee is nonrefundable, regardless of whether the offense is later determined to be statutorily ineligible for expungement or the solicitor or his designee does not consent to the expungement.

(B) Any person who applies to the solicitor's office for an expungement of general sessions charges pursuant to Section 17-1-40 is exempt from paying the administrative fee, unless the charge that is the subject of the expungement request was dismissed, discharged, or nolle prossed as part of a plea arrangement under which the defendant pled guilty and was sentenced on other charges.

(C) The solicitor's office shall implement policies and procedures consistent with this section to ensure that the expungement process is properly conducted. This includes, but is not limited to:

(1) assisting the applicant in completing the expungement order form;

(2) collecting from the applicant and distributing to the appropriate agencies separate certified checks or money orders for charges prescribed by this article;

(3) coordinating with the South Carolina Law Enforcement Division (SLED) and, in the case of juvenile expungements, the Department of Juvenile Justice, to confirm that the criminal charge is statutorily appropriate for expungement;

(4) obtaining and verifying the presence of all necessary signatures;

(5) filing the completed expungement order with the clerk of court; and

(6) providing copies of the completed expungement order to all governmental agencies which must receive the order including, but not limited to, the:

(a) arresting law enforcement agency;

(b) detention facility or jail;

(c) solicitor's office;

(d) magistrates or municipal court where the arrest warrant originated;

(e) magistrates or municipal court that was involved in any way in the criminal process of the charge sought to be expunged;

(f) Department of Juvenile Justice; and

(g) SLED.

(D) The solicitor or his designee also must provide a copy of the completed expungement order to the applicant or his retained counsel.

(E) In cases when charges are sought to be expunged pursuant to Section 17-22-150(a), 17-22-530(a), 22-5-910, or 44-53-450(b), the circuit pretrial intervention director, alcohol education program director, or summary court judge shall attest by signature on the application to the eligibility of the charge for expungement before either the solicitor or his designee and then the circuit court judge, or the family court judge in the case of a juvenile, signs the application for expungement.

(F) SLED shall verify and document that the criminal charges in all cases, except in cases when charges are sought to be expunged pursuant to Section 17-1-40, are appropriate for expungement before the solicitor or his designee, and then a circuit court judge, or a family court judge in the case of a juvenile, signs the application for expungement. If the expungement is sought pursuant to Section 34-11-90(e), Section 22-5-910, Section 22-5-920, or Section 56-5-750(f), the conviction for any traffic-related offense which is punishable only by a fine or loss of points will not be considered as a bar to expungement.

(1) SLED shall receive a twenty-five dollar certified check or money order from the solicitor or his designee on behalf of the applicant made payable to SLED for each verification request, except that no verification fee may be charged when an expungement is sought pursuant to Section 17-1-40, 17-22-150(a), or 44-53-450(b). SLED then shall forward the necessary documentation back to the solicitor's office involved in the process.

(2) In the case of juvenile expungements, verification and documentation that the charge is statutorily appropriate for expungement must first be accomplished by the Department of Juvenile Justice and then SLED.

(3) Neither SLED, the Department of Juvenile Justice, nor any other official shall allow the applicant to take possession of the application for expungement during the expungement process.

(G) The applicant also is responsible to the clerk of court for the filing fee per individual order as required by Section 8-21-310(21), which must be forwarded to the clerk of court by the solicitor or his designee and deposited in the county general fund. If the charge is determined to be statutorily ineligible for expungement, this prepaid

clerk of court filing fee must be refunded to the applicant by the solicitor or his designee.

(H) Each expungement order may contain only one charge sought to be expunged, except in those circumstances when expungement is sought for multiple charges occurring out of a single incident and subject to expungement pursuant to Section 17-1-40 or 17-22-150(a). Only in those circumstances may more than one charge be included on a single application for expungement and, when applicable, only one two hundred fifty-dollar fee, one twenty-five dollar SLED verification fee, and one thirty-five dollar clerk of court filing fee may be charged.

(I) A filing fee may not be charged by the clerk's office to an applicant seeking the expungement of a criminal record pursuant to Section 17-1-40, when the charge was discharged, dismissed, nolle prossed, or the applicant was acquitted.

(J) Nothing in this article precludes an applicant from retaining counsel to apply to the solicitor's office on his behalf or precludes retained counsel from initiating an action in circuit court seeking a judicial determination of eligibility when the solicitor, in his discretion, does not consent to the expungement. In either event, retained counsel is responsible to the solicitor or his designee, when applicable, for the two hundred fifty-dollar fee, the twenty-five dollar SLED verification fee, and the thirty-five dollar clerk of court filing fee which must be paid by retained counsel's client.

(K) The solicitor or his designee has the discretion to waive the two hundred fifty-dollar fee only in those cases when it is determined that a person has been falsely accused of a crime as a result of identity theft.

(L) Each solicitor's office shall maintain a record of all fees collected related to the expungement of criminal records, which must be made available to the Chairmen of the House and Senate Judiciary Committees. Those records shall remain confidential otherwise.

Section 17-22-950. (A) When criminal charges are brought in a summary court and the accused person is found not guilty or if the charges are dismissed or nolle prossed, pursuant to Section 17-1-40, the presiding judge of the summary court, at no cost to the accused person, immediately shall issue an order to expunge the criminal records of the accused person unless the dismissal of the charges occurs at a preliminary hearing or unless the accused person has charges pending in summary court and a court of general sessions and such charges arise out of the same course of events. This expungement must occur no sooner than the appeal expiration date and no later than thirty days after the appeal expiration date. Upon issuance of the order, the judge

of the summary court or a member of the summary court staff must coordinate with SLED to confirm that the criminal charge is statutorily appropriate for expungement; obtain and verify the presence of all necessary signatures; file the completed expungement order with the clerk of court; provide copies of the completed expungement order to all governmental agencies which must receive the order including, but not limited to, the arresting law enforcement agency, the detention facility or jail, the solicitor's office, the magistrates or municipal court where the arrest warrant originated, the magistrates or municipal court that was involved in any way in the criminal process of the charge sought to be expunged, and SLED. The judge of the summary court or a member of the summary court staff also must provide a copy of the completed expungement order to the applicant or his retained counsel. The prosecuting agency or appropriate law enforcement agency may file an objection to a summary court expungement. If an objection is filed by the prosecuting agency or law enforcement agency, that expungement then must be heard by the judge of a general sessions court. The prosecuting agency's or the appropriate law enforcement agency's reason for objecting must be that the:

(1) accused person has other charges pending;

(2) prosecuting agency or the appropriate law enforcement agency believes that the evidence in the case needs to be preserved; or

(3) accused person's charges were dismissed as a part of a plea agreement.

(B) If the prosecuting agency or the appropriate law enforcement agency objects to an expungement order being issued pursuant to subsection (A)(2), the prosecuting agency or appropriate law enforcement agency must notify the accused person of the objection. This notice must be given in writing at the address listed on the accused person's bond form, or through his attorney, no later than thirty days after the person is found not guilty or his charges are dismissed or nolle prossed."

Destruction of criminal records, timeline, corrections exception

SECTION 3. Section 17-1-40(A) of the 1976 Code, as last amended by Act 82 of 2007, is further amended to read:

"(A) 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."

Expungement, notice requirement

SECTION 4. Chapter 1, Title 17 of the 1976 Code is amended by adding:

"Section 17-1-45. South Carolina Court Administration shall include on all bond paperwork and courtesy summons the following notice: 'If the charges that have been brought against you are discharged, dismissed, or nolle prossed or if you are found not guilty, you may have your record expunged.'"

Expungement, eligibility

SECTION 5. Section 22-5-910(A) and (B) of the 1976 Code is amended to read:

"(A) Following a first offense conviction for a crime carrying a penalty of not more than thirty days imprisonment or a fine of five hundred dollars, or both, the defendant after three years from the date of the conviction 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 five hundred dollars, or both, 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."

Expungement, youthful offender eligibility

SECTION 6. Section 22-5-920(B) of the 1976 Code is amended to read:

"(B) Following a first offense conviction as a youthful offender, the defendant after five years from the date of completion of his sentence, including probation and parole, 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 an offense involving the operation of a motor vehicle, to a violation of Title 50 or the regulations promulgated under it for which points are assessed, suspension provided for, or enhanced penalties for subsequent offenses authorized, to an offense classified as a violent crime in Section 16-1-60, or to an offense contained in Chapter 25, Title 16, except as otherwise provided in Section 16-25-30. If the defendant has had no other conviction during the five-year period following completion of his sentence, including probation and parole, for a first offense conviction as a youthful offender, 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 before the effective date of this section."

Controlled substances, conditional discharge, eligibility for expungement

SECTION 7. Section 44-53-450(b) of the 1976 Code is amended to read:

"(b) Upon the dismissal of the person and discharge of the proceedings against him pursuant to subsection (a), and if the offense did not involve a controlled substance classified in Schedule I which is a narcotic drug and Schedule II which is a narcotic drug, the person may apply to the court for an order to expunge from all official records (other than the nonpublic records to be retained as provided in subsection (a)) all recordation relating to his arrest, indictment or information, trial, finding of guilty, and dismissal and discharge pursuant to this section. If the court determines, after hearing, that the person was dismissed and the proceedings against him discharged, it shall enter the order. The effect of the order is to restore the person, in the contemplation of the law, to the status he occupied before the arrest or indictment or information. No person as to whom the order has been entered may be held pursuant to another provision of law to be guilty of perjury or otherwise giving a false statement by reason of his failure to recite or acknowledge the arrest, or indictment or information, or trial in response to an inquiry made of him for any purpose."

Traffic Education Program, delayed implementation

SECTION 8. The deadline requiring all circuit solicitors to have a traffic education program in effect, as provided in SECTION 5 of Act 176 of 2008, is extended from July 1, 2009, to July 1, 2010. No person has the right to apply to the program until the program is established.

Time effective

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

Ratified the 27th day of May, 2009.

Approved the 2nd day of June, 2009.

No. 37

(R92, H3118)

AN ACT TO AMEND SECTION 63-11-530, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE POWERS AND DUTIES OF GUARDIANS AD LITEM IN CHILD ABUSE AND NEGLECT CASES, SO AS TO PROVIDE THAT THE SOUTH CAROLINA GUARDIAN AD LITEM PROGRAM, OR A COUNTY GUARDIAN AD LITEM PROGRAM, HAS THE RIGHT TO INTERVENE IN A PROCEEDING TO PETITION TO HAVE THE VOLUNTEER GUARDIAN AD LITEM REMOVED AND TO SPECIFY GROUNDS FOR REMOVAL; AND TO AMEND SECTION 63-11-550, RELATING TO CONFIDENTIALITY OF REPORTS AND INFORMATION MAINTAINED BY THE GUARDIAN AD LITEM PROGRAM, SO AS TO ALSO PROVIDE THAT REPORTS AND INFORMATION MAINTAINED BY A GUARDIAN AD LITEM IS CONFIDENTIAL.

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

Grounds for removal of a volunteer guardian ad litem

SECTION 1. Section 63-11-530(A) of the 1976 Code, as added by Act 361 of 2008, is amended to read:

"(A)(1) The guardian ad litem is charged in general with the duty of representation of the child's best interests. After appointment by the family court to a case involving an abused or neglected child, the guardian ad litem shall receive appropriate notice of all court hearings and proceedings regarding the child. The obligation of the guardian ad litem to the court is a continuing one and continues until formally relieved by the court.

(2) The South Carolina Guardian ad Litem Program, or a county guardian ad litem program operating pursuant to Section 63-11-500, whichever is appropriate, may intervene in an abuse or neglect proceeding in order to petition the court to relieve the volunteer, lay guardian ad litem from appointment for the following reasons:

(a) incapacity;
(b) conflict of interest;
(c) misconduct;

(d) persistent neglect of duties;

(e) incompetence; or

(f) a knowing and wilful violation of program policies and procedures that affect the health, safety, and welfare of the child.

(3) The court shall determine what is in the best interest of the child when ruling on the petition."

Confidentiality of reports and information

SECTION 2. Section 63-11-550(A) of the 1976 Code, as added by Act 361 of 2008, is amended to read:

"(A) All reports and information collected pursuant to this article maintained by the South Carolina Guardian ad Litem Program, or a county guardian ad litem program operating pursuant to Section 63-11-500(B) or by a guardian ad litem, are confidential except as provided for in Section 63-7-1990(C). A person who disseminates or permits the unauthorized dissemination of the information is guilty of contempt of court and, upon conviction, may be fined or imprisoned, or both, pursuant to Section 63-3-620."

Time effective

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

Ratified the 27th day of May, 2009.

Approved the 2nd day of June, 2009.

No. 38

(R93, H3123)

AN ACT TO AMEND SECTION 40-5-310, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE PROHIBITION AGAINST ANY PERSON PRACTICING OR SOLICITING THE CAUSE OF ANOTHER PERSON IN A COURT OF THIS STATE UNLESS HE HAS BEEN ADMITTED AND SWORN AS AN ATTORNEY, SO AS TO PROVIDE THAT A PERSON MUST BE ENROLLED AS A MEMBER OF THE SOUTH CAROLINA

BAR PURSUANT TO APPLICABLE COURT RULES, OR OTHERWISE AUTHORIZED TO PERFORM PRESCRIBED LEGAL ACTIVITIES BY ACTION OF THE SUPREME COURT OF SOUTH CAROLINA IN ORDER TO EITHER PRACTICE LAW OR SOLICIT THE LEGAL CAUSE OF ANOTHER, AND TO PROVIDE THAT THE TYPE OF CONDUCT THAT IS THE SUBJECT OF ANY CHARGE FILED PURSUANT TO THIS SECTION MUST HAVE BEEN DEFINED AS THE UNAUTHORIZED PRACTICE OF LAW BY THE SUPREME COURT OF SOUTH CAROLINA PRIOR TO ANY CHARGE BEING FILED.

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

Practicing law or soliciting legal cause of another

SECTION 1. Section 40-5-310 of the 1976 Code is amended to read:

"Section 40-5-310. No person may either practice law or solicit the legal cause of another person or entity in this State unless he is enrolled as a member of the South Carolina Bar pursuant to applicable court rules, or otherwise authorized to perform prescribed legal activities by action of the Supreme Court of South Carolina. The type of conduct that is the subject of any charge filed pursuant to this section must have been defined as the unauthorized practice of law by the Supreme Court of South Carolina prior to any charge being filed. A person who violates this section is guilty of a felony and, upon conviction, must be fined not more than five thousand dollars or imprisoned not more than five years, or both."

Time effective

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

Ratified the 27th day of May, 2009.

Approved the 2nd day of June, 2009.

No. 39

(R95, H3134)

AN ACT TO AMEND SECTION 56-3-9910, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE ISSUANCE OF GOLD STAR FAMILY SPECIAL LICENSE PLATES, SO AS TO REVISE THE PROVISIONS THAT RELATE TO THE ISSUANCE, PRODUCTION, AND FEE FOR THIS SPECIAL LICENSE PLATE.

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

Gold Star Family Special License Plates

SECTION 1. Section 56-3-9910 of the 1976 Code, as last amended by Act 347 of 2008, is further amended to read:

"Section 56-3-9910. (A) The Department of Motor Vehicles may issue 'Gold Star Family' special license plates to owners of private passenger motor vehicles as defined in Section 56-3-630 registered in the names of members of the immediate family of United States armed forces members killed in action. The fee for this special license plate is the regular motor vehicle license fee contained in Article 5, Chapter 3 of this title. The special fee required by Section 56-3-2020 is waived. The license plates issued pursuant to this section must conform to a design agreed to by the department and the chief executive officer of the South Carolina Chapter of American Gold Star Mothers, Inc. or other similar organization operating in this State.

(B) Notwithstanding another provision of law, the provisions contained in Section 56-3-8000(B) and (C) do not apply to the production and distribution of 'Gold Star Family' special license plates.

(C) For the purposes of this section, 'members of the immediate family' means a person who is a parent, spouse, sibling, or child of a armed forces member killed in action. Each qualifying person is entitled to a limit of two 'Gold Star Family' special license plates."

Time effective

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

Ratified the 27th day of May, 2009.

Approved the 2nd day of June, 2009.

No. 40

(R97, H3187)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 29-5-26 SO AS TO PROVIDE A PERSON WHO PROVIDES CERTAIN LANDSCAPE SERVICES MAY HAVE A MECHANICS' LIEN ON THE REAL ESTATE WHERE THE LANDSCAPE SERVICES WERE PROVIDED, AND TO DEFINE LANDSCAPE SERVICES; BY ADDING SECTION 29-5-15 SO AS TO PROVIDE THE MANNER BY WHICH A CONTRACTOR MUST FILE A MECHANICS' LIEN AND A PENALTY FOR FILING A FRIVOLOUS MECHANICS' LIEN; TO AMEND SECTION 29-5-120, RELATING TO THE DISSOLUTION OF LIENS NOT TIMELY BROUGHT, SO AS TO PROVIDE CIRCUMSTANCES IN WHICH A MECHANICS' LIEN MAY BE RELEASED BY A COURT; AND TO AMEND SECTION 40-59-30, AS AMENDED, RELATING TO LICENSE REQUIREMENTS, ENFORCEMENT OF CONTRACTS, AND RESTRAINING ORDERS, SO AS TO PROVIDE A PENALTY FOR FAILING TO REGISTER WITH THE COMMISSION BEFORE ENGAGING OR OFFERING TO ENGAGE IN THE BUSINESS OF RESIDENTIAL BUILDING, AMONG OTHER THINGS.

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

Mechanics' lien for landscape services; landscape services defined

SECTION 1. Chapter 5, Title 29 of the 1976 Code is amended by adding:

"Section 29-5-26. (A) A person who provides a landscape service on a parcel of real estate, which service exceeds five thousand dollars, by virtue of a written agreement with the owner of the real estate and to

whom a debt is due for his performance of the landscaping service has a mechanics' lien on the real estate to secure payment of debt due to him as provided by Section 29-5-10 and Section 29-5-20. The lien attaches to the land and a building, structure, or other improvement on the land.

(B) As used in this chapter, a landscape service includes:

(1) land clearing, grading, filling, plant removal, natural obstruction removal, or other preparation of land;

(2) provision or installation, or both of them, of a landscaping item including plant material, mulch, paving, walkway, swimming pool, fountain, retaining wall, bulkhead, deck, patio, lightscaping system, irrigation system, drainage structure, drainage system, underground utility, or other feature incidental and necessary to a landscape plan or site design; or

(3) both.

(C) A landscaping service does not depend on whether the service is related to the construction, erection, alteration, or repair of a building or other structure."

Mechanics' lien filing requirements; penalty for frivolous lien

SECTION 2. Chapter 5, Title 29 of the 1976 Code is amended by adding:

"Section 29-5-15. (A) To file a mechanics' lien, a contractor must provide the county clerk of court or register of deeds proof that he is licensed or registered if he is required by law to be licensed or registered. As proof of licensure or registration, the contractor must record his contractor license number or registration number on the lien document when the lien document is filed.

(B) A contractor who files a frivolous lien is subject to a fine up to five thousand dollars, the loss of his registration or contractor license, or both."

Release of mechanics' lien under certain conditions

SECTION 3. Section 29-5-120 of the 1976 Code is amended to read:

"Section 29-5-120. (A) Unless a suit for enforcing the lien is commenced and notice of pendency of the action is filed within six months after the person desiring to avail himself of it ceases to labor on

or furnish labor or material for the building or structure, the lien must be dissolved.

(B) A mechanics' lien and associated bonds may be released by a court order, a written affidavit of the bond holder's attorney, or by a written affidavit from the defendant's attorney stating:

(1) six months has passed since the lien was attached and no suit or notice of pendency has been filed; or

(2) the failure of the filing party to take some other timely action required by this chapter. This affidavit must be in the form approved by the appropriate local office where the mechanics' lien was filed and must reference the lien's recording information."

License requirement; enforcement of contracts; restraining orders

SECTION 4. Section 40-59-30 of the 1976 Code is amended to read:

"Section 40-59-30. (A) 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, which has not expired or been revoked, suspended, or restricted or who knowingly presents to, or files with, the commission false information for the purpose of obtaining a license or registering with the commission is guilty of a misdemeanor and, upon conviction, must be fined not less than five hundred dollars or more than ten thousand dollars or imprisoned for not less than thirty days, or both.

(B) Notwithstanding Section 29-5-10, or another provision of law, a person or firm who first has not procured a license or registered with the commission and is required to do so by law may not file a mechanics' lien or bring an action at law or in equity to enforce the provisions of a contract for residential building or residential specialty contracting which the person or firm entered into in violation of this chapter.

(C) Pursuant to Article 5, Chapter 23, Title 1, the commission may petition an administrative law judge to issue a temporary restraining order enjoining a violation of this chapter, pending a full hearing to determine whether the injunction must be made permanent."

Time effective

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

Ratified the 27th day of May, 2009.

Approved the 2nd day of June, 2009.

No. 41

(R99, H3311)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SUBARTICLE 8 TO ARTICLE 1, CHAPTER 9, TITLE 63 SO AS TO ESTABLISH THE RESPONSIBLE FATHER REGISTRY WITHIN THE DEPARTMENT OF SOCIAL SERVICES AND TO PROVIDE THAT AN UNMARRIED BIOLOGICAL FATHER OF A CHILD, OR A MALE CLAIMING TO BE THE UNMARRIED BIOLOGICAL FATHER OF A CHILD, MUST FILE A CLAIM OF PATERNITY WITH THIS REGISTRY IN ORDER TO RECEIVE NOTICE OF A TERMINATION OF PARENTAL RIGHTS ACTION OR AN ADOPTION ACTION PERTAINING TO THIS CHILD; TO PROVIDE THAT FAILURE TO FILE A CLAIM CONSTITUTES AN IMPLIED IRREVOCABLE WAIVER OF THE FATHER'S RIGHT TO NOTICE OF PROCEEDINGS FOR THE TERMINATION OF HIS PARENTAL RIGHTS AND FOR THE CHILD'S ADOPTION; TO PROVIDE THAT CERTAIN CONDUCT BY AN UNMARRIED BIOLOGICAL FATHER IS DEEMED TO BE NOTICE TO THIS FATHER OF THE BIOLOGICAL MOTHER'S PREGNANCY; AND TO FURTHER ESTABLISH FILING PROCEDURES AND PROCEDURES FOR THE OPERATION OF THE REGISTRY; TO AMEND SECTION 63-9-730, RELATING TO PERSONS AND ENTITIES ENTITLED TO NOTICE OF ADOPTION ACTIONS, SO AS TO INCLUDE A PERSON WHO HAS REGISTERED WITH THE RESPONSIBLE FATHER REGISTRY; TO AMEND SECTION 63-7-2530, RELATING TO THE FILING OF A PETITION FOR TERMINATION OF PARENTAL RIGHTS, SO AS TO REQUIRE A TERMINATION OF PARENTAL RIGHTS ACTION TO BE HEARD WITHIN ONE HUNDRED TWENTY DAYS OF THE DATE THE PETITION IS FILED AND TO PROVIDE CONDITIONS UNDER WHICH A CONTINUANCE

MAY BE GRANTED; TO AMEND SECTION 63-7-2550, RELATING TO PERSONS AND ENTITIES ENTITLED TO BE SERVED WITH A PETITION FOR TERMINATION OF PARENTAL RIGHTS, SO AS TO FURTHER SPECIFY THE AGE AS FOURTEEN FOR SERVING A CHILD, TO PROVIDE SERVICE ON THE GUARDIAN AD LITEM OF A CHILD UNDER FOURTEEN YEARS OF AGE, AND TO SPECIFY THE NOTICE PROVISIONS APPLICABLE TO AN UNMARRIED BIOLOGICAL FATHER OF A CHILD WHOSE PARENTAL RIGHTS ARE BEING TERMINATED.

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

Responsible Father Registry established

SECTION 1. Article 1, Chapter 9, Title 63 of the 1976 Code is amended by adding:

"Subarticle 8

Responsible Father Registry

Section 63-9-810. The State has a compelling interest in promptly providing stable and permanent homes for adoptive children and in preventing the disruption of adoptive placements. It is the purpose of the Responsible Father Registry to provide notice to unmarried biological fathers who affirmatively assume responsibility for children they may have fathered by registering with the Responsible Father Registry.

Section 63-9-820. (A) There is established within the Department of Social Services the Responsible Father Registry, which the department shall maintain.

(B) As used in this section:

(1) 'Department' means the Department of Social Services.

(2) 'Registrant' means an unmarried biological father or a male who claims to be the unmarried biological father of a child.

(3) 'Registry' means the Responsible Father Registry as established by this section.

(4) 'Unmarried biological father' means a male who is not married to the biological mother of a child of whom he is or claims to be the natural father.

(C) Except as set forth in Section 63-9-730(B), in order to preserve the right to notice of an adoption proceeding or the right to notice of a petition for termination of parental rights, a registrant must file a claim of paternity with the registry. A claim of paternity filed with the registry must not be deemed to be an acknowledgment of paternity, and a claim of paternity filed with the registry, as well as any other information contained in the registry, is not admissible as evidence in any proceeding.

(D) Except for a person who is required to receive notice pursuant to Section 63-9-730(B), an unmarried biological father's failure to file a claim of paternity with the registry constitutes an implied irrevocable waiver of the father's right to notice of any proceedings pertaining to the termination of his parental rights and to the child's adoption. Such waiver includes a waiver of any right of the parent to be named as a party in or served with a summons or any other document prepared in conjunction with a termination of parental rights proceeding or an adoption proceeding.

(E) A claim of paternity must be signed by the registrant and must include:

(1) the registrant's name, address, and date of birth;

(2) the mother's name and, if known, her address and date of birth;

(3) if known, the child's name, place of birth, and date of birth;

(4) if known, the date, county, and state of conception of the child; and

(5) the date the claim is filed.

(F) The claim of paternity may be filed with the registry before or after the birth of the child; however, a claim of paternity filed with the registry is null and void if it is filed on or after the date a petition for termination of parental rights or a petition for adoption is filed.

(G) Only the registrant may file the claim of paternity. No other person may file the claim of paternity on behalf of the registrant. The registrant must notify the registry of any change of address in the manner prescribed by the department. Failure to notify the registry of a change of address in the manner prescribed by the department is deemed to be a waiver of a right to notice or to any other right to which the registrant may be entitled as a result of filing a claim of paternity pursuant to this section, including, but not limited to, notice by publication.

(H) The department shall issue a certificate to the registrant verifying that the claim of paternity, revocation, or change of address has been filed.

(I) No fee may be charged for filing a claim of paternity, a revocation, or a change of address with the registry. No fee may be charged to the department for its searches of the registry. The department may charge a fee for processing searches of the registry to a child-placing agency or an attorney assisting in the adoption or termination of parental rights of a child in accordance with a fee schedule established in the annual appropriations act.

(J) A registrant may at any time revoke a claim of paternity and shall file the revocation with the department in the manner prescribed by the department. The filing of a revocation of a claim of paternity with the registry in the manner prescribed by the department makes the prior claim of paternity filed by the registrant null and void.

(K) Except as set forth in Section 63-9-730(B), no unmarried biological father who fails to file a claim of paternity with the registry is entitled to notice of any adoption proceeding or of any termination of parental rights proceeding concerning the unmarried biological father's child.

(L) An unmarried biological father's failure to file a claim of paternity with the registry is deemed to be a lack of proper diligence under Section 63-9-770(B). An unmarried biological father's lack of knowledge of the biological mother's pregnancy does not excuse an unmarried biological father's failure to file a claim of paternity pursuant to this chapter. An unmarried biological father's sexual intercourse or his consent to artificial insemination with the biological mother is deemed to be notice to the unmarried biological father of the biological mother's pregnancy.

(M)(1) The registry is not available for public inspection and is not subject to disclosure under the Freedom of Information Act pursuant to Chapter 4, Title 30 except that:

(a) the department may file a written request with the registry regarding a child for whom the department has an open case for child welfare services;

(b) the department shall provide the names and addresses of all registrants who have filed a claim of paternity for the child in question upon written request of a child-placing agency or an attorney assisting in the adoption or termination of parental rights of a child. The written request may be filed with the registry before or after the birth of the child and must include:

(i) the mother's name and, if known, her address and date of birth;

(ii) if known, the child's date of birth and place of birth; and

(iii) if known, the date, county, and state of conception of the child.

(2) If a written request is submitted by or to the department pursuant to item (a) or (b) of subsection (M)(1), and no claim of paternity for the registrant is found, the department shall issue a certificate of diligent search verifying that a search of the registry has been conducted and that no claim of paternity regarding that registrant or child was found.

(N) A registrant who has filed a claim of paternity must be served with notice of any adoption proceeding and any termination of parental rights proceeding involving any child identified in the registrant's filed claim of paternity within ten days of receipt of the registrant's name and address by the attorney or child-placing agency pursuant to item (b) of subsection (M)(1).

(O) Should the department issue a certificate of diligent search, the attorney for the requesting party in an adoption proceeding or in a termination of parental rights proceeding shall file the certificate of diligent search with the court in which the proceeding is pending within ten days of receipt of the certificate.

(P) A registrant's claim of paternity shall remain on the registry until nineteen years after the claim of paternity has been filed with the registry, at which time the information may be purged from the registry. A registrant's claim of paternity shall be purged from the registry if the registrant revokes his claim of paternity pursuant to subsection (J).

(Q) The department may promulgate regulations and forms necessary to implement the provisions of this section. The department shall produce and distribute a pamphlet or publication informing the public of the Responsible Father Registry. The pamphlet or publication shall indicate the procedure for registering and the consequences for failure to register.

(R)(1) Any unauthorized use, or attempted unauthorized use, of the registry is expressly prohibited, and any person or organization seeking, receiving, using, or publishing, or attempting to do so, any information contained in the registry in violation of this section is guilty of a misdemeanor and, upon conviction, must be fined not more than five hundred dollars or imprisoned for not more than thirty days, or both.

(2) A person who knowingly, maliciously, or in bad faith files a false claim of paternity with the registry is guilty of a misdemeanor and, upon conviction, must be fined not more than five hundred dollars or imprisoned for not more than thirty days, or both."

Notice of adoption proceedings

SECTION 2. Section 63-9-730(B) of the 1976 Code, as added by Act 361 of 2008, is amended to read:

"(B) The following persons or agencies are entitled to notice as provided in subsection (A) :

(1) a person adjudicated by a court in this State to be the father of the child;

(2) a person or agency required to give consent or relinquishment pursuant to Section 63-9-310(A) or (B) from whom consent or relinquishment cannot be obtained;

(3) a person who has properly registered with the Responsible Father Registry at the time of the filing of the petition for termination of parental rights or adoption;

(4) a person who is recorded on the child's birth certificate as the child's father. The Department of Health and Environmental Control shall release this information to any attorney representing a party in an adoption or termination of parental rights action pursuant to a subpoena;

(5) a person who is openly living with the child or the child's mother, or both, at the time the proceeding is initiated and who is holding himself out to be the child's father;

(6) a person who has been identified as the child's father by the mother in a sworn, written statement; and

(7) a person from whom consent or relinquishment is not required pursuant to Section 63-9-320(A)(2)."

Filing procedures for termination of parental rights

SECTION 3. Section 63-7-2530 of the 1976 Code, as added by Act 361 of 2008, is amended to read:

"Section 63-7-2530. (A) A petition seeking termination of parental rights may be filed by the Department of Social Services or any interested party.

(B) The department may file an action for termination of parental rights without first seeking the court's approval of a change in the permanency plan pursuant to Section 63-7-1680 and without first seeking an amendment of the placement plan pursuant to Section 63-7-1700.

(C) The hearing on the petition to terminate parental rights must be held within one hundred twenty days of the date the termination of parental rights petition is filed. A party may request a continuance that would result in the hearing being held more than one hundred twenty days after the petition was filed, and the court may grant a continuance in its discretion. If a continuance is granted, the court must issue a written order scheduling the case for trial on a date and time certain."

Service of petition for termination of parental rights

SECTION 4. Section 63-7-2550 of the 1976 Code, as added by Act 361 of 2008, is amended to read:

"Section 63-7-2550.(A) A summons and petition for termination of parental rights must be filed with the court and served on:

(1) the child, if the child is fourteen years of age or older;

(2) the child's guardian ad litem, appointed pursuant to Section 63-7-2560(B), if the child is under fourteen years of age;

(3) the parents of the child; and

(4) an agency with placement or custody of the child.

(B) The right of an unmarried biological father, as defined in Section 63-9-820, to receive notice of a termination of parental rights action must be governed by the notice provisions of Section 63-9-730(B)(1), (3), (4), (5), and (6), and Subarticle 8, Chapter 9."

Severability

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

Time effective

SECTION 6. This act takes effect July 1, 2009, except that those provisions of Section 1 of this act pertaining to the establishment of the Responsible Father Registry and the receipt of claims of paternity by the registry take effect January 1, 2010, and those provisions of Section 1 of this act and Section 63-9-730 of the 1976 Code, as amended by Section 2 of this act, affecting an unmarried biological father's right to receive notice in a termination of parental rights or an adoption action by filing a claim of paternity and Section 63-7-2550(B) of the 1976 Code, as added by Section 4 of this act, apply to termination of parental rights actions and adoption actions filed on or after July 1, 2010.

Ratified the 27th day of May, 2009.

Approved the 2nd day of June, 2009.

No. 42

(R100, H3347)

AN ACT TO AMEND SECTION 56-1-143, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE DEPARTMENT OF MOTOR VEHICLES GIVING APPLICANTS FOR CERTAIN SERVICES THE OPTION TO MAKE A VOLUNTARY CONTRIBUTION TO DONATE LIFE OF SOUTH CAROLINA, SO AS TO INCREASE THE AMOUNT THAT MAY BE DONATED; AND TO AMEND SECTION 56-1-130, AS AMENDED, RELATING TO THE DEPARTMENT OF MOTOR VEHICLES' EXAMINATION TO OBTAIN A DRIVER'S LICENSE, SO AS TO DELETE THE PROVISIONS THAT RELATE TO THE THREE-WHEEL VEHICLE EXAMINATION AND THE NONCOMMERCIAL ENDORSEMENT TO THE MOTORCYCLE CLASSIFICATION, AND TO PROVIDE THAT A BASIC DRIVER'S LICENSE AUTHORIZES THE LICENSEE TO OPERATE CERTAIN MOTORCYCLE THREE-WHEEL VEHICLES.

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

Voluntary contribution

SECTION 1. Section 56-1-143 of the 1976 Code is amended to read:

"Section 56-1-143. An applicant for a new or renewal driver's license, commercial driver's license, motorcycle driver's license, identification card, issuance of a vehicle title or transfer of title, or issuance or renewal of a vehicle license plate must be given an opportunity in writing to make a voluntary contribution of five dollars, more or less, to be credited to Donate Life South Carolina established in Section 44-43-1310. Any voluntary contribution must be added to the driver's license, identification card, title, or license plate fee and must be transferred to the State Treasurer and credited to Donate Life South Carolina as provided for in Section 44-43-1310. The incremental cost of administration of the contribution must be paid by the trust fund from amounts received pursuant to this section before funds are expended by the trust fund."

Driver's license examinations

SECTION 2. Section 56-1-130 of the 1976 Code, as last amended by Act 347 of 2008, is further amended to read:

"Section 56-1-130. (A) The Department of Motor Vehicles shall examine every applicant for a driver's license, except as otherwise provided in this article. The examination shall include a test of the applicant's eyesight, his ability to read and understand highway signs regulating, warning, and directing traffic, and his knowledge of the traffic laws of this State and shall include an actual demonstration of ability to exercise ordinary and reasonable control in the operation of the type motor vehicle, including motorcycles, for which a license is sought. The department may require a further physical and mental examination as it considers necessary to determine the applicant's fitness to operate a motor vehicle upon the highways, the further examination to be at the applicant's expense. The department shall make provisions for giving an examination in the county where the applicant resides. The department shall charge an appropriate fee for each complete examination or reexamination required in this article.

(B) No persons, except those exempted under Section 56-1-30 and Section 56-1-60, or those holding beginner's permits under Section 56-1-50, shall operate any classification of motor vehicle without first

being examined and duly licensed by the driver examiner as a qualified driver of that classification of motor vehicle.

(C) A basic driver's license authorizes the licensee to operate motor vehicles, automotive three-wheel vehicles, motorcycle three-wheel vehicles, excluding a motorcycle with a detachable side car, or combinations of vehicles which do not exceed twenty-six thousand pounds gross vehicle weight rating; provided, that the driver has successfully demonstrated the ability to exercise ordinary and reasonable control in the operation of a motor vehicle in this category. A basic driver's license also authorizes the licensee to operate farm trucks provided for in Sections 56-3-670, 56-3-680, and 56-3-690, which are used exclusively by the owner for agricultural, horticultural, and dairying operations or livestock and poultry raising. Notwithstanding another provision of law, the holder of a conditional license, or special restricted license operating a farm truck for the purposes provided in this subsection, may operate the farm truck without an accompanying adult after six o'clock a.m. and no later than nine o'clock p.m., but may not operate a farm truck on a freeway. A person operating a farm truck while holding a conditional driver's license or a special restricted license may not use the farm truck for ordinary domestic purposes or general transportation.

A classified driver's license shall authorize the licensee to operate a motorcycle, motorcycle three-wheel vehicle, including a motorcycle with a detachable side car, or those vehicles in excess of twenty-six thousand pounds gross vehicle weight rating which are indicated by endorsement on the license. The endorsement may include classifications such as: motorcycle, two-axle truck, three- or more axle truck, combination of vehicles, motor busses, or oversize or overweight vehicles. The department shall determine from the driving demonstration the endorsements to be indicated on the license."

Time effective

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

Ratified the 27th day of May, 2009.

Approved the 2nd day of June, 2009.

No. 43

(R101, H3377)

AN ACT TO AMEND SECTION 23-1-212, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE ENFORCEMENT OF STATE CRIMINAL LAWS BY FEDERAL LAW ENFORCEMENT OFFICERS, SO AS TO PROVIDE THAT NATIONAL PARK SERVICE RANGERS ARE FEDERAL LAW ENFORCEMENT OFFICERS WHO ARE AUTHORIZED TO ENFORCE THE STATE'S CRIMINAL LAWS.

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

Federal law enforcement officer defined

SECTION 1. Section 23-1-212(A) of the 1976 Code is amended to read:

"(A) For purposes of this section, 'federal law enforcement officer' means the following persons who are employed as full-time law enforcement officers by the federal government and who are authorized to carry firearms while performing their duties:

(1) Federal Bureau of Investigation special agents;

(2) Bureau of Alcohol, Tobacco and Firearms special agents;

(3) Drug Enforcement Administration special agents;

(4) United States Secret Service special agents;

(5) United States Customs Service officers;

(6) United States Postal Service inspectors;

(7) Internal Revenue Service special agents;

(8) United States Marshal's Service marshals and deputy marshals;

(9) United States Department of Agriculture Forest Service law enforcement officers and special agents;

(10) United States Department of Interior Fish and Wildlife special agents;

(11) United States National Marine Fisheries special agents;

(12) National Park Service Rangers."

Time effective

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

Ratified the 27th day of May, 2009.

Approved the 2nd day of June, 2009.

No. 44

(R102, H3413)

AN ACT TO AMEND SECTION 61-4-1910, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO DEFINITIONS REGARDING BEER KEG REGISTRATION REQUIREMENTS, SO AS TO REVISE THE DEFINITION OF "KEG".

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

Alcohol and alcoholic beverages, definition of "keg" revised

SECTION 1. Section 61-4-1910(1) of the 1976 Code is amended to read:

"(1) 'Keg' means a metal container of beer with a capacity of 5.16 gallons or more that is designed to dispense beer directly from the container in an off-premises location."

Time effective

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

Ratified the 27th day of May, 2009.

Approved the 2nd day of June, 2009.

No. 45

(R103, H3482)

AN ACT TO AMEND SECTION 12-37-220, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO PROPERTY TAX EXEMPTIONS, SO AS TO EXEMPT FROM PROPERTY TAX ALL PERSONAL PROPERTY, INCLUDING AIRCRAFT, OF A COMPANY ENGAGED IN AIR TRANSPORT OF SPECIALIZED CARGO.

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

Property tax exemption for specialized air cargo company

SECTION 1. Section 12-37-220(B)(33) of the 1976 Code is amended to read:

"(33)(a) All personal property including aircraft of an air carrier which operates an air carrier hub terminal facility in this State for a period of ten consecutive years from the date of qualification, if its qualifications are maintained. An air carrier hub terminal facility is defined in Section 55-11-500.

(b) All aircraft, including associated personal property, owned by a company owning aircraft meeting the requirements of Section 55-11-500(a)(3)(i) without regard to the other requirements of Section 55-11-500. An aircraft qualifying for the exemption allowed by this subitem may not be used by the operator of the aircraft as the basis for an exemption pursuant to subitem (a) of this item."

Severability clause

SECTION 2. If any section, subsection, part, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this severability, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

Time effective

SECTION 3. This act takes effect upon approval by the Governor and applies for property tax years beginning after 2006.

Ratified the 27th day of May, 2009.

Approved the 2nd day of June, 2009.

No. 46

(R105, H3550)

AN ACT TO AMEND CHAPTER 10, TITLE 6, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE BUILDING ENERGY EFFICIENCY STANDARD ACT, SO AS TO REVISE THE TITLE OF THE ACT TO THE "ENERGY STANDARD ACT"; TO REVISE DEFINITIONS; TO ADOPT THE 2006 EDITION INTERNATIONAL ENERGY CONSERVATION CODE AS THE ENERGY STANDARD AND TO PROVIDE THAT ALL NEW AND RENOVATED BUILDINGS AND ADDITIONS MUST COMPLY WITH THIS STANDARD, TO PROVIDE THAT LOCAL BUILDING OFFICIALS SHALL ENFORCE THE ENERGY STANDARD AND TO PROVIDE ALTERNATIVE ENFORCERS IN AREAS WITHOUT A BUILDING OFFICIAL; TO PROVIDE THAT BUILDING OFFICIALS SHALL ISSUE AND REVOKE BUILDING PERMITS AND INSPECT CONSTRUCTION OF BUILDINGS PURSUANT TO THE PERMITS ISSUED, TO REQUIRE LOCAL JURISDICTIONS TO PROVIDE AN APPEALS BOARD AND PROCESS FOR GRANTING OF CERTAIN VARIANCES, TO PROVIDE AN EXCEPTION, AND TO ALLOW CERTAIN APPEALS TO BE HEARD BY THE SOUTH CAROLINA BUILDING CODES COUNCIL; AND TO PROVIDE THAT THE BUILDING OFFICIAL MAY OBTAIN INJUNCTIVE RELIEF; AND TO AMEND SECTION 6-9-50, AS AMENDED, RELATING TO THE MANDATORY ADOPTION OF CERTAIN NATIONAL BUILDING CODES, BUILDING ENVELOPE REQUIREMENTS OF THE ENERGY CODE, FREE ACCESS TO CODE

DOCUMENTS, AND THREE STORY HOMES, SO AS TO DELETE PROVISIONS RELATING TO WHAT CONSTITUTES COMPLIANCE WITH THE BUILDING ENVELOPE REQUIREMENTS OF THE ENERGY CODE, FREE ACCESS TO DOCUMENTS CONTAINING CODES ADOPTED BY THE BUILDING CODES COUNCIL, AND BUILDING PERMITS FOR THREE STORY HOMES.

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

Energy Standard Act

SECTION 1. Chapter 10, Title 6 of the 1976 Code is amended to read:

"CHAPTER 10

Energy Standard Act

Section 6-10-10. This chapter may be cited as the Energy Standard Act.

Section 6-10-20. As used in this chapter, unless a different meaning is clearly indicated by the context:

(1) 'Addition' means the extension or increase in floor area or height of a building.

(2) 'Building' means any combination of materials, which comprises a structure affording facilities or shelter for any occupancy. The word 'building' must be construed wherever used in this chapter as if followed by the words 'or part or parts of the building and all equipment in the building' unless the context clearly requires a different meaning. The term 'building' includes manufactured buildings but not manufactured housing or buildings heated to less than fifty degrees Fahrenheit.

(3) 'Building inspection department' means the agency of a local jurisdiction with authority to make energy related building inspections and to enforce state and local laws, ordinances, and regulations applicable to the construction of buildings.

(4) 'Construction' means the erection, fabrication, reconstruction, alteration, conversion, or repair of a building, or the installation of equipment in a building.

(5) 'Equipment' means components associated with plumbing, heating, electrical, ventilating, air conditioning, lighting and

refrigerating systems, and elevators, dumbwaiters, escalators, boilers, and pressure vessels.

(6) 'Local jurisdiction' means a county, city, municipality, or other political subdivision of this State.

(7) 'One- or two-family dwelling' means a building which contains one or two units, each providing complete, independent living facilities for one or more persons, including permanent provisions for sleeping, cooking, and sanitation.

(8) 'Renovations' means the condition where within any twelve-month period, alterations or repairs costing in excess of fifty percent of the then physical value of the building are made to an existing building.

Section 6-10-30. The 2006 edition of the International Energy Conservation Code is adopted as the Energy Standard. All new and renovated buildings and additions constructed within the State must comply with this standard.

Section 6-10-40. A local jurisdiction may appeal to the South Carolina Building Codes Council for a variance from the Energy Standard for application within its jurisdiction based on special local conditions. The council may approve variations if it is established to the council's satisfaction that the proposed variance:

(1) is consistent with this chapter, so that its application will not reduce statewide uniformity of effective energy conservation;

(2) does not discriminate against particular technologies, techniques, or materials;

(3) does not unnecessarily increase the cost of construction and operation of the building in the jurisdiction; or

(4) is necessary to protect the public health, safety, and welfare within the jurisdiction.

Copies of an approved variance must be provided upon the request by the State Energy Office.

Section 6-10-50. (A) Local building officials shall enforce the provisions of the Energy Standard.

(B) In areas of the State without a building official, the local jurisdiction may designate its engineer, director of public works, or chief fire inspector to enforce the provisions of the Energy Standard.

Upon request, the State Energy Office shall provide local jurisdictions a brief synopsis of the Energy Standard, the Residential

Energy Efficiency Requirements that apply to South Carolina, and penalties.

(C) The building officials are responsible for examination and approval or disapproval of plans and specifications, the issuance and revocation of building permits, licenses, certificates, and similar documents, and the inspection of buildings pursuant to the provisions of the Energy Standard.

(D) Except as otherwise provided in the Energy Standard, the construction of a building must not begin until a building permit is issued. Upon submission of an application to the building official, if the building proposed to be erected will comply with this chapter, a permit must be issued. The building official may suspend or revoke a building permit if the building under construction pursuant to that building permit does not comply with this chapter.

(E) The building official periodically shall inspect, or cause to be inspected, all construction undertaken pursuant to permits issued by the building official to assure compliance with this chapter. If a building is found not to comply with the Energy Standard, the building official shall notify the permit holder in writing to bring the building into compliance with the standard or to secure it from entry or both; if the permit holder fails to comply with the notification, the building official shall revoke the permit.

(F) A building constructed after the effective date of the Energy Standard must not be used or occupied until a certificate of occupancy has been issued.

Section 6-10-60. Each local jurisdiction may establish a schedule of fees for the functions performed by the building inspection department in connection with the enforcement of this chapter.

Section 6-10-70. (A) Local jurisdictions must provide an appeals board and process for the routine granting of variations for residential recreational dwellings not intended for use as permanent residences and for buildings such as log buildings which, if insulation were required on the walls, would change the character of these buildings. Until the boards are established, appeals must be heard by the South Carolina Building Codes Council. A local jurisdiction must be relieved of the duty to appoint local appeals boards if it is established to the satisfaction of the council that qualified people cannot be found in the jurisdiction or through cooperation with neighboring jurisdictions. Two or more local jurisdictions may establish a building board of appeals to serve their jurisdictions.

(B) Where local jurisdictions have been relieved of the duty to appoint an appeals board because qualified people cannot be found in the jurisdiction, appeals may be made to the South Carolina Building Codes Council.

(C) The council promptly shall hear and decide appeals brought by a person or party in an individual capacity, or on behalf of a call of persons or parties, affected by a regulation or decision pursuant to this chapter. Final decisions by the council are reviewable on appeal, or on successive appeals, in the courts of competent jurisdiction.

Section 6-10-80. The building official may obtain injunctive relief from a court of competent jurisdiction to enjoin the offering for sale, delivery, use, occupancy, erection, alteration, or installation of a building covered by this chapter, upon an affidavit from the building official specifying the manner in which the building does not conform to the requirements of this chapter.

Section 6-10-90. (A) When a violation of the provisions of this chapter is discovered, the person in violation must be granted thirty days to correct the violation. A person who fails to correct a violation 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 for each offense.

(B) A separate violation is deemed to have occurred with respect to each building not in compliance with this chapter. Each day the violation continues constitutes a separate violation."

Adoption and enforcement of nationally recognized codes and standards

SECTION 2. Section 6-9-50 of the 1976 Code, as last amended by Act 83 of 2003, is further amended to read:

"Section 6-9-50. (A) The council shall adopt by reference and amend only the latest editions of the following nationally recognized codes and the standards referenced in those codes for regulation of construction within this State: building, residential, gas, plumbing, mechanical, fire, and energy codes as promulgated, published, or made available by the International Code Council, Inc. and the National Electrical Code as published by the National Fire Protection Association. The appendices of the codes provided in this section may be adopted as needed, but the specific appendix or appendices must be

referenced by name or letter designation at the time of adoption. However, the provisions of the codes referenced in this section which concern the qualification, removal, dismissal, duties, responsibilities of, and administrative procedures for all building officials, deputy building officials, chief inspectors, other inspectors, and assistants do not apply unless they have been adopted by the municipal or county governing body.

(B) The governing body of a county may not enforce that portion of a nationally recognized fire prevention code it has adopted which may regulate outdoor burning for forestry, wildlife, and agricultural purposes as regulated by the South Carolina Forestry Commission."

Permits not subject to new requirements

SECTION 3. The provisions of this act do not apply to projects which have received the proper permits as required by law before the effective date of this act.

Time effective

SECTION 4. This act takes effect July 1, 2009.

Ratified the 27th day of May, 2009.

Approved the 2nd day of June, 2009.

No. 47

(R107, H3572)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY REPEALING SECTION 50-5-1707 RELATING TO SHARK CATCH LIMITS; BY ADDING SECTION 50-13-400 SO AS TO ESTABLISH CREEL AND SIZE LIMITS FOR CRAPPIE TAKEN IN LAKE MURRAY; AND BY ADDING SECTION 50-5-2017 SO AS TO ESTABLISH THE FLOUNDER POPULATION STUDY PROGRAM TO BE ADMINISTERED BY THE DEPARTMENT OF NATURAL RESOURCES, TO SET FLOUNDER CATCH LIMITS AND PROHIBIT THE USE OF ARTIFICIAL ILLUMINATION

POWERED BY GENERATORS, AND TO ESTABLISH THE DURATION OF THE PROGRAM.

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

Repeal

SECTION 1. Section 50-5-1707 of the 1976 Code is repealed.

Lake Murray crappie creel and size limits

SECTION 2. Article 1, Chapter 13, Title 50 of the 1976 Code is amended by adding:

"Section 50-13-400. (A) In Lake Murray it is unlawful to take or possess more than twenty crappie (Pomoxis spp.) per day.

(B) In Lake Murray it is unlawful to take or possess crappie (Pomoxis spp.) less than eight inches in total length."

Flounder Population Study Program and catch limits

SECTION 3. Chapter 5, Title 50 of the 1976 Code is amended by adding:

"Section 50-5-2017. (A) There is established the Flounder Population Study Program to be administered by the Department of Natural Resources. The program shall study the effects of flounder catch limits and the prohibition of artificial illumination powered by generators on flounder of the species Paralichthys dentatus, commonly known as the summer flounder, located in the waters of Murrells Inlet Estuary, Pawleys Island Estuary, and the creeks of Litchfield flowing into Pawleys Island Estuary. For purposes of this section, 'gigging' means using a rod with one or multiple prongs to spear a fish.

(B) During the term of the program in the area defined in subsection (A):

(1) the lawful flounder gigging and fishing catch limit is ten per day for any individual, not to exceed twenty flounder in any one day on any boat;

(2) it is unlawful to use any type of artificial illumination powered by generator while gigging or fishing for flounder from a boat or while wading in the water.

(C) The program shall run for five years, beginning January 1, 2010, and ending December 31, 2015.

(D) The Department of Natural Resources must compile its findings and submit the report to the General Assembly by March 16, 2016."

Time effective

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

Ratified the 27th day of May, 2009.

Approved the 2nd day of June, 2009.

No. 48

(R109, H3651)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 48-23-205 SO AS TO PROVIDE CERTAIN DEFINITIONS, TO LIMIT THE AUTHORITY OF COUNTIES AND MUNICIPALITIES TO RESTRICT OR REGULATE CERTAIN FORESTRY ACTIVITIES, TO PROVIDE THE TERMS AND CONDITIONS OF CERTAIN PERMITTED REGULATIONS, AND TO PROVIDE EXEMPTIONS.

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

Forestry regulations, definitions, prohibitions on enforcement of certain laws, exemptions

SECTION 1. Chapter 23, Title 48 of the 1976 Code is amended by adding:

"Section 48-23-205. (A) For purposes of this section:

(1) 'Development' means any activity, including timber harvesting, that is associated with the conversion of forestland to nonforest or nonagricultural use.

(2) 'Forestland' means land supporting a stand or potential stand of trees valuable for timber products, watershed or wildlife protection, recreational uses, or for other purposes.

(3) 'Forest management plan' means a document or documents prepared or approved by a forester registered in this State that defines a landowner's forest management objectives and describes specific measures to be taken to achieve those objectives. A management plan shall include silvicultural practices, objectives, and measures to achieve them, that relate to a stand or potential stand of trees that may be utilized for timber products, watershed or wildlife protection, recreational uses, or for other purposes.

(4) 'Forestry activity' includes, but is not limited to, timber harvest, site preparation, controlled burning, tree planting, applications of fertilizers, herbicides, pesticides, weed control, animal damage control, fire control, insect and disease control, forest road construction, and any other generally accepted forestry practices.

(B) A county or municipality must not adopt or enforce any ordinance, rule, regulation, resolution, or permit related to forestry activities on forestland that is:

(1) taxed on the basis of its present use value as forestland under Section 12-43-220(d);

(2) managed in accordance with a forest management plan;

(3) certified under the Sustainable Forestry Initiative, the Forest Stewardship Council, the American Forest Foundations Tree Farm System, or any other nationally recognized forest certification system;

(4) subject to a legally binding conservation easement under which the owner limits the right to develop or subdivide the land; or

(5) managed and harvested in accordance with the best management practices established by the State Commission of Forestry pursuant to Section 48-36-30.

(C) This section does not limit, expand, or otherwise alter the authority of a county or municipality to:

(1) regulate activities associated with development, provided that a county or municipality requires a deferral of consideration of an application for a building permit, a site disturbance or subdivision plan, or any other approval for development that if implemented would result in a change from forest land to nonforest or nonagricultural use, the deferral may not exceed a period of up to:

(a) one year after the completion of a timber harvest if the harvest results in the removal of all or substantially all of the trees from the specific area included in a building permit, site disturbance or

subdivision plan in item (1), and the removal qualified for an exemption contained in subsection (B); or

(b) five years after the completion of a timber harvest if the harvest results in the removal of all or substantially all of the trees from the specific area included in a building permit, site disturbance or subdivision plan in item (1), and the removal qualified for an exemption contained in subsection (B) for which the permit or approval is sought and the harvest was a wilful violation of the county regulations;

(2) regulate trees pursuant to any act of the General Assembly;

(3) adopt ordinances that are necessary to comply with any federal or state law, regulation, or rule; or

(4) exercise its development permitting, planning, or zoning authority as provided by law.

(D) A person whose application for a building permit, a site disturbance or subdivision plan, or any other approval for development is deferred pursuant to the provisions contained in this section may appeal the decision to the appropriate governmental authority."

Time effective

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

Ratified the 27th day of May, 2009.

Approved the 2nd day of June, 2009.

No. 49

(R65, S360)

AN ACT TO AMEND SECTION 4-10-310, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE IMPOSITION OF A ONE PERCENT CAPITAL PROJECT SALES AND USE TAX BY A COUNTY GOVERNING BODY, SO AS TO DELETE A REQUIREMENT THAT THE TAX IS TO COLLECT A LIMITED AMOUNT OF MONEY; TO AMEND SECTION 4-10-330, AS AMENDED, RELATING TO THE COUNTY ORDINANCE AND BALLOT QUESTION FOR THE REFERENDUM REQUIRED, SO AS TO FURTHER PROVIDE

FOR THE CONTENTS OF THE ORDINANCE AND THE DATES AND PURPOSES OF THE REFERENDUM; TO AMEND SECTION 4-10-340, AS AMENDED, RELATING TO THE IMPOSITION AND TERMINATION OF THE TAX, SO AS TO FURTHER PROVIDE FOR THE TERMINATION OF A NEWLY IMPOSED AND A REIMPOSED TAX, AND TO PROVIDE FOR THE USE OF THE FUNDS REMAINING AFTER THE PROJECT IS COMPLETED IF THE TAX IS REIMPOSED AND IF THE TAX IS NOT REIMPOSED; TO AMEND SECTION 4-10-350, RELATING TO THE ADMINISTRATION AND COLLECTION OF THE TAX BY THE DEPARTMENT OF REVENUE, SO AS TO PROVIDE THAT UNPREPARED FOOD ELIGIBLE FOR PURCHASE WITH USDA FOOD COUPONS IS EXEMPT FROM THE TAX, AND TO PROVIDE FOR WHEN THESE PROVISIONS TAKE EFFECT.

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

Purpose revised

SECTION 1. Section 4-10-310 of the 1976 Code, as added by Act 138 of 1997, is amended to read:

"Section 4-10-310. Subject to the requirements of this article, the county governing body may impose a one percent sales and use tax by ordinance, subject to a referendum, within the county area for a specific purpose or purposes and for a limited amount of time. The revenues collected pursuant to this article may be used to defray debt service on bonds issued to pay for projects authorized in this article. However, at no time may any portion of the county area be subject to more than one percent sales tax levied pursuant to this article, pursuant to Chapter 37, Title 4, or pursuant to any local law enacted by the General Assembly."

Ordinance and referendum requirements revised

SECTION 2. Section 4-10-330(A) and (C) of the 1976 Code, as last amended by Act 292 of 2004, is further amended to read:

"(A) The sales and use tax authorized by this article is imposed by an enacting ordinance of the county governing body containing the

ballot question formulated by the commission pursuant to Section 4-10-320(C), subject to referendum approval in the county. The ordinance must specify:

(1) the purpose for which the proceeds of the tax are to be used, which may include projects located within or without, or both within and without, the boundaries of the local governmental entities, including the county, municipalities, and special purpose districts located in the county area, and may include the following types of projects:

(a) highways, roads, streets, bridges, and public parking garages and related facilities;

(b) courthouses, administration buildings, civic centers, hospitals, emergency medical facilities, police stations, fire stations, jails, correctional facilities, detention facilities, libraries, coliseums, educational facilities under the direction of an area commission for technical education, or any combination of these projects;

(c) cultural, recreational, or historic facilities, or any combination of these facilities;

(d) water, sewer, or water and sewer projects;

(e) flood control projects and storm water management facilities;

(f) beach access and beach renourishment;

(g) jointly operated projects of the county, a municipality, special purpose district, and school district, or any combination of those entities, for the projects delineated in subitems (a) through (f) of this item;

(h) any combination of the projects described in subitems (a) through (g) of this item;

(2) the maximum time, in two-year increments not to exceed eight years from the date of imposition, or in the case of a reimposed tax, a period ending on April thirtieth of an odd-numbered year, not to exceed seven years, for which the tax may be imposed;

(3)(a) if the county proposes to issue bonds to provide for the payment of any costs of the projects, the maximum amount of bonds to be issued, whether the sales tax proceeds are to be pledged to the payment of the bonds and, if other sources of funds are to be used for the projects, specifying the other sources;

(b) the maximum cost of the project or facilities or portion of the project or portion of the facilities, to be funded from proceeds of the tax or bonds issued as provided in this article and the maximum amount of net proceeds expected to be used to pay the cost or debt service on the bonds, as the case may be; and

(4) any other condition precedent, as determined by the commission, to the imposition of the sales and use tax authorized by this article or condition or restriction on the use of sales and use tax revenue collected pursuant to this article.

(C) Upon receipt of the ordinance, the county election commission must conduct a referendum on the question of imposing the sales and use tax in the area of the county that is to be subject to the tax. The referendum for imposition or reimposition of the tax must be held at the time of the general election unless the vote is to reimpose a tax in effect on or before June 1, 2009, and in existence at the time of such vote, in which case the referendum may be held on a general election day or at a time the governing body of the county and the Department of Revenue determine necessary to permit the tax to be reinstated and continue without interruption. The choice of election times rests with the governing body of the county. However, a referendum to reimpose an existing tax as permitted above only may be held once whether or not the referendum is held on a general election day or at another time. Two weeks before the referendum the election commission must publish in a newspaper of general circulation the question that is to appear on the ballot, with the list of projects and the cost of the projects. If the proposed question includes the use of sales taxes to defray debt service on bonds issued to pay the costs of any project, the notice must include a statement indicating that principal amount of the bonds proposed to be issued for the purpose and, if the issuance of the bonds is to be approved as part of the referendum, stating that the referendum includes the authorization of the issuance of bonds in that amount. This notice is in lieu of any other notice otherwise required by law."

Termination of tax; use of remaining funds

SECTION 3. Section 4-10-340 of the 1976 Code, as last amended by Act 334 of 2002, is further amended to read:

"Section 4-10-340. (A) If the sales and use tax is approved in the referendum, the tax is imposed on the first of May following the date of the referendum. If the reimposition of an existing sales and use tax imposed pursuant to this article is approved in the referendum, the new tax is imposed immediately following the termination of the earlier imposed tax and the reimposed tax terminates on the thirtieth of April in an odd-numbered year, not to exceed seven years from the date of

reimposition. If the certification is not timely made to the Department of Revenue, the imposition is postponed for twelve months.

(B) The tax terminates the final day of the maximum time period specified for the imposition.

(C)(1) Amounts collected in excess of the required net proceeds must first be applied, if necessary, to complete a project for which the tax was imposed.

(2) If funds still remain after first using the funds as described in item (1) and the tax is reimposed, the remaining funds must be used to fund the projects approved by the voters in the referendum to reimpose the tax, in priority order as the projects appeared on the enacting ordinance.

(3) If funds still remain after first using the funds as described in item (1) and the tax is not reimposed, the remaining funds must be used for the purposes set forth in Section 4-10-330(A)(1). These remaining funds only may be expended for the purposes set forth in Section 4-10-330(A)(1) following an ordinance specifying the authorized purpose or purposes for which the funds will be used."

Unprepared food exempt

SECTION 4. A. Section 4-10-350(B) of the 1976 Code, as added by Act 138 of 1997, is amended to read:

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

B. Notwithstanding the general effective date of this act, this section takes effect on the approval of this act by the Governor and applies with respect to Capital Project Sales Tax Act taxes imposed or reimposed pursuant to a referendum held after that date.

Time effective

SECTION 5. This act takes effect upon approval by the Governor; provided, that the amendments to Section 4-10-330(A)(1)(b) of the 1976 Code, as contained in Section 2, apply with respect to Capital Project Sales and Use Tax Act taxes imposed or reimposed pursuant to a referendum held after the effective date of this act.

Ratified the 27th day of May, 2009.

Became law without the signature of the Governor -- 6/3/09.

No. 50

(R69, S390)

AN ACT TO ENACT THE "MENTAL HEALTH PARITY AND ADDICTION EQUITY ACT OF 2009"; TO AMEND SECTION 38-71-880, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO MEDICAL AND SURGICAL BENEFITS AND MENTAL BENEFITS COVERAGE, SO AS TO ADD PROVISIONS RELATING TO SUBSTANCE USE DISORDER COVERAGE, FINANCIAL REQUIREMENTS, AND TREATMENT LIMITATIONS AND TO PROVIDE FOR DEFINITIONS; AND TO AMEND SECTION 38-71-290, RELATING TO COVERAGE FOR A MENTAL HEALTH INSURANCE PLAN, SO AS TO CHANGE THE DEFINITION OF "HEALTH INSURANCE PLAN", TO PROVIDE FOR THE EXCLUSION OF A HEALTH INSURANCE PLAN THAT IS INDIVIDUALLY UNDERWRITTEN OR A PLAN PROVIDED TO A SMALL EMPLOYER FROM THE PROVISIONS OF THIS SECTION, AND TO PROVIDE HOW THIS SECTION APPLIES TO THE PROVISIONS OF SECTION 38-71-880.

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

Act may be cited

SECTION 1. This act may be cited as the "Mental Health Parity and Addiction Equity Act of 2009".

Medical and surgical benefits

SECTION 2. Section 38-71-880 of the 1976 Code, as last amended by Act 332 of 2006, is further amended to read:

"Section 38-71-880. (A)(1) In the case of health insurance coverage offered in connection with a group health plan that provides both medical and surgical benefits and mental health or substance use disorder benefits:

(a) if the coverage does not include an aggregate lifetime limit on substantially all medical and surgical benefits, the coverage may not impose any aggregate lifetime limit on mental health or substance use disorder benefits;

(b) if the coverage includes an aggregate lifetime limit, also referred to in this item as the 'applicable lifetime limit', on substantially all medical and surgical benefits, the coverage must either:

(i) apply the applicable lifetime limit both to the medical and surgical benefits to which it otherwise would apply and to mental health and substance use disorder benefits and not distinguish in the application of the limit between the medical and surgical benefits and mental health and substance use disorder benefits; or

(ii) not include any aggregate lifetime limit on mental health or substance use disorder benefits that is less than the applicable lifetime limit;

(c) in the case of coverage that is not described in subitem (a) or (b) and that includes no or different aggregate lifetime limits on different categories of medical and surgical benefits, the director or his designee may promulgate regulations under which subitem (b) is applied to the coverage with respect to mental health and substance use disorder benefits by substituting for the applicable lifetime limit an average aggregate limit that is computed taking into account the weighted average of the aggregate lifetime limits applicable to the categories.

(2) In the case of health insurance coverage offered in connection with a group health plan that provides both medical and surgical benefits and mental health or substance use disorder benefits:

(a) if the coverage does not include an annual limit on substantially all medical and surgical benefits, the coverage may not impose any annual limit on mental health or substance use disorder benefits;

(b) if the coverage includes an annual limit on substantially all medical and surgical benefits, referred to as the 'applicable annual limit', the coverage must either:

(i) apply the applicable annual limit both to medical and surgical benefits to which it otherwise would apply and to mental health and substance use disorder benefits and not distinguish in the application of such limit between such medical and surgical benefits and mental health and substance use disorder benefits; or

(ii) not include any annual limit on mental health or substance use disorder benefits that is less than the applicable annual limit;

(c) in the case of coverage that is not described in subitem (a) or (b) and that includes no or different annual limits on different categories of medical and surgical benefits, the director or his designee may promulgate regulations under which subitem (b) is applied to the coverage with respect to mental health and substance use disorder benefits by substituting for the applicable annual limit an average annual limit that is computed taking into account the weighted average of the annual limits applicable to the categories.

(3) In the case of a group health plan, or health insurance coverage offered in connection with a plan, that provides both medical and surgical benefits and mental health or substance use disorder benefits, the plan or coverage must ensure that:

(a) the financial requirements applicable to the mental health or substance use disorder benefits are no more restrictive than the predominant financial requirements applied to substantially all medical and surgical benefits covered by the plan or coverage and there are no separate cost sharing requirements that are applicable only with respect to mental health or substance use disorder benefits; and

(b) the treatment of limitations applicable to the mental health or substance use disorder benefits are no more restrictive than the predominant treatment limitations applied to substantially all medical and surgical benefits covered by the plan or coverage and there are no separate treatment limitations that are applicable only with respect to mental health or substance use disorder benefits.

(4) In the case of a plan or coverage that provides both medical and surgical benefits and mental health or substance use disorder benefits, if the plan or coverage provides coverage for medical or surgical benefits provided by out-of-network providers, the plan or coverage must provide coverage for mental health or substance use disorder benefits provided by out-of-network providers in a manner that is consistent with the requirements of this section.

(B) To the extent consistent with Section 38-71-737 and another applicable state law, nothing in this section may be construed:

(1) as requiring health insurance coverage offered in connection with a group health plan to provide any mental health or substance use disorder benefits; or

(2) in the case of a group health plan or health insurance coverage offered in connection with a plan that provides mental health or substance use disorder benefits, as affecting the terms and conditions of the plan or coverage relating to benefits under the plan or coverage, except as provided in subsection (A).

(C)(1) This section does not apply to a group health insurance coverage offered in connection with a group health plan for any plan year of a small employer.

(2) For purposes of this subsection, 'small employer' means, in connection with a group health plan with respect to a calendar year and a plan year, an employer who employed an average of at least two but not more than fifty employees on business days during the preceding calendar year and who employs at least two employees on the first day of the plan year.

(3) For purposes of this subsection:

(a) All persons treated as a single employer under subsection (b), (c), (m), or (o) of Section 414 of the Internal Revenue Code of 1986 are treated as one employer.

(b) In the case of an employer which was not in existence throughout the preceding calendar year, the determination of whether the employer is a small employer is based on the average number of employees that it is reasonably expected the employer will employ on business days in the current calendar year.

(c) A reference in this subsection to an employer includes a reference to any predecessor of the employer.

(4) This section does not apply with respect to health insurance coverage offered in connection with a group health plan if the application of this section to this coverage results in an increase in the actual total cost for the coverage of at least two percent in the case of the first plan year or at least one percent in the case of a subsequent plan year. Determinations as to increases in actual total costs under a plan or coverage for purposes of this subsection must be made and certified by a qualified and licensed actuary who is a member in good standing of the American Academy of Actuaries. Determinations must be in a written report prepared by the actuary. The report, and all underlying documentation relied upon by the actuary, must be

maintained by the group health plan and the health insurance issuer for a period of six years.

(5) When a group health insurance coverage offered in connection with a group health plan that qualifies for exemption pursuant to the provisions of item (2), the plan or coverage must continue to apply the requirements of applicable state law, including Sections 38-71-290 and 38-71-737, where required.

(D) In the case of health insurance coverage offered in connection with a group health plan that offers a participant or beneficiary two or more benefit package options under the plan, the requirements of this section are applied separately with respect to each option.

(E) For purposes of this section:

(1) 'Aggregate lifetime limit' means, with respect to benefits under health insurance coverage, a dollar limitation on the total amount that may be paid with respect to the benefits under the health insurance coverage with respect to an individual or other coverage unit.

(2) 'Annual limit' means, with respect to benefits under health insurance coverage, a dollar limitation on the total amount of benefits that may be paid with respect to the benefits in a twelve-month period under the health insurance coverage with respect to an individual or other coverage unit.

(3) 'Financial requirement' includes deductibles, copayments, coinsurance, and out-of-pocket expenses, but excludes an aggregate lifetime limit and annual limit subject to subsections (A)(3)(a) and (A)(3)(b).

(4) 'Medical or surgical benefits' means benefits with respect to medical or surgical services, as defined under the terms of the plan, but does not include mental health benefits.

(5) 'Mental health benefits' means benefits with respect to services for mental health conditions, as defined under the terms of the plan and in accordance with applicable federal and state law.

(6) 'Predominant' means a financial requirement or treatment limit that is the most common or frequent of the type of requirement or limit.

(7) 'Substance use disorder benefits' means benefits with respect to services for substance use disorders, as defined under the terms of the plan and in accordance with applicable federal and state law.

(8) 'Treatment limitation' includes limits on the frequency of treatment, number of visits, days of coverage, or other similar limits on the scope or duration of treatment."

Definition "health insurance plan"

SECTION 3. Section 38-71-290(A)(1) of the 1976 Code, as added by Act 76 of 2005, is amended to read:

"(1) 'Health insurance plan' means a health insurance policy or health benefit plan offered by an insurance issuer, including a qualified health benefit plan offered or administered by the State, or a subdivision or instrumentality of the State, that provides group health insurance coverage as defined by Section 38-71-840(12)."

Provisions not to apply

SECTION 4. Section 38-71-290(F) of the 1976 Code, as added by Act 76 of 2005, is amended to read:

"(F) The provisions of this section do not:

(1) limit the provision of specialized medical services for individuals with mental health disorders;

(2) supersede the provisions of federal law, federal or state Medicaid policy, or the terms and conditions imposed on a Medicaid waiver granted to the State for the provision of services to individuals with mental health disorders;

(3) require a health insurance plan to provide rates, terms, or conditions for access to treatment for mental illness that are identical to rates, terms, or conditions for access to treatment for a physical condition;

(4) apply to a health insurance plan that is individually underwritten; or

(5) apply to a health insurance plan provided to a small employer, as defined in Section 38-71-1330(18)."

Applicability of provisions

SECTION 5. Section 38-71-290 of the 1976 Code, as added by Act 76 of 2005, is amended by adding an appropriately lettered subsection to read:

"(G) The provisions of this section apply where required regardless of the applicability of Section 38-71-880 regarding parity in the application of certain limits to mental health and substance use disorder benefits."

Time effective

SECTION 6. This act takes effect upon approval by the Governor and applies to group health plans for plan years beginning after October 2, 2009.

Ratified the 27th day of May, 2009.

Became law without the signature of the Governor -- 6/3/09.

No. 51

(R72, S491)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING ARTICLE 18 TO CHAPTER 23, TITLE 57 SO AS TO DESIGNATE CERTAIN HIGHWAYS IN WESTERN YORK COUNTY AS THE WESTERN YORK COUNTY SCENIC BYWAY, AND TO MAKE IT SUBJECT TO THE REGULATIONS OF THE SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION AND THE SOUTH CAROLINA SCENIC HIGHWAYS COMMITTEE.

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

Western York County Scenic Byway

SECTION 1. Chapter 23, Title 57 of the 1976 Code is amended by adding:

"Article 18

Western York County Scenic Byway

Section 57-23-900. (A) That portion of South Carolina Highway 161 from Kings Mountain National Military Park near the Bethany community to South Carolina Highway 49 in the City of York, that portion of South Carolina Highway 49 between Kings Mountain Street and Liberty Street in the City of York, that portion of South Carolina

Highway 5 from Congress Street to South Carolina Highway 324 in the City of York, that portion of South Carolina Highway 324 from South Carolina Highway 5 to S-46-347, that portion of S-46-347 from South Carolina Highway 324 to South Carolina Highway 322, that portion of South Carolina Highway 322 from South Carolina Highway 347 through the Town of McConnells to South Carolina Highway 49 in the Bullock Creek community, including approximately one and eight-tenths mile of a side road known as Brattonsville Road, that portion of South Carolina Highway 49 from South Carolina Highway 322 in the Bullock Creek community to South Carolina Highway 211 in the Town of Sharon, including approximately one-fourth mile of a side road known as York Street, that portion of South Carolina Highway 211 from South Carolina Highway 49 to South Carolina Highway 97 in the Town of Hickory Grove, and that portion of South Carolina Highway 97 from South Carolina Highway 211 to North Main Street in the Town of Smyrna, all being one contiguous route of approximately fifty-seven miles, is designated as the Western York County Scenic Byway. It is subject to the regulations promulgated by the South Carolina Department of Transportation and the South Carolina Scenic Highways Committee.

(B) The Department of Transportation shall install appropriate markers or signs to implement this designation."

Time effective

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

Ratified the 27th day of May, 2009.

Became law without the signature of the Governor -- 6/3/09.

No. 52

(R75, S630)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 56-15-65 SO AS TO PROVIDE THAT IT IS UNLAWFUL FOR A MOTOR VEHICLE MANUFACTURER, DISTRIBUTOR, FACTORY REPRESENTATIVE, OR DISTRIBUTOR REPRESENTATIVE

TO REQUIRE OR COERCE A MOTOR VEHICLE DEALER TO CHANGE THE LOCATION OF HIS DEALERSHIP OR MAKE SUBSTANTIAL ALTERATIONS TO THE DEALER'S PREMISES UNDER CERTAIN CIRCUMSTANCES; BY ADDING SECTION 56-15-75 SO AS TO PROVIDE THAT IT IS UNLAWFUL FOR A MOTOR VEHICLE MANUFACTURER, FACTORY BRANCH, DISTRIBUTOR BRANCH, FACTORY REPRESENTATIVE, OR DISTRIBUTOR REPRESENTATIVE TO REQUIRE OR COERCE A MOTOR VEHICLE DEALER TO REFRAIN FROM PARTICIPATION IN THE MANAGEMENT OF, INVESTMENT IN, OR ACQUISITION OF ANOTHER MAKE OR LINE OF NEW MOTOR VEHICLES OR RELATED PRODUCTS UNDER CERTAIN CIRCUMSTANCES; AND TO AMEND SECTION 56-15-90, RELATING TO A MANUFACTURER'S, WHOLESALER'S, DISTRIBUTOR'S, OR FRANCHISOR'S UNLAWFUL FAILURE TO RENEW, TERMINATE, OR RESTRICT THE TRANSFER OF A FRANCHISE, SO AS TO MAKE TECHNICAL CHANGES, AND TO PROVIDE THE FACTORS TO BE CONSIDERED IN CALCULATING THE FAIR AND REASONABLE COMPENSATION FOR THE VALUE OF A DEALERSHIP FRANCHISE.

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

Motor vehicle dealerships

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

"Section 56-15-65. It is unlawful for any manufacturer, distributor, factory representative, or distributor representative to require, coerce, or attempt to coerce any motor vehicle dealer to change the location of the motor vehicle dealership or to make any substantial alterations to the dealer's premises or facilities unless:

(1) the manufacturer demonstrates that such change or alteration is reasonable in light of the current market and economic conditions; and

(2) the motor vehicle dealer has been provided written assurance from the manufacturer or distributor of a sufficient supply of motor vehicles to justify such change or alteration."

Motor vehicle dealers

SECTION 2. Article 1, Chapter 15, Title 56 of the 1976 Code is amended by adding:

"Section 56-15-75. It is unlawful for any manufacturer, distributor, factory branch, distributor branch, factory representative, or distributor representative to require, coerce, or attempt to coerce any motor vehicle dealer to refrain from participation in the management of, investment in, or acquisition of any other make or line of new motor vehicles or related products if:

(1) the requirements are unreasonable considering current economic conditions and are not otherwise justified by reasonable business considerations;

(2) the motor vehicle dealer has maintained a reasonable line of credit for each make or line of a new motor vehicle; and

(3) the motor vehicle dealer remains in compliance with reasonable capital standards and reasonable facilities requirements specified by the manufacturer.

Reasonable facilities requirements shall not include any requirement that a motor vehicle dealer establish or maintain exclusive facilities, personnel, or display space, unless the manufacturer or distributor establishes by a preponderance of the evidence that such requirements are justified by current economic conditions or reasonable business considerations."

Motor vehicle dealers

SECTION 3. Section 56-15-90 of the 1976 Code is amended to read:

"Section 56-15-90. (A) Anything to the contrary notwithstanding, it shall be unlawful for the manufacturer, wholesaler, distributor, or franchisor, without due cause, to fail to renew on terms then equally available to all its motor vehicle dealers of the same line-make, to terminate a franchise or to unreasonably restrict the transfer of a franchise unless the franchisee shall receive fair and reasonable compensation for the value of the business and compensation for its dealership facilities or location as provided in subsection (C).

(B) In determining the fair and reasonable compensation for a business, pursuant to subsection (A) or (D), the value of the business shall include, but not be limited to:

(1) the dealer cost for all new untitled, undamaged, and unaltered motor vehicles in the dealer's inventory purchased from the manufacturer or from another same line-make dealer in the ordinary course of business within eighteen months of termination;

(2) the dealer cost for all new, unused, and undamaged parts listed in the current price catalog and still in the original, resalable merchandising package and in unbroken lots, purchased from the manufacturer or distributor;

(3) the fair market value of signage bearing a trademark or trade name of the manufacturer or line-make purchased from and required by the manufacturer or distributor;

(4) the fair market value of special tools and automotive service equipment owned by the dealer that were designated as special tools or equipment required by and purchased from the manufacturer or distributor, if the tools and equipment are in useable and good condition, normal wear and tear excepted; and

(5) the reasonable cost of return shipping and handling charges incurred as a result of returning such items.

Provided the new motor vehicle dealer has clear title to the inventory and other items and is in a position to convey that title to the manufacturer, the payments required under this section shall be paid by the manufacturer, wholesaler, distributor, or franchisor within ninety days of the effective date of the termination, nonrenewal, or cancellation of a franchise. If the inventory or other items are subject to a security interest, the manufacturer, wholesaler, distributor, or franchisor may make payment jointly to the dealer and the holder of the security interest.

(C) Within ninety days of the termination, cancellation, or nonrenewal of a franchise by a manufacturer, wholesaler, distributor, or franchisor, due to a dealer's poor sales and service performance, or due to the discontinuation of a line-make, the party shall pay the franchisee an amount equal to:

(1) the franchisee's reasonable cost to rent or lease its dealership facility or location for one year or the unexpired term of the lease or rental period, whichever is less; or

(2) the reasonable rental value of the facilities or location for one year if the franchisee owns the facility or location.

If more than one franchise is being terminated, canceled, or not renewed, the reimbursement shall be prorated equally among the different manufacturers, wholesalers, distributors, and franchisors. If the facility is used for the operations of more than one franchise and only one is being terminated, the reasonable rent shall be paid based

upon the prorated portion of new vehicle sales for the previous year attributable to the line-make being terminated, canceled, or nonrenewed for the prior one-year period.

(D) In the event a franchisee terminates the franchise agreement with the manufacturer, wholesaler, distributor, or franchisor, it is unlawful for the manufacturer, wholesaler, distributor, or franchisor to not abide by the provisions included in subsection (B) in determining fair and reasonable compensation to the dealer. However, the requirements of subsection (B) do not apply to a termination, cancellation, or nonrenewal due to the sale of the assets or stock of a motor vehicle franchisee.

(E) In the case of a franchise for motor homes as defined in Section 56-15-10(q), subsections (B), (C), and (D) do not apply."

Time effective

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

Ratified the 27th day of May, 2009.

Became law without the signature of the Governor -- 6/3/09.

No. 53

(R82, S756)

AN ACT TO AMEND SECTION 7-7-530, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE DESIGNATION OF VOTING PRECINCTS IN YORK COUNTY, SO AS TO REVISE AND RENAME CERTAIN VOTING PRECINCTS OF YORK COUNTY AND REDESIGNATE A MAP NUMBER FOR THE MAP ON WHICH LINES OF THESE PRECINCTS ARE DELINEATED AND MAINTAINED BY THE OFFICE OF RESEARCH AND STATISTICS OF THE STATE BUDGET AND CONTROL BOARD.

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

Voting precincts, York County, revised, renamed, and map number redesignated

SECTION 1. Section 7-7-530 of the 1976 Code, as last amended by Act 327 of 2008, is further amended to read:

"Section 7-7-530. (A) In York County there are the following voting precincts:
Adnah
Airport
Allison Creek
Anderson Road
Bethany
Bethel No. 1
Bethel No. 2
Bethel School
Bowling Green
Bullocks Creek
Cannon Mill
Carolina
Catawba
Clover No. 1
Clover No. 2
Cotton Belt
Delphia
Dobys Bridge
Ebenezer
Ebinport
Edgewood
Fairgrounds
Ferry Branch
Fewell Park
Filbert
Fort Mill No. 1
Fort Mill No. 2
Fort Mill No. 3
Fort Mill No. 4
Fort Mill No. 5
Fort Mill No. 6
Friendship
Gold Hill
Harvest

Hickory Grove
Highland Park
Hollis Lakes
Hopewell
Independence
India Hook
Lakeshore
Lakewood
Laurel Creek
Lesslie
Manchester
McConnells
Mill Creek
Mt. Holly
Mt. Gallant
Nation Ford
Neelys Creek
New Home
Newport
Northside
Northwestern
Oakridge
Oakwood
Old Pointe
Ogden
Orchard Park
Palmetto
Pleasant Road
Pole Branch
Riverview
Rock Hill No. 2
Rock Hill No. 3
Rock Hill No. 4
Rock Hill No. 5
Rock Hill No. 6
Rock Hill No. 7
Rock Hill No. 8
Rosewood
Sharon
Shoreline
Six Mile
Smyrna

Springdale
Springfield
Stateline
Steele Creek
Tega Cay
Tirzah
Tools Fork
University
Waterstone
Windjammer
Wylie
York No. 1
York No. 2.

(B) The precinct lines defining the precincts in subsection (A) are as shown on the official map on file with the Office of Research and Statistics of the State Budget and Control Board designated as document P-91-09 and as shown on copies provided to the Registration and Elections Commission for York County by the Office of Research and Statistics.

(C) The polling places for the precincts in subsection (A) must be determined by the Registration and Elections Commission for York County with the approval of a majority of the York County Legislative Delegation."

Time effective

SECTION 2. This act takes effect upon approval by the Governor and applies to all elections conducted after January 1, 2010.

Ratified the 27th day of May, 2009.

Approved the 2nd day of June, 2009.

No. 54

(R84, S774)

AN ACT TO AMEND SECTION 7-7-490, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE DESIGNATION OF VOTING PRECINCTS IN SPARTANBURG

COUNTY, SO AS TO REVISE AND RENAME CERTAIN VOTING PRECINCTS OF SPARTANBURG COUNTY AND REDESIGNATE A MAP NUMBER FOR THE MAP ON WHICH LINES OF THESE PRECINCTS ARE DELINEATED AND MAINTAINED BY THE OFFICE OF RESEARCH AND STATISTICS OF THE STATE BUDGET AND CONTROL BOARD.

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

Voting precincts, Spartanburg County, revised and renamed

SECTION 1. Section 7-7-490 of the 1976 Code, as last amended by Act 272 of 2006, is further amended to read:

"Section 7-7-490. (A) In Spartanburg County there are the following voting precincts:
Abner Creek Baptist
Anderson Mill Elementary
Arcadia Elementary
Arrowood Baptist
Beaumont Methodist
Beech Springs Intermediate
Ben Avon Methodist
Bethany Baptist
Bethany Wesleyan
Boiling Springs Elementary
Boiling Springs High School
Boiling Springs Intermediate
Boiling Springs Jr. High
Boiling Springs 9th Grade
Canaan Baptist
Cannons Elementary
Carlisle Fosters Grove
Cavins Hobbysville
C.C. Woodson Recreation
Cedar Grove Baptist
Chapman Elementary
Chapman High School
Cherokee Springs Fire Station
Chesnee Senior Center
Cleveland Elementary

Clifdale Elementary
Converse Fire Station
Cooley Springs Baptist
Cornerstone Baptist
Cowpens Depot Museum
Cowpens Fire Station
Croft Baptist
Cross Anchor Fire Station
Cudd Memorial
Daniel Morgan Technology Center
Drayton Fire Station
Eastside Baptist
Ebenezer Baptist
Enoree First Baptist
E.P. Todd Elementary
Fairforest Middle School
Friendship Baptist
Gable Middle School
Glendale Fire Station
Grace Baptist
Gramling Methodist
Hayne Baptist
Hendrix Elementary
Holly Springs Baptist
Inman Mills Baptist
Jesse Bobo Elementary
Jesse Boyd Elementary
Lake Bowen Baptist
Landrum High School
Landrum United Methodist
Lyman Town Hall
Mayo Elementary
Motlow Creek Baptist
Mountain View Baptist
Mt. Calvary Presbyterian
Mt. Moriah Baptist
Mt. Sinai Baptist
Mt. Zion Full Gospel Baptist
North Spartanburg Fire Station
Oakland Elementary
Pacolet Town Hall
Park Hills Elementary

Pauline Glenn Springs Elementary
Pelham Fire Station
Pine Street Elementary
Poplar Springs Fire Station
Powell Saxon Una Fire Station
R.D. Anderson Vocational
Rebirth Missionary Baptist
Reidville Elementary
Reidville Fire Station
Roebuck Bethlehem
Roebuck Elementary
Silverhill United Methodist
Southside Baptist
Spartanburg High School
Startex Fire Station
Swofford Career Center
Travelers Rest Baptist
Trinity Methodist
T.W. Edwards Recreation Center
Una Fire Station
Victor Mill Methodist
Wellford Fire Station
West Side Baptist
West View Elementary
White Stone Methodist
Whitlock Jr. High
Woodland Heights Recreation Center
Woodruff American Legion
Woodruff Armory Drive Fire Station
Woodruff Fire Station
Woodruff Town Hall

(B) The precinct lines defining the precincts in subsection (A) are as shown on the official map on file with the Office of Research and Statistics of the State Budget and Control Board and as shown on copies provided to the Board of Voter Registration of the county by the Office of Research and Statistics designated as document P-83-09.

(C) The polling places for the precincts listed in subsection (A) must be determined by the Spartanburg County Election Commission with the approval of a majority of the Spartanburg County Legislative Delegation."

Time effective

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

Ratified the 27th day of May, 2009.

Approved the 2nd day of June, 2009.

No. 55

(R85, S793)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING CHAPTER 37 TO TITLE 6 SO AS TO PROVIDE FOR THE BEAUFORT-JASPER WATER AND SEWER AUTHORITY, TO REMOVE CERTAIN RESTRICTIONS ON THE AREAS IN WHICH THE AUTHORITY PROVIDES SERVICES, TO FURTHER PRESCRIBE THE AUTHORITY'S FUNCTIONS AND POWERS REGARDING WATER AND WASTEWATER SERVICES, TO PRESCRIBE THE CONDITIONS AND TERMS UPON WHICH MUNICIPAL CORPORATIONS AND OTHER PUBLIC BODIES OR AGENCIES OPERATING WATER DISTRIBUTION AND WASTEWATER SYSTEMS IN BEAUFORT, JASPER, HAMPTON, AND COLLETON COUNTIES MAY ACQUIRE SERVICES FROM THE AUTHORITY, AND TO CHANGE THE NAME OF THE AUTHORITY TO THE BEAUFORT-JASPER WATER AND SEWER AUTHORITY.

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

Beaufort-Jasper Water and Sewer Authority

SECTION 1. Title 6 of the 1976 Code is amended by adding:

"CHAPTER 37

Beaufort-Jasper Water and Sewer Authority

Section 6-37-10. This chapter may be cited as the 'Beaufort-Jasper Water and Sewer Authority Act'.

Section 6-37-20. For purposes of this chapter, unless the context clearly indicates otherwise, 'authority' means the Beaufort-Jasper Water and Sewer Authority.

Section 6-37-30. (A) The Beaufort-Jasper Water and Sewer Authority is a body corporate and politic whose function is to acquire supplies of water and to distribute such water within its service area. To that end, the authority is empowered to construct such reservoirs, wells, treatment facilities, impounding dams or dykes, canals, conduits, aqueducts, tunnels, water distribution facilities, water mains and water lines, and appurtenant facilities, as in the opinion of the authority as may be considered necessary, and to acquire such land, rights of way, easements, machinery, apparatus, and equipment as is considered useful.

(B) The authority shall acquire, construct, operate, maintain, improve, and enlarge facilities which provide for the collection, treatment, disposal, and recycling of water and wastewater at any point within its service area, wherever such facilities are found by the authority to be necessary for the public health and the protection of the environment; to make such facilities available to private persons, private corporations, and governmental entities as authorized by this chapter; and to finance the cost of such facilities by the means made available to the authority by the provisions of this chapter.

(C) In order to perform services and functions related to the provision of water and wastewater collection, treatment, and disposal services and related public works activities, the authority is authorized to contract with any of the following counties and any political subdivision therein: Beaufort, Jasper, Hampton, and Colleton Counties.

(D) Without in any way limiting the provisions of this section, the service territory of the authority shall be Beaufort and Jasper Counties.

Section 6-37-40. (A) Notwithstanding the provisions of Section 6-11-610 or any other provision of law, the authority is comprised of eleven members, seven of whom shall be resident electors of Beaufort County and four of whom shall be resident electors of Jasper County.

(B) The seven Beaufort County members of the authority shall be appointed by the Governor upon the recommendation of a majority of the Legislative Delegation of Beaufort County. Of the Beaufort County members, the respective governing bodies of the City of Beaufort, the Town of Bluffton, and the Town of Port Royal shall each recommend to the Legislative Delegation of Beaufort County one person who may in turn be recommended by the Legislative Delegation of Beaufort County to the Governor for appointment and the Beaufort County Council shall recommend to the Legislative Delegation of Beaufort County three persons who may in turn be recommended by the Legislative Delegation of Beaufort County to the Governor for appointment. One person shall be recommended by the Legislative Delegation of Beaufort County to the Governor for appointment without recommendation by any other entity.

(C) The four Jasper County members of the authority shall be appointed by the Governor upon the recommendation of a majority of the Legislative Delegation of Jasper County. Of the Jasper County members, the respective governing bodies of the Town of Ridgeland and the City of Hardeeville shall each recommend to the Legislative Delegation of Jasper County one person who may in turn be recommended by the Legislative Delegation of Jasper County to the Governor for appointment.

(D) The terms of office for all members and their successors of the authority shall be for six years. All members of the authority shall hold office until their successors have been appointed and qualify. Any vacancy occurring for any reason among the members of the authority shall be filled for the remainder of the unexpired term by the same procedure for appointment. Notwithstanding the provisions of Section 6-11-610, the seating of additional members of the authority shall not affect the terms of other members serving upon the effective date of this section.

(E) The members of the authority may fix or change the compensation or other benefits, including insurance benefits and per diem for the members of the authority. Reimbursable expenses actually incurred while on official business must not exceed the amounts authorized for members of state boards, committees, and commissions, and insurance benefits must not exceed those provided for state employees.

Section 6-37-50. Subject to the limitations set forth in this section, the authority is fully empowered to acquire, construct, operate, maintain, improve, and extend facilities that enable it to obtain,

distribute, and sell water, and to collect, treat, recycle, and dispose of water and wastewater, to persons, firms, corporations, municipal corporations, political divisions, and the United States Government, or any agencies thereof, at any point within its service area. To that end, the authority shall have the powers to:

(1) have perpetual succession;

(2) sue and be sued;

(3) adopt, use, and alter a corporate seal;

(4) define a quorum for its meetings;

(5) establish a principal office;

(6) make bylaws for the management and regulation of its affairs;

(7) build, construct, maintain, and operate wells, canals, aqueducts, ditches, tunnels, culverts, flumes, conduits, mains, pipes, dykes, dams, water reservoirs, treatment facilities, and appurtenant facilities;

(8) impound water in lakes or reservoirs;

(9) build, construct, maintain, and operate water distribution systems;

(10) construct, operate, maintain, improve, and enlarge facilities which provide for the collection, impoundment, retention, transmission, treatment, recycling, and disposal of water and wastewater;

(11) acquire and operate any type of machinery, appliances, or appurtenances, necessary or useful to discharge the functions committed to the authority by this chapter;

(12) accept gifts or grants of services, properties, or monies from the United States, or any of its agencies, under such conditions as the United States or such agency shall prescribe;

(13) subject to the provisions of this section, sell water and wastewater services for agricultural, industrial, commercial, residential, or domestic use;

(14) prescribe rates and regulations under which water and wastewater services shall be sold or provided;

(15) subject to the provisions of this section, enter into contracts for the sale of water and to enter into contracts to furnish services for any or all of the collection, treatment, recycling, and disposal of water or wastewater, upon such terms as the parties thereto shall approve, with persons, private corporations, municipal corporations, public bodies, public agencies, and with the United States Government, or any agencies thereof;

(16) prescribe regulations fixing the conditions under which services shall be provided;

(17) prescribe such regulations as the authority considers necessary to protect from pollution all water in its canals, aqueducts, reservoirs, or distribution systems;

(18) prescribe such regulations as the authority considers necessary to ensure the efficient use of water supply, collection, treatment, and disposal resources within its service area;

(19) make contracts of all sorts and to execute all instruments necessary or convenient for the carrying on of the business of the authority including, but not limited to, source water protection agreements with upstream landowners;

(20) lease or sell and convey lands or interests therein;

(21) make use of county and state highway rights of way in which to lay pipes and lines, in such manner and under such reasonable conditions as the appropriate officials in charge of such rights of way shall approve;

(22) alter and change county and state highways wherever necessary in order that the authority may discharge the functions committed to it, in such manner and under such reasonable conditions as the appropriate officials in charge of such highways shall approve;

(23) acquire, by purchase, gift, or through the exercise of eminent domain, all land, interests therein, easements, or rights of way, which the authority shall consider necessary to enable it to fully and adequately discharge all functions committed to it. The power herein granted shall be considered to include the power to acquire protective areas of land adjacent to any of its facilities and water supplies;

(24) exercise the power of eminent domain for any corporate function. The power of eminent domain may be exercised through any procedure prescribed by general law as it may be amended or expanded from time to time;

(25) appoint officers, agents, employees, and servants, to prescribe the duties of such, to fix their compensation, and to determine if and to what extent they shall be bonded for the faithful performance of their duties;

(26) make contracts for construction, engineering, legal, and other services, with or without competitive bidding;

(27) borrow money and to make and issue negotiable bonds, notes, and other evidences of indebtedness, payable from all or any part of the revenues derived from the operation of its system and facilities. The sums borrowed may be those needed to pay all costs incident to the construction and establishment of the facilities, and any extension,

addition, and improvement thereto, including engineering costs, construction costs, the sum needed to capitalize and pay interest for a period of three years from the date of delivery of the bonds, such sum as is needed to supply working capital to place the facilities in operation, and all other expenses of any sort that the authority may incur in establishing, extending, and enlarging its system or the facilities. Neither the faith and credit of the State of South Carolina, nor of any county, municipality, or political subdivision of the State shall be pledged for the payment of the principal and interest of the obligations, and there shall be on the face of each obligation a statement, plainly worded, to that effect. Neither the members of the authority nor any person signing the obligations shall be personally liable thereon. To the end that a convenient procedure for borrowing money may be prescribed, the authority shall be fully empowered to avail itself of all power granted by general law for the issuance or refinancing of revenue bonds by political subdivisions of the State including future amendments and modifications thereto. In exercising the power conferred upon the authority by such general law, the authority may make all pledges and covenants authorized by any provision thereof, and may confer upon the holders of its securities all rights and liens authorized by such general law. Notwithstanding any other provision of law, the authority is specifically authorized to:

(a) covenant and agree that upon it being adjudged in default as to the payment of any installment of principal or interest upon any obligation issued by it or in default as to the performance of any covenant or undertaking made by it, that in such event, the principal of all obligations of such issue may be declared forthwith due and payable, notwithstanding that any of them may not have then matured;

(b) confer upon a corporate trustee the power to make disposition of the proceeds from all borrowings and of all revenues derived from the operation of the facilities, in accordance with and in the order of priority prescribed by the resolutions adopted by the authority as an incident to the issuance of any notes, bonds, or other types of securities;

(c) dispose of its obligations at public or private sale, and upon such terms and conditions as it shall approve;

(d) make such provisions for the redemption of any obligations issued by it prior to their stated maturity, with or without premium, and on such terms and conditions as the authority shall approve;

(e) covenant and agree that any reserve fund established to further secure the payment of the principal and interest of any obligations shall be in a fixed amount;

(f) limit or prohibit free service to any person, firm, corporation, municipal corporation, or any subdivision or division of the State;

(g) prescribe the procedure, if any, by which the terms of the contract with the holders of its obligations may be amended, the number of obligations whose holders must consent thereto, and the manner in which such consent shall be given;

(h) prescribe the events of default and the terms and conditions upon which all or any obligations shall become or may be declared due before maturity, and the terms and conditions upon which such declaration and its consequences may be waived; notwithstanding any contrary provision of law, revenue bonds payable from the revenues of the system or systems of the authority shall be payable from and secured by a pledge of the net revenues of such system or systems remaining after provisions shall have been made for the operation and maintenance thereof;

(i) provide that all bonds of any issue mature at a fixed time in lieu of serial maturities;

(28) do all other acts and things necessary or convenient to carry out any function or power committed or granted to the authority;

(29) withdraw from the Salkehatchie River not more than twenty-five million gallons of water per day;

(30) withdraw from the Savannah River not more than one hundred million gallons of water per day;

(31) exercise the powers conferred on special purpose districts by the provisions of Article 7, Chapter 11, Title 6 related to front-foot assessments, and to provide that if assessments are imposed to defray the cost of a particular water or sewer line, any parcel that is initially or subsequently connected to the water or sewer line, whether or not the parcel actually abuts that particular line, is subject to the assessment at the time of the initial assessment or at the time the parcel becomes connected, and further provided that where any lines are extended in segments over time, the authority may treat all segments of the line or lines as a single project and may recalculate the assessments on properties subject to earlier front-foot assessments at the time of a subsequent extension of the line or lines, provided that:

(a) the new assessment is less than or equal to the amount of the earlier assessment; and

(b) the term of the new assessment must not be extended beyond the term of the original assessment.

Section 6-37-60. The rates charged for services furnished by the authority are not subject to supervision or regulation by any state bureau, board, commission, or like instrumentality, or agency thereof.

Section 6-37-70. All property of the authority is exempt from all ad valorem taxes levied by the State, county, or any municipality, division, subdivision, or agency thereof, directly or indirectly.

Section 6-37-80. The authority shall conduct its affairs on the fiscal year basis employed by the State. The authority's fiscal year shall begin July first of each year and shall end on the thirtieth day of June of the succeeding year. Within one hundred eighty days of the end of each fiscal year, an audit of its affairs shall be made by certified public accountants, of good standing, to be designated by the authority. Copies of such audits, incorporated into an annual report of the authority, shall be filed in the office of the Clerks of Court for Beaufort and Jasper Counties, with the Beaufort and Jasper Legislative Delegations, and with the Secretary of State.

Section 6-37-90. (A) It is unlawful for any person to wilfully injure or destroy, or in any manner hurt, damage, tamper with, or impair the facilities of the authority, or any part of the same, or any machinery, apparatus, or equipment of the authority, or to pollute the water in any part of its service area, or to obtain water illegally from facilities of the authority, or to turn, raise, remove, or in any manner tamper with any cover of any manhole, filter, bed, or other appurtenance of any sewer except in accordance with the regulations promulgated by the authority. Any person who violates the provisions of this section is guilty of a misdemeanor and, upon conviction, shall be fined not less than ten dollars nor more than one hundred dollars, or shall be imprisoned for not more than thirty days at the discretion of the court, and shall be further liable to pay all damages suffered by the authority.

(B) Any person violating any regulation or any permit, permit condition, or final determination as required by state or federal law is subject to a civil penalty not to exceed two thousand dollars for each day of violation.

(C) All penalties assessed under this section must be held as debt and payable to the authority by the person against whom they have

been charged and shall constitute a lien against the property of the person.

(D) The authority is empowered to conduct vulnerability assessments, prepare emergency response plans, and address threats from terrorist attacks, or other intentional actions designed to disrupt the provision of safe drinking water or significantly affect the public health or significantly affect the safety or supply of drinking water.

Section 6-37-100. All revenues derived by the authority from the operation of its facilities, which may not be required to discharge covenants made by it in issuing bonds, notes, or other obligations authorized by this chapter, shall be disposed of by the authority from time to time for purposes germane to the functions of the authority.

Section 6-37-110. All municipalities, public bodies, and public agencies operating water district systems or wastewater systems in any part of Beaufort, Jasper, Hampton, and Colleton Counties are authorized to enter into contracts to buy water and wastewater service from the authority. Such contracts shall extend over such periods of time and shall contain such terms and conditions as shall be mutually agreeable to the authority and to the contracting municipalities, public bodies, or public agencies.

Section 6-37-120. Any amendment or repeal of this chapter shall not operate to impair the obligation of any contract made by the authority pursuant to any power conferred by this chapter."

Repeal of inconsistent laws

SECTION 2. The provisions of this act are intended to supersede all other legislative acts or actions of a county council which are inconsistent with this act. Therefore, all other legislative acts or actions of a county council taken to date concerning the establishment of the authority that are inconsistent with this act are hereby repealed to the extent of such inconsistencies.

Time effective

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

Ratified the 27th day of May, 2009.

Approved the 2nd day of June, 2009.

No. 56

(R87, H3013)

AN ACT TO AMEND SECTION 16-11-650, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE OFFENSE OF REMOVING OR DESTROYING FENCES, GATES, OR OTHER BARRIERS ENCLOSING ANIMALS, CROPS, OR UNCULTIVATED LANDS, SO AS TO REVISE THE ELEMENTS OF THE OFFENSE, INCREASE PENALTIES FOR VIOLATIONS, PROVIDE FOR THE RIGHTS OF EASEMENT HOLDERS, AND TO VEST JURISDICTION TO HEAR AND DISPOSE OF THIS OFFENSE IN MAGISTRATES COURT.

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

Penalty increased, jurisdiction

SECTION 1. Section 16-11-650 of the 1976 Code is amended to read:

"Section 16-11-650. (A) A person, other than the owner or a person acting under the authority of the owner, who wilfully and knowingly removes, destroys, or leaves down any portion of a fence in this State intended to enclose animals of any kind or crops or uncultivated lands or who wilfully and knowingly leaves open or removes a gate or leaves down bars or other structure intended for the same purpose is guilty of a misdemeanor and must be punished by a fine of one thousand dollars or imprisonment for thirty days, or both.

(B) The magistrates court is vested with jurisdiction to hear and dispose of these cases.

(C) Nothing in this section shall affect an easement holder's right and ability to maintain such easement and rights of way consistent with the provisions of the document granting such easement."

Savings clause

SECTION 2. The repeal or amendment by this act of any law, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

Time effective

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

Ratified the 27th day of May, 2009.

Became law without the signature of the Governor -- 6/3/09.

No. 57

(R90, H3042)

AN ACT TO AMEND SECTIONS 40-81-20, 40-81-50, 40-81-70, 40-81-230, 40-81-280, 40-81-430, AND 40-81-480, CODE OF LAWS OF SOUTH CAROLINA, 1976, ALL RELATING TO REGULATIONS OF VARIOUS ATHLETIC AND SPORTING ACTIVITIES BY THE STATE ATHLETIC COMMISSION, SO AS TO PROVIDE FOR THE REGULATION OF MIXED MARTIAL ARTS COMPETITIONS BY THE STATE ATHLETIC COMMISSION; BY ADDING SECTION 40-81-445 SO AS TO MAKE THE COMBATIVE SPORT OF MIXED MARTIAL ARTS LEGAL IN SOUTH CAROLINA, AND TO PROVIDE FOR THE MANNER IN WHICH THE STATE ATHLETIC COMMISSION SHALL SUPERVISE AND REGULATE MIXED MARTIAL ARTS COMPETITIONS; AND

TO REPEAL SECTION 40-81-530 RELATING TO ULTIMATE FIGHTING EVENTS AS BEING UNLAWFUL.

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

Definitions

SECTION 1. A. Section 40-81-20(26) of the 1976 Code, as added by Act 28 of 2003, is amended to read:

"(26) 'Promoter' means a person, club, corporation, organization, or association which promotes, advertises, presents, conducts, holds, or gives a boxing, kickboxing, mixed martial arts, or wrestling event or exhibition in this State."

B. Section 40-81-20(34) of the 1976 Code, as added by Act 28 of 2003, is amended to read:

"(34) 'Mixed martial arts' means an event or exhibition, or part thereof, where the contestants are compensated and allowed to use any variation or combination of combative sports or fighting skills, which may include, but are not limited to, boxing, wrestling, kickboxing, or martial art skills."

Creation of the commission; appointment; compensation

SECTION 2. Section 40-81-50(A) of the 1976 Code, as added by Act 28 of 2003, is amended to read:

"(A) There is created the State Athletic Commission consisting of eight members appointed by the Governor with the advice and consent of the Senate to regulate boxing, kickboxing, wrestling, mixed martial arts, and other combative sports in this State. One member must be appointed from each congressional district of the State and two from the State at large. One of the at-large appointments shall be a physician licensed and in good standing in the State. The terms of the members are for four years and until their successors are appointed and qualified. Vacancies must be filled by the Governor for the remainder of an unexpired term. The commissioners of the State Athletic Commission may not have any financial interest, direct or indirect, in the promotion, management, or result of any boxing, kickboxing, mixed martial arts, or wrestling event or exhibition."

Powers and duties

SECTION 3. Section 40-81-70(D) of the 1976 Code, as added by Act 28 of 2003, is amended to read:

"(D) The commission designee in conjunction with the department representative shall review the Association of Boxing Commissions' National Registry or any other approved registry along with all additional appropriate information and approve or deny all pairing of contestants."

Issuance of licenses

SECTION 4. Section 40-81-230 of the 1976 Code, as added by Act 28 of 2003, is amended to read:

"Section 40-81-230. The commission shall issue licenses pursuant to this chapter as follows:

(1) boxer;
(2) wrestler;
(3) manager;
(4) second;
(5) trainer;
(6) announcer;
(7) promoter;
(8) promoter's representative;
(9) referee;
(10) judge;
(11) timekeeper;
(12) matchmaker;
(13) professional kickboxer;
(14) mixed martial arts contestant."

Kickboxing and mixed martial arts licenses

SECTION 5. Section 40-81-280 of the 1976 Code, as added by Act 28 of 2003, is amended to read:

"Section 40-81-280. In order to be licensed as a professional kickboxer or mixed martial arts contestant for an event or exhibition, an applicant:

(1) must be between the ages of eighteen and thirty-five, unless the commission by a majority vote waives this requirement as to an individual applicant over the age of thirty-five;

(2) shall submit a completed application with payment of the prescribed fee; and

(3) shall submit documentation, on a commission-approved form, that the applicant has undergone a comprehensive physical examination by a licensed physician subsequent to his last match or fifteen days before an event or exhibition in this State. The examining physician shall indicate on the approved form that the applicant is physically able to participate or compete. The comprehensive physical exam shall include a clinical, neurological, neurophysiological, and ophthalmologic examination that may include, but is not limited to, an EEG, EKG, and CAT scan by a licensed physician. If, at the time of these examinations, there is any indication of brain injury, or for any other reason the physician considers appropriate, the applicant shall undergo further neurological and neurophysiological examinations by a specialized physician including, but not limited to, a computerized tomography or medically equivalent procedure. The commission shall not issue a license to an applicant until all examinations are completed and the physician determines that the kickboxer is eligible to participate or compete;

(4) shall submit evidence that the applicant has been tested not more than one year before the scheduled event or exhibition and is not infected with the human immunodeficiency virus and shall show proof of immunity for Hepatitis B and Hepatitis C; and

(5) shall submit any additional documentation required by the commission."

Licensure fees

SECTION 6. Section 40-81-430 of the 1976 Code, as added by Act 28 of 2003, is amended to read:

"Section 40-81-430. The following licensure fees must be established by the department, in conjunction with the commission, and adjusted in accordance with Section 40-1-50(d):

(1) promoter;
(2) promoter's representative;
(3) referee;
(4) manager;
(5) wrestler;

(6) matchmaker;
(7) boxer;
(8) kickboxer;
(9) trainer;
(10) second;
(11) timekeeper;
(12) announcer;
(13) judge;
(14) event permit for boxing;
(15) event permit for wrestling;
(16) mixed martial arts contestant and event."

Unlawful events or exhibitions

SECTION 7. Section 40-81-480 of the 1976 Code, as added by Act 28 of 2003, is amended to read:

"Section 40-81-480. Events or exhibitions in which weapons are used are unlawful in this State. A person violating this section is guilty of a misdemeanor and, upon conviction, must be punished in accordance with the provisions of Section 40-81-200."

Compliance with rules of sanctioning body

SECTION 8. Chapter 81, Title 40 of the 1976 Code is amended by adding:

"Section 40-81-445. The department and commission shall require that mixed martial arts events comply with the rules of a recognized professional organization or sanctioning body recognized by the commission except where those rules conflict with the laws of this State in which case the laws of this State shall apply."

Repealed

SECTION 9. Section 40-81-530 of the 1976 Code is repealed.

Time effective

SECTION 10. This act takes effect upon approval by the Governor.

Ratified the 27th day of May, 2009.

Became law without the signature of the Governor -- 6/3/09.

No. 58

(R94, H3131)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 1-1-711 SO AS TO DESIGNATE THE "WOOD DUCK" AS THE OFFICIAL STATE DUCK; BY ADDING SECTION 1-1-712 SO AS TO DESIGNATE THE "BOTTLENOSE DOLPHIN" AS THE OFFICIAL STATE MARINE MAMMAL; BY ADDING SECTION 1-1-713 SO AS TO DESIGNATE THE "NORTHERN RIGHT WHALE" AS THE OFFICIAL STATE MIGRATORY MARINE MAMMAL; AND TO AMEND SECTION 50-11-840, RELATING TO PROTECTION OF WILD BIRD NESTS AND EGGS, SO AS TO DEFINE A WILD BIRD NEST AS A NEST WITH BIRDS OR EGGS PRESENT AND TO PROVIDE FOR THE ISSUANCE OF A PERMIT TO POSSESS SUCH NEST OR EGGS OR TO REMOVE AN ACTIVE NEST OR EGGS THAT CONSTITUTE A PUBLIC SAFETY THREAT OR WHEN CAUSING PROPERTY DAMAGE.

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

Official state duck designated

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

"Section 1-1-711. The 'wood duck' (Aix sponsa) also known as the summer duck and the Carolina duck is designated as the official state duck."

Official state marine mammal designated

SECTION 2. Article 9, Chapter 1, Title 1 of the 1976 Code is amended by adding:

"Section 1-1-712. The 'bottlenose dolphin' (Tursiops truncatus) is designated as the official state marine mammal."

Official state migratory marine mammal designated

SECTION 3. Article 9, Chapter 1, Title 1 of the 1976 Code is amended by adding:

"Section 1-1-713. The 'northern right whale' (Eubalaena glacialis) is designated as the official state migratory marine mammal."

Protection of nest with birds or eggs present

SECTION 4. Section 50-11-840 of the 1976 Code is amended to read:

"Section 50-11-840. (A) No person may take or destroy, or attempt to take or destroy, an active nest or the eggs of a wild bird or have an active nest or eggs in his possession, except pursuant to a permit issued by the department. An 'active nest' means a nest with birds or eggs present.

(B) The department may issue a permit for the removal of an active nest or eggs that constitute a public safety threat or when birds are causing damage to property."

Time effective

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

Ratified the 27th day of May, 2009.

Became law without the signature of the Governor -- 6/3/09.

No. 59

(R111, H3677)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ENACTING THE "VIOLENCE AGAINST WOMEN FEDERAL COMPLIANCE ACT" SO AS TO

CONFORM STATE LAW TO FEDERAL REQUIREMENTS; TO AMEND SECTION 16-3-740, RELATING TO TESTING CERTAIN CRIMINALS FOR HEPATITIS B AND THE HUMAN IMMUNODEFICIENCY VIRUS AT THE REQUEST OF A VICTIM, SO AS TO REVISE THE DEFINITION OF "OFFENDER" TO INCLUDE ADULTS AND JUVENILES, TO REVISE PROCEDURES FOR DISCLOSING TEST RESULTS, TO PROVIDE THAT THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL SHALL ADVISE THE VICTIM OF AVAILABLE TREATMENT OPTIONS AND, UPON REQUEST OF THE VICTIM, TEST THE VICTIM AND PROVIDE POST-TESTING COUNSELING; BY ADDING SECTION 16-3-750 SO AS TO PROVIDE THAT LAW ENFORCEMENT AND PROSECUTING OFFICERS MAY REQUEST A VICTIM OF AN ALLEGED CRIMINAL SEXUAL CONDUCT OFFENSE TO SUBMIT TO A POLYGRAPH EXAMINATION IF THE CREDIBILITY OF THE VICTIM IS AT ISSUE AND TO PROHIBIT LAW ENFORCEMENT OR SUCH OFFICERS FROM REQUIRING A VICTIM TO SUBMIT TO SUCH EXAMINATION AS A CONDITION OF PROCEEDING WITH THE INVESTIGATION, CHARGING, OR PROSECUTION OF THE OFFENSE; TO AMEND SECTION 16-3-1350, RELATING TO MEDICOLEGAL EXAMINATIONS OF VICTIMS OF CRIMINAL SEXUAL CONDUCT OR CHILD SEXUAL ABUSE, SO AS TO DELETE THE PROVISION REQUIRING SUCH A VICTIM TO FILE AN INCIDENT REPORT WITH A LAW ENFORCEMENT AGENCY IN ORDER TO RECEIVE A MEDICOLEGAL EXAMINATION WITHOUT CHARGE; AND BY ADDING SECTION 16-25-30 SO AS TO PROVIDE THAT A PERSON CONVICTED OF CRIMINAL DOMESTIC VIOLENCE OR CRIMINAL DOMESTIC VIOLENCE OF A HIGH AND AGGRAVATED NATURE MUST BE NOTIFIED IN WRITING THAT PURSUANT TO FEDERAL LAW IT IS UNLAWFUL FOR SUCH AN OFFENDER TO SHIP, TRANSPORT, OR POSSESS A FIREARM.

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

Act citation

SECTION 1. This act may be cited as the "Violence Against Women Federal Compliance Act" and is intended to bring South Carolina into compliance with the federal Violence Against Women Act.

Definition of "offender" revised

SECTION 2. Section 16-3-740(A) of the 1976 Code is amended to read:

"(A) For purposes of this section:

(1) 'Body fluid' means blood, amniotic fluid, pericardial fluid, pleural fluid, synovial fluid, cerebrospinal fluid, semen or vaginal secretions, or any body fluid visibly contaminated with blood.

(2) 'HIV' means the Human Immunodeficiency Virus.

(3) 'Offender' includes adults and juveniles."

Notice procedure revised

SECTION 3. Section 16-3-740(C) of the 1976 Code is amended to read:

"(C) The tests must be administered by the Department of Health and Environmental Control through the local county health department or the medical professional at the state or local detention facility where the offender is imprisoned or detained. The solicitor shall notify the following persons of the tests results:

(1) the victim or the legal guardian of a victim who is a minor or is mentally retarded or mentally incapacitated;

(2) the victim's attorney;

(3) the offender and a juvenile offender's parent or guardian; and

(4) the offender's attorney.

The results of the tests shall be provided to the designated recipients with the following disclaimer: 'The tests were conducted in a medically approved manner, but tests cannot determine infection by Hepatitis B or HIV with absolute accuracy. Additionally, the testing does not determine exposure to, or infection by, other sexually transmitted diseases. Persons receiving the test results should continue to monitor their own health, seek retesting in approximately six months, and should consult a physician as appropriate'.

The solicitor also shall provide to the state or local correctional facility where the offender is imprisoned or detained and the Department of Health and Environmental Control the test results for HIV and Hepatitis B which indicate that the offender is infected with the disease. The state or local correctional facility where the offender is imprisoned or detained shall use this information solely for the purpose of providing medical treatment to the offender while the offender is imprisoned or detained. The State shall pay for the tests. If the offender is subsequently convicted or adjudicated delinquent, the offender or the parents of an adjudicated offender must reimburse the State for the costs of the tests unless the offender or the parents of the adjudicated offender are determined to be indigent.

If the tests given pursuant to this section indicate infection by Hepatitis B or HIV, the Department of Health and Environmental Control shall be provided with all test results and must provide counseling to the offender regarding the disease, syndrome, or virus. The Department of Health and Environmental Control must provide counseling for the victim, advise the victim of available medical treatment options, refer the victim to appropriate health care and support services, and, at the request of the victim or the legal guardian of a victim, test the victim for HIV and Hepatitis B and provide post-testing counseling to the victim."

Victim may not be required to undergo polygraph examination

SECTION 4. Article 7, Chapter 3, Title 16 of the 1976 Code is amended by adding:

"Section 16-3-750. A law enforcement officer, prosecuting officer, or other governmental official may request that the victim of an alleged criminal sexual conduct offense as defined under federal or South Carolina law submit to a polygraph examination or other truth telling device as part of the investigation, charging, or prosecution of the offense if the credibility of the victim is at issue; however, the officer or official must not require the victim to submit to a polygraph examination or other truth telling device as a condition for proceeding with the investigation, charging, or prosecution of the offense."

Medicolegal examination of victim

SECTION 5. Section 16-3-1350(A) and (B) of the 1976 Code is amended to read:

"(A) The State must ensure that a victim of criminal sexual conduct in any degree, criminal sexual conduct with a minor in any degree, or child sexual abuse must not bear the cost of his or her routine medicolegal exam following the assault.

(B) These exams must be standardized relevant to medical treatment and to gathering evidence from the body of the victim and must be based on and meet minimum standards for rape exam protocol as developed by the South Carolina Law Enforcement Division, the South Carolina Hospital Association, and the Governor's Office Division of Victim Assistance with production costs to be paid from funds appropriated for the Victim's Compensation Fund. These exams must include treatment for sexually transmitted diseases, and must include medication for pregnancy prevention if indicated and if desired. The South Carolina Law Enforcement Division must distribute these exam kits to any licensed health care facility providing sexual assault exams. When dealing with a victim of criminal sexual assault, the law enforcement agency immediately must transport the victim to the nearest licensed health care facility which performs sexual assault exams. A health care facility providing sexual assault exams must use the standardized protocol described in this subsection."

Unlawful for a person convicted of domestic violence or domestic violence of high and aggravated nature to possess a firearm

SECTION 6. Article 1, Chapter 25, Title 16 of the 1976 Code is amended by adding:

"Section 16-25-30. At the time a person is convicted of violating the provisions of Section 16-25-20 or 16-25-65, the court must deliver to the person a written form that conspicuously bears the following language: 'Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 to ship, transport, possess, or receive a firearm or ammunition.'"

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.

Severability clause

SECTION 8. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this act, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

Time effective

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

Ratified the 27th day of May, 2009.

Approved the 2nd day of June, 2009.

No. 60

(R112, H3678)

AN ACT TO AMEND SECTION 56-5-4140, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE MAXIMUM ALLOWABLE GROSS WEIGHTS OF VEHICLES THAT MAY BE OPERATED ALONG THE STATE'S HIGHWAYS, SO AS TO MAKE A TECHNICAL CHANGE.

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

Maximum allowable gross weights of vehicles

SECTION 1. Section 56-5-4140(B)(1) of the 1976 Code is amended to read:

"(1) Dump trucks, dump trailers, trucks carrying agricultural products, concrete mixing trucks, fuel oil trucks, line trucks, and trucks designated and constructed for special type work or use are not required to conform to the axle spacing requirements of this section. However, the vehicle is limited to a weight of twenty thousand pounds for each axle plus scale tolerances and the maximum gross weight of these vehicles may not exceed the maximum weight allowed by subsection (A)(1) for the appropriate number of axles, plus allowable scale tolerances."

Time effective

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

Ratified the 27th day of May, 2009.

Approved the 2nd day of June, 2009.

No. 61

(R113, H3749)

AN ACT TO AMEND SECTION 25-1-380, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE ASSISTANT ADJUTANT GENERAL FOR THE ARMY, SO AS TO PROVIDE UPON NATIONAL GUARD BUREAU AUTHORIZATION, AN ADDITIONAL ASSISTANT ADJUTANT GENERAL WITH THE RANK OF MAJOR GENERAL.

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

Assistant Adjutant Generals for the Army

SECTION 1. Section 25-1-380 of the 1976 Code, as last amended by Act 252 of 2008, is further amended to read:

"Section 25-1-380. There must be two Assistant Adjutant Generals for the Army, with the rank of brigadier general, who must be assistants to the Adjutant General and must be appointed and commissioned by the Governor upon the recommendation of the Adjutant General at a salary provided by the annual appropriations act. When authorized by the National Guard Bureau, there may be an additional Assistant Adjutant General for the South Carolina Army National Guard who may hold the rank of major general. These individuals must be appointed from the active or retired list of the Army National Guard and shall have a minimum of five years' active commissioned service in the South Carolina Army National Guard."

Time effective

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

Ratified the 27th day of May, 2009.

Approved the 2nd day of June, 2009.

No. 62

(R114, H3761)

AN ACT TO AMEND SECTION 44-53-530, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO FORFEITURE PROCEDURES RELATED TO DRUG PROCEEDS, SO AS TO ALLOW THE USE OF FORFEITED MONIES AND PROCEEDS FROM THE SALE OF PROPERTY FOR TRAINING AND EDUCATION BY LAW ENFORCEMENT IN ADDITION TO OTHER USES PREVIOUSLY DELINEATED.

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

Controlled substances, use of forfeited drug proceeds

SECTION 1. Section 44-53-530(g) of the 1976 Code is amended to read:

"(g) All forfeited monies and proceeds from the sale of forfeited property as defined in Section 44-53-520 must be retained by the governing body of the local law enforcement agency or prosecution agency and deposited in a separate, special account in the name of each appropriate agency. These accounts may be drawn on and used only by the law enforcement agency or prosecution agency for which the account was established. For law enforcement agencies, the accounts must be used for drug enforcement activities, or for drug or other law enforcement training or education. For prosecution agencies, the accounts must be used in matters relating to the prosecution of drug offenses and litigation of drug-related matters.

These accounts must not be used to supplant operating funds in the current or future budgets. Expenditures from these accounts for an item that would be a recurring expense must be approved by the governing body before purchase or, in the case of a state law enforcement agency or prosecution agency, approved as provided by law.

In the case of a state law enforcement agency or state prosecution agency, monies and proceeds must be remitted to the State Treasurer who shall establish separate, special accounts as provided in this section for local agencies.

All expenditures from these accounts must be documented, and the documentation made available for audit purposes and upon request by a person under the provisions of Chapter 4, Title 30, the Freedom of Information Act."

Savings clause

SECTION 2. The repeal or amendment by this act of any law, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or

appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

Time effective

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

Ratified the 27th day of May, 2009.

Became law without the signature of the Governor -- 6/3/09.

No. 63

(R116, H3794)

AN ACT TO AMEND SECTION 50-11-2200, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE ESTABLISHMENT OF WILDLIFE MANAGEMENT AREAS, SO AS TO SPECIFY ADDITIONAL PROHIBITED ACTIVITIES; TO AMEND SECTION 50-11-2210, RELATING TO ABUSE OF WILDLIFE MANAGEMENT AREA LANDS, SO AS TO INCLUDE HERITAGE TRUST AND DEPARTMENT OWNED LANDS; TO AMEND SECTION 50-11-2220, AS AMENDED, RELATING TO ADDITIONAL PENALTIES FOR ABUSING WILDLIFE MANAGEMENT AREA LANDS, SO AS TO INCLUDE HERITAGE TRUST AND DEPARTMENT OWNED LANDS; BY ADDING SECTION 50-11-2225 SO AS TO CREATE A MISDEMEANOR CRIMINAL OFFENSE FOR ENTERING OR REMAINING ON A CLOSED AREA CONTRARY TO THE INSTRUCTIONS OF A LAW ENFORCEMENT OFFICER, MANAGER, OR DEPARTMENT CUSTODIAL PERSONNEL; AND BY ADDING SECTION 50-11-2215 SO AS TO PROVIDE THAT NOTHING CONTAINED IN SECTION 50-11-2200 OR 50-11-2210 SHALL INTERFERE WITH AGENCY DUTIES OR LANDOWNER RIGHTS.

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

Establishment of wildlife management areas; regulations; prohibited conduct; penalties

SECTION 1. Section 50-11-2200 of the 1976 Code, as last amended by Act 84 of 2007, is further amended to read:

"Section 50-11-2200. (A) Subject to available funding, the department shall acquire sufficient wildlife habitat through lease or purchase or otherwise to establish wildlife management areas for the protection, propagation, and promotion of fish and wildlife and for public hunting, fishing, and other natural resource dependent recreational use. The department may not have under lease at any one time more than one million six hundred thousand acres in the wildlife management area program. The department may not pay more than fair market value for the lease of lands in the area. The department may not lease land for the program which, during the preceding twenty-four months, was held under a private hunting lease. However, this restriction does not apply:

(1) if the former lessee executes a voluntary consent to the proposed wildlife management area lease;

(2) if the lessor cancels the lease; or

(3) to any lands which, during the twenty-four months before June 5, 1986, were in the game management area program.

(B) The department may promulgate regulations for the protection, preservation, operation, maintenance, and use of wildlife management areas and Heritage Trust areas and those other lands owned by the department.

(C) The following acts or conduct are prohibited and shall be unlawful on all wildlife management areas, heritage preserves, and all other lands owned by the department; provided, however, the department may promulgate regulations allowing any of the acts or conduct by prescribing acceptable times, locations, means, and other appropriate restrictions not inconsistent with the protection, preservation, operation, maintenance, and use of such lands:

(1) hunting or taking wildlife or fish;

(2) exceeding bag or creel limits;

(3) hunting or taking wildlife or fish by unauthorized methods, weapons, or ammunition;

(4) hunting or taking wildlife or fish during closed seasons, days, or times;

(5) hunting or taking wildlife by aid of bait or feeding or baiting wildlife;

(6) hiking;
(7) rock climbing or rappelling;
(8) operation of motorized and nonmotorized vehicles;
(9) swimming;
(10) camping;
(11) horse riding;
(12) staging or participating in 'paintball', 'airsoft', or similar games;
(13) possession of pets and specialty animals;
(14) use of fire, fireworks, or explosives;
(15) polluting or contaminating any land or water;
(16) acting in a disorderly manner or creating any noise which would result in annoyance to others and no person shall operate or use a public address system;
(17) consumption of alcoholic beverages or possession of open containers of alcoholic beverages on land designated for hunting;
(18) conducting commercial activity or using the area for commercial gain, except by permit;
(19) gathering, damaging, or destroying rocks, minerals, fossils, artifacts, geological formations, or ecofacts, except by permit;
(20) gathering, damaging, or destroying plants, fallen vegetation, animals, and fungi except to the extent these activities are authorized by permit, or are incidental to other activities authorized in wildlife management areas by this title;
(21) entering a closed area or unauthorized entry;
(22) launching or landing parachutes or parasails or aircraft including models or remotely piloted aircraft and similar devices, except for law enforcement or emergencies;
(23) placing structures in the WMA, except permitted stands and blinds;
(24) obstructing or creating a hazard to land or water traffic or obstructing a watercourse;
(25) operating a motor vehicle in watercourses other than at fording sites;
(26) posting bills, signs, or other notices;
(27) indecently exposing one's person or performing an indecent act in public;
(28) abandoning vehicles or other equipment;
(29) defacing, altering, destroying, or removing any sign, marker, guidepost, fence, gate, lock, barrier, improvement, building, bridge, culvert, structure, natural landmark, or feature;
(30) geocaching;

(31) use or possession of metal detectors, except by permit;

(32) digging or excavating, except by permit;

(33) use of herbicides or pesticides, excluding insect repellent;

(34) introducing nonnative or cultivated plants or other organisms, or releasing an animal;

(35) cutting or collecting of firewood, except by permit;

(36) target shooting, except in areas designated by the department;

(37) trapping; and

(38) shooting onto or across WMA areas closed to hunting or attempting to take wildlife on WMA areas closed to hunting.

(D) The department or emergency service personnel may undertake these activities for enforcement, emergencies, or management purposes.

(E) A person violating this section is guilty of a misdemeanor and, upon conviction, must be fined not less than twenty-five dollars nor more than two hundred dollars or be imprisoned for not more than thirty days, or both.

(F) As used in this section 'bait', 'baiting', or 'feeding' means placing, depositing, exposing, distributing, or scattering of shelled, shucked or unshucked corn, wheat, or other grain or food stuffs to constitute an attraction, lure, or enticement for wildlife to, on, or over an area. 'Baited area' means an area where bait or feed is directly or indirectly placed, deposited, exposed, distributed, or scattered, and the area remains a baited area for ten days following the complete removal of all bait or feed. Nothing in this section prohibits the hunting and taking of wildlife on or over lands or areas that are not otherwise baited and where:

(1) there are standing crops on the field where grown, including crops grown for wildlife management purposes; or

(2) shelled, shucked, or unshucked corn, wheat, or other grain, or seeds that have been distributed or scattered solely as the result of a normal agricultural practice as prescribed by the Clemson University Extension Service or its successor.

(G) An activity permitted by regulation may be temporarily suspended for up to one hundred eighty days if the activity is adversely affecting natural resources or human health or safety.

(H) Nothing contained in this section shall interfere with the use and management of lands by a state agency in charge of these lands in the functions of the agency as authorized by law."

Abuse of wildlife management area land and improvements unlawful; penalties

SECTION 2. Section 50-11-2210 of the 1976 Code is amended to read:

"Section 50-11-2210. The abuse, misuse, damage, or destruction of wildlife management area land, Heritage Trust land, or department owned land or improvements on these lands is unlawful. A person who abuses, misuses, damages, or destroys these lands or improvements on them including, but not limited to, roads, vegetation, buildings, structures, or fences or leaves refuse, trash, or other debris on the property, or who otherwise abuses, damages, destroys, or misuses these lands is guilty of a misdemeanor and, upon conviction, must be fined two hundred dollars and be required to make restitution to the landowner in an amount determined by the court to be necessary to repair, rebuild, clean up, or restore the property to its condition before the abuse occurred. A person failing to make restitution within the time limit set by the court must serve a mandatory ten-day sentence in the county jail which may not be suspended in whole or in part. The provisions of this section are in addition to other criminal penalties."

Additional penalties for abusing wildlife management area land and improvements

SECTION 3. Section 50-11-2220 of the 1976 Code, as last amended by Act 84 of 2007, is further amended to read:

"Section 50-11-2220. A person convicted of abusing, damaging, or destroying wildlife management area land, Heritage Trust land, or department owned land or improvements loses the privilege of entering onto these lands for one year. A person who enters onto wildlife management land, Heritage Trust land, or department owned land after losing the privilege to enter is guilty of a misdemeanor and, upon conviction, must be fined not less than two hundred dollars nor more than five hundred dollars or imprisoned for not more than thirty days, or both and, in addition, shall lose the privilege to enter these lands for an additional two years and the privilege to hunt and fish for one year. The provisions of this section are in addition to other criminal penalties."

Trespass on closed area; penalties

SECTION 4. Article 10, Chapter 11, Title 50 of the 1976 Code is amended by adding:

"Section 50-11-2225. A person who enters a closed area or who remains on an area after being instructed by a law enforcement officer, the manager, or department custodial personnel to leave is guilty of a misdemeanor and, upon conviction, must be fined up to five hundred dollars or imprisoned up to thirty days, or both."

Severability clause

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

Noninterference with agency duties and landowner rights

SECTION 6. Article 10, Chapter 11, Title 50 of the 1976 Code is amended by adding:

"Section 50-11-2215. Nothing contained in Section 50-11-2200 or 50-11-2210 shall interfere with the use and management of lands by a state agency charged with the management of those lands as part of the functions of the agency authorized by law or with the management and use by a landowner of his lands with the WMA program; nor shall anything contained in Section 50-11-2200 or 50-11-2210 be deemed to alter in any way the rights of owners of easements and rights of way within the boundaries of those lands."

Time effective

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

Ratified the 27th day of May, 2009.

Approved the 2nd day of June, 2009.

No. 64

(R117, H3804)

AN ACT TO AMEND SECTION 7-7-280, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE DESIGNATION OF VOTING PRECINCTS IN GREENVILLE COUNTY, SO AS TO REVISE AND RENAME CERTAIN VOTING PRECINCTS OF GREENVILLE COUNTY AND REDESIGNATE A MAP NUMBER FOR THE MAP ON WHICH LINES OF THESE PRECINCTS ARE DELINEATED AND MAINTAINED BY THE OFFICE OF RESEARCH AND STATISTICS OF THE STATE BUDGET AND CONTROL BOARD.

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

Voting precincts, Greenville County, revised

SECTION 1. Section 7-7-280 of the 1976 Code, as last amended by Act 245 of 2006, is further amended to read:

"Section 7-7-280. (A) In Greenville County there are the following voting precincts:
Aiken
Altamont Forest
Asheton Lakes
Avon
Baker Creek
Belle Meade
Bells Crossing
Belmont
Berea
Boiling Springs
Botany Woods
Bridge Fork

Brookglenn
Canebrake
Carolina
Castle Rock
Chestnut Hills
Circle Creek
Clear Creek
Conestee
Darby Ridge
Del Norte
Devenger
Donaldson
Dove Tree
Dunklin
Eastside
Ebenezer
Edwards Forest
Enoree
Feaster
Fork Shoals
Fountain Inn 1
Fountain Inn 2
Fox Chase
Frohawk
Furman
Gowensville
Granite Creek
Graze Branch
Greenbriar
Greenville 1
Greenville 3
Greenville 4
Greenville 5
Greenville 6
Greenville 7
Greenville 8
Greenville 10
Greenville 14
Greenville 16
Greenville 17
Greenville 18
Greenville 19

Greenville 20
Greenville 21
Greenville 22
Greenville 23
Greenville 24
Greenville 25
Greenville 26
Greenville 27
Greenville 28
Greenville 29
Grove
Hillcrest
Holly Tree
Jennings Mill
Kilgore Farms
Lakeview
Laurel Ridge
Leawood
Locust Hill
Long Creek
Maple Creek
Maridell
Mauldin 1
Mauldin 2
Mauldin 3
Mauldin 4
Mauldin 5
Mauldin 6
Mauldin 7
Mission
Monaview
Moore Creek
Mountain Creek
Mountain View
Mt. Pleasant
Neely Farms
Northwood
Oakview
Oneal
Palmetto
Paris Mountain
Pebble Creek

Pelham Falls
Piedmont
Pineview
Poinsett
Raintree
Ranch Creek
Reedy Fork
Riverside
Riverwalk
Rock Hill
Rocky Creek
Rolling Green
Royal Oaks
Saluda
Sandy Flat
Sevier
Silverleaf
Simpsonville 1
Simpsonville 2
Simpsonville 3
Simpsonville 4
Simpsonville 5
Simpsonville 6
Skyland
Slater Marietta
Southside
Sparrows Point
Spring Forest
Standing Springs
Stonehaven
Stone Valley
Suber Mill
Sugar Creek
Sulphur Springs
Sycamore
Tanglewood
Taylors
Thornblade
Tigerville
Timberlake
Trade
Travelers Rest 1

Travelers Rest 2
Tubbs Mountain
Tyger River
Verdmont
Wade Hampton
Walnut Springs
Ware Place
Welcome
Wellington
Westcliffe
Westside
Woodmont
Woodruff Lakes.

(B) The precinct lines defining the precincts in subsection (A) are as shown on maps filed with the Greenville County Board of Voter Registration as provided and maintained by the Office of Research and Statistics of the State Budget and Control Board designated as document P-45-09.

(C) The polling places for the precincts provided in subsection (A) must be established by the Greenville County Board of Voter Registration and the Greenville County Election Commission with the approval of a majority of the members of the Greenville County Legislative Delegation."

Time effective

SECTION 2. This act takes effect upon approval by the Governor and is effective for all elections conducted after December 31, 2009.

Ratified the 27th day of May, 2009.

Approved the 2nd day of June, 2009.

No. 65

(R119, H3944)

AN ACT TO AMEND SECTION 56-3-8710, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE ISSUANCE OF NASCAR SPECIAL LICENSE PLATES

BY THE DEPARTMENT OF MOTOR VEHICLES, SO AS TO PROVIDE THAT A PORTION OF THE FEES COLLECTED FROM THE SALE OF THESE LICENSE PLATES MUST BE DISTRIBUTED TO THE SOUTH CAROLINA ASSOCIATION OF CHILDREN'S HOMES AND FAMILY SERVICES AND NO LONGER TO THE SOUTH CAROLINA CHILDREN'S EMERGENCY SHELTER FOUNDATION.

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

NASCAR special license plate charitable donations

SECTION 1. Section 56-3-8710(C)(1) of the 1976 Code is amended to read:

"(1) one-half deposited in a special account, separate and apart from the General Fund, designated the 'South Carolina Children's Emergency Shelter Fund' established within and administered for use by the Department of Social Services. The Department of Social Services shall distribute at least one-half of the funds from the special account to the South Carolina Association of Children's Homes and Family Services for the benefit of the South Carolina children's emergency shelters. Funds distributed to the South Carolina Association of Children's Homes and Family Services may be used only for providing donations to support the South Carolina children's emergency shelters. Funds received by the South Carolina Association of Children's Homes and Family Services pursuant to this section must be deposited in an appropriate nonprofit account designated by the South Carolina Association of Children's Homes and Family Services;"

Time effective

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

Ratified the 27th day of May, 2009.

Approved the 2nd day of June, 2009.

No. 66

(R120, H4023)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 57-23-815 SO AS TO PROVIDE THAT THE DEPARTMENT OF TRANSPORTATION MAY MOW BEYOND THIRTY FEET FROM THE PAVEMENT ROADSIDE VEGETATION ADJACENT TO INTERSTATE HIGHWAY 26 AT EXIT 199 IN BERKELEY COUNTY.

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

Roadside vegetation management along I-26 in Berkeley County

SECTION 1. Article 17, Chapter 23, Title 57 of the 1976 Code is amended by adding:

"Section 57-23-815. Notwithstanding the provisions of Section 57-23-800, or another provision of law, the Department of Transportation may mow beyond thirty feet from the pavement roadside vegetation adjacent to Interstate Highway 26 at Exit 199 in Berkeley County."

Time effective

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

Ratified the 27th day of May, 2009.

Approved the 2nd day of June, 2009.

No. 67

(R77, S673)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, SO AS TO ENACT THE "SOUTH CAROLINA MORTGAGE LENDING ACT", BY ADDING

CHAPTER 22 TO TITLE 37 SO AS TO REQUIRE THE LICENSING OF A MORTGAGE LENDER, LOAN ORIGINATOR, OR SOMEONE ACTING AS A MORTGAGE LENDER; PROVIDE DEFINITIONS; ESTABLISH QUALIFICATIONS AND REQUIREMENTS FOR LICENSURE AND GROUNDS FOR REVOCATION, SUSPENSION, RENEWAL, AND TERMINATION; DESCRIBE PROHIBITED ACTIVITIES; PROVIDE FOR RECORD KEEPING, TRUST AND ESCROW ACCOUNTS, AND ANNUAL REPORTS; PROVIDE FOR ENFORCEMENT THROUGH ADMINISTRATIVE ACTION BY THE COMMISSIONER OF THE CONSUMER FINANCE DIVISION OF THE BOARD OF FINANCIAL INSTITUTIONS AND THROUGH CRIMINAL PENALTIES, AND TO PROVIDE FOR PARTICIPATION IN A NATIONAL MORTGAGE REGISTRY; TO AMEND SECTION 34-1-20, AS AMENDED, RELATING TO APPOINTMENT OF MEMBERS OF THE STATE BOARD OF FINANCIAL INSTITUTIONS, SO AS TO PROVIDE FOR A REPRESENTATIVE OF THE MORTGAGE BANKERS ASSOCIATION; TO AMEND SECTION 34-1-110, AS AMENDED, RELATING TO AUTHORITY OF CERTAIN FINANCIAL INSTITUTIONS TO ENGAGE IN BUSINESS, SO AS TO PROVIDE FOR MORTGAGE LENDERS AND LOAN ORIGINATORS; TO AMEND SECTIONS 37-1-301, 37-3-105, 37-3-501, AND 37-23-20, ALL RELATING TO DEFINITIONS IN CONNECTION WITH MORTGAGE LENDING AND BROKERING AND HIGH-COST AND CONSUMER HOME LOANS, SO AS TO CONFORM DEFINITIONS, AND TO INCLUDE CERTAIN ADJUSTABLE RATE MORTGAGES AS A HIGH-COST HOME LOAN AND TO DEFINE "ADJUSTABLE RATE MORTGAGE"; TO AMEND SECTIONS 37-23-40, 37-23-45, AND 37-23-75, ALL RELATING TO PROTECTIONS FOR THE BORROWER IN A HIGH-COST OR CONSUMER HOME LOAN TRANSACTION, SO AS TO REQUIRE CERTAIN DISCLOSURES IN CONNECTION WITH AN ADJUSTABLE RATE MORTGAGE; TO AMEND SECTION 29-4-20, RELATING TO THE DEFINITION OF "REVERSE MORTGAGE", SO AS TO CONFORM THE DEFINITION; AND TO AMEND CHAPTER 58, TITLE 40, RELATING TO THE REGISTRATION OF MORTGAGE LOAN BROKERS, SO AS TO CHANGE THE REGISTRATION REQUIREMENTS TO LICENSING REQUIREMENTS, TO CONFORM DEFINITIONS

TO THOSE SET FORTH IN THE SOUTH CAROLINA MORTGAGE LENDING ACT, REQUIRE CERTAIN PROFESSIONAL COURSES, AN ADDITIONAL YEAR OF EXPERIENCE, AND A FINGERPRINT CHECK FOR MORTGAGE BROKERS AND LOAN ORIGINATORS, REQUIRE CERTAIN RECORDS BE KEPT AND MADE ACCESSIBLE, ADD CERTAIN PROHIBITIONS IN CONNECTION WITH A REAL ESTATE APPRAISAL, REQUIRE AND PRESCRIBE MORTGAGE BROKER AGREEMENTS, AUTHORIZE ENFORCEMENT BY THE DEPARTMENT OF CONSUMER AFFAIRS AND PRESCRIBE ADMINISTRATIVE PENALTIES INCLUDING FINES AND INJUNCTIONS AND A CRIMINAL PENALTY, REQUIRE CERTAIN REPORTS AND FILINGS, AND PROVIDE FOR PARTICIPATION IN A NATIONWIDE MORTGAGE REGISTRY.

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

South Carolina Mortgage Lending Act

SECTION 1. This act may be cited as the "South Carolina Mortgage Lending Act".

Mortgage lending

SECTION 2. Title 37 of the 1976 Code is amended by adding:

"CHAPTER 22

Mortgage Lending

Section 37-22-110. The following definitions apply in this chapter:

(1) 'Act as a mortgage broker' means to act, for compensation or gain, or in the expectation of compensation or gain, either directly or indirectly, by: (i) soliciting, processing, placing, or negotiating a mortgage loan for a borrower from a mortgage lender or depository institution or offering to process, place, or negotiate a mortgage loan for a borrower from a mortgage lender or depository institution, (ii) engaging in tablefunding of a mortgage loan, or (iii) acting as a loan correspondent, as that term is defined in 24 C.F.R. Part 202 et seq., whether those acts are done by telephone, by electronic means, by mail,

or in person with the borrowers or potential borrowers. 'Act as a mortgage broker' also includes bringing a borrower and lender together to obtain a mortgage loan or rendering a settlement service as described in 12 U.S.C. 2602(3) and 24 C.F.R. Part 3500.2(b).

(2) 'Act as a mortgage lender' means to engage in the business of making or servicing a mortgage loan for compensation or gain, or in the expectation of compensation or gain, either directly or indirectly, including soliciting, processing, placing, or negotiating a mortgage loan.

(3) 'Administrator' means the Administrator of the Department of Consumer Affairs (department) or the administrator's designees.

(4) 'Advertising' means a commercial message in a medium that promotes, either directly or indirectly, a mortgage loan transaction.

(5) 'Affiliate' means a company that controls, is controlled by, or is under common control with another company, as set forth in the Bank Holding Company Act of 1956 (12 U.S.C. Section 1841 et seq.). For purposes of this item, the term 'control' means ownership of all of the voting stock or comparable voting interest of the controlled person.

(6) 'Board' means the State Board of Financial Institutions as that term is used in Chapter 1, Title 34.

(7) 'Borrower' means a natural person in whose dwelling a security interest is or is intended to be retained or acquired if that person's ownership interest in the dwelling is or is to be subject to the security interest.

(8) 'Branch manager' means the natural person who is in charge of and who is responsible for the business operations of a branch office of a licensee.

(9) 'Branch office' means an office of the licensee that is separate and distinct from the licensee's principal office.

(10) 'Clerical or support duties' mean administrative functions after the receipt of an application by a licensed mortgage originator or lender, such as gathering information, requesting information, word processing, sending correspondence, or assembling files, and may include:

(a) the receipt, collection, and distribution common for the processing or underwriting of a residential mortgage loan; or

(b) any communication with a borrower to obtain the information necessary for the processing or underwriting of a loan, to the extent that such communication does not include taking a residential mortgage loan application, offering or negotiating loan rates or terms, or counseling consumers about residential mortgage loan rates or terms.

(11) 'Commissioner' means the designee of the State Board of Financial Institutions for purposes of licensing and regulation of mortgage lenders and mortgage loan originators pursuant to this chapter.

(12) 'Control', except as provided in item (5), means the power, directly or indirectly, to direct the management or policies of a company, whether through ownership of securities, by contract, or otherwise. A person is presumed to have 'control' of a company if that person: (i) is a director, general partner or executive officer, (ii) directly or indirectly has the right to vote ten percent or more of a class of a voting security or has the power to sell or direct the sale of ten percent or more of a class of voting securities, (iii) in the case of an LLC, is the managing member, or (iv) in the case of a partnership, has the right to receive upon dissolution, or has contributed, ten percent or more of the capital.

(13) 'Depository institution' has the same meaning as in Section 3 of the Federal Deposit Insurance Act (12 U.S.C. Section 1811 et seq.), and includes a credit union.

(14) 'Dwelling' means the same as the term in Section 226.2(a)19 of Title 12 of the Code of Federal Regulations and the Federal Reserve Board's Official Staff Commentary to that section.

(15) 'Employee' means a natural person who has an employment relationship, acknowledged by both the natural person and the mortgage lender, and is treated like an employee for purposes of compliance with the federal income tax laws.

(16) 'Escrow account' means an account that a mortgage lender establishes or controls on behalf of a borrower to pay taxes, insurance premiums including flood insurance, or other charges with respect to a mortgage loan, including charges that the borrower and mortgage lender have voluntarily agreed that the mortgage lender collects and pays. The definition encompasses an account established for this purpose. For purposes of this item, the term 'escrow account' excludes an account that is under the borrower's total control.

(17) 'Escrow funds' means money entrusted to a mortgage lender by a borrower for the purpose of payment of taxes and insurance or other payments to be made in connection with the servicing of a mortgage loan.

(18) 'Exempt person' means:

(a) an employee of a licensee whose responsibilities are limited to clerical or support duties for the employer and who does not solicit borrowers, accept applications, or negotiate the terms of loans on behalf of the employer;

(b) a depository institution or a subsidiary that is wholly owned and controlled by the depository institution and regulated by a federal banking agency or an institution regulated by the Farm Credit Administration. This chapter does not apply to the exempt persons described in this subitem;

(c) an officer, registered loan originator, or employee of an exempt person described in subitem (b) of this section when acting in the scope of employment for the exempt person;

(d) a person who offers or negotiates terms of a mortgage loan with or on behalf of an immediate family member of the individual;

(e) an individual who offers or negotiates terms of a mortgage loan secured by a dwelling that served as the person's residence;

(f) a natural person who sells residential real estate and who lends or services, in one calendar year, no more than five purchase money notes secured by mortgages, deeds of trust, or other security instruments on the real estate sold as security for the purchase money obligation, unless the United States Department of Housing and Urban Development or a court of competent jurisdiction determines that this exemption is not in compliance with the SAFE Act pursuant to Section 1508 of Title V of The Housing and Economic Recovery Act of 2008, Public Law 110-289;

(g) an employee whose employment as a processor or underwriter is undertaken pursuant to the direction and supervision of a licensee or exempt person except when the processor or underwriter is working as an independent contractor;

(h) an attorney who negotiates the terms of a residential mortgage loan on behalf of a client as an ancillary matter to the attorney's representation of the client, unless the attorney is compensated by a mortgage lender, a mortgage broker, or other mortgage loan originator or by an agent of the mortgage lender, mortgage broker, or other mortgage loan originator;

(i) an attorney who works for a mortgage lender, pursuant to a contract, for loss mitigation efforts or third party independent contractor who is HUD-certified, Neighborworks-certified, or similarly certified, who works for a mortgage lender, pursuant to a contract, for loss mitigation efforts; or

(j) a manufactured home retailer and its employees if performing only clerical or support duties in connection with the sale or lease of a manufactured home and the manufactured home retailer and its employees receive no compensation or other gain from a mortgage lender or a mortgage broker for the performance of the clerical or support duties.

(19) 'Federal banking agencies' means the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the National Credit Union Administration, and the Federal Deposit Insurance Corporation.

(20) 'Financial services or financial services related business' means pertaining to securities, commodities, banking, insurance, consumer lending, or real estate including, but not limited to, acting as or being associated with a bank or savings association, credit union, mortgage lender, mortgage servicer, mortgage broker, real estate broker, real estate salesperson or agent, closing agent, title company, or escrow agent.

(21) 'Immediate family member' means a spouse, child, sibling, parent, grandparent, or grandchild including stepparents, stepchildren, stepsiblings, and adoptive relationships.

(22) 'Individual servicing a mortgage loan' means an employee of a mortgage lender licensed in this State, that:

(a) collects or receives payments including payments of principal, interest, escrow amounts, and other amounts due on existing obligations due and owing to the licensed mortgage lender for a mortgage loan when:

(i) the borrower is in default; or

(ii) the borrower is in reasonably foreseeable likelihood of default;

(b) works with the borrower and the licensed mortgage lender, collects data, and makes decisions necessary to modify, either temporarily or permanently, certain terms of those obligations; or

(c) otherwise finalizes collection through the foreclosure process.

(23) 'Licensee' means a person who is licensed pursuant to this chapter.

(24) 'Loan commitment' or 'commitment' means a statement, written or electronic, by the mortgage lender setting forth the terms and conditions upon which the mortgage lender is willing to make a particular mortgage loan to a particular borrower.

(25) 'Loan originator' means a natural person who, in exchange for compensation or gain or in the expectation of compensation or gain as an employee of a licensed mortgage lender, solicits, negotiates, accepts, or offers to accept applications for mortgage loans, including electronic applications, or includes direct contact with, or informing mortgage loan applicants of, the rates, terms, disclosures, and other aspects of the mortgage loan. The definition of 'loan originator' does not include an exempt person described in item (18) of this section or a person solely involved in extensions of credit relating to timeshare

plans, as that term is defined in Section 101(53D) of Title 11, United States Code. The definition of loan originator does not apply to an individual servicing a mortgage loan as that term is defined in this chapter until July 31, 2011, unless the United States Department of Housing and Urban Development or a court of competent jurisdiction determines before that time that those individuals servicing mortgage loans are 'loan originators' as that term is defined in the SAFE Act pursuant to Section 1508 of Title V of The Housing and Economic Recovery Act of 2008, Public Law 110-289. Solely acquiring and reviewing a credit report does not constitute acting as a loan originator.

(26) 'Make a mortgage loan' means to close a mortgage loan, advance funds, offer to advance funds, or make a commitment to advance funds to a borrower under a mortgage loan.

(27) 'Managing principal' means a natural person who meets the requirements of Section 37-22-140(C) and who agrees to be primarily responsible for the operations of a licensed mortgage lender.

(28) 'Mortgage broker' means a person who acts as a mortgage broker, as that term is defined in item (1) of this section.

(29) 'Mortgage lender' means a person who acts as a mortgage lender as that term is defined in item (2) of this section or engages in the business of servicing mortgage loans for others or collecting or otherwise receiving mortgage loan payments directly from borrowers for distribution to another person. This definition does not include engaging in a tablefunded transaction.

(30) 'Mortgage loan' means a loan made to a natural person primarily for personal, family, or household use, primarily secured by a mortgage, deed of trust, or other security interest on residential real property or security interest arising under an installment sales contract or equivalent security interest against the borrower's dwelling and: (i) located in South Carolina, (ii) negotiated, offered, or otherwise transacted within this State, in whole or in part, or (iii) made or extended within this State.

(31) 'Nationwide Mortgage Licensing System and Registry' means a mortgage licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators of licensees licensed pursuant to this chapter.

(32) 'Nontraditional mortgage product' means a mortgage product other than a thirty-year fixed rate mortgage loan.

(33) 'Person' means a natural person, partnership, limited liability company, limited partnership, corporation, association, or other group engaged in joint business activities, however organized.

(34) 'Processor or underwriter' means an employee of a mortgage broker, mortgage lender, or exempt person who performs clerical or support duties at the direction of and subject to the supervision and instruction of a licensee or exempt person and may include direct contact with applicants but does not include soliciting, negotiating, accepting, or offering to accept applications that include personal identifying information as defined in Section 16-13-510(D) for mortgage loans including electronic applications or informing applicants of the rates, terms, disclosures, and other aspects of the mortgage loan.

(a) For purposes of this item only, clerical or support duties may include after the receipt of an application: (i) the receipt, collection, distribution, and analysis of information common for the processing or underwriting of a mortgage loan, and (ii) communication with a consumer to obtain the information necessary for the processing or underwriting of a mortgage loan, to the extent that the communication does not include offering or negotiating loan rates or terms or counseling consumers about mortgage loans.

(b) A person engaging solely in loan processor or underwriter activities may not represent to the public, through advertising or other means of communicating or providing information including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items that the person may or will perform any of the activities of a loan originator.

(c) A processor or underwriter who is an independent contractor may not engage in the activities of a processor or underwriter unless the independent contractor processor or underwriter obtains and maintains a license as provided by rule or regulation pursuant to Section 37-22-270.

(35) 'Registered loan originator' means a natural person who meets the definition of loan originator and is an employee of a depository institution or a subsidiary that is wholly owned and controlled by the depository institution and regulated by a federal banking agency or an institution regulated by the Farm Credit Administration and is registered with and maintains a unique identifier through the Nationwide Mortgage Licensing System and Registry.

(36) 'Residential real property' means real property located in the State of South Carolina upon which there is located or is to be located one or more single-family dwellings or dwelling units that are to be occupied as the owner's dwelling, and includes real estate and residential manufactured home (land/home) transactions.

(37) 'RESPA' means the Real Estate Settlement Procedures Act of 1974, 12 U.S.C. Section 2601 et seq. and regulations adopted pursuant to it by the Department of Housing and Urban Development.

(38) 'Soliciting, processing, placing, or negotiating a mortgage loan' means, for compensation or gain or in the expectation of compensation or gain, either directly or indirectly, accepting or offering to accept an application for a mortgage loan, assisting or offering to assist in the processing of an application for a mortgage loan, soliciting or offering to solicit a mortgage loan, or negotiating or offering to negotiate the terms or conditions of a mortgage loan.

(39) 'Tablefunding' means a settlement at which a loan is funded by a contemporaneous advance of loan funds and an assignment of the loan to the person advancing the funds.

(40) 'TILA' means the Truth in Lending Act, 15 U.S.C. Section 1601 et seq. and regulations adopted pursuant to it by the Board of Governors of the Federal Reserve System.

(41) 'Unique identifier' means a number or other identifier assigned by protocols established by the Nationwide Mortgage Licensing System and Registry.

Section 37-22-120. (A) Without first obtaining a license pursuant to this chapter it is unlawful for a person, other than an exempt person, doing business in this State to:

(1) act as a mortgage lender or, directly or indirectly, engage in the business of a mortgage lender under any name or title; or

(2) circulate or use advertising, including electronic means, make a representation or give information to a person which indicates or reasonably implies activity within the scope of this chapter.

(B) It is unlawful for a person to employ, compensate, or appoint as its agent a loan originator unless the loan originator is licensed as a loan originator pursuant to this chapter. An exempt person is not subject to this subsection.

(C) The license of a loan originator is not effective during a period that the person is not employed by a mortgage lender licensed pursuant to this chapter.

(D) If a loan originator ceases to be employed by a mortgage lender licensed pursuant to this chapter, the loan originator and the mortgage lender by whom that person is employed promptly shall notify the commissioner in writing. The mortgage lender's notice must include a statement of the specific reason or reasons for the termination of the loan originator's employment. The reason for termination is confidential information and must not be released to the public.

(E) A loan originator must not be employed simultaneously by more than one mortgage lender licensed pursuant to this chapter.

(F) Independent contractors, except for exempt persons, must be licensed separately. Processors and underwriters who are independent contractors must be licensed as provided in Section 37-22-110(34)(c).

Section 37-22-130. (A) A person aggrieved by an administrative order issued by the commissioner may request a contested case hearing before the Administrative Law Court in accordance with the court's rules of procedure. If the person fails to request a contested case hearing within the time provided in the court's rules of procedure, the administrative order becomes final and the commissioner may bring an action to enforce its order pursuant to Chapter 23, Title 1. This section does not limit utilization of, or the scope of judicial review available under, other means of review, redress, relief, or trial de novo provided by law. A preliminary, procedural, or intermediate action or ruling of the Administrative Law Court is reviewable immediately if review of the final decision of the Administrative Law Court would not provide an adequate remedy.

(B) Contested case proceedings are instituted by filing a request for a contested case hearing with the Administrative Law Court according to the rules of procedure of the Administrative Law Court. Copies of the request for a contested case hearing must be served upon the commissioner and all parties of record. The final decision of the administrative law judge may be appealed as provided in Section 1-23-380 and 1-23-610 or Chapter 23, Title 1.

Section 37-22-140. (A) A person desiring to obtain a license pursuant to this chapter shall make application for licensure to the commissioner on forms prescribed by the commissioner. The application must contain the information the commissioner considers necessary including, but not limited to, the applicant's:

(1) name, address, and social security number or, if applicable, Employer Identification Number (EIN);

(2) form and place of organization, if applicable;

(3) proposed method of and locations for doing business, if applicable;

(4) qualifications and business history and, if applicable, the business history of any partner, officer, or director, a person occupying a similar status or performing similar functions, or a person directly or indirectly controlling the applicant, including: (i) a description of any injunction or administrative order by a state or federal authority to

which the person is or has been subject, including denial, suspension, or revocation of a financial services or financial services related license or registration, (ii) a conviction, or plea of guilty or nolo contendere to a misdemeanor within the last ten years involving financial services or a financial services related business or any fraud, false statements or omissions, theft or wrongful taking of property, bribery, perjury, forgery, counterfeiting, extortion, money laundering, breach of trust, or a conspiracy to commit any of these offenses, and (iii) a conviction of, or plea of guilty or nolo contendere to, a felony;

(5) financial condition, credit history, and business history, with respect to an application for licensing as a mortgage lender; and credit history and business history, with respect to the application for licensing as a loan originator; and

(6) consent to a national and state fingerprint-based criminal history record check pursuant to Section 37-22-240 and submission of a set of the applicant's fingerprints in a form acceptable to the commissioner. In the case of an applicant that is a corporation, partnership, limited liability company, association, or trust, each natural person who has control of the applicant or who is the managing principal or a branch manager shall consent to a national and state fingerprint-based criminal history record check pursuant to Section 37-22-240 and submit a set of that natural person's fingerprints pursuant to this item. Refusal to consent to a criminal history record check constitutes grounds for the commissioner to deny licensure to the applicant as well as to any entity: (i) by whom or by which the applicant is employed, (ii) over which the applicant has control, or (iii) as to which the applicant is the current or proposed managing principal or a current or proposed branch manager.

(B) In addition to the requirements imposed by the commissioner in subsection (A), each applicant for licensure as a loan originator shall:

(1) have attained the age of at least eighteen years;

(2) work for a licensed mortgage lender;

(3) have satisfactorily completed prelicensing education of at least twenty hours and a written examination approved pursuant to 12 U.S.C. 5101 et seq. To satisfy the twenty hours of prelicensing education, an applicant may show proof of the equivalent of twenty or more semester hours of satisfactorily completed course work in real estate finance or real estate law or course work that is equivalent to the education requirements in the SAFE Act pursuant to Section 1508 of Title V of The Housing and Economic Recovery Act of 2008, Public Law 110-289 if the course work counts toward the successful completion of a degree that is baccalaureate level or more advanced

with a major or minor in finance, accounting, business administration, real estate finance economics, or similar baccalaureate or more advanced degree, approved by the commissioner, from an accredited college or university. The coursework must be approved pursuant to 12 U.S.C. 5101 et seq.;

(4) have never had a loan originator license revoked in any governmental jurisdiction; and

(5) have not been convicted of, or pled guilty or nolo contendere to, a felony in a domestic, foreign, or military court: (i) during the ten-year period preceding the date of the application for licensing, or (ii) at any time, if the felony involved an act of fraud, dishonesty, breach of trust, or money laundering.

(C) In addition to the requirements of subsection (A) of this section, each applicant for licensure as a mortgage lender at the time of application and at all times after that shall comply with the following requirements:

(1) If the applicant is a sole proprietor, the applicant shall have at least three years of experience in financial services or financial services related business or other experience or competency requirements as the commissioner may impose.

(2) If the applicant is a general or limited partnership, at least one of its general partners shall have the experience described in item (1).

(3) If the applicant is a corporation, at least one of its principal officers shall have the experience described in item (1).

(4) If the applicant is a limited liability company, at least one of its members or managers shall have the experience described in item (1).

(5) Instead of a showing of three years' experience, an applicant may show proof of three years' employment with a federally insured depository institution or a VA-, FHA-, or HUD-approved mortgagee.

(D) Each applicant shall identify one person meeting the requirements of subsections (B) and (C) to serve as the applicant's managing principal.

(E) Every applicant for initial licensure shall pay a filing fee of one thousand dollars for licensure as a mortgage lender or fifty dollars for licensure as a loan originator, in addition to the actual cost of obtaining credit reports and national and state fingerprint-based criminal history record checks. If a licensed loan originator changes employment, a new license must be issued and a fee of twenty-five dollars must be paid.

(F) A mortgage lender shall post and maintain a surety bond in an amount determined by the commissioner, based on the total dollar amount of mortgage loans originated in a calendar year in this State

pursuant to the following: (i) dollar volume of mortgage loans from $0 to $49,999,999, surety bond of $50,000, (ii) dollar volume of mortgage loans from $50,000,000 to $249,999,999, surety bond of $100,000, (iii) dollar volume of mortgage loans greater than $250,000,000 surety bond of $150,000. In no case is the surety bond less than fifty thousand dollars. The surety bond must be executed by a surety company authorized by the laws of this State to transact business within this State. The surety bond must be in a form satisfactory to the commissioner, must be executed to the commissioner, and must be for the use of the State for the recovery of expenses, fines, and fees, or any of them, levied pursuant to this chapter and for consumers who have losses or damages as a result of noncompliance with this chapter by the mortgage lender. The full amount of the surety bond must be in effect at all times. The license of a licensee expires upon the termination of the bond by the surety company, unless a new bond is filed with the commissioner before the termination of the previous bond. If the license expires based on bond termination, all licensed activity must cease and the person must apply for a license pursuant to subsection (A).

(G) Any sole proprietor, general partner, member or manager of a limited liability company, or officer of a corporation who meets individually the requirements of subsection (B), upon payment of the applicable fee, meets the qualifications for licensure as a loan originator subject to the provisions of subsection (I).

(H) Each principal office and each branch office of a licensed mortgage lender at which business is conducted must be licensed pursuant to this chapter and must be issued a separate license. A licensed mortgage lender shall file with the commissioner an application on a form prescribed by the commissioner which identifies the address of the principal office and each branch office and branch manager. A licensing fee of one hundred fifty dollars must be assessed by the commissioner for each branch office issued a license.

(I) If the commissioner determines that an applicant meets the qualifications for licensure and finds that the financial responsibility, character, and general fitness of the applicant are such as to command the confidence of the community and to warrant belief that the business is to be operated honestly, fairly, and efficiently according to the purposes of this chapter and in accordance with all applicable state and federal laws, the commissioner shall issue a license to the applicant. If the commissioner does not make that determination, the commissioner shall refuse to license the applicant and shall notify him of the denial.

(J) Issuance of a license does not indicate approval or acceptance of any contract, agreement, or other document submitted in support of the application. A licensee may not represent that its services or contracts are approved by the State or state agency.

(K) A person who obtains a license as a mortgage lender, upon notice to the commissioner on a form prescribed by the commissioner, may act as a mortgage broker as defined in Section 37-22-110(1). The commissioner shall provide to the administrator notification of which mortgage lenders also are acting as brokers. A mortgage lender who also acts as a mortgage broker is not required to obtain a license as a mortgage broker pursuant to Chapter 58, Title 40, and is not subject to regulation by the administrator, except that the mortgage lender acting as a mortgage broker must comply with Sections 40-58-70, 40-58-75, and 40-58-78.

(L)(1) A person with three years' experience as a loan originator who applies for a license as a loan originator and who has completed and filed with the Nationwide Mortgage Licensing System and Registry all information, documents, and requirements for licensure pursuant to this chapter and who has been assigned a unique identifier by the registry must be provided a provisional license as a loan originator before the commissioner takes action on his application if the applicant is employed by a mortgage lender licensed pursuant to this chapter and a senior officer or managing principal of that licensee attests to the commissioner that:

(a) the applicant, within the six-month period before the date of application for licensure, has not been acting as a registered loan originator or a state-licensed loan originator in another state under provisions of Section 1507 of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008, and:

(i) the applicant has never had a loan originator license denied, revoked, or suspended in any governmental jurisdiction;

(ii) the applicant during the previous five years, ending on the date of the filing of the current application, has not had an application for a professional license denied, a professional license revoked, or any adverse action taken on a professional license;

(iii) the applicant has not been convicted of a felony that would otherwise authorize the commissioner to deny a license;

(iv) the application meets all of the applicable requirements of this chapter for licensure; and

(v) the licensee will be responsible for the acts of the applicant during the period that such application is pending; or

(b) the applicant is currently, or has within the six-month period before the date of the application, been acting as a registered loan originator or a state-licensed loan originator in another state under provisions of Section 1507 of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 and the applicant has never had a loan originator license denied, revoked, or suspended in any governmental jurisdiction and has not been convicted of a felony that would otherwise authorize the commissioner to deny a license.

(2) A provisional license issued pursuant to this section expires on the earlier of the following:

(a) the date upon which the commissioner issues or denies the permanent license applied for; or

(b) ninety days from the date the provisional license is issued.

(3) The commissioner may deny or suspend the rights of a licensee pursuant to this chapter to employ a loan originator acting under item (1) of this subsection if the commissioner finds that the licensee, the senior officer, or managing principal does not make the certification or undertaking set forth in item (1)(b) of this subsection in good faith.

(M) If the information contained in a document filed with the commissioner is or becomes inaccurate or incomplete, the licensee promptly shall file a correcting amendment to the information contained in the document.

(N) All advertisements of mortgage loans must comply with the Truth in Lending Act, 15 U.S.C. 1601 et seq. and the South Carolina Consumer Protection Code, Title 37.

Section 37-22-150. (A) All licenses issued by the commissioner pursuant to this chapter expire annually on the thirty-first day of December or on another date that the commissioner may determine. The license is invalid after that date unless renewed. The renewal period for all licensees is from November first through December thirty-first annually or on another date the commissioner may determine. A licensee desiring to renew its license must submit an application to the commissioner on forms and containing information the commissioner requires. Applications received after December thirty-first or another date the commissioner determines, are late and the late fees in subsection (B) apply. A license may be renewed by compliance with this section and by paying to the commissioner, in addition to the actual cost of obtaining credit reports and national and state fingerprint-based criminal history record checks as the

commissioner may require, a renewal fee as prescribed by the board for each of the following:

(1) for a licensed mortgage lender, an annual renewal fee of no more than eight hundred dollars and no more than one hundred fifty dollars for each branch office; and

(2) for a licensed loan originator, an annual fee of no more than fifty dollars.

(B) If a license of a licensed mortgage lender is not renewed during the renewal period, a late fee of not more than five hundred dollars as prescribed by the board, in addition to the renewal fee in subsection (A)(1), must be assessed. If a license of a licensed loan originator is not renewed during the renewal period, a late fee of not more than one hundred dollars as prescribed by the board, in addition to the renewal fee in subsection (A)(2) of this section, must be assessed as a late fee to a renewal. If a licensee fails to renew its license within thirty days after the date the license expires or otherwise fails to maintain a valid license, the commissioner shall require the licensee to comply with the requirements for the initial issuance of a license pursuant to this chapter, in addition to paying any fee that has accrued.

(C) At any time required by the commissioner, each person described in Section 37-22-140 shall furnish to the commissioner consent to a national and state fingerprint-based criminal history record check and a set of fingerprints in a form acceptable to the commissioner. Refusal to consent to a criminal history record check may constitute grounds for the commissioner to deny renewal of the license of the person as well as the license of another person by which he is employed, over which he has control, or as to which he is the current or proposed managing principal or a current or proposed branch manager.

(D) A license issued pursuant to this chapter is not assignable or transferable. Control of a licensee must not be acquired through a stock purchase or other device without the prior written consent of the commissioner. The commissioner may not give written consent if the commissioner finds that any of the grounds for denial, revocation, or suspension of a license pursuant to Section 37-22-200 are applicable to the acquiring person.

Section 37-22-160. (A) As a condition of license renewal, a licensee must complete at least eight hours of continuing professional education annually for the purpose of enhancing professional competence and responsibility. The continuing professional education completed must be reported to the commissioner annually. Documentation of courses

completed must be maintained by all licensees. This documentation is subject to inspection by the commissioner for up to two years after the date of course completion.

(B) Continuing education credit may be granted only for the year in which the class is taken and may not be granted for the same course in successive years.

(C) If a licensee fails to complete the continuing professional education before the license expiration date, his license expires and he shall pay a penalty of not more than one hundred dollars, in addition to other fees or penalties that have accrued, to reinstate the license.

(D) All prelicensing education, continuing education, and written examinations must be approved through the Nationwide Mortgage Licensing System and Registry, pursuant to 12 U.S.C. 5101 et seq. before credit can be awarded. Applicants and licensees that successfully complete education or testing approved through the Nationwide Mortgage Licensing System and Registry fulfill the requirements of this State.

Section 37-22-170. A mortgage lender licensed pursuant to this chapter shall have a managing principal who operates the business under that manager's full charge, control, and supervision. A mortgage lender may operate a branch office subject to the requirements of this chapter. Each principal and branch office of a mortgage lender licensed pursuant to this chapter shall have a branch manager who meets the requirements of Section 37-22-140(B) and (C)(1). Each mortgage lender licensed pursuant to this chapter shall file a form prescribed by the commissioner indicating the business's designation of managing principal and branch manager for each branch and their acceptance of the responsibility. The managing principal for a licensee's business also may serve as the branch manager of one of the licensee's branch offices. A mortgage lender licensed pursuant to this chapter shall notify the commissioner of a change in its managing principal or any branch manager. The license of a licensee who does not comply with this provision must be suspended pursuant to Section 37-22-200 until the licensee complies with this section. A licensee who operates as a sole proprietorship is a managing principal for the purposes of this chapter.

Section 37-22-180. (A) A licensee shall report to the commissioner a change of address of the principal place of business or a branch office at least seven days before the change. Change of address notification

of a licensed location must be accompanied by a fee of twenty-five dollars.

(B) A mortgage lender licensed pursuant to this chapter shall display in plain view in its principal office and in each branch the license issued by the commissioner. A loan originator licensed pursuant to this chapter shall display in each branch office in which mortgage loans are originated a copy of the license issued by the commissioner.

Section 37-22-190. (A) In addition to the activities prohibited by other provisions of state or federal law, it is unlawful for a person licensed pursuant to this chapter, in the course of a mortgage loan origination, to:

(1) misrepresent or conceal the material facts or make false promises likely to influence, persuade, or induce an applicant for a mortgage loan or a mortgagor to take a mortgage loan, or to pursue a course of misrepresentation through agents or otherwise;

(2) refuse improperly or fail to issue a satisfaction of a mortgage pursuant to Section 29-3-310;

(3) fail to account for or deliver to a person entitled to receive funds, documents, or other things of value obtained in connection with a mortgage loan including money provided by a borrower for a real estate appraisal or a credit report, which the mortgage lender or loan originator is not entitled to retain under the circumstances;

(4) pay, receive, or collect in whole or in part any commission, fee, or other compensation for a mortgage loan origination in violation of this chapter including any unlicensed person other than an exempt person;

(5) charge or collect a fee or rate of interest or to make or service a mortgage loan with terms or conditions or in a manner contrary to the provisions of this chapter;

(6) advertise mortgage loans including rates, margins, discounts, points, fees, commissions, or other material information including material limitations on the loans, unless the person is able to make the mortgage loans available as advertised to qualified applicants;

(7) fail to disburse funds in good faith and in accordance with a written commitment or agreement to make a mortgage loan that has been accepted by the borrower;

(8) engage in a transaction, practice, or course of business in connection with the making or servicing of, or purchase or sale of, a mortgage loan that is not in good faith or fair dealing, that is

unconscionable, as set forth in Section 37-5-108, or that constitutes a fraud upon a person;

(9) fail to pay reasonable fees within a reasonable time to a licensed third party for services that are:

(a) requested from the third party in writing by the mortgage lender or an employee of the mortgage lender; and

(b) performed by the third party in connection with the origination or closing of a mortgage loan for a customer or mortgage lender;

(10) influence or attempt to influence through coercion, extortion, or bribery, the development, reporting, result, or review of a real estate appraisal sought in connection with a mortgage loan. This item does not prohibit a mortgage lender or servicer from asking the appraiser to do one or more of the following:

(a) consider additional appropriate property information;

(b) provide further detail, substantiation, or explanation for the appraiser's value conclusion; or

(c) correct errors in the appraisal report;

(11) fail to comply with the mortgage loan servicing transfer, escrow account administration, or borrower inquiry response requirements imposed by Sections 6 and 10 of the Real Estate Settlement Procedures Act (RESPA), 12 U.S.C. Section 2605 and Section 2609, and regulations adopted pursuant to them by the Secretary of the Department of Housing and Urban Development and state law;

(12) fail to provide within a reasonable time, upon written request of a borrower, a payment history statement in a form easily understood by the borrower including payment dates and amounts and charges within the twelve months preceding the month in which the request is received and the total amount unpaid as of the end of the period covered by the statement. The statement must be provided without charge once during each year of the term of the obligation. If additional statements are requested, the borrower may be charged a reasonable fee, not to exceed five dollars for each additional statement;

(13) take a security interest in a borrower's principal dwelling where the amount of the mortgage loan is less than five thousand dollars;

(14) fail to provide disclosures as required by state or federal law or collect any fee before providing required disclosures;

(15) fail to comply with this chapter or other state or federal law including rules and regulations applicable to business regulated by this chapter;

(16) falsely advertise or misuse names in violation of 18 U.S.C. Section 709 or state law; or

(17) use any trade name or insignia of membership in an organization of which the licensee is not a member or advertise falsely through any material including, but not limited to, business card, stationery, or signage concerning a designation or certification of special education, credentials, trade organization membership, or business.

(B) A violation of a state or federal law applicable to a business covered by this chapter is a violation of this chapter and may be enforced by the commissioner.

Section 37-22-200. (A) The commissioner, by order, may deny, suspend, revoke, or refuse to issue or renew a license of a licensee or applicant pursuant to this chapter or may restrict or limit the activities relating to mortgage loans of a licensee or a person who owns an interest in or participates in the business of a licensee, if the commissioner finds that both:

(1) the order is in the public interest; and

(2) the applicant, licensee, or any partner, member, manager, officer, director, loan originator, managing principal, or other person occupying a similar status or performing similar functions or a person directly or indirectly controlling the applicant or licensee:

(a) has filed an application for license that, as of its effective date or as of a date after filing, contained a statement that, in light of the circumstances under which it was made, is false or misleading with respect to a material fact;

(b) has violated or failed to comply with a provision of this chapter or order of the commissioner;

(c) within the past ten years has been convicted of, or pled guilty or nolo contendere to, a misdemeanor involving financial services or financial services related business or an offense involving breach of trust or fraudulent or dishonest dealing, or money laundering or has been convicted of, or pled guilty or nolo contendere to, a felony in a domestic, foreign, or military court;

(d) is permanently or temporarily enjoined by a court of competent jurisdiction from engaging in or continuing conduct or practice involving financial services or financial services related business;

(e) is the subject of an order of the commissioner denying, suspending, or revoking that person’s license;

(f) is the subject of an order entered by the authority of a governmental entity with jurisdiction over the financial services or financial services related industry denying or revoking that person's license;

(g) does not meet the qualifications or the financial responsibility, character, or general fitness requirements, or a bond or capital requirements, pursuant to this chapter;

(h) has been the executive officer or controlling shareholder or owned a controlling interest in a financial services or financial services related business that has been subject to an order or injunction described in subitems (d), (e), or (f);

(i) has failed to pay the proper filing or renewal fee pursuant to this chapter or a fine, penalty, or fee imposed by any governmental entity. However, the commissioner may enter only a denial order pursuant to this subitem, and the commissioner shall vacate the order when the deficiency is corrected; or

(j) has falsely certified attendance or completion of hours at an approved education course.

(B) The commissioner, by order, summarily may postpone or suspend the license of a licensee pending final determination of a proceeding pursuant to this section. Upon entering the order, the commissioner shall notify promptly the applicant or licensee that the order has been entered, the reasons for the order, and the procedure for requesting a hearing before the Administrative Law Court. If a licensee does not request a hearing and the commissioner does not request a hearing, the order remains in effect until it is modified or vacated by the commissioner.

(C) The commissioner, by order, may impose an administrative penalty upon a licensee or any member, partner, officer, director, or other person occupying a similar status or performing similar functions on behalf of a licensee for a violation of this chapter. The administrative penalty may not exceed ten thousand dollars for each violation of this chapter by a licensee. The commissioner may impose an administrative penalty that may not exceed ten thousand dollars for each violation of this chapter by a person other than a licensee or exempt person.

(D) In addition to other powers pursuant to this chapter, upon finding that an action of a person is in violation of this chapter, the commissioner may order the person to cease from the prohibited action. If the person subject to the order fails to request a contested case hearing in accordance with Section 37-22-130, or if the person requests the hearing and it is denied or dismissed, and the person

continues to engage in the prohibited action in violation of the commissioner's order, the person is subject to an administrative penalty that may not exceed twenty-five thousand dollars for each violation of the commissioner's order. The penalty provision of this section is in addition to and not instead of another provision of law for failure to comply with an order of the commissioner.

(E) Unless otherwise provided, all actions and hearings pursuant to this chapter are governed by Chapter 23, Title 1.

(F) If a licensee is accused of any act, omission, or misconduct that subjects the licensee to disciplinary action, the licensee, with the consent and approval of the commissioner, may surrender the license and the rights and privileges pertaining to it and is not eligible to receive, or to submit an application for, licensure for a period of time established by the commissioner.

(G) If the commissioner has reasonable grounds to believe that a licensee or other person has violated this chapter or that facts exist that would be the basis for an order against a licensee or other person, the commissioner, either personally or by a person duly designated by the commissioner, at any time may investigate or examine the loans and business of the licensee and examine the books, accounts, records, and files of the licensee or other person relating to the complaint or matter under investigation. The reasonable cost of this investigation or examination must be charged against the licensee. The commissioner may require the licensee or other person to submit a consent to a national and state fingerprint-based criminal history record check and a set of that person's fingerprints in a form acceptable to the commissioner in connection with an examination or investigation. Refusal to submit the requested criminal history record check or a set of fingerprints is grounds for disciplinary action.

(H) The commissioner may subpoena documents and witnesses and compel their production and attendance, to examine under oath all persons whose testimony the commissioner considers relative to the person's business and require the production of books, papers, or other materials.

(I) The commissioner, at the licensee's expense, may conduct routine examinations of the books and records of a licensee to determine compliance with this chapter.

(J) The commissioner shall cooperate and share information with an agency of this State, other states, or the federal government concerning activity regulated by this chapter. The commissioner shall accept or participate in examinations conducted by one of these agencies.

(K) In addition to the authority described in this section, the commissioner may require a person to pay to a borrower or other natural person amounts received by the person or its employees in violation of this chapter.

(L) If the commissioner finds that the managing principal, branch manager, or loan originator of a licensee had knowledge of, or reasonably should have had knowledge of, or participated in an activity that results in the entry of an order suspending or withdrawing the license of a licensee, the commissioner may prohibit the branch manager, managing principal, or loan originator from serving as a branch manager, managing principal, or loan originator for the period of time the commissioner considers necessary.

(M) Orders issued by the commissioner or by the Administrative Law Court pursuant to this chapter must be reported by the commissioner to the Nationwide Mortgage Licensing System and Registry.

Section 37-22-210. (A) The commissioner shall keep a list of all applicants for licensure pursuant to this chapter which includes the date of application, name, and place of residence and whether the license was granted or refused.

(B) The commissioner shall keep a current roster containing the names and places of business of all licensees and containing their respective loan originators. The rosters must: (i) be kept on file in the office of the commissioner, (ii) contain information regarding all orders or other action taken against the licensees, loan originators, and other persons, and (iii) be open to public inspection.

(C)(1) A licensee shall make and keep the accounts, correspondence, memoranda, papers, books, and other records prescribed by the commissioner. Records must be preserved for three years unless the commissioner prescribes otherwise for particular types of records. A licensee should develop, maintain, and test disaster recovery plans for all records that are maintained. The recordkeeping requirements imposed by the commissioner or this subsection must not be greater than those imposed by applicable state or federal law. Licensee's records may be maintained electronically, if approved by the commissioner, so long as they are readily accessible for examination by the commissioner.

(2) Beginning on January 1, 2010, in addition to the records required to be maintained by licensees pursuant to subitem (1), each licensee shall maintain a mortgage log that contains these specific data elements: (i) credit score of the borrower, (ii) adjustable or fixed type

of loan, (iii) term of the loan, (iv) annual percentage rate of the loan, and (v) appraised value of the collateral. Each licensee shall submit to the commissioner by March thirty-first of each year its mortgage log data and the data identified in 12 C.F.R. Part 203 et seq., in a form determined by the commissioner. The licensee shall pay a fine of one hundred dollars a day for late or incomplete data submissions. Data collected by the commissioner pursuant to this section is confidential and may be released to the public only in composite form. The commissioner annually shall submit to the department, in a form prescribed by the department and no later than April thirtieth, the data that it collected. The department shall prepare and make available to the public a report based on the data. The report must be available by June thirtieth each year.

(D) If the information contained in a document filed with the commissioner is or becomes inaccurate or incomplete in a material respect, the licensee promptly shall file a correcting amendment to the information contained in the document.

(E) A licensee shall maintain in a segregated escrow fund or trust account funds that come into the licensee's possession, but which are not the licensee's property and which the licensee is not entitled to retain under the circumstances. The escrow fund or trust account must be held on deposit in a federally insured financial institution. Escrow funds must be accounted for in compliance with the rules under RESPA.

(F) A licensee clearly shall display the unique identifier assigned by the Nationwide Mortgage Licensing System and Registry on all mortgage loan forms, solicitations, or advertisements including business cards or websites and any other documents furnished in connection with a mortgage loan transaction.

(G) A licensee ceasing activities regulated by this chapter and desiring no longer to be licensed shall inform the commissioner at least seven days in advance. The licensee shall include with the notification a plan of withdrawal that includes a timetable for the disposition of the business, the location of the books, records, and accounts until the end of the retention period, and certification of the proper disposal of those records after that.

Section 37-22-220. (A) A licensee shall maintain records in conformity with generally accepted accounting principles and practices in a manner that will enable the commissioner to determine if the licensee is complying with the provisions of this chapter and other state and federal laws. The recordkeeping system of a licensee is sufficient

if it makes the required information reasonably available. The records need not be kept in the place of business where loans are made if the commissioner is given free access to the records wherever located and the licensee pays the reasonable cost of their examination.

(B) On or before March thirty-first each year, a licensee shall file with the commissioner an annual report in the form prescribed by the commissioner relating to all mortgage loans made, serviced, or brokered by it. The licensee shall pay a fine of one hundred dollars a day for each late or incomplete annual report.

(C) The mortgage loan report shall include, but is not limited to, the total number and dollar amounts in connection with all mortgage loans, of:

(1) first and subordinate lien loans originated by licensee and closed in the name of another party;

(2) first and subordinate lien loans originated by another party and closed in the name of the licensee;

(3) first and subordinate lien loans originated by and closed in the name of the licensee;

(4) first and subordinate lien loans originated by and closed in the name of another party but funded by licensee;

(5) loans purchased by licensee;

(6) first and subordinate lien loans serviced by licensee;

(7) loans owned with and without servicing rights;

(8) loans sold with and without servicing rights;

(9) loans paid off before and at maturity;

(10) unpaid loans at the beginning and end of the reporting year;

(11) delinquent loans that are 30-59, 60-89, and ninety days or more delinquent, of all the loans the licensee owned as of December thirty-first;

(12) loans in foreclosure as of December thirty-first and foreclosed in the previous calendar year by licensee;

(13) mortgage loans charged against reserve for loan losses as a result of foreclosures during the reporting year; and

(14) loans repurchased during the previous calendar year.

(D) The annual report also must include the total gross revenue earned in this State under this license, the total dollar amount of points paid to the licensee by borrowers on first and subordinate lien mortgage loans, the total dollar amount of points paid to brokers by the licensee on first and subordinate lien mortgage loans, including yield spread premiums, and the lending institution, maximum amount available, outstanding balance, and expiration date of licensee’s four largest warehouse lines of credit during the previous calendar year.

(E) Information contained in annual reports is confidential and may be published only in composite form.

(F) The commissioner annually shall submit to the department, in a form prescribed by the Department of Consumer Affairs and no later than April thirtieth, the data that it collected. The department shall prepare and make available to the public a report based on the data. The report must be available by June thirtieth each year.

Section 37-22-230. A person who wilfully violates a provision of this chapter is guilty of a misdemeanor and, upon conviction, must be fined not more than five hundred dollars or imprisoned not more than six months, or both, for each violation. Each transaction involving the unlawful making or servicing of a mortgage loan is a separate offense.

Section 37-22-240. (A) The South Carolina Law Enforcement Division (SLED) shall provide a criminal history record check to the commissioner for a person who has applied for or holds a mortgage lender or loan originator license through the commissioner pursuant to this chapter.

(B) In addition, if a person described in subsection (A) is a corporation, partnership, limited liability company, association, or trust, SLED shall provide a criminal history record check to the commissioner for a person who has control of that person, or who is the managing principal or a branch manager of that person.

(C) The commissioner shall provide to SLED, along with the request, the fingerprints of the person, additional information required by SLED, records check fees required by SLED and the Federal Bureau of Investigation (FBI), and a form signed by the person consenting to the check of the criminal record and to the use of the fingerprints and other identifying information required by the state or national repositories. Using the information supplied by the commissioner to SLED, the applicant must undergo a state criminal record check, supported by fingerprints, by SLED, and a national criminal record check, supported by fingerprints, by the FBI. The results of these criminal record checks must be reported to the commissioner. SLED is authorized to retain the fingerprints for certification purposes and for notification of the commissioner regarding subsequent criminal charges which may be reported to SLED or the FBI or both. The commissioner shall keep all information pursuant to this section privileged, in accordance with applicable state and federal guidelines.

Section 37-22-250. All funds specified in this chapter must be paid to the commissioner, must be used to implement the provisions of this chapter, and are nonrefundable.

Section 37-22-260. (A) The commissioner may promulgate regulations necessary to effectuate the purposes of this chapter.

(B) For the purpose of participating in the Nationwide Mortgage Licensing System and Registry, the commissioner may waive or modify, in whole or in part, by rule, regulation, or order, any or all of the requirements of this chapter and establish new requirements as reasonably necessary to participate in the Nationwide Mortgage Licensing System and Registry.

(C) For the purposes of implementing an orderly and efficient licensing process, the commissioner may establish licensing rules or regulations and interim procedures for licensing and acceptance of applications. For previously registered or licensed individuals, the commissioner may establish expedited reviews, expedited licensing procedures, and grandfather provisions.

Section 37-22-270. (A) The commissioner may participate in a Nationwide Mortgage Licensing System and Registry and may:

(1) facilitate and participate in the establishment and implementation of the Nationwide Mortgage Licensing System and Registry;

(2) enter into agreements and contracts including cooperative, coordinating, and information sharing agreements;

(3) contract with third parties to process, maintain and store information collected by the Nationwide Mortgage Licensing System and Registry;

(4) authorize the Nationwide Mortgage Licensing System and Registry to collect fingerprints on the commissioner's behalf in order to receive national and state criminal history background record checks from the FBI and SLED and furnish the fingerprints to SLED to retain for certification purposes and for notification of the commissioner regarding subsequent criminal charges which may be reported to SLED, or the FBI or both in accordance with Sections 37-22-140 and 37-22-240;

(5) authorize the Nationwide Mortgage Licensing System and Registry to collect credit reports on the commissioner's behalf for all licensees in accordance with Section 37-22-140;

(6) require persons that must be licensed by this chapter to utilize the Nationwide Mortgage Licensing System and Registry;

(7) require all applicants and licensees to pay all applicable funds provided for in this chapter through the Nationwide Mortgage Licensing System and Registry;

(8) provide information to and receive information from the Nationwide Mortgage Licensing System and Registry;

(9) authorize a third party to collect funds associated with licensure on behalf of the commissioner; and

(10) authorize the Nationwide Mortgage Licensing System and Registry to collect and disburse consumer complaints.

(B) Persons required to be licensed pursuant to this chapter must be required to pay all applicable fees to utilize the Nationwide Mortgage Licensing System and Registry and consent to utilizing the Nationwide Mortgage Licensing System and Registry to obtain fingerprint-based criminal history background record checks and credit reports.

(C) The commissioner shall provide licensees with written notice sent to the address of record on file with the commissioner through the United States Postal Service the date the Nationwide Mortgage Licensing System and Registry will be available for their use. Licensees shall have one hundred and twenty days from the date the system is available for use to enter all their licensing information into the Nationwide Mortgage Licensing System and Registry. All filings required by the commissioner pursuant to this chapter after the date the system is available for use must be made through the Nationwide Mortgage Licensing System and Registry, except for exempt persons.

(D) All licensees licensed through the Nationwide Mortgage Licensing System and Registry must use the unique identifier assigned in all advertising and on all mortgage loan documents.

(E) Notwithstanding another provision of law to the contrary, the Nationwide Mortgage Licensing System and Registry is not intended to and does not replace or affect the commissioner's authority to grant, suspend, revoke, or deny a license required pursuant to this chapter.

(F) The commissioner shall develop a plan that ensures an orderly transition to the Nationwide Mortgage Licensing System and Registry. This transition plan must address issues of prelicensing education, written examinations, credit reports, and national and state fingerprint-based criminal histories and record checks."

State Board of Financial Institutions

SECTION 3.A. Section 34-1-20 of the 1976 Code, as last amended by Act 252 of 2006, is further amended to read:

"Section 34-1-20. The State Board of Financial Institutions is composed of eleven members, one of whom is the State Treasurer as an ex officio member and as the chairman. The remaining ten members must be appointed by the Governor with the advice and consent of the Senate. Four must be engaged in banking and recommended by the South Carolina Bankers Association, one must be recommended by the association of supervised lenders, one must be engaged in the mortgage lending business and recommended by the Mortgage Bankers Association of the Carolinas, one must be engaged in the licensed consumer finance business as a restricted lender or a supervised lender and recommended by the Independent Consumer Finance Association, two must be engaged in the cooperative credit union business and recommended by the State Cooperative Credit Union League, and one must be unaffiliated with a financial organization and serve as a representative of the consumers of the State. The terms of the present members are not affected. Each member shall represent the best interests of the public and shall not serve more than two consecutive four-year terms. The association which is to provide a member to fill a vacancy on the board, except for a consumer representative, shall submit three names, from three different institutions, from which the Governor shall select one."

B. Section 34-1-110(A) of the 1976 Code, as last amended by Act 42 of 1999, is further amended to read:

"(A) Notwithstanding any other provision of law and in addition to all of the powers granted under Chapters 1 through 31, Title 34 and Chapter 3, Title 37, the State Board of Financial Institutions, by regulation or by issuing operational instructions, may permit:

(1) state-chartered banks to engage in any activity authorized for national banks by federal law or regulation of the Comptroller of the Currency or for state-chartered savings and loan associations by this title or regulation or operational instruction of the State Board of Financial Institutions;

(2) state-chartered savings and loan associations to engage in any activity authorized for federally chartered savings and loan associations by federal law or regulation of the Office of Thrift Supervision or for state-chartered banks by this title or regulation or operational instruction of the State Board of Financial Institutions;

(3) cooperative credit unions to engage in any activity authorized for federally chartered credit unions by federal law or by regulation of the National Credit Union Administration;

(4) consumer finance companies operating pursuant to a license to make supervised loans as provided in Part 5, Chapter 3, Title 37, to engage in any lending activity authorized for supervised financial organizations by law or by regulation of an agency given supervisory authority over those institutions, except where otherwise restricted by statute; and

(5) mortgage lenders and loan originators operating pursuant to a license to make mortgage loans as provided in Chapter 22, Title 37, to engage in a mortgage lending activity authorized for licensed mortgage lenders and loan originators by law or by regulation of an agency given supervisory authority over those institutions, except where otherwise restricted by statute."

Definitions; adjustable rate mortgage

SECTION 4.A. Section 37-1-301(29) of the 1976 Code is amended to read:

"(29) 'Licensee' means a person licensed pursuant to this title."

B. Section 37-3-105(3) of the 1976 Code is amended to read:

"(3) Loans excluded from the definition of a 'consumer loan' pursuant to subsection (1) also are subject to the provisions of Chapter 7, Chapter 10, Chapter 22, and Chapter 23 of this title."

C. Section 37-3-501(1) of the 1976 Code is amended to read:

"(1) 'Supervised loan' means a consumer loan in which the rate of the loan finance charge exceeds twelve percent per year as determined according to the provisions on the loan finance charge for consumer loans (Section 37-3-201). A supervised loan does not include a mortgage loan as defined in Section 37-22-110(30)."

D. Section 37-23-20(9), (10), and (12) of the 1976 Code, as added by Act 42 of 2003, is amended to read:

"(9) 'High-cost home loan' means:

(a) a loan, other than an open-end credit plan or a reverse mortgage transaction, in which the:

(i) principal amount of the loan does not exceed the conforming loan size limit for a single-family dwelling as established from time to time by the Federal National Mortgage Association;

(ii) borrower is a natural person;

(iii) debt is incurred by the borrower primarily for personal, family, or household purposes;

(iv) loan is secured by either a security interest in a residential manufactured home, as defined in Section 37-1-301(24) which is to be occupied by the borrower as the borrower's principal dwelling, or a mortgage on real estate upon which there is located or there is to be located a structure designed principally for occupancy from one to four families and which is or is to be occupied by the borrower as the borrower's principal dwelling; and

(v) terms of the loan exceed one or more of the thresholds as defined in item (15) of this section; or

(b) an adjustable rate mortgage at the fully indexed rate assuming a fully amortizing repayment schedule that would exceed one or more of the thresholds as defined in item (15) of this section.

(10) 'Lender' includes, but is not limited to, a mortgage broker originating a loan in a tablefunded loan transaction in which the broker is identified as the original payee of the note.

(12) 'Originator' or 'loan originator' means an employee of a mortgage broker or mortgage lender whose primary job responsibilities include direct contact with or informing loan applicants of the rates, terms, disclosure, or other aspects of the mortgage. It does not mean an employee whose primary job responsibilities are clerical in nature, such as processing the loan."

E. Section 37-23-20 of the 1976 Code, as added by Act 42 of 2003, is amended by adding:

"(17) An adjustable rate mortgage (ARM) is a mortgage in which the interest rate and monthly payment may vary over time."

F. Section 37-23-40(2) of the 1976 Code, as added by Act 42 of 2003, is amended to read:

"(2) make a high-cost home loan unless the lender reasonably believes at the time the loan is consummated that one or more of the obligors, when considered individually or collectively, is able to make the scheduled payments to repay the obligation based upon a

consideration of their current and expected income, current obligations, employment status, and other financial resources other than the borrower's equity in the dwelling that secures repayment of the loan. If the loan is an adjustable rate mortgage (ARM), the analysis of the obligor must include an evaluation of the ability to repay by final maturity at the fully indexed rate assuming a fully amortizing repayment schedule. An obligor is presumed to be able to make the scheduled payments to repay the obligation if, at the time the loan is consummated, the obligor's total monthly debts, including amounts owed pursuant to the loan including, but not limited to, principal, interest, current property taxes, and current insurance, do not exceed fifty percent of the obligor's monthly gross income as verified by the credit application, a credit report, and information provided to a lender by a third party, including the Internal Revenue Service (IRS). A presumption of inability to make the scheduled payments to repay the obligation does not arise solely from the fact that, at the time the loan is consummated, the obligor's total monthly debts, including amounts owed under the loan, exceed fifty percent of the obligor's monthly gross income;"

G. Section 37-23-45(A) of the 1976 Code, as added by Act 42 of 2003, is amended by adding:

"(4) for a loan that is an ARM as defined in Section 37-23-20(17), a listing of the schedule when the loan may be reset, for each and every reset, and a listing of the monthly payment that is owed for each change that is allowed by the terms of the contract. If the consumer escrows the insurance and taxes with each monthly payment, it must be reflected in the payment listed."

H. Section 37-23-75(A) of the 1976 Code, as added by Act 42 of 2003, is amended by adding:

"(4) for a loan that is an ARM as defined in Section 37-23-20(17), a listing of the schedule when the loan may be reset, for each and every reset, and a listing of the monthly payment that is owed for each change that is allowed by the terms of the contract. If the consumer escrows the insurance and taxes with each monthly payment, it must be reflected in the payment listed."

I. Section 29-4-20(1) and (3) of the 1976 Code is amended to read:

"(1) provides cash advances to a borrower based on the equity or future appreciation in value in a borrower's owner-occupied principal residence;

(3) is made by a lender authorized to engage in business as a bank, savings institution, or credit union under the laws of the United States or of South Carolina, or a mortgage lender licensed pursuant to Chapter 22, Title 37."

Licensing of mortgage brokers

SECTION 5. Chapter 58, Title 40 of the 1976 Code is amended to read:

"CHAPTER 58

Licensing of Mortgage Brokers

Section 40-58-10. (A) This chapter may be cited as the Licensing of Mortgage Brokers Act.

(B) A person may not broker a mortgage loan as defined in this chapter unless the broker of the mortgage loan:

(1) is an exempt person as defined by Section 40-58-20(16); or

(2) has complied with the provisions of this chapter.

Section 40-58-20. As used in this chapter:

(1) 'Act as a mortgage broker' means to act, for compensation or gain, or in the expectation of compensation or gain, either directly or indirectly, by: (i) soliciting, processing, placing, or negotiating a mortgage loan for a borrower from a mortgage lender or depository institution or offering to process, place, or negotiate a mortgage loan for a borrower from a mortgage lender or depository institution, (ii) engaging in tablefunding of a mortgage loan, or (iii) acting as a loan correspondent, as that term is defined in 24 C.F.R. Part 202 et seq., whether those acts are done by telephone, by electronic means, by mail, or in person with the borrowers or potential borrowers. 'Act as a mortgage broker' also includes bringing a borrower and lender together to obtain mortgage loan or rendering a settlement service as described in 12 U.S.C. 2602(3) and 24 C.F.R. Part 3500.2(b).

(2) 'Act as a mortgage lender' means to engage in the business of making or servicing mortgage loan for compensation or gain, or in the expectation of compensation or gain, either directly or indirectly,

including soliciting, processing, placing, or negotiating a mortgage loan.

(3) 'Administrator' means the Administrator of the Department of Consumer Affairs (department) or the administrator's designees.

(4) 'Advertising' means a commercial message in a medium that promotes, either directly or indirectly, a mortgage loan transaction.

(5) 'Affiliate' means a company that controls, is controlled by, or is under common control with another company, as set forth in the Bank Holding Company Act of 1956 (12 U.S.C. Section 1841 et seq.). For purposes of this item, the term 'control' means ownership of all of the voting stock or comparable voting interest of the controlled person.

(6) 'Borrower' means a natural person in whose dwelling a security interest is or is intended to be retained or acquired if that person's ownership interest in the dwelling is or is to be subject to the security interest.

(7) 'Branch manager' means the natural person who is in charge of and who is responsible for the business operations of a branch office of a licensee.

(8) 'Branch office' means an office of the licensee that is separate and distinct from the licensee's principal office.

(9) 'Clerical or support duties' mean administrative functions after the receipt of an application by a licensed mortgage originator or broker, such as gathering information, requesting information, word processing, sending correspondence, or assembling files, and may include:

(a) The receipt, collection, and distribution common for the processing or underwriting of a residential mortgage loan; or

(b) Any communication with a borrower to obtain the information necessary for the processing or underwriting of a loan, to the extent that such communication does not include taking a residential mortgage loan application, offering or negotiating loan rates or terms, or counseling consumers about residential mortgage loan rates or terms.

(10) 'Control', except as provided in item (5), means the power, directly or indirectly, to direct the management or policies of a company, whether through ownership of securities, by contract, or otherwise. A person is presumed to have 'control' of a company if that person: (i) is a director, general partner or executive officer, (ii) directly or indirectly has the right to vote ten percent or more of a class of a voting security or has the power to sell or direct the sale of ten percent or more of a class of voting securities, (iii) in the case of an LLC, is the managing member, or (iv) in the case of a partnership, has the right to

receive upon dissolution, or has contributed, ten percent or more of the capital.

(11) 'Depository institution' has the same meaning as in Section 3 of the Federal Deposit Insurance Act (12 U.S.C. Section 1811 et. seq.), and includes a credit union.

(12) 'Dwelling' means the same as the term in Section 226.2(a)19 of Title 12 of the Code of Federal Regulations and the Federal Reserve Board's Official Staff Commentary to that section.

(13) 'Employee' means a natural person who has an employment relationship, acknowledged by both the natural person and the mortgage broker, and is treated like an employee for purposes of compliance with the federal income tax laws.

(14) 'Escrow account' means an account that a mortgage lender establishes or controls on behalf of a borrower to pay taxes, insurance premiums including flood insurance, or other charges with respect to a mortgage loan, including charges that the borrower and mortgage lender have voluntarily agreed that the mortgage lender collects and pays. The definition encompasses an account established for this purpose. For purposes of this item, the term 'escrow account' excludes an account that is under the borrower's total control.

(15) 'Escrow funds' means money entrusted to a mortgage lender by a borrower for the purpose of payment of taxes and insurance or other payments to be made in connection with the servicing of a mortgage loan.

(16) 'Exempt person' means:

(a) an employee of a licensee whose responsibilities are limited to clerical or support duties for the employer and who does not solicit borrowers, accept applications, or negotiate the terms of loans on behalf of the employer;

(b) a depository institution or a subsidiary that is wholly owned and controlled by the depository institution and regulated by a federal banking agency or an institution regulated by the Farm Credit Administration. This chapter does not apply to the exempt persons described in this subitem;

(c) an officer, registered loan originator, or employee of an exempt person described in subitem (b) of this section when acting in the scope of employment for the exempt person;

(d) a person who offers or negotiates terms of a mortgage loan with or on behalf of an immediate family member of the individual;

(e) an individual who offers or negotiates terms of a mortgage loan secured by a dwelling that served as the person's residence;

(f) a natural person who sells residential real estate and who lends or services, in one calendar year, no more than five purchase money notes secured by mortgages, deeds of trust, or other security instruments on the real estate sold as security for the purchase money obligation, unless the United States Department of Housing and Urban Development or a court of competent jurisdiction determines that this exemption is not in compliance with the SAFE Act pursuant to Section 1508 of Title V of The Housing and Economic Recovery Act of 2008, Public Law 110-289;

(g) an employee whose employment as a processor or underwriter is undertaken pursuant to the direction and supervision of a licensee or exempt person except when the processor or underwriter is working as an independent contractor;

(h) an attorney who negotiates the terms of a residential mortgage loan on behalf of a client as an ancillary matter to the attorney's representation of the client, unless the attorney is compensated by a mortgage lender, a mortgage broker, or other mortgage loan originator or by an agent of the mortgage lender, mortgage broker, or other mortgage loan originator;

(i) an attorney who works for a mortgage lender, pursuant to a contract, for loss mitigation efforts or third party independent contractor who is HUD-certified, Neighborworks-certified, or similarly certified, who works for a mortgage lender, pursuant to a contract, for loss mitigation efforts; or

(j) a manufactured home retailer and its employees if performing only clerical or support duties in connection with the sale or lease of a manufactured home and the manufactured home retailer and its employees receive no compensation or other gain from a mortgage lender or a mortgage broker for the performance of the clerical or support duties.

(17) 'Federal banking agencies' means the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the National Credit Union Administration, and the Federal Deposit Insurance Corporation.

(18) 'Financial services or financial services related business' means pertaining to securities, commodities, banking, insurance, consumer lending, or real estate including, but not limited to, acting as or being associated with a bank or savings association, credit union, mortgage lender, mortgage servicer, mortgage broker, real estate broker, real estate salesperson or agent, closing agent, title company, or escrow agent.

(19) 'Immediate family member' means a spouse, child, sibling, parent, grandparent, or grandchild including stepparents, stepchildren, stepsiblings, and adoptive relationships.

(20) 'Individual servicing a mortgage loan' means an employee of a mortgage lender licensed in this State, that:

(a) collects or receives payments including payments of principal, interest, escrow amounts, and other amounts due on existing obligations due and owing to the licensed mortgage lender for a mortgage loan when:

(i) the borrower is in default; or

(ii) the borrower is in reasonably foreseeable likelihood of default;

(b) works with the borrower and the licensed mortgage lender, collects data, and makes decisions necessary to modify, either temporarily or permanently, certain terms of those obligations; or

(c) otherwise finalizes collection through the foreclosure process.

(21) 'Licensee' means a person who is licensed pursuant to this chapter.

(22) 'Loan commitment' or 'commitment' means a statement, written or electronic, by the mortgage lender setting forth the terms and conditions upon which the mortgage lender is willing to make a particular mortgage loan to a particular borrower.

(23) 'Loan originator' means a natural person who, in exchange for compensation or gain or in the expectation of compensation or gain as an employee of a licensed mortgage broker, solicits, negotiates, accepts, or offers to accept applications for mortgage loans, including electronic applications, or includes direct contact with, or informing mortgage loan applicants of, the rates, terms, disclosures, and other aspects of the mortgage loan. The definition of 'loan originator' does not include an exempt person described in item (16) of this section or a person solely involved in extensions of credit relating to timeshare plans, as that term is defined in Section 101(53D) of Title 11, United States Code. The definition of loan originator does not apply to an individual servicing a mortgage loan as that term is defined in this chapter until July 31, 2011, unless the United States Department of Housing and Urban Development or a court of competent jurisdiction determines before that time that those individuals servicing mortgage loans are 'loan originators' as that term is defined in the SAFE Act pursuant to Section 1508 of Title V of The Housing and Economic Recovery Act of 2008, Public Law 110-289. Solely acquiring and reviewing a credit report does not constitute acting as a loan originator.

(24) 'Make a mortgage loan' means to close a mortgage loan, advance funds, offer to advance funds, or make a commitment to advance funds to a borrower under a mortgage loan.

(25) 'Managing principal' means a natural person who meets the requirements of Section 40-58-50(B) and who agrees to be primarily responsible for the operations of a licensed mortgage broker.

(26) 'Mortgage broker' means a person who acts as a mortgage broker, as that term is defined in item (1) of this section.

(27) 'Mortgage lender' means a person who acts as a mortgage lender as that term is defined in item (2) of this section or engages in the business of servicing mortgage loans for others or collecting or otherwise receiving mortgage loan payments directly from borrowers for distribution to another person. This definition does not include engaging in a tablefunded transaction.

(28) 'Mortgage loan' means a loan made to a natural person primarily for personal, family, or household use, primarily secured by a mortgage, deed of trust, or other security interest on residential real property or security interest arising under an installment sales contract or equivalent security interest against the borrower's dwelling and: (i) located in South Carolina, (ii) negotiated, offered, or otherwise transacted within this State, in whole or in part, or (iii) made or extended within this State.

(29) 'Nationwide Mortgage Licensing System and Registry' means a mortgage licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators of licensees licensed pursuant to this chapter.

(30) 'Nontraditional mortgage product' means a mortgage product other than a thirty-year fixed rate mortgage loan.

(31) 'Person' means a natural person, partnership, limited liability company, limited partnership, corporation, association, or other group engaged in joint business activities, however organized.

(32) 'Processor or underwriter' means an employee of a mortgage broker, mortgage lender, or exempt person who performs clerical or support duties at the direction of and subject to the supervision and instruction of a licensee or exempt person and may include direct contact with applicants but does not include soliciting, negotiating, accepting, or offering to accept applications that include personal identifying information as defined in Section 16-13-510(D) for mortgage loans including electronic applications or informing applicants of the rates, terms, disclosures, and other aspects of the mortgage loan.

(a) For purposes of this item only, clerical or support duties may include after the receipt of an application: (i) the receipt, collection, distribution, and analysis of information common for the processing or underwriting of a mortgage loan, and (ii) communication with a consumer to obtain the information necessary for the processing or underwriting of a mortgage loan, to the extent that the communication does not include offering or negotiating loan rates or terms or counseling consumers about mortgage loans.

(b) A person engaging solely in loan processor or underwriter activities may not represent to the public, through advertising or other means of communicating or providing information including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items that the person may or will perform any of the activities of a loan originator.

(c) A processor or underwriter who is an independent contractor may not engage in the activities of a processor or underwriter unless the independent contractor processor or underwriter obtains and maintains a license as provided by rule or regulation pursuant to Section 40-58-100.

(33) 'Registered loan originator' means a natural person who meets the definition of loan originator and is an employee of a depository institution or a subsidiary that is wholly owned and controlled by the depository institution and regulated by a federal banking agency or an institution regulated by the Farm Credit Administration and is registered with and maintains a unique identifier through the Nationwide Mortgage Licensing System and Registry.

(34) 'Residential real property' means real property located in the State of South Carolina upon which there is located or is to be located one or more single-family dwellings or dwelling units that are to be occupied as the owner's dwelling, and includes real estate and residential manufactured home (land/home) transactions.

(35) 'RESPA' means the Real Estate Settlement Procedures Act of 1974, 12 U.S.C. Section 2601 et seq. and regulations adopted pursuant to it by the Department of Housing and Urban Development.

(36) 'Soliciting, processing, placing, or negotiating a mortgage loan' means, for compensation or gain or in the expectation of compensation or gain, either directly or indirectly, accepting or offering to accept an application for a mortgage loan, assisting or offering to assist in the processing of an application for a mortgage loan, soliciting or offering to solicit a mortgage loan, or negotiating or offering to negotiate the terms or conditions of a mortgage loan.

(37) 'Tablefunding' means a settlement at which a loan is funded by a contemporaneous advance of loan funds and an assignment of the loan to the person advancing the funds.

(38) 'TILA' means the Truth in Lending Act, 15 U.S.C. Section 1601 et seq. and regulations adopted pursuant to it by the Board of Governors of the Federal Reserve System.

(39) 'Unique identifier' means a number or other identifier assigned by protocols established by the Nationwide Mortgage Licensing System and Registry.

Section 40-58-30. (A) A person may not act as a mortgage broker in this State without first being licensed with the administrator. A person, required to be licensed pursuant to this chapter, may not do business without a license under any name or title, or circulate or use advertising, including electronic means, or make a representation or give information to any person, which indicates or reasonably implies activity within the scope of this chapter unless that person has a license.

(B) It is unlawful for a person to employ, to compensate, or to appoint as its agent a loan originator unless the loan originator is licensed pursuant to this chapter. The license of a loan originator is not effective during any period when that person is not employed by a mortgage broker licensed pursuant to this chapter. When a loan originator ceases to be employed by a licensed mortgage broker, the loan originator and the mortgage broker by whom that person was employed shall notify promptly the administrator in writing. The mortgage broker's notice must include a statement of the specific reason or reasons for the termination of the loan originator's employment. The reason for termination is confidential information and must not be released to the public. A loan originator must not be employed simultaneously by more than one mortgage broker. If a licensed loan originator changes employment, a new license must be issued and a fee of twenty-five dollars must be paid for issuance of the new license.

(C) Notwithstanding subsection (A) of this section, the provisions of this chapter do not apply to an exempt person.

(D) Independent contractors, including processors and underwriters, must be separately licensed.

Section 40-58-40. A mortgage broker shall post and maintain a surety bond in an amount determined by the administrator that is based on the total dollar amount of mortgage loans originated in a calendar

year pursuant to the following: (1) dollar volume of mortgage loans from $0 to $49,999,999 surety bond of $25,000, (2) dollar volume of mortgage loans from $50,000,000 to $99,999,999 surety bond of $40,000, (3) dollar volume of mortgage loans greater than $100,000,000 surety bond of $55,000. In no case will the surety bond be less than the amount of twenty-five thousand dollars. The surety bond must be executed by a surety company authorized by the laws of this State to transact business within this State. The surety bond must be in a form satisfactory to the administrator, must be executed to the administrator, and must be for the use of the State for the recovery of expenses, fines, and/or fees levied pursuant to this chapter and for consumers who have losses or damages as a result of noncompliance with this chapter by the mortgage broker. The full amount of the surety bond must be in effect at all times. The license of a licensee expires upon the termination of the bond by the surety company, unless a new bond has been filed with the administrator before the termination of the previous bond. In the event that the license expires based on bond termination, all licensed activity must cease and the person must apply for a license pursuant to Section 40-58-50.

Section 40-58-50. (A) An application to become licensed as a mortgage broker or loan originator must be in writing, under oath, and in a form prescribed by the administrator. The application must contain any information the administrator deems necessary including the name and complete business and residential address or addresses, and social security number or if applicable Employer Identification Number (EIN) of the applicant. If the applicant for a mortgage broker license is a partnership, association, limited liability company, corporation, or other form of business organization, the names and complete business and residential addresses of each member, director, and principal officer and a list of all employees who engage in direct brokerage activity including, but not limited to, loan originators.

(B)(1) The application for a mortgage broker license must include an affirmation of financial solvency noting bonding requirements required by the administrator and the descriptions of the business activities, credit history, financial responsibility, educational background, and general character and fitness of the applicant and any partner, officer, or director, a person occupying a similar status or performing similar functions, or a person directly or indirectly controlling the applicant as required by this chapter, including consent to a national and state criminal history record checks and a set of the applicant’s fingerprints in a form acceptable to the administrator. The

application must be accompanied by a nonrefundable fee, payable to the department, of five hundred fifty dollars, in addition to the actual cost of obtaining credit reports and national and state criminal history record checks by the Federal Bureau of Investigation (FBI) and the South Carolina Law Enforcement Division (SLED). Using the information supplied by the administrator to SLED, the applicant must undergo a state criminal record check, supported by fingerprints, by SLED, and a national criminal record checks, supported by fingerprints, by the FBI. The results of these criminal record checks must be reported to the administrator. The South Carolina Law Enforcement Division is authorized to retain the fingerprints for certification purposes and for notification of the administrator regarding criminal charges. The administrator shall keep all information pursuant to this section privileged, in accordance with applicable state and federal guidelines.

(2) An applicant for a mortgage broker's license must have at least three years' experience in financial services or financial services related business or other experience or competency requirements the administrator may impose before an initial license is issued.

(a) Instead of a showing of three years' experience, an applicant may show proof of three years' employment with a federally insured depository institution, or a VA-, FHA-, or HUD-approved mortgagee.

(b) Instead of one of the required year's experience, an applicant may show proof of the equivalent of six or more semester hours of satisfactorily completed course work in real estate finance, real estate law, or similar course work counting toward the successful completion of a degree that is baccalaureate level or more advanced with a major or minor in finance, accounting, business administration, real estate finance, economics, or similar baccalaureate or more advanced degree, approved by the administrator or the administrator's designee, from an accredited college or university.

(3) If the applicant is a partnership, limited liability company (LLC), or corporation, at least one partner, member-manager, or principal officer shall have the experience required for the applicant. Each applicant shall identify the person meeting the experience requirement to serve as the applicant's managing principal. The managing principal shall operate the business under his full charge, control, and supervision. The managing principal also may serve as the branch manager of a licensee branch office. Each main and branch office of a mortgage broker licensed pursuant to this chapter must have a branch manager who meets the experience requirements of

subsection (B)(2). The mortgage broker licensee must designate a managing principal in writing and notify the administrator of any changes in managing principal. The managing principal and each branch manager must meet the requirements in subsection (C) of this section.

(C) The application for a loan originator license must designate the employing mortgage broker and must include descriptions of the business activities, credit history, financial responsibility, educational background, and general character and fitness of the applicant as required by this chapter, including consent to a national and state criminal history record check and a set of the applicant's fingerprints in a form acceptable to the administrator. The application must be accompanied by a nonrefundable fee, payable to the department, of fifty dollars, in addition to the actual cost of obtaining credit reports and national and state criminal history record checks by the FBI and SLED. Using the information supplied by the administrator to SLED, the applicant must undergo a state criminal record check, supported by fingerprints, by SLED, and a national criminal record check, supported by fingerprints, by the FBI. The results of these criminal record checks must be reported to the administrator. The South Carolina Law Enforcement Division is authorized to retain the fingerprints for certification purposes and for notification of the administrator regarding criminal charges. The administrator shall keep all information pursuant to this section privileged, in accordance with applicable state and federal guidelines. Additionally, the applicant must:

(1) complete satisfactorily a prelicensing educational course of at least twenty hours and a written examination approved pursuant to 12 U.S.C. 5101 et seq.;

(2) have never had a loan originator license revoked in any governmental jurisdiction;

(3) have not been convicted of, or pled guilty or nolo contendere to, a felony in a domestic, foreign, or military court: (i) during the ten-year period preceding the date of application for licensing, or (ii) at any time if the felony involved an act of fraud, dishonesty, breach of trust, or money laundering; and

(4) be at least eighteen years of age and otherwise comply with this chapter.

(D) Any sole proprietor, general partner, member or manager of a limited liability company, or officer of a corporation who meets individually the requirements of subsection (C) of this section, upon payment of the applicable fee, meets the qualifications for licensure as

a loan originator subject to the provisions of Section 40-58-60 of this chapter.

Section 40-58-55. (Reserved)

Section 40-58-60. (A) Upon the filing of an application for a license, if the administrator finds that the financial responsibility, experience, character, and general fitness of the applicant, and of the members if the applicant is a partnership, association, or limited liability company, and of the officers and directors if the applicant is a corporation, are such as to command the confidence of the community and to warrant belief that the business may be operated honestly, fairly, and efficiently according to the purposes of this chapter and in accordance with all applicable state and federal laws, it shall license the applicant and issue a license. If the administrator does not so find, it shall refuse to license the applicant and shall notify him of the denial.

(B) Upon the receipt of the license, the licensee is authorized to engage in the business for which the license was issued.

(C) Each license issued to a licensee must state the address at which the business is to be conducted and must state fully the name of the licensee and the date of the license. A license must be posted prominently in each place of business of the licensee. The license is not transferable or assignable.

(D) Issuance of a license does not indicate approval or acceptance of any contract, agreement, or other document submitted in support of the application. A licensee may not represent that its services or contracts are approved by the State or a state agency.

(E) If the information contained in any document filed with the administrator is or becomes inaccurate or incomplete in a material respect, the licensee promptly shall file a correcting amendment to the information contained in the document.

(F) All advertisements of mortgage loans must comply with the Truth in Lending Act, 15 U.S.C. 1601 et seq. and the South Carolina Consumer Protection Code, Title 37.

Section 40-58-65. (A) A mortgage broker licensed pursuant to this chapter must maintain at his usual place of business books, records, and documents pertaining to the business conducted, to enable the administrator to determine compliance with this chapter, and shall include a mortgage loan log that contains these specific data elements: (i) credit score of the borrower, (ii) adjustable or fixed type of loan, (iii) term of the loan, (iv) annual percentage rate of the loan, and (v)

appraised value of the collateral. Each licensee shall submit its mortgage loan log data and the data identified in 12 C.F.R. Part 203 et seq., in a form determined by the administrator by March thirty-first of each year. The licensee shall pay a fine of one hundred dollars a day for late or incomplete data submissions. Data collected by the administrator pursuant to this section is confidential and may be released only in composite form. The administrator shall prepare and make available to the public a report based on the above data. The report must be available by June thirtieth of each year. The mortgage loan log must be completed with information known at the time of review by the administrator and must include loans in process, closed loans, turndowns, denials, and withdrawals. A mortgage broker with two or more licensed offices may consolidate the records at any one of the licensed offices so long as the administrator is notified of the location of the records. The records must be available for examination to the administrator or his designee upon request. Books and records must be maintained for at least three years. A licensee's records may be maintained electronically, if approved by the administrator, so long as they are readily accessible for examination by the administrator.

(B) A mortgage broker doing business in this State shall maintain a sufficient physical presence in this State and his records must be maintained at the licensed location in this State. At a minimum, the broker shall maintain an official place of business open during regular business hours, staffed by one or more licensees who have the authority to contract on behalf of the broker and to accept service on behalf of the broker. If the official place of business is not open for business within the hours of 8:30 a.m. until 5:00 p.m., Monday through Friday, the broker shall notify the administrator in writing.

(C) A licensed mortgage broker with an official place of business within South Carolina also may maintain one or more branch offices if the:

(1) mortgage broker notifies the administrator in writing seven days before the opening of a branch office of the location of the branch office, the branch manager for each branch location, and that all records from the branch office are stored in a main or branch location in this State which is staffed by one or more licensees during regular business hours;

(2) records of any pending mortgage loan application or records in which a loan closing is still in process are made available at the mortgage broker's main or branch location as provided in item (1) to the administrator within seven business days of a written request

delivered by facsimile transmission, mail, or hand delivery by the administrator;

(3) broker notifies the administrator in writing within seven business days of closing a branch office;

(4) mortgage broker licensee is responsible and accountable for the activities of all licensed locations, branch managers, and loan originators. Compliance reviews must include examination of all facts and circumstances of branch operations to ensure this responsibility and accountability.

(D) The administrator may examine the books and records of a mortgage broker and other documents and records to determine whether there has been substantial compliance with this chapter. Unless there is reason to believe a violation of this chapter has occurred, examinations must be limited to one each year. Records and information obtained by the administrator during an examination are confidential and the administrator must certify that it is in compliance with the Right to Financial Privacy Act (RFPA).

(E) The administrator may cooperate and share information with an agency of this State, other states, or the federal government. The administrator may accept or participate in examinations conducted by one of these agencies.

(F) If the mortgage broker fails to notify the administrator of the existence or closing of a branch office, the actual operating hours of the main or branch offices where records are kept, or the whereabouts of its records, the broker is subject to penalties as set forth in Section 40-58-80.

(G) A mortgage broker licensee who ceases doing business in this State must notify the administrator at least seven days in advance. The notification must include a withdrawal plan that includes a timetable for disposition of the business, the location of the books, records, and accounts until the end of the retention period, and certification of the proper disposal of those records.

(H) A mortgage broker licensee may develop, maintain, and test disaster recovery plans for all records that are maintained.

Section 40-58-67. (A)(1) Licensees must complete at least eight hours of continuing professional education annually. Continuing education credit may be granted only for the year in which the class is taken and may not be granted for the same course in successive years. The continuing professional education completed must be reported to the administrator annually. Course providers must maintain records of attendees for two years after the course.

(2) Documentation of courses completed must be maintained by the mortgage broker for all licensees and shall consist of a certificate of completion issued by the provider of the course showing the recommended number of hours of continuing professional education. This documentation is subject to inspection by the administrator for up to two years after the date of the course.

(B) If a licensee fails to complete his continuing professional education prior to renewal, his license shall expire and the licensee shall pay a penalty of one hundred dollars in order to renew the license.

(C) All prelicensing education, continuing education, and written examinations must be approved through the Nationwide Mortgage Licensing System and Registry pursuant to 12 U.S.C. 5101 et seq. before credit may be awarded. Applicants and licensees that successfully complete education or testing approved through the Nationwide Mortgage Licensing System and Registry shall fulfill the requirements of this State.

Section 40-58-70. In addition to the activities prohibited by other provisions of state or federal law, it is unlawful for a person in the course of a mortgage loan transaction to:

(1) misrepresent the material facts or make false promises likely to influence, persuade, or induce an applicant for a mortgage loan or a mortgagor to take a mortgage loan. This includes presenting the broker in the guise of a lender or pursuing a course of misrepresentation through agents or otherwise;

(2) intentionally misrepresent or conceal a material factor, term, or condition of a transaction to which he is a party, pertinent to an applicant for a mortgage loan or a mortgagor;

(3) engage in a transaction, practice, or course of business which is unconscionable, as provided in Section 37-5-108, or which operates a fraud upon a person in connection with the making of or purchase or sale of a mortgage loan;

(4) fail to use due diligence and make reasonable efforts in procuring a mortgage loan on behalf of a borrower;

(5) collect any allowable third party fees excluding appraisals or credit reports before a conditional mortgage loan commitment is obtained by the mortgage broker;

(6) influence or attempt to influence through coercion, extortion, or bribery the development, reporting, result, or review of a real estate appraisal sought in connection with a mortgage loan. This item does not prohibit a mortgage broker or mortgage lender from asking the appraiser to do one or more of the following:

(a) consider additional appropriate property information;

(b) provide further detail, substantiation, or explanation for the appraiser's value conclusion; or

(c) correct errors in the appraisal report;

(7) fail to pay reasonable fees within a reasonable time to a licensed third party for services that are:

(a) requested from the third party in writing by the mortgage broker or an employee of the mortgage broker; and

(b) performed by the third party in connection with the origination or closing of a mortgage loan for a customer or mortgage lender;

(8) advertise mortgage loans, including rates, margins, discounts, points, fees, commissions, or other material information, including material limitations on the loans, unless the person is able to make the mortgage loans as advertised available to qualified applicants;

(9) fail to provide disclosures as required by state or federal law or collect any fee prior to providing required disclosures;

(10) fail to comply with this chapter or any other state or federal law including rules and regulations applicable to a business regulated by this chapter;

(11) falsely advertise or misuse names in violation of 18 U.S.C. Section 709 or state law; or

(12) use any trade name or insignia of membership in any organization of which the licensee is not a member or advertise falsely through any material including, but not limited to, any business card, stationery, or signage concerning a designation or certification of special education, credentials, trade organization membership, or business.

Section 40-58-75. (A) Within three business days of the receipt of an application for a mortgage loan, the broker must provide a mortgage broker fee agreement that discloses the total estimated charges to the borrower for the mortgage loan and an itemization of the charges provided if required under, federal or state law. The disclosure is considered delivered when deposited with United States Postal Service for first class delivery.

(B) A person may not earn, charge, or collect a mortgage broker or processing fee unless the person meets the requirements of this chapter, is authorized to conduct mortgage brokerage services by this chapter, or is exempt from the requirements of this chapter.

(C) All fees earned for services rendered as a mortgage broker must be disclosed to the applicant by the mortgage broker as required by federal or state law.

(D) A mortgage broker fee agreement must be in writing and include the current name, address, and telephone number of the mortgage broker's branch office, the account number, if any, the date of the agreement, the name of the borrower or proposed borrower, signature of the borrower and mortgage broker, the amount of any fees, and the nature of services provided to the borrower. A copy of the completed agreement must be provided to the borrower by the mortgage broker. The mortgage broker agreement may provide for a signed acknowledgement by the borrower of receipt of a copy of the agreement. If a mortgage broker co-brokers mortgage loans, the mortgage broker agreement must contain a statement advising the applicant that the loan may be co-brokered. Within three days of making a final decision to co-broker a loan, the broker must provide the applicant with written notice of co-brokering, including the name and street and mailing address of the co-broker as well as which broker is to be contacted regarding progress of the mortgage broker's services provided to the applicant. Each broker in a co-brokering arrangement must be licensed with the administrator.

(E) Additional disclosure requirements exist and must be complied with pursuant to Chapter 10 and Chapter 23, Title 37.

Section 40-58-78. (A) A mortgage broker fee agreement with a mortgage broker or loan originator must contain an explicit statement that:

(1) the mortgage broker or loan originator is acting as the agent of the borrower in providing brokerage services to the borrower;

(2) when acting as agent for the borrower, it owes to that borrower a duty of utmost care, honesty, and loyalty in the transaction, including the duty of full disclosure of all material facts. If the mortgage broker or loan originator is authorized to act as an agent for any other person, the mortgage broker fee agreement must contain a statement of that fact and identification of that person;

(3) a detailed description of the services the mortgage broker or loan originator agrees to perform for the borrower, and a good faith estimate of any fees the mortgage broker or loan originator will receive for those services, whether paid by the borrower, the institutional lender, or both; and

(4) a clear and conspicuous statement of the conditions under which the borrower is obligated to pay for the services rendered under the agreement.

(B) If a mortgage broker or loan originator violates the provisions of subsection (A), the borrower may recover from the mortgage broker or loan originator charged with the violation:

(1) a penalty in an amount determined by the court of not less than one thousand five hundred dollars and not more than seven thousand five hundred dollars for each loan transaction;

(2) fees paid by the borrower to the mortgage broker or loan originator for services rendered by the agreement; and

(3) actual costs, including attorney's fees, for enforcing the borrower's rights under the agreement.

(C) A mortgage broker or loan originator charged with the violation must not be held liable in an action brought under this section for a violation if the mortgage broker or loan originator charged with the violation shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid the error.

Section 40-58-80. (A) The administrator, by order, may deny, suspend, revoke, or refuse to issue or renew a license of a licensee or applicant pursuant to this chapter or may restrict or limit the activities relating to mortgage loans of a licensee or a person who owns an interest in or participates in the business of a licensee, if the administrator finds that both:

(1) the order is in the public interest; and

(2) any of the following circumstances apply to the applicant, licensee, or any partner, member, manager, officer, director, loan originator, managing principal, or other person occupying a similar status or performing similar functions or a person directly or indirectly controlling the applicant or licensee. The person:

(a) has filed an application for license that, as of its effective date or as of a date after filing, contained a statement that, in light of the circumstances under which it was made, is false or misleading with respect to a material fact;

(b) has violated or failed to comply with any provision of this chapter or order of the administrator;

(c) has been convicted of, or pled guilty or nolo contendere to, a felony, or, within the past ten years, a misdemeanor involving financial services or financial services related business, or an offense

involving breach of trust or fraudulent or dishonest dealing, or money laundering in a domestic, foreign, or military court;

(d) is enjoined permanently or temporarily by a court of competent jurisdiction from engaging in or continuing any conduct or practice involving financial services or financial services related business;

(e) is the subject of an order of the administrator denying, suspending, or revoking that person's license;

(f) is the subject of an order entered by the authority of a governmental entity with jurisdiction over the financial services or financial services related industry denying or revoking that person's license;

(g) does not meet the qualifications or the financial responsibility, character, or general fitness requirements, or bond or capital requirements, pursuant to this chapter;

(h) has been the executive officer or controlling shareholder or owned a controlling interest in a financial services or financial services related business that has been subject to an order or injunction described in subitem (d), (e), or (f) of this item;

(i) has failed to pay the proper filing or renewal fee pursuant to this chapter or any fine or fee imposed by any governmental entity. However, the administrator may enter only a denial order pursuant to this subitem, and the administrator shall vacate the order when the deficiency is corrected; or

(j) has falsely certified attendance or completion of hours at an approved education course.

(B) The administrator, by order, summarily may postpone or suspend the license of a licensee pending final determination of a proceeding pursuant to this section. Upon entering the order, the administrator shall notify promptly the applicant or licensee that the order has been entered, the reasons for the order, and the procedure for requesting a hearing before the Administrative Law Court. If a licensee does not request a hearing and the administrator does not request a hearing, the order remains in effect until it is modified or vacated by the administrator.

(C) The administrator, by order, may impose an administrative penalty upon a licensee or any partner, member, officer, director, or other person occupying a similar status or performing similar functions on behalf of a licensee for a violation of this chapter. The administrative penalty may not exceed ten thousand dollars for each violation. The administrator may impose an administrative penalty that

may not exceed ten thousand dollars for each violation of this chapter by a person other than a licensee or exempt person.

(D) In addition to other powers pursuant to this chapter, upon finding that an action of a person is in violation of this chapter, the administrator may order the person to cease and desist from the prohibited action. If the person subject to the order fails to request a contested case hearing in accordance with Section 40-58-90, or if the person requests the hearing and it is denied or dismissed, and the person continues to engage in the prohibited action in violation of the administrator's order, the person is subject to an administrative penalty that may not exceed twenty-five thousand dollars for each violation of the administrator's order. The penalty provision of this section is in addition to and not instead of another provision of law for failure to comply with an order of the administrator.

(E) Unless otherwise provided, all actions and hearings pursuant to this chapter are governed by Chapter 23, Title 1.

(F) When a licensee is accused of any act, omission, or misconduct that subjects the licensee to disciplinary action, the licensee, with the consent and approval of the administrator, may surrender the license and the rights and privileges pertaining to it and is not eligible to receive, or to submit an application for, licensure for a period of time established by the administrator.

(G) If the administrator has reasonable grounds to believe that a licensee or other person has violated this chapter or that facts exist that would be the basis for an order against a licensee or other person, the administrator, either personally or by a person duly designated by the administrator, at any time may investigate or examine the loans and business of the licensee and examine the books, accounts, records, and files of the licensee or other person relating to the complaint or matter under investigation. The reasonable cost of this investigation or examination must be charged against the licensee. The administrator may require the licensee or other person to submit a consent to a national and state fingerprint-based criminal history record check and a set of that person's fingerprints in a form acceptable to the administrator in connection with an examination or investigation. Refusal to submit the requested criminal history record check or a set of fingerprints is grounds for disciplinary action.

(H) The administrator may subpoena documents and witnesses, and compel their production and attendance, to examine under oath all persons whose testimony the administrator considers relative to the person's business, and require the production of books, papers, or other materials.

(I) The administrator may conduct routine examinations of the books and records of a licensee to determine compliance with this chapter.

(J) The administrator may cooperate and share information with an agency of this State, other states, or the federal government. The administrator may accept or participate in examinations conducted by one of these agencies.

(K) In addition to the authority described in this section, the administrator may require a person to pay to a borrower or other natural person amounts received by the person or its employees in violation of this chapter.

(L) If the administrator finds that the managing principal, branch manager, or loan originator of a licensee had knowledge of, or reasonably should have had knowledge of, or participated in any activity that results in the entry of an order suspending or withdrawing the license of a licensee, the administrator may prohibit the branch manager, managing principal, or loan originator from serving as a branch manager, managing principal, or loan originator for the period of time the administrator considers necessary.

(M) A person who wilfully violates a provision of this chapter is guilty of a misdemeanor and, upon conviction, must be fined not more than five hundred dollars or imprisoned not more than six months, or both, for each offense. Each violation is considered a separate offense.

(N) Orders issued by the administrator or by the Administrative Law Court pursuant to this chapter must be reported by the administrator to the Nationwide Mortgage Licensing System and Registry.

(O) Nothing in this chapter limits a statutory or common law right of a person to bring an action in a court for an act or the right of the State to punish a person for a violation of a law.

Section 40-58-90. (A) A person aggrieved by an administrative order issued by the administrator may request a contested case hearing before the Administrative Law Court in accordance with the court's rules of procedure. If the person fails to request a contested case hearing within the time provided in the court's rules of procedure, the administrative order becomes final and the administrator may bring an action to enforce its order pursuant to Chapter 23, Title 1. This section does not limit utilization of or the scope of judicial review available under other means of review, redress, relief, or trial de novo provided by law. A preliminary, procedural, or intermediate action or ruling of the Administrative Law Court is reviewable immediately if review of

the final decision of the Administrative Law Court would not provide an adequate remedy.

(B) Contested case proceedings are instituted by filing a request for a contested case hearing with the Administrative Law Court according to the rules of procedure of the Administrative Law Court. Copies of the request for a contested case hearing must be served upon the administrator and all parties of record. The final decision of the administrative law judge may be appealed as provided in Chapter 23, Title 1.

Section 40-58-100. The administrator may promulgate regulations necessary to effectuate the purposes of this chapter.

Section 40-58-110. (A)(1) In addition to the initial nonrefundable license application fee of five hundred fifty dollars required by Section 40-58-50, first time mortgage broker licensees also shall pay a one-time, nonrefundable processing fee of two hundred dollars. Thereafter, a mortgage broker licensee shall pay an annual nonrefundable renewal fee of five hundred fifty dollars. A mortgage broker licensee shall pay an initial nonrefundable fee of one hundred fifty dollars and, thereafter, a nonrefundable renewal fee of one hundred fifty dollars for each branch location.

(2) The initial nonrefundable license fee is fifty dollars for a loan originator license, and fifty dollars, nonrefundable, for a renewal license. In addition, all licensees must pay the cost of obtaining credit reports and national and state criminal history record checks as the administrator may require. The broker shall notify the administrator in writing ten days before opening a new location or changing the address of a licensed location. A fee of twenty-five dollars is required when the licensee notifies the administrator of a change in address for a licensed location.

(B)(1) The term of each license is one year. Licenses issued pursuant to this chapter expire on December thirty-first annually or another date that the administrator may determine and must be renewed in accordance with the provisions of this section.

(2) The renewal period for all licensees is from November first through December thirty-first annually or on any other dates that the administrator may determine.

(3) Applications received after December thirty-first, or any other date the administrator may determine, are late and late fees apply.

(C) If a license of a licensed mortgage broker is not renewed before the dates in subsection (B), five hundred dollars in addition to the

renewal fee pursuant to subsection (A) must be assessed as a late fee to any renewal. If a license of a licensed loan originator is not renewed before the dates in subsection (B), one hundred dollars in addition to the renewal fee pursuant to subsection (A) of this section must be assessed as a late fee to any renewal. If a licensee fails to renew his license within thirty days after the date the license expires or otherwise maintain a valid license, the administrator shall require the licensee to comply with the requirements for the initial issuance of a license pursuant to this chapter, in addition to paying any fee that has accrued. All renewal applications must contain information required by the administrator. All funds collected by the department pursuant to this chapter must be used to implement the provisions of this chapter and are nonrefundable.

Section 40-58-120. (A) A licensee shall maintain records in conformity with generally accepted accounting principles and practices in a manner that will enable the administrator to determine whether the licensee is complying with this chapter. The recordkeeping system of a licensee is sufficient if he makes the required information reasonably available.

(B) On or before March thirty-first each year a licensee shall file with the administrator a composite annual report in the form prescribed by the administrator relating to all mortgage loans made or brokered by him. The licensee shall pay a fine of one hundred dollars each day for late or incomplete annual reports.

(C) The report must include, but is not limited to, the volume and amounts of first and second lien mortgage loans originated by licensee and closed in the name of another party and the volume and amounts of first and second lien mortgage loans originated and closed in the name of the licensee.

(D) The annual report also must include the total gross revenue earned in this State under this license.

(E) Information contained in annual reports is confidential and may be published only in composite form.

Section 40-58-130. (A) The administrator may participate in the Nationwide Mortgage Licensing System and Registry and may take all actions necessary and appropriate to that end including, but not limited to, the following:

(1) facilitating and participating in the establishment and implementation of the Nationwide Mortgage Licensing System and Registry;

(2) entering into agreements and contracts including cooperative, coordinating, and information sharing agreements;

(3) contracting with third parties to process, maintain, and store information collected by the Nationwide Mortgage Licensing System and Registry;

(4) authorizing the Nationwide Mortgage Licensing System and Registry to collect fingerprints on the administrator's behalf in order to receive national and state criminal history background record checks from the FBI and SLED and furnishing the fingerprints to SLED to retain for certification purposes and for notification of the administrator regarding subsequent criminal charges which may be reported to SLED, or the FBI, or both in accordance with Section 40-58-50;

(5) authorizing the Nationwide Mortgage Licensing System and Registry to collect credit reports on the administrator's behalf for all licensees;

(6) requiring persons that must be licensed by this chapter to utilize the Nationwide Mortgage Licensing System and Registry;

(7) requiring all applicants and licensees to pay all applicable funds provided for in this chapter through the Nationwide Mortgage Licensing System and Registry;

(8) providing information to and receiving information from the Nationwide Mortgage Licensing System and Registry;

(9) authorizing a third party to collect funds associated with licensure on behalf of the administrator; and

(10) authorizing the Nationwide Mortgage Licensing System and Registry to collect and disburse consumer complaints.

(B) Persons required to be licensed pursuant to this chapter shall pay all applicable fees to utilize the Nationwide Mortgage Licensing System and Registry and consent to utilizing the Nationwide Mortgage Licensing System and Registry to obtain fingerprint-based criminal history background record checks and credit reports.

(C) The administrator shall provide licensees with written notice sent to the address of record on file with the administrator through the United States Postal Service the date the Nationwide Mortgage Licensing System and Registry will be available for their use. Licensees have one hundred and twenty days from the date the system is available for use to enter all their licensing information into the Nationwide Mortgage Licensing System and Registry. All filings required by the administrator pursuant to this chapter after the date the system is available for use must be made through the Nationwide Mortgage Licensing System and Registry.

(D) All licensees licensed through the Nationwide Mortgage Licensing System and Registry must use the unique identifier assigned in all advertising and on all mortgage loan documents.

(E) Notwithstanding another provision of law, the Nationwide Mortgage Licensing System and Registry is not intended to and does not replace or affect the administrator's authority to grant, suspend, revoke, or deny a license required pursuant to this chapter."

Savings clause

SECTION 6. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this act, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective. Any provision of this act deemed by HUD to conflict with its interpretation of the SAFE Act, provided for in Section 1508 of Title V of The Housing and Economic Recovery Act of 2008, Public Law 110-289, must be interpreted, applied, or amended in such a way so as to comply with HUD's interpretation of the SAFE Act. The regulating authority shall adopt emergency regulations or take other actions necessary to ensure compliance with the SAFE Act and the regulating authority's continued jurisdiction over and supervision of the mortgage business in this State.

Time effective

SECTION 7. Except as otherwise provided herein, this act is effective January 1, 2010, except that the definition of "mortgage loan originator" does not include an individual servicing a mortgage loan as that term is defined in Section 37-22-110(22) and Section 40-58-20(20) until July 31, 2011.

Ratified the 27th day of May, 2009.

Became law without the signature of the Governor -- 6/3/09.

No. 68

(R96, H3148)

AN ACT TO ENACT THE "FEDERAL EDUCATIONAL TAX-CREDIT BOND IMPLEMENTATION ACT", INCLUDING PROVISIONS TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 59-3-100 SO AS TO PROVIDE FOR THE MANNER IN WHICH AND CONDITIONS UNDER WHICH ALLOCATIONS OF QUALIFIED SCHOOL CONSTRUCTION BONDS AUTHORIZED BY THE PROVISIONS OF THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 SHALL BE MADE AMONG THE SCHOOL DISTRICTS OF THIS STATE, AND TO PROVIDE FOR OTHER RELATED MATTERS IN REGARD TO THESE ALLOCATIONS; TO AMEND SECTION 11-15-460, AS AMENDED, RELATING TO THE INTEREST RATE ON REFUNDING BOND OBLIGATIONS OF POLITICAL SUBDIVISIONS, SO AS TO EXEMPT QUALIFIED SCHOOL CONSTRUCTION BONDS FROM THIS PROVISION; AND TO AMEND SECTION 11-27-50, AS AMENDED, RELATING TO THE EFFECT OF THE PROVISIONS OF ARTICLE X OF THE CONSTITUTION OF THIS STATE ON BONDS OF SCHOOL DISTRICTS, SO AS TO PROVIDE THAT QUALIFIED SCHOOL CONSTRUCTION BONDS UP TO A CERTAIN AMOUNT MAY BE SOLD AT PUBLIC OR PRIVATE SALE AT SUCH PRICE AS DETERMINED BY THE GOVERNING BODY OF THE ISSUER.

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 "Federal Educational Tax-Credit Bond Implementation Act".

Findings

SECTION 2. The General Assembly finds that:

(1) Owing to a devastating upheaval in world financial markets, the United States is experiencing restricted access to credit, closures of numerous business concerns, and high levels of unemployment across the nation. In response, the United States Congress has made provisions for a variety of strategies intended to stimulate economic activity in The American Recovery and Reinvestment Act of 2009 (ARRA). Among the strategies implemented by ARRA are various innovative financing programs for local governments.

(2) Traditionally, most financing undertaken by local governments is exempt from federal income tax. In order to stimulate local building activity and, further, to ameliorate the impact of a significant present weakness in the market for tax-exempt securities, ARRA, through a change in federal tax law, provides for the issuance by local school districts of a new type of obligation, the Qualified School Construction Bond (QSCB). It is the intent of Congress that QSCB obligations will be issued with an interest rate at or near to zero. In exchange for forgoing interest, the holder of a QSCB obligation will receive a credit against federal income tax intended to provide tax benefits equivalent to the forgone interest payments. The proceeds of QSCB obligations only may be used to defray the cost of the construction, rehabilitation, or repair of a public school facility or for the acquisition of land on which a facility is to be constructed.

(3) ARRA authorizes the issuance of eleven billion dollars of QSCB obligations in each of calendar years 2009 and 2010. Allocations will be made to the states in proportion to the respective numbers of children in each state who have attained age five but not age eighteen for the most recent fiscal year ending before the calendar year. South Carolina has been allotted one hundred and thirty one million dollars under ARRA in 2009 plus special allocations for large districts. Forty percent of the total national allocation amount is being allocated to one hundred large school districts and up to twenty-five additional school districts selected by the Secretary of the United States Department of Education. School districts of Charleston County and Greenville County are receiving direct allocations from the Secretary of the United States Department of Education.

(4) ARRA does not specify any method or criteria by which a state must allocate its share of QSCB issuance authority to its school districts. Accordingly, it is necessary for the General Assembly to direct the allocation of this issuance authority. The General Assembly

has determined in this act to provide for the allocation of sixty percent of the State's QSCB issuance authority, not including the amount allocated to school districts of Greenville and Charleston Counties, to school districts having the lowest capital financing resources, measured in terms of assessed value per pupil, not to exceed a maximum of twenty million dollars per school district, and forty percent of the State's QSCB issuance authority to school districts having an ability to expeditiously issue bonds demonstrated through a high credit rating and timely start and completion of a project, not to exceed ten million dollars per school district. Any remaining QSCB allocations shall be awarded on a pro rata basis to school districts that originally requested more than the maximum amount in a QSCB allocation. By allocating QSCB issuance authority to such school districts, a portion of the critical facilities needs of these districts may be addressed, subject to Article X, Section 15 of the South Carolina Constitution, 1895.

(5) Because the public market for tax-credit obligations is presently underdeveloped and may require several years or more to become a robust substitute for the tax-exempt market of prior years, it is also necessary to make appropriate provisions for the marketing of QSCB obligations.

Allocation

SECTION 3. Chapter 3, Title 59 of the 1976 Code is amended by adding:

"Section 59-3-100. (A)(1) Issuance authority for Qualified School Construction Bonds (QSCB) obligations allotted to the State pursuant to the provisions of 26 U.S.C. Section 54F(d)(1) and any issuance authority allocated pursuant to 26 U.S.C. Section 54F(d)(2) to school districts of the State and not used by them shall be allocated by the State Superintendent of Education to one or more of the school districts, or county boards of education on behalf of one or more school districts of the State. In that regard, the State Superintendent of Education shall allocate sixty percent of the state's QSCB issuance authority to or on behalf of school districts having the lowest capital financing resources, measured in terms of assessed value per pupil, not to exceed twenty million dollars per school district and forty percent of the state's QSCB issuance authority to or on behalf of school districts having an ability to expeditiously issue bonds demonstrated through a high credit rating and timely start and completion of a project, not to exceed ten million dollars per school district. Any remaining QSCB

allocations shall be awarded on a pro rata basis to school districts that originally requested more than the maximum amount in a QSCB allocation. School districts allocated issuance authority under 26 U.S.C. Section 54F(d)(2)(E)(i) are not eligible for allocation of issuance authority under this paragraph (A). When two or more school districts are proposing a joint construction rehabilitation of a qualified project, the priority level for the project must be based on the priority level of the joint partner having the lowest assessed value per pupil.

(2) The State may not issue a QSCB obligation. For purposes of Article X, Section 15, of the South Carolina Constitution, a QSCB obligation shall be considered general obligation debt. A school district may not use the proceeds of a QSCB obligation for the purposes stated in Section 14003(b) of the American Recovery and Reinvestment Act of 2009.

(B) The State Superintendent of Education is authorized to establish for each allocation of issuance authority a schedule for issuance of QSCB obligations, giving due regard for the time required to initiate and hold bond referendums, and may reallocate issuance authority or any portion of issuance authority to another school district or county board of education if the schedule is not kept.

(C) Issuance authority allocated pursuant to this section but not utilized may be reallocated by the State Superintendent of Education in accordance with this section.

(D) Assessed value for purposes of this section means the assessed value of all taxable property, excluding property subject to a fee in lieu of tax. Each per pupil measurement is based upon the one hundred thirty-five day count for the most recently completed fiscal year."

Exemption

SECTION 4. Section 11-15-460 of the 1976 Code, as last amended by Act 34 of 1989, is further amended to read:

"Section 11-15-460. These refunding bonds must bear interest at those rates as may be determined by the governing body of the issuer. However, before the issuance of any refunding bonds, except in the case of the refunding of Qualified School Construction Bonds issued pursuant to the provisions of 26 U.S.C. Section 54F, the governing body shall determine that a savings can be effected through the issuance of these refunding bonds."

Sale of bonds

SECTION 5. Section 11-27-50 of the 1976 Code, as last amended by Act 113 of 1999, is further amended by adding an appropriately numbered item at the end to read:

"( ) Notwithstanding any other provision of law, bonds issued as Qualified School Construction Bonds in amounts not exceeding one and a half million dollars pursuant to the provisions of 26 U.S.C. Section 54F may be sold at public or private sale at the price determined by the governing body of the issuer."

Powers additional

SECTION 6. The powers and authorizations conferred by this act shall be in addition to all other powers and authorizations previously conferred upon the State Superintendent of Education, the State Department of Education, and the school districts of the State. The provisions of this act are remedial in nature and shall be liberally construed in order to give full force and effect to its provisions.

Severability

SECTION 7. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this act, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

Time effective

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

Ratified the 27th day of May, 2009.

Became law without the signature of the Governor -- 6/3/09.

No. 69

(R106, H3562)

AN ACT TO AMEND SECTION 38-1-20, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO DEFINITIONS USED IN TITLE 38 PERTAINING TO INSURANCE, SO AS TO ADD THE DEFINITIONS OF "GENERAL APPOINTMENT", "LOCAL APPOINTMENT", "SPECIAL APPOINTMENT", "CROP INSURANCE", AND "TRAVEL INSURANCE", CORRECT ARCHAIC LANGUAGE, AND MAKE CONFORMING AMENDMENTS; TO AMEND SECTION 38-39-20, RELATING TO PREMIUM SERVICE COMPANIES, SO AS TO PROVIDE THAT THE FEE FOR LICENSURE TO ENGAGE IN SERVICING INSURANCE PREMIUMS IN THIS STATE IS DUE ON A BIENNIAL BASIS RATHER THAN ON AN ANNUAL BASIS; TO AMEND SECTION 38-43-80, AS AMENDED, RELATING TO LICENSE FEES FOR INSURANCE PRODUCERS AND AGENCIES, SO AS TO PROVIDE FOR A BIENNIAL PRODUCER LICENSE RENEWAL FEE OF TWENTY-FIVE DOLLARS, INCREASE THE INITIAL PRODUCER LICENSE RENEWAL FEE FROM TWENTY DOLLARS TO TWENTY-FIVE DOLLARS, AND PROVIDE FOR THE REQUIREMENTS RELATING TO THE PAYMENT OF APPOINTMENT FEES; TO AMEND SECTION 38-43-106, AS AMENDED, RELATING TO CONTINUING EDUCATION REQUIREMENTS FOR INSURANCE PRODUCERS, SO AS TO PROVIDE THAT THE BIENNIAL COMPLIANCE PERIOD IS BASED ON THE LICENSEE'S MONTH AND YEAR OF BIRTH; TO AMEND SECTION 38-43-110, AS AMENDED, RELATING TO THE DURATION OF AN INSURANCE PRODUCER'S LICENSE, SO AS TO PROVIDE THAT INDIVIDUAL LICENSES MUST BE RENEWED BIENNIALLY BASED ON THE LICENSEE'S MONTH AND YEAR OF BIRTH AND PROVIDE FOR THE REQUIREMENTS RELATING TO RENEWAL; TO AMEND

SECTION 38-43-200, AS AMENDED, RELATING TO THE PROHIBITION ON SPLITTING COMMISSIONS WITH AN UNLICENSED PERSON BY AN INSURANCE PRODUCER, SO AS TO DELETE THE EXISTING PROVISIONS AND PROVIDE FOR THE REQUIREMENTS RELATING TO THE SPLITTING AND SHARING OF COMMISSIONS; TO AMEND SECTION 38-45-10, RELATING TO THE DEFINITIONS OF AN INSURANCE BROKER, SO AS TO PROVIDE FOR THE QUALIFYING DUTIES AND PROVIDE FOR EXCEPTIONS; AND TO AMEND SECTION 38-45-20, AS AMENDED, RELATING TO THE REQUIREMENTS FOR LICENSURE AS AN INSURANCE BROKER, SO AS TO DELETE THE REQUIREMENTS THAT A BROKER HOLD AT LEAST ONE APPOINTMENT.

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

Definitions

SECTION 1. Section 38-1-20 of the 1976 Code, as last amended by Act 290 of 2004, is further amended to read:

"Section 38-1-20. As used in this title, unless the context otherwise requires:

(1) 'Accident and health insurance' means insurance of human beings against death or personal injury by accident, and each insurance of human beings against sickness, ailment, and any type of physical disability resulting from accident or disease, and prepaid dental service, but not including coverages required by the Workers' Compensation Law of this State.

(2) 'Accommodation bondsman' means as defined in Section 38-53-10.

(3) 'Adjuster' means an individual who determines the extent of insured losses and assists in settling or attempts to settle claims.

(4) 'Admitted assets' means assets of an insurer considered admitted under Section 38-11-100.

(5) 'Admitted insurer' means an insurer licensed to do business in this State.

(6) 'Alien insurer' means an insurer incorporated or organized under the laws of a country other than the United States of America, its states, commonwealths, territories, or insular possessions.

(7) 'Annuity' means each contract or agreement to make periodic payments, whether in fixed or variable dollar amounts, or both, at specified intervals.

(8)(a) 'Appointment' means an individual designated by an official or authorized representative of an authorized insurer to act on its behalf as a producer.

(b) 'General appointment' means an appointment of a person who, as a representative of an insurer or insurers, is vested with authority to supervise producers and to exercise this management authority as is delegated to him by the principal. A producer appointed as a general also may perform the duties of a producer who holds a local or special appointment.

(c) 'Local appointment' means an appointment of a producer who has been authorized by an insurer to sell, solicit, or negotiate policies on an insurer's behalf.

(d) 'Special appointment' means an individual designated by an insurer to supervise and assist other producers in the proper discharge of their duties under an insurer's policy contract. A special appointment grants no authority to sell, solicit, or negotiate policies of insurance on behalf of an insurer.

(9) 'Bail bondsman' means as defined in Section 38-53-10.

(10) 'By' means on or before.

(11) 'Casualty insurance' means each insurance against legal liability of the insured for bodily injury to or death of another person, including workers' compensation insurance, and for damages to or loss or destruction of the property of another person; medical payments insurance when written in conjunction with insurance covering liability for the deaths or bodily injuries of another person; guaranteeing the fidelity of a person holding a position of public or private trust; loss of or damage to property caused by burglary, theft, larceny, robbery, fraud, or unlawful taking or secretion of property owned by or entrusted to the insured; loss of or damage to property of the insured resulting from the explosion of or damage to a fired or unfired boiler or other pressure vessel, engine, turbine, compressor, pump, wheel, or an apparatus generating, transmitting, or using electric power, and machinery or equipment connected with any of them; loss resulting from nonpayment of debts owed to merchants or another person extending credit.

(12) 'Certificate of insurance' means a memorandum copy, complete or abbreviated, of an insurance contract.

(13) 'Coinsurance' means a stipulation or requirement that the insured undertakes to be his own insurer to the extent that he fails to

maintain insurance of a given percentage of the value of the property against loss or damage.

(14) 'Commission' means the part of the premium paid to the producer as compensation for his services.

(15) 'Company' includes a corporation, fraternal organization, burial association, other association, partnership, society, order, individual, or aggregation of individuals engaging or proposing or attempting to engage as principals in any kind of insurance or surety business, including the exchanging of reciprocal or interinsurance contracts between individuals, partnerships, and corporations.

(16) 'Crop insurance' includes insurance providing protection against damage to crops from unfavorable weather conditions, fire, lightning, flood, hail, insect infestation, disease, or other yield-reducing conditions or perils provided by the private insurance market, or that is subsidized by the Federal Crop Insurance Corporation, including Multi-Peril Crop Insurance.

(17) 'Department' means the Department of Insurance of South Carolina.

(18) 'Designee or deputy director' means the person or persons appointed by the director, serving at the will and pleasure of the director as his designee, to supervise and carry out the functions and duties of the department as provided by law. A duty or function of the director to manage and supervise the department may be conferred by the director's authority upon his designee or deputy director.

(19) 'Director' means the person who is appointed by the Governor upon the advice and consent of the Senate and who is responsible for the operation and management of the department. The director has the authority to appoint or designate the person or persons who shall serve at the pleasure of the director to carry out the objectives or duties of the department as provided by law. Furthermore, the director may bestow upon his designee or deputy director a duty or function required of him by law to manage and supervise the department.

(20) 'Domestic insurer' means an insurer incorporated or organized under the laws of this State.

(21) 'Eligible surplus lines insurer' means a nonadmitted insurer with which a licensed broker may place surplus lines insurance.

(22) 'Exempt commercial policies' means policies for commercial insureds as may be provided for in regulation issued by the director. Exempt commercial policies include all property and casualty coverages except for insurance related to credit transactions written through financial institutions.

(23) 'Foreign insurer' means an insurer incorporated or organized under the laws of the United States or of any jurisdiction within the United States other than this State.

(24) 'Home state' means the District of Columbia and a state or territory of the United States in which an insurance producer maintains his principal place of residence or principal place of business and is licensed to act as an insurance producer.

(25) 'Insurance' means a contract where one undertakes to indemnify another or pay a specified amount upon determinable contingencies. The term 'insurance' includes annuities.

(26) 'Insurance agency' means a corporation, association, partnership, limited liability company, limited liability partnership, or other legal entity in which more than one person has a financial interest.

(27) 'Insurance broker' means an individual licensed by the department to represent citizens of this State in placing their insurance. An insurance broker may place that insurance either with an eligible surplus lines insurer or with a licensed insurance producer in an insurance carrier licensed in this State.

(28) 'Insurance company' means an 'insurer'.

(29) 'Insurance premium service company' means a person engaged in the business of entering into insurance premium service agreements.

(30) 'Insurance producer' or 'producer' means a person who represents an insurance company and is required to be licensed pursuant to Section 38-43-10.

(31) 'Insurance rate' means the price of insurance for each unit of exposure.

(32) 'Insurance-support organization' means a person who regularly engages, in whole or in part, in the practice of assembling or collecting information about natural persons for the primary purpose of providing the information to an insurer or agent for insurance transactions, including: (i) the furnishing of consumer reports or investigative consumer reports to an insurer or agent for use in connection with an insurance transaction; or (ii) the collection of personal information from insurers, agents, or other insurance-support organizations for the purpose of detecting or preventing fraud, material misrepresentation, or material nondisclosure in connection with insurance underwriting or insurance claim activity. However, the following are not considered insurance-support organizations for purposes of this chapter: agents, governmental institutions, insurers, modeling organizations, consumer reporting agencies, medical care institutions, and medical professionals.

(33) 'Insurer' includes a corporation, fraternal organization, burial association, other association, partnership, society, order, individual, or aggregation of individuals engaging or proposing or attempting to engage as principals in any kind of insurance or surety business, including the exchanging of reciprocal or interinsurance contracts between individuals, partnerships, and corporations.

(34) 'License' means a document issued by the state's director or his designee authorizing a person to act as an insurance producer for the lines of authority specified in the document. The license itself does not create any authority, actual, apparent or inherent, in the holder to represent or commit an insurance carrier.

(35) 'Life insurance' means a contract of insurance upon the lives of human beings. The following contracts are considered to be contracts of life insurance within the meaning of this definition:

(a) a contract providing acceleration of life benefits, beginning on the contract's original effective date, in advance of the time they otherwise would be payable for long-term care as defined in Section 38-72-40;

(b) a contract providing acceleration of life benefits, beginning on the contract's original effective date, in advance of the time they otherwise would be payable for a life-threatening illness or a terminal illness as specified in the contract.

(36) 'Limited line credit insurance' includes credit life, credit disability, credit property, credit unemployment, involuntary unemployment, mortgage life, mortgage guaranty, mortgage disability, guaranteed automobile protection insurance, and another form of insurance offered in connection with an extension of credit that is limited to partially or wholly extinguishing that credit obligation that the director or his designee determines should be designated a form of limited line credit insurance.

(37) 'Limited line credit insurance producer' means a person who sells, solicits, or negotiates one or more forms of limited line credit insurance coverage to individuals through a master, corporate, group, or individual policy.

(38) 'Limited line insurance' includes crop, travel surety, Federal Crop Insurance Program, and any other form of insurance that the director considers necessary in order to ensure compliance with the reciprocal provisions of this chapter.

(39) 'Limited line insurance producer' means a person authorized by the director or his designee to sell, solicit, or negotiate limited line insurance.

(40) 'Marine insurance' means each insurance against loss or destruction of or damage to aircraft, vessels, or watercraft and their cargoes; insurance covering the risks or perils of navigation, transit, or transportation of all forms of property, including the liability of a carrier for hire for the loss of property of shippers delivered for transporting; marine builder's risks; bridges, tunnels, piers, wharves, docks and slips, dry docks, marine railways, and other aids to navigation and transportation, precious stones, precious metals, and jewelry, whether in the course of transportation or otherwise; coverage of personal property by all risk forms known as the 'Personal Property Floater'; and coverage of mobile machinery and equipment.

(41) 'Modeling organization' means a corporation, unincorporated association, partnership, or individual, whether located within or outside this State, that prepares a catastrophe model that is used by an insurer in a rate filing. A catastrophe model is a computer program that estimates losses from a potential upcoming disaster. Catastrophe modeling combines data on property exposures with information on hazards, such as storms or earthquakes, to generate estimates of potential losses.

(42) 'Negotiate' means the act of conferring directly with or offering advice directly to a purchaser or prospective purchaser of a particular contract of insurance concerning substantive benefits, terms, or conditions of the contract, provided that the person engaged in that act either sells insurance or obtains insurance from insurers for purchasers.

(43) 'Nonadmitted insurer' means an insurer not licensed to do an insurance business in this State.

(44) 'Person' means a corporation, agency, partnership, association, voluntary organization, individual, or another entity, organization, or aggregation of individuals.

(45) 'Policy' means a contract of insurance.

(46) 'Premium' means payment given in consideration of a contract of insurance.

(47) 'Premium service agreement' means an agreement by which an insured or prospective insured promises to pay to an insurance premium service company the amount advanced or to be advanced under the agreement to an insurer or to an insurance producer or insurance broker in payment of premiums on an insurance contract together with a service charge as authorized by Chapter 39 of this title.

(48) 'Probation' means allowing a licensed person the director has found to have violated South Carolina, any United States territory, or another state's laws to continue selling, soliciting, or negotiating insurance on behalf of an insurer. A person convicted of a felony or

those crimes listed in 18 U.S.C. 1033 or 1034 does not qualify for probation.

(49) 'Professional bondsman' means as defined in Section 38-53-10.

(50) 'Property insurance' means each insurance against direct or indirect loss of or damage to a property resulting from fire, smoke, weather disturbances, climatic conditions, earthquake, volcanic eruption, rising waters, insects, blight, animals, war damage, riot, civil commotion, destruction by order of civil authority to prevent spread of conflagration or for other reason, water damage, vandalism, glass breakage, explosion of a water system, collision, theft of automobiles, and personal effects in them (but no other forms of theft insurance), loss of or damage to domestic or wild animals, and any other perils to property which in the discretion of the director or his designee form proper subjects of property insurance, if not specified in items (1), (7), (11), (35), (40), (54), or (59) of this section.

(51) 'Runner' means as defined in Section 38-53-10.

(52) 'Sell' means to exchange a contract of insurance by any means, for money or its equivalent, on behalf of an insurance company.

(53) 'Solicit' means attempting to sell insurance or asking or urging a person to apply for a particular kind of insurance from a particular company.

(54) 'Surety' includes insurance or a bond that covers obligations to pay the debts, or answer for the default, of another, including faithlessness in a position of public or private trust.

(55) 'Surety bondsman' means as defined in Section 38-53-10.

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

(57) 'Surplus to policyholders' is the excess of total admitted assets over the liabilities of an insurer which is the sum of all capital and surplus accounts minus any impairment of them.

(58) 'Terminate' means the cancellation of the relationship between an insurance producer and the insurer or the termination of a producer's authority to transact insurance.

(59) 'Title insurance' means insurance of the owners of real property and other persons lawfully interested in the title insurance against loss

by reason of defective titles and undisclosed liens and encumbrances affecting the property.

(60) 'Travel insurance' includes insurance coverage for trip cancellation, trip interruption, baggage, life, sickness and accident, disability, and personal effects when limited to a specific trip and sold in connection with transportation provided by a common carrier.

(61) 'Uniform agency application' means the current version of the National Association of Insurance Commissioners Uniform Business Entity Application for resident and nonresident business entities.

(62) 'Uniform application' means the current version of the National Association of Insurance Commissioners Uniform Application for resident and nonresident producer licensing."

License fee

SECTION 2. Section 38-39-20(b) of the 1976 Code is amended to read:

"(b) The biennial license fee is one thousand dollars payable to the department by March 1, 2010, and biennially after that time. These funds are to be deposited in the general fund of the State."

Certain fees altered

SECTION 3. Section 38-43-80 of the 1976 Code, as last amended by Act 326 of 2008, is further amended to read:

"Section 38-43-80. (A)(1) Unless otherwise changed by regulation or statute, the following fees are applicable to producer licenses, agency licenses, and insurer appointments:

(a) initial producer license fee: twenty-five dollars; biennial producer license renewal fee: twenty-five dollars;

(b) local appointment initial and biennial fee: forty dollars; special appointment initial and biennial fee: one hundred dollars; general appointment initial and biennial fee: one hundred dollars;

(c) agency initial and biennial license fee: forty dollars.

(2) However, the license and appointment fee applicable to a producer of a common carrier who sells only transportation ticket policies on accident and health insurance or baggage insurance on personal effects is twenty dollars.

(B) The fees provided for in subsection (A)(1)(b) are subject to the following requirements on each appointment basis:

(1) initial fees are due and payable in advance of the appointment;

(2) fees are due on a biennial basis and must be paid to the department by September thirtieth of an even-numbered year;

(3) if a fee is not paid by September thirtieth of an even-numbered year, the appointment must be canceled; and

(4) an appointment must be reactivated if by December first of the even-numbered year the appointment fee and a two hundred fifty-dollar penalty has been paid to the department.

(C) Fees must be paid in advance. The department shall promulgate regulations specifying the time and manner of payment of fees. If payment is rejected by the bank, the producer has thirty days from the rejection date to pay the license fee. If payment is not made to the department within this period, the license must be canceled. To reinstate the license, the producer is required to pay a license fee plus any charges resulting from rejection by the bank.

(D) Fees provided for in subsection (A)(1)(a) and (B)(4) are to be retained by the department as other funds for purposes of implementing and administering individual licensing requirements and the provisions of this title. License and appointment fees must be deposited into the general fund of this State.

(E) A fee provided for in this section may be paid by credit card."

Continuing education requirements, administration of

SECTION 4. Section 38-43-106(B)(1) of the 1976 Code, as last amended by Act 326 of 2008, is further amended to read:

"(1) The director or his designee shall administer these continuing education requirements and shall approve courses of instruction which qualify for these purposes. However, the director may enter into reciprocal agreements with the insurance commissioners of other states regarding the approval of continuing education courses, sponsors, instructors, or proctors if, in his judgment, the arrangements or agreements are in the best interest of the State and if the proposed courses, sponsors, instructors, or proctors submitted meet the minimum statutory requirements of this State for approval. However, the director or his designee may not enter into or continue a reciprocal agreement unless the other state has requirements similar to this State in approving courses, sponsors, instructors, or proctors. In administering this program, the department, in its discretion, may promulgate regulations producers provide to a continuing education administrator

established within the department proof of compliance with continuing education requirements as a condition of license renewal or, in the alternative, contract with an outside service provider to provide recordkeeping services as the continuing education administrator. The costs of the continuing education administrator must be paid from the continuing insurance education fees paid by producers in the manner provided by this section, except that course approval responsibilities may not be designated to the continuing education administrator. The continuing education administrator shall compile and maintain, in conjunction with insurers and producers, records reflecting the continuing insurance education status of all licensed or qualified producers subject to the requirements of this section. The continuing education administrator shall furnish to the insurer, as specified by regulation, a report of the continuing insurance education status of all of its producers. All licensed producers shall provide evidence of their continuing insurance education status to the continuing education administrator by the last day of the individual's month of birth. An individual born in an odd-numbered year shall comply every odd-numbered year. An individual born in an even-numbered year shall comply every even-numbered year."

Producer's license

SECTION 5. Section 38-43-110 of the 1976 Code, as last amended by Act 326 of 2008, is further amended to read:

"Section 38-43-110. (A) A producer's license continues on a biennial basis unless revoked or suspended subject to the following requirements:

(1) an individual producer license must be renewed by the last day of the licensee's month of birth based on the producer's year of birth as provided for in regulation;

(2) an individual producer license may not be renewed unless the continuing education requirements of Section 38-43-106 are met; and

(3) an individual producer license may not be renewed unless the biennial license renewal fee is paid as provided in Section 38-43-80.

(B) A producer who allows his license to lapse for failure to comply with Section 38-43-106, within six months from the compliance deadline, may reinstate the same license if continuing education requirements have been met and a penalty fee set forth by regulation is paid.

(C) A licensed insurance producer who is unable to comply with license renewal procedures due to active military service or some other extenuating circumstance (e.g., a long-term medical disability) may request a waiver of those procedures. The producer also may request a waiver of any examination requirement or any other fine or sanction imposed for failure to comply with renewal procedures."

Prohibition of certain commissions, fees, etc.

SECTION 6. Section 38-43-200 of the 1976 Code, as last amended by Act 291 of 2004, is further amended to read:

"Section 38-43-200. (A) An insurance company or insurance producer may not pay a commission, service fee, brokerage, or other valuable consideration to a person for selling, soliciting, or negotiating insurance in this State if that person is required to be licensed pursuant to the provisions of this chapter and is not licensed.

(B) A person may not accept a commission, service fee, brokerage, or other valuable consideration for selling, soliciting, or negotiating insurance in this State if that person is required to be licensed pursuant to the provisions of this chapter and is not licensed.

(C) A renewal or other deferred commission may be paid to a person for selling, soliciting, or negotiating insurance in this State if the person was required to be licensed pursuant to the provisions of this chapter at the time of the sale, solicitation, or negotiation and was licensed at that time.

(D) An insurer or insurance producer may pay or assign service fees or other valuable consideration to an insurance agency or to a person who does not sell, solicit, or negotiate insurance in this State, unless the payment violates another provision of Title 38. A payment made pursuant to the provisions of this subsection must not be based on completion of the sale of the insurance policy.

(E) Nothing in this section may be construed to prohibit a licensed insurance producer from rebating a portion of his commission collected on automobile insurance premiums to the insured upon that automobile insurance policy.

(F) This section does not prohibit the payment of a fee to a trade or professional association exempt from income tax under Section 501(c) of the Internal Revenue Code."

Insurance broker, definition

SECTION 7. Section 38-45-10 of the 1976 Code is amended to read:

"Section 38-45-10. (A)(1) An 'insurance broker', as used in this chapter, means a property and casualty insurance producer licensed by the director or his designee who:

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

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

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

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

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

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

(2) However, an insurance broker's license is not required of a broker's office employee acting within the confines of the broker's office, under the direction and supervision of the licensed broker and within the scope of the broker's license, in the acceptance of request for insurance and payment of premiums and the performance of clerical, stenographic, and similar office duties.

(B) An insurance broker may place that insurance either with an eligible surplus lines insurer or with a licensed insurance producer appointed by an insurance carrier licensed in this State."

Licensing of insurance broker, requirements

SECTION 8. Section 38-45-20 of the 1976 Code, as last amended by Act 326 of 2008, is further amended to read:

"Section 38-45-20. A resident property and casualty-licensed insurance producer may be licensed as an insurance broker by the director or his designee if the following requirements are met:

(1) licensure of the resident as an insurance producer for the same lines of insurance for which he proposes to apply as a broker of this State;

(2) successfully passed the South Carolina broker licensing examination;

(3) payment of a biennial license fee of two hundred dollars which is earned fully when received, not refundable;

(4) filing of a bond with the department in a form approved by the Attorney General in favor of South Carolina of ten thousand dollars executed by a corporate surety licensed to transact surety insurance in this State and personally countersigned by a licensed resident agent of the surety. The bond must be conditioned to pay a person insured or seeking insurance through the broker who sustains loss as a result of:

(a) the broker's violation of or failure to comply with an insurance law or regulation of this State;

(b) the broker's failure to transmit properly a payment received by him, cash or credit, for transmission to an insurer or an insured; or

(c) an act of fraud committed by the broker in connection with an insurance transaction. Instead of a bond, the broker may file with the department certificates of deposit of ten thousand dollars of building and loan associations or federal savings and loan associations located within the State in which deposits are guaranteed by the Federal Savings and Loan Insurance Corporation, not to exceed the amount of insurance, or of banks located within the State in which deposits are guaranteed by the Federal Deposit Insurance Corporation, not to exceed the amount of insurance. An aggrieved person may institute an action in the county of his residence against the broker or his surety, or both, to recover on the bond or against the broker to recover from the certificates of deposit, and a copy of the summons and complaint in the action must be served on the director, who is not required to be made a party to the action;

(5) payment to the department, within thirty days after March thirty-first, June thirtieth, September thirtieth, and December thirty-first each year, of a broker's premium tax of four percent upon premiums for policies of insurers not licensed in this State. In computing total premiums, return premiums on risks and dividends paid or credited to policyholders are excluded. Such credit must be refunded to the policyholder."

Time effective

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

Ratified the 27th day of May, 2009.

Approved the 2nd day of June, 2009.

No. 70

(R108, H3615)

AN ACT TO AMEND CHAPTER 7 OF TITLE 32, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO PRENEED FUNERAL CONTRACTS, SO AS TO TRANSFER THE POWERS AND DUTIES FOR THE REGULATION OF PRENEED FUNERAL CONTRACTS FROM THE STATE BOARD OF FINANCIAL INSTITUTIONS TO THE DEPARTMENT OF CONSUMER AFFAIRS AND TO CONFORM THE PROVISIONS OF THIS CHAPTER TO THIS TRANSFER OF AUTHORITY, TO INCREASE CRIMINAL FINES FOR VIOLATIONS, TO PROVIDE FOR ADMINISTRATIVE PENALTIES, TO PROVIDE FOR A CONTESTED CASE HEARING FROM AN ORDER OF THE DEPARTMENT, AND TO MAKE TECHNICAL CORRECTIONS; AND TO AMEND SECTION 40-19-290, AS AMENDED, RELATING TO LICENSED EMBALMERS AND FUNERAL DIRECTORS PLACING PAYMENTS RECEIVED FOR FUNERAL MERCHANDISE IN A TRUST ACCOUNT, SO AS TO CHANGE "STATE BOARD OF FINANCIAL INSTITUTIONS" TO "SOUTH CAROLINA DEPARTMENT OF CONSUMER AFFAIRS" AND TO PROVIDE THAT THESE PAYMENTS MUST BE HELD UNTIL THE MERCHANDISE IS DELIVERED FOR USE OR IN THE POSSESSION OF THE PURCHASER.

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

Preneed funeral contracts

SECTION 1. Chapter 7, Title 32 of the 1976 Code is amended to read:

"CHAPTER 7

Preneed Funeral Contracts

Section 32-7-10. As used in this chapter, unless the context requires otherwise:

(1) 'Administrator' means the administrator of the South Carolina Department of Consumer Affairs.

(2) 'Beneficiary' means the person who is to be the subject of the disposition, services, facilities, or merchandise described in a preneed funeral contract.

(3) 'Common trust fund' means a trust in which the proceeds of more than one funeral contract may be held by the trustee.

(4) 'Department' means the South Carolina Department of Consumer Affairs.

(5) 'Financial institution' means a bank, trust company, or savings and loan association authorized by law to do business in this State.

(6) 'Preneed funeral contract' means a contract which has for its purpose the furnishing or performance of funeral services or the furnishing or delivery of personal property, merchandise, or services of any nature in connection with the final disposition of a dead human body to be furnished or delivered at a time determinable by the death of the person whose body is to be disposed of, but does not mean the furnishing of a cemetery lot, crypt, niche, mausoleum, grave marker, or monument.

(7) 'Provider' means a funeral home licensed in this State which is the entity providing services and merchandise pursuant to a preneed funeral contract and is designated trustee of all funds.

(8) 'Purchaser' means the person who is obligated to make payments under a preneed funeral contract.

(9) 'Seller' means a licensed funeral director in this State who is directly employed by the provider.

Section 32-7-20. (A)(1) All payments of money made to a person upon an agreement or contract or a series or combination of agreements or contracts, but not including the furnishing of cemetery lots, crypts, niches, mausoleums, grave markers, or monuments, which has for a purpose the furnishing or performance of funeral services or the furnishing or delivery of personal property, merchandise, or services of any nature in connection with the final disposition of a dead human body, to be furnished or delivered at a time determinable by the death

of the person whose body is to be disposed of, are held to be trust funds.

(2) When a vault is sold preneed by a seller in accordance with this chapter, one hundred percent of funds received by the seller at the time of payment must be held as trust funds and deposited in a financial institution.

(3) The provider receiving the payments is declared to be a trustee of the payments, and shall deposit the payments in a financial institution. All of the interest, dividends, increases, or accretions of whatever nature earned by the funds deposited in a trust account must remain with the principal of the account and become a part of it, subject to all of the regulations concerning the principal of the fund contained in this section. After the death of the beneficiary, the principal and all accrued earnings must be applied to the cost in effect at the time of death of the services and merchandise specified in the contract. A shortfall in the funds must be paid by the next of kin or the estate of the beneficiary and any excess must be refunded to the estate of the beneficiary. All taxes on the fund must be paid in accordance with the Internal Revenue Code and applicable rules and regulations.

(B) The provider may enter into a contract and guarantee to provide services and merchandise in accordance with a preneed funeral contract in the future at no additional cost to the purchaser when the full contract price amount is paid to the provider. After the death of the beneficiary of a guaranteed-price contract, the principal and all accrued earnings must be paid to the provider to cover the costs in effect at the time of death of the services and merchandise specified in the contract.

(C) All payments made under the agreement, contract, or plan remain trust funds with the financial institution until the death of the beneficiary and until the delivery of all merchandise and full performance of all services called for by the agreement, contract, or plan, unless payment is made pursuant to Section 32-7-30.

(D) The funds must not be paid by the financial institution until a certified death certificate and a certified statement that all of the terms and conditions of the agreements have been fully performed are furnished by the provider to the financial institution. The provider has no obligation to deliver merchandise or perform a service unless payment in full has been deposited in the financial institution. An amount deposited which is not payment in full may be credited against the cost of merchandise or services contracted for by representatives of the deceased. A balance remaining in the fund after the payment for the merchandise and services as provided in the agreement, contract, or plan must be paid to the estate of the beneficiary of the agreement,

contract, or plan pursuant to subsection (A) or paid to the provider of a contract pursuant to subsection (B).

(E) Subsections (A), (B), (C), and (D) do not apply to contracts for funeral services or merchandise funded by insurance policies that are otherwise regulated by law; however, Section 38-55-330 governs the conduct of a licensed funeral director employed by a licensed funeral home in South Carolina, who also is licensed as an agent for a life insurer doing business in this State, except a licensed funeral director employed by a licensed funeral home owned by a company not chartered in the United States.

(F) The department shall approve forms for preneed funeral contracts. All contracts must be in writing, and a contract form must not be used without prior approval of the department. The use or attempted use of an oral preneed funeral contract or a written preneed funeral contract in a form not approved by the department is a violation of this chapter by the person selling services or merchandise under its provisions; except that minor modifications to a contract form furnished or approved by the department do not invalidate the contract.

(G) All contracts must contain the name and Funeral Service License Number of the provider and seller.

(H) All funds received by the provider pursuant to the provisions of a contract governed by this chapter must be placed in trust in a federally insured account. The trustee may establish an individual trust for each contract or a common trust fund may be established with a financial institution that would maintain accounting for each individual deposit and furnish a quarterly report to the provider. The trust accounts must be carried in the name of the provider but accounting records must be maintained showing the amounts deposited and invested, and interest, dividends, increases, and accretions earned on them, with respect to each purchaser's contract. The trustee has the authority to transfer trust funds from one financial institution to another, except that the trustee must notify the purchaser, or the beneficiary of a deceased purchaser, within thirty days after the transfer.

(I) All earnings accrue to the trust except that the provider may withdraw ten percent of the annual earnings of the trust to cover trust administration.

(J) Preneed trust funds or earnings must not be used as collateral, pledged, or in any way encumbered or placed at risk.

(K) If the purchaser fails to make payments as provided in the contract, the contract is voidable at the option of the provider and he

may retain ten percent of the amount paid on the contract as a fee and return the remaining funds to the purchaser.

(L) If the merchandise selected is not available at the time of need, the provider shall make available merchandise of equal or greater value to the purchaser or his representative. The purchaser or his representative is entitled to approve a substitution.

Section 32-7-25. The contracts governed by the provisions of this chapter may be made irrevocable at the option of the purchaser. If the purchaser selects an irrevocable contract he must be allowed thirty days to examine the contract. Within that period, the purchaser may revoke his decision to enter this contract and all monies paid by the purchaser must be refunded. An irrevocable trust-funded preneed funeral contract executed under this chapter must not be converted to an insurance-funded preneed funeral contract. If a premium is paid on an insurance-funded preneed irrevocable contract and the contract is revoked within thirty days, the full premium must be refunded.

Section 32-7-30. (A) Within thirty days of receipt of a written demand for refund by a purchaser who has paid funds for a preneed funeral contract pursuant to Section 32-7-20(A) or (B) the trustee shall refund to the purchaser the entire amount paid together with all interest, dividends, increases, or accretions earned on the fund except that the provider may retain ten percent of the earnings in the portion of the final year before termination.

(B) After making refund to the trustee pursuant to the provisions of subsection (A), the financial institution is relieved from further liability to any party.

(C) This section does not apply if the contract is irrevocable.

Section 32-7-35. (A) A preneed funeral contract may be transferred to another provider only upon the prior written request of the purchaser or the beneficiary of a deceased purchaser or pursuant to Section 32-7-45. The selling provider must be paid a fee equal to ten percent of the contract face amount. The selling provider also must be paid ten percent of the earnings in that portion of the final year before transfer.

(B) A preneed funeral contract, whether revocable or irrevocable, funded by an insurance policy may be transferred to another provider only upon the prior written request of the purchaser or the beneficiary of a deceased purchaser or pursuant to Section 32-7-45. The selling provider may not collect, charge, or receive a fee in connection with this transfer of a preneed funeral contract funded by an insurance

policy. An irrevocable preneed funeral contract funded by an insurance policy may be transferred to another provider only upon the prior written request of the purchaser or the beneficiary of a deceased purchaser or pursuant to Section 32-7-45.

Section 32-7-40. All trust funds described in this chapter must be deposited in the name of the trustee, as trustee, within thirty days after receipt.

Section 32-7-45. (A) If a provider goes out of business or the provider's license issued by the State Board of Funeral Service is cancelled or the license to sell preneed funeral contracts is cancelled and application for a replacement license is not filed, the provider within thirty days shall submit to the department a complete listing of names and addresses of all active contracts in its possession. The provider also shall notify all contract purchasers in writing that their contracts are to be transferred to another licensed provider of the purchaser's choice. The former licensee then shall transfer the contracts and notify the department of the providers selected within sixty days of the cancellation of the preneed license. All contracts funded by insurance or trust funds together with interest are to be transferred. The selling provider forfeits its right to monies it otherwise would be entitled to. If the provider fails to provide for the transfer of contracts within sixty days, the purchasers may request directly the financial institution to transfer the account balance to another provider selected by the purchaser with payment jointly to the provider and its financial institution. The purchaser also may request that an insurance company assign another provider as beneficiary for the insurance policy.

(B) The department has jurisdiction over the provider and the insurance policy or trust funds together with interest of all active contracts and has the authority to accomplish the necessary transfer of preneed funeral contracts in all cases in which the purchaser has failed to effectuate the transfer to a licensed provider within six months of the date the provider's license issued by the State Board of Funeral Service is cancelled or the license to sell preneed funeral contracts is cancelled and an application for a replacement license has not been filed.

Section 32-7-50. (A) Without first securing a license from the department, no one, except a financial institution, may accept or hold payments made on a preneed funeral contract.

(1) The State Board of Funeral Service must revoke the license of a funeral home or funeral director, or both, if the funeral home or funeral director: (a) accepts funds for a preneed funeral contract or other prepayment of funeral expenses without a license to sell preneed funeral contracts, or (b) is licensed to sell preneed funeral contracts and fails to deposit the funds collected in trust in a federally insured account as required by Section 32-7-20(H).

(2) Application for a license must be in writing, signed by the applicant, and verified on forms furnished by the department. Each application must contain at least the following: the full name and address, both residence and place of business, of the applicant and every member, officer, and director of it if the applicant is a firm, partnership, association, or corporation. A license issued pursuant to the application is valid only at the address stated in the application for the applicant or at a new address approved by the department.

(3) If a licensee cancels the license and later applies for a new license, the department shall investigate the applicant's books, records, and accounts to determine if the applicant violated the provisions of this chapter during the time he did not have a license.

(B) Upon receipt of the application, a one-time payment of a license fee, and the deposit in an amount to be determined by the department of the security or proof of financial responsibility as the department may determine, the department shall issue a license unless it determines that the applicant has made false statements or representations in the application, is insolvent, has conducted his business in a fraudulent manner, is not authorized to transact business in this State, or if, in the judgment of the department, the applicant should be denied a license for some other good and sufficient reason.

(C) A person selling a preneed funeral contract shall collect from each purchaser a service charge and all fees collected must be remitted by the person collecting them to the department at least once each month.

(1) With the fees collected, the person also must provide the department with a listing of each contract sold. If the listing or fees collected are not sent to the department within sixty days of the last day of the month when the contract was sold, the department shall assess a civil penalty of ten dollars for each contract not reported to the department. The monies collected as civil penalties must be deposited in the Preneed Funeral Loss Reimbursement Fund. Upon its own initiative or upon complaint or information received, the department shall investigate a person's books, records, and accounts if the

department has reason to believe that fees are collected and either not remitted or not timely remitted.

(2) The service charge for each contract may not exceed a total of thirty dollars, twenty-five dollars for the department to use in administering the provisions of this chapter and five dollars to be allocated to the Preneed Funeral Loss Reimbursement Fund.

(3) The department shall keep a record of each preneed funeral contract for which it receives a service charge.

Section 32-7-60. (A) There is established the Preneed Funeral Loss Reimbursement Fund which must be administered by the department. The purpose of the fund is to reimburse the estates of beneficiaries of preneed funeral contacts, or in the absence of an estate filing, the purchaser or applicant with payment jointly to the funeral home providing services or merchandise or both, who have suffered financial loss as a result of the misfeasance, fraud, default, failure, or insolvency of a South Carolina funeral home or South Carolina funeral director.

(B) From the service charge for each preneed contract as required by Section 32-7-50(C), the department shall deposit into the fund that portion of the charge as established by the department. The department may suspend or resume deposits into the fund at any time and for any period to ensure that a sufficient amount is available to meet likely disbursements and to maintain an adequate reserve. The maximum amount of the service charge to be allocated to the Preneed Funeral Loss Reimbursement Fund as required by Section 32-7-50(C)(2) may not exceed the amount of five dollars for each preneed contract. The maximum amount of the fund is five hundred thousand dollars with a five percent adjustment compounded annually.

(C) All sums received by the department pursuant to this section must be held in a separate account maintained by the Office of State Treasurer to be used solely as provided in this section. All interest or other income earned on the fund must be retained by the fund.

(D) Reimbursements from the fund may not exceed the total payment made for preneed funeral services or merchandise or both. Interest or future graduated insurance benefits must not be reimbursed. Upon the death of the beneficiary and the applicant's compliance with all applicable rules of the department, reimbursement from the fund may be made to the estate of the beneficiary, the purchaser, or applicant with payment jointly to the funeral home providing services or merchandise or both only to the extent to which losses are not bonded or otherwise covered. If the department makes payments from the fund under this section, the department is subrogated in the

reimbursed amount and may bring an action against a person, including a preneed licensee. The department may enforce claims it may have for restitution or otherwise and may employ and compensate from the fund consultants, legal counsel, accountants, and other persons it considers appropriate to ensure compliance with this section.

(E) The department shall investigate all applications made and may reject or allow claims in whole or in part. Payment must be made to the extent that monies become available in the fund. Reimbursements for completed claims must be processed in the order in which they are received subject to availability of monies in the fund. The department has complete discretion to determine the order and manner of payment of approved applications. All payments are a matter of privilege and not a right, and a person does not have a right in the fund as a third party beneficiary or otherwise.

(F) The department shall furnish a form of application for reimbursement which shall require the following minimum information:

(1) the name and address of the applicant;

(2) the name and address of the funeral service or funeral director, or both, who caused the loss;

(3) the amount of the alleged loss for which application for reimbursement is made;

(4) a copy of a preneed funeral contract or written agreement which was the basis of the alleged loss;

(5) a copy of payment receipts or canceled checks, or both;

(6) a copy of the death certificate;

(7) a general statement of facts relative to the application;

(8) supporting documents, including copies of court proceedings and other papers indicating the efforts of the applicant to obtain reimbursement from the provider, insurance companies, or others;

(9) documentation of receipt of funds in partial payment of the loss;

(10) name and address of the funeral home that provided services or merchandise or both.

(G) This fund and all interest earned may be used only as prescribed in this section and may not be used for another purpose. The department may expend monies from the fund to:

(1) make reimbursements on approved applications;

(2) purchase insurance to cover losses and department liability as considered appropriate by the department and not inconsistent with the purpose of the fund;

(3) invest portions of the fund as are not currently needed to reimburse losses and maintain adequate reserves, as are permitted to be made by fiduciaries under state law;

(4) pay the expenses, other than normal operating expenses, of the department for administering the fund, including employment of legal counsel, accountants, consultants, and other persons the department considers necessary to ensure compliance with this section.

(H) A person may not make, publish, disseminate, circulate, or place before the public, or cause, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter, poster, or over any radio station or television station, or in any other way any advertisement, announcement, or statement that uses the existence of the fund for the purpose of sales, solicitation, or inducement to purchase any form of preneed contract covered by this chapter.

(I) The department may establish procedures and promulgate regulations it determines necessary to implement the purposes of the section.

Section 32-7-70. (A) The provider must keep accurate accounts, books, and records in this State of all transactions, copies of all agreements, dates, and amounts of payments made and accepted on them, the names and addresses of the contracting parties, the persons for whose benefit funds are accepted, and the names of the depositories of the funds. The provider must make all books and records pertaining to the trust funds available to the department for examination.

(B) The department may at any reasonable time and shall at least once every two years investigate the books, records, and accounts of each provider with respect to its trust funds and for that purpose may require the attendance of and examine under oath all persons whose testimony the department may require. The department shall investigate a provider's books, records, and accounts if the department has reason to believe or has received a complaint alleging that the provider has violated the provisions of this chapter.

Section 32-7-90. (A) A contract seller, provider, agent, employee, or person acting in behalf of one of these persons may not:

(1) directly or indirectly call upon individuals or persons in hospitals, rest homes, nursing homes, or similar institutions for the purpose of soliciting preneed funeral contracts or making funeral or

final disposition arrangements without first having been specifically requested by the person to do so;

(2) directly or indirectly employ an agent, assistant, employee, independent contracting person, or other person to call upon individuals or persons in hospitals, rest homes, nursing homes, or similar institutions for the purpose of soliciting preneed funeral contracts or making funeral or final disposition arrangements without first having been specifically requested by the person to do so;

(3) solicit relatives of persons whose death is apparently pending or whose death has recently occurred for the purpose of providing funeral services, final disposition, burial, or funeral goods for the person;

(4) solicit or accept or pay consideration for recommending or causing a dead human body to be provided funeral services and funeral and burial goods by specific persons, or the services of a specific crematory, mausoleum, or cemetery unless the arrangement is the subject of a preneed funeral contract; or

(5) solicit by telephone call or by visit to a personal residence unless the solicitation has been previously requested by the person solicited or by a family member residing at the residence.

(B) This chapter does not restrict the right of a person lawfully to advertise, to use direct mail, or otherwise communicate in a manner not within the above prohibition of solicitation or to solicit the business of anyone responding to the communication or otherwise initiating discussion of the goods or services being offered.

(C) This chapter does not prohibit general advertising.

(D) A person making a personal or written solicitation for a preneed funeral contract, as soon as possible, shall divulge the real reason for the contract or solicitation.

(E) The department may promulgate regulations for the solicitation of preneed contracts by sellers and providers and their agents and employees to protect the public from solicitation practices that utilize undue influence or that take undue advantage of a person’s ignorance or emotional vulnerability.

Section 32-7-95. The prohibitions of Section 32-7-90 as to solicitations and advertising relating to preneed funeral contracts apply equally to a funeral director licensed pursuant to this title as an agent for a life insurer as well as to the life insurer doing business in this State.

Section 32-7-100. (A) A person wilfully violating the provisions of this chapter is guilty of a misdemeanor and, upon conviction, must be fined not less than one thousand dollars or more than five thousand dollars, or imprisoned for not less than ten days or more than six months, or both. In addition, this person may be prohibited from entering into further preneed funeral contracts if the department, in its discretion, finds that the offense is sufficiently grievous.

(B) Before the suspension, revocation, or other action by the department involving a license to sell preneed funeral contracts becomes final, a licensee is entitled to request a contested case hearing before the Administrative Law Court, in accordance with the Administrative Procedures Act.

Section 32-7-110. (A) The department shall enforce the provisions of this chapter and has the power to make investigations, subpoena witnesses and documents, require audits and reports, and conduct hearings as to violations of any provisions, and to promulgate regulations necessary to carry out the provisions of this chapter.

(B) Upon its own initiative or upon receipt of a complaint, the department shall investigate a funeral home, funeral director, individual, or business the department has reason to believe is acting as a provider without a license. In order to conduct its investigation, the department shall review the books, records, and accounts of: (1) a funeral home or funeral director licensed by the State Board of Funeral Service even if the funeral home or funeral director is not licensed to sell preneed funeral contracts, or (2) an individual or business the department has reason to believe is acting as a provider without a license. If the department discovers that a violation of this chapter has occurred by a funeral home, funeral director, individual, or business that is not licensed to sell preneed funeral contracts, the department may initiate an action for a violation of this chapter in the Administrative Law Court for a cease and desist order or assess an administrative fine not to exceed ten thousand dollars, or both. A person aggrieved by an order of the department may request a contested case hearing before the Administrative Law Court.

(C) Whether or not enforcement action is taken by the department, the department shall report a violation it discovers to the State Board of Funeral Service for an action pursuant to Section 40-19-110(12) and to the Attorney General, a circuit solicitor, or an appropriate law enforcement agency.

Section 32-7-120. This chapter does not modify, abridge, or repeal any provision of Chapter 55, Title 39. This chapter applies only to preneed funeral contracts sold by funeral homes licensed in this State and their licensed directors.

Section 32-7-130. Nothing in this chapter or in Chapter 55, Title 39 precludes the sale at need of granite, memorials, or vaults by a licensed funeral director. However, a licensed funeral director may sell only vaults preneed in accordance with this chapter."

Payments received for funeral merchandise must be placed in a trust account

SECTION 2. Section 40-19-290(E) of the 1976 Code, as last amended by Act 188 of 2004, is further amended to read:

"(E) All payments received by any establishment licensed under this chapter for funeral merchandise being purchased must be placed in a trust account in a federally insured institution until the merchandise is delivered for use as provided in the contract in accordance with the sales agreement or in the physical possession of the purchaser. Upon its own initiative or upon receipt of a complaint, the South Carolina Department of Consumer Affairs shall undertake investigations; review the books, records, and accounts of any establishment licensed under this chapter; subpoena witnesses; require audits and reports; and conduct hearings to determine if payments are being received in violation of the provisions of Chapter 7, Title 32."

Time effective

SECTION 3. This act takes effect July 1, 2009.

Ratified the 27th day of May, 2009.

Approved the 2nd day of June, 2009.

No. 71

(R51, H3616)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING ARTICLE 27 TO CHAPTER 53, TITLE 59 SO AS TO ENACT THE "STATE BOARD FOR TECHNICAL AND COMPREHENSIVE EDUCATION ACT"; TO CREATE THE AIKEN TECHNICAL COLLEGE ENTERPRISE CAMPUS AUTHORITY, THE GREENVILLE TECHNICAL COLLEGE ENTERPRISE CAMPUS AUTHORITY, THE ORANGEBURG-CALHOUN TECHNICAL COLLEGE ENTERPRISE CAMPUS AUTHORITY, THE SPARTANBURG COMMUNITY COLLEGE ENTERPRISE CAMPUS AUTHORITY, AND THE YORK TECHNICAL COLLEGE ENTERPRISE CAMPUS AUTHORITY; TO PROVIDE THAT EACH AUTHORITY MUST BE GOVERNED BY A BOARD, AND TO PROVIDE FOR THE POWERS AND DUTIES OF THE BOARD; TO PROVIDE FOR LEASE AND LEASE PURCHASE AGREEMENT APPROVAL; TO PROVIDE THAT THE POWERS GRANTED TO AN AUTHORITY MUST COMPLY WITH THE PROCUREMENT CODE; TO PROVIDE FOR THE ISSUANCE OF BONDS, NOTES, AND OTHER OBLIGATIONS OR INDEBTEDNESS BY AN AUTHORITY; TO PROVIDE REPORTING REQUIREMENTS; TO PROVIDE THAT AN AUTHORITY IS NOT REQUIRED TO PAY TAXES AND ASSESSMENTS, AND THAT BONDS, NOTES, AND OTHER OBLIGATIONS OR INDEBTEDNESS ISSUED BY AN AUTHORITY MAY NOT BE TAXED; TO REQUIRE A COMMISSION TO DESIGNATE THE AREA THAT COMPRISES THE ENTERPRISE CAMPUS, AND TO FURTHER PROVIDE COMMISSION POWERS AND DUTIES WITH RESPECT TO ENTERPRISE CAMPUS PROPERTY.

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

Findings

SECTION 1. The General Assembly finds that:

(1) the State Board for Technical and Comprehensive Education (state board) and its colleges are in a unique position to be active and full participants in the state's effort to promote and enhance the

economic development of this State through the location and development of high technology businesses and industries;

(2) the role of the state board and the colleges to provide educational and job training opportunities for citizens complements and enhances the ability of the state's research universities to pursue and engage the high technology community;

(3) the state board and the colleges can better utilize their resources if necessary powers and flexibility are granted by the General Assembly for the state board and the colleges to fulfill their role in a high technology economy;

(4) it is in the best interest of the State to provide the powers and flexibility for the state board, and the best method for accomplishing this is through the creation and establishment of separate and distinct instrumentalities of the State;

(5) the state board shall carefully review and approve each individual project brought to it by these colleges and instrumentalities and shall approve projects based on the best interest of the State; and

(6) authorizations contained in this act are in the public interest, serve a public purpose, and promote the health, safety, welfare, and convenience of the people of the State.

Citation name

SECTION 2. This act may be cited as the "State Board for Technical and Comprehensive Education Enterprise Campus Authority Act".

Technical College Enterprise Campus Authority

SECTION 3. Chapter 53, Title 59 of the 1976 Code is amended by adding:

"Article 27

Technical College Enterprise Campus Authority

Section 59-53-2400. As used in this article:

(1) 'Authority' means a technical college Enterprise Campus Authority.

(2) 'Board' means the governing body of an authority.

(3) 'Commission' means an area commission as defined by Section 59-53-52.

(4) 'Enterprise campus' means the real and personal property subject to the management and control of an authority. The enterprise campus may consist of one or more tracts or parcels of real property and none of the tracts or parcels must be contiguous with other properties constituting the enterprise campus.

Section 59-53-2410. (A) There are created bodies politic and corporate known as the Aiken Technical College Enterprise Campus Authority, the Greenville Technical College Enterprise Campus Authority, the Orangeburg-Calhoun Technical College Enterprise Campus Authority, the Spartanburg Community College Enterprise Campus Authority, and the York Technical College Enterprise Campus Authority. The authorities are public instrumentalities of the State and the exercise by them of a power conferred in this article is the performance of an essential public function. The authorities are governed by a board, which consists of members of the respective commissions. All members serve ex officio. Persons serving as chairman, vice chairman, treasurer, and secretary of the respective commissions shall serve in the same capacity on their respective board. Members of a board shall receive per diem as provided for members of boards, commissions, and committees and actual expenses incurred in the performance of their duties.

(B) A board shall exercise the powers of an authority.

(C) The purpose of an authority is to provide for the management, development, and operation of an enterprise campus.

Section 59-53-2420. (A) In addition to the powers contained elsewhere in this article, a board has power necessary, useful, or appropriate to operate and administer an authority, to effectuate the purposes of an authority, and to perform its other functions including, but not limited to, the power to:

(1) have perpetual succession;

(2) sue and be sued in its own name;

(3) adopt, promulgate, amend, and repeal bylaws, not inconsistent with provisions in this article for the administration of an authority's affairs and the implementation of its functions;

(4) have a seal and alter it at its pleasure, although the failure to affix the seal does not affect the validity of an instrument executed on behalf of an authority;

(5) make and execute contracts and all other instruments and agreements necessary or convenient for the performance of its duties and the exercise of its powers and functions;

(6) buy, purchase, or otherwise acquire real and personal property and other assets and sell, convey, mortgage, pledge, lease, exchange, transfer, and otherwise dispose of all or part of its real and personal property and other assets, upon terms and conditions determined by the board;

(7) employ agents, advisors, consultants, engineers, architects, attorneys, accountants, construction and financial experts, land planners, superintendents, managers, and other employees and agents as necessary in the board's judgment in connection with any aspect of the enterprise campus and determine their duties and to fix their compensation;

(8) procure insurance against any loss in connection with its property, assets, or activities, including insurance against liability for its acts or the acts of its employees or agents;

(9) procure insurance, guarantees, letters of credit, and other forms of collateral or security or credit support from public or private entities, including a department, agency, or instrumentality of the United States or the State of South Carolina, for the payment of any bonds issued by it, including the power to pay premiums or fees on any insurance, guarantees, letters of credit, and other forms of collateral or security or credit support;

(10) receive, accept, and expend from any source including a federal, state, or other public agency or a private agency, person, or other entity appropriated funds, donations, loans, grants, aid, or contributions of money, property, labor, or other things of value;

(11) invest or reinvest its funds as provided in Section 11-9-660;

(12) make contracts and guarantees, incur liabilities, issue its notes, bonds, and other obligations, and secure its obligations by mortgage or pledge of its property, or income in a manner determined to be in the best interest of an authority. A guarantee or indebtedness of an authority does not create an obligation of the State or commission, nor must the guarantee or indebtedness be considered a debt against the general revenue of the State or commission;

(13) fix and revise when necessary and charge and collect rates, fees, rents, and charges for the use of, and for the services furnished by it, for all or any portion of the enterprise campus;

(14) determine the character of an enterprise campus, and acquire, develop, construct, and provide for an enterprise campus, and maintain, repair, and operate, and enter into contracts for the management, lease, use, or operation of all or any portion of an enterprise campus;

(15) establish and enforce, and agree through a resolution or trust agreement authorizing or securing bonds, notes, other obligations, or

indebtedness of an authority to make and enforce rules and regulations for the use of and services rendered by an authority for the enterprise campus;

(16) appoint and provide for advisory committees;

(17) establish nonprofit corporations in accordance with applicable corporate law and with the powers provided by the applicable corporate law; and

(18) do all other things necessary or convenient to exercise the powers granted or reasonably implied by this article.

(B) The powers contained in this article include the power to enter into contracts and other agreements with public or private entities for the lease of authority property, the construction, occupancy, use, and ownership by the public or private entity of buildings or other facilities on authority property, and the conveyance of the public or private entity's property to an authority at the end of an applicable contract or agreement.

Section 59-53-2430. (A) An authority must comply with the provisions of Chapter 47, Title 2, but only State Budget and Control Board approval is required for leases and lease purchase agreements, including ground lease agreements, the terms and conditions thereof, and the consideration involved, for the construction or use of facilities on an enterprise campus. Upon the expiration of the lease purchase agreements, including ground lease agreements, the private entity shall surrender to an authority the premises with the existing buildings, other structures, and improvements constructed and located on an enterprise campus, in the same condition as when the construction of the buildings, other structures, and improvements were completed, only natural and normal wear and tear excepted. Subject to the provisions of this article, the approval of the State Budget and Control Board required for leases and lease purchase agreements, including ground lease agreements, is in lieu of or a substitute for any other approval required by another provision of law or regulation. The full faith and credit of the State toward the lease obligations may not be pledged, and a statement to the contrary is void as a matter of public policy.

(B) Notwithstanding another provision of this chapter, all powers granted to an authority must be exercised in a manner consistent with the provisions of Title 11, Chapter 35 and Section 1-11-65. Approval by the State Budget and Control Board is not a substitute for the requirements of Title 11, Chapter 35. An authority shall adhere to fire, life, and safety codes as required by the Office of State Engineer.

Section 59-53-2440. (A) An authority may issue bonds in the same manner and for the same purposes, including the purposes of an authority, pursuant to the provisions of the Higher Education Revenue Bond Act, as provided in Chapter 147, Title 59.

(B) The issuance by an authority of bonds, notes, other obligations, or indebtedness is subject to approval by resolution of the State Budget and Control Board.

(C) Bonds, notes, other obligations, or indebtedness of an authority do not constitute a debt or a pledge of the faith and credit of the State of South Carolina, the commission, or any of the state's political subdivisions other than an authority, but are payable only from the revenue, money, or property of an authority as provided in this article. The bonds, notes, other obligations, or indebtedness of an authority do not constitute an indebtedness of the State within the meaning of any state constitutional or statutory limitation. A member of the board or a person executing bonds, notes, other obligations, or indebtedness of an authority is not liable personally on the bonds, notes, other obligations, or indebtedness by reason of their issuance or execution. Each bond, note, other obligation, or indebtedness must contain on its face a statement to the effect that:

(1) the State, the commission, the State's political subdivisions, or an authority is not obligated to pay the principal of or interest on the bond or other costs incident to the bond except from the revenue, money, or property of an authority pledged;

(2) the full faith and credit, and the taxing power of the State and its political subdivisions, is not pledged to the payment of the principal of or interest on the bond, note, other obligation, or indebtedness; and

(3) an authority does not have taxing power.

Section 59-53-2450. An authority shall submit an annual report on the development and use of the enterprise campus to the State Board for Technical and Comprehensive Education, the Governor, the State Budget and Control Board, the Chairman of the Ways and Means Committee of the House of Representatives, and the Chairman of the Finance Committee of the Senate. The report must be submitted not later than six months after the end of each fiscal year.

Section 59-53-2460. In performing an essential governmental function in the exercise of the powers conferred upon it, an authority is not required to pay taxes or assessments upon property or upon its activities or operations or the income from them, or taxes or

assessments upon property acquired or used by an authority or upon the income from them. Bonds, notes, other obligations, or indebtedness issued by an authority and the income from them are free from taxation and assessment of every kind by the State and by the local governments and other political subdivisions of the State.

Section 59-53-2470. (A) A commission must designate with specificity the area or areas that comprise the enterprise campus and the purpose of the enterprise campus. This information must be submitted to the State Board for Technical and Comprehensive Education. The state board shall have final approval over the areas designated as part of a Technical College Enterprise Campus Authority and the projects to be undertaken.

(B) A commission may provide for the management, development, and operation of part or all of the enterprise campus property by an authority.

(C) An area commission is authorized to enter into contracts with the Enterprise Campus Authority for the provision of executive and administrative services to an authority.

(D) In the fulfillment of the power contained in this section, the commission is authorized to sell, convey, lease, exchange, transfer, or give all or part of its real and personal property and other assets constituting the enterprise campus to the Enterprise Campus Authority upon such terms and conditions as the commission determines. The commission may sell, convey, lease, exchange, transfer, or give all or part of its real and personal property and other assets constituting the enterprise campus, other than the property defined pursuant to paragraph (A), only upon approval by the State Board for Technical and Comprehensive Education. The commission may buy, purchase, or otherwise acquire and accept real and personal property and other assets from the Enterprise Campus Authority only in accordance with all regulations and general laws applicable to state-supported technical institutions in the acquisition and acceptance of real and personal property and other assets."

Affect on existing technical colleges or authorities

SECTION 4. Nothing in the article may be construed to alter, amend, or otherwise affect an existing technical or community college enterprise campus or Enterprise Campus Authority currently in existence.

Severability Clause

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

Time effective

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

Ratified the 13th day of May, 2009.

Vetoed by the Governor -- 5/19/09.
Veto overridden by House -- 5/20/09.
Veto overridden by Senate -- 6/16/09.

No. 72

(R55, S116)

AN ACT TO AMEND SECTION 11-35-310, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO DEFINITIONS FOR PURPOSES OF THE CONSOLIDATED PROCUREMENT CODE, SO AS TO DELETE THE DEFINITION FOR "OFFICE"; TO AMEND SECTION 11-35-1524, AS AMENDED, RELATING TO VENDOR PREFERENCES, SO AS TO PROVIDE FOR PREFERENCES FOR END PRODUCTS FROM SOUTH CAROLINA AND FROM THE UNITED STATES AND FOR CONTRACTORS AND SUBCONTRACTORS WHO EMPLOY INDIVIDUALS DOMICILED IN SOUTH CAROLINA, TO DEFINE CERTAIN TERMS, PROVIDE FOR ELIGIBILITY REQUIREMENTS FOR THE PREFERENCES, PROVIDE FOR APPLICATION FOR

THE PREFERENCES AND PENALTIES FOR FALSE APPLICATION, AND TO MAKE EXCEPTIONS TO THE PREFERENCES; TO AMEND SECTION 11-35-40, AS AMENDED, RELATING TO COMPLIANCE WITH FEDERAL REQUIREMENTS, SO AS TO PROVIDE FOR COMPLIANCE WITH THE CONSOLIDATED PROCUREMENT CODE; TO AMEND SECTION 11-35-3215, RELATING TO CONTRACTS FOR DESIGN SERVICES, SO AS TO PROVIDE FOR A RESIDENT PREFERENCE; AND TO REPEAL SECTION 11-35-3025 RELATING TO APPROVAL OF CHANGE ORDERS IN CONNECTION WITH CERTAIN CONTRACTS.

Whereas, the General Assembly finds that the economic crisis plaguing our nation and this State, particularly the exceptionally high rate of unemployment in our State, requires action; and

Whereas, the General Assembly finds that it is crucial to this state's economic recovery to purchase goods manufactured and produced in the State, maintain the circulation of the funds of the citizens of this State within this State, and encourage and facilitate job development and economic growth by providing both assistance and opportunity to this state's small businesses to participate as providers and vendors of goods and services to the State; and

Whereas, the General Assembly determines that various preferences should be accorded to residents both for the purpose of employment and business development when the State expends funds in the manner provided in this act. Now, therefore,

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

Definitions

SECTION 1. Section 11-35-310(22) of the 1976 Code, as added by Act 153 of 1997, is amended to read:

"(22) Reserved."

Resident vendor preference

SECTION 2. Section 11-35-1524 of the 1976 Code, as last amended by Act 333 of 2002, is further amended to read:

"Section 11-35-1524. (A) For purposes of this section:

(1) 'End product' means the tangible product described in the solicitation including all component parts and in final form and ready for the state's intended use.

(2) 'Grown' means to produce, cultivate, raise, or harvest timber, agricultural produce, or livestock on the land, or to cultivate, raise, catch, or harvest products or food from the water which results in an end product that is locally derived from the product cultivated, raised, caught, or harvested.

(3) 'Labor cost' means salary and fringe benefits.

(4) 'Made' means to assemble, fabricate, or process component parts into an end product, the value of which, assembly, fabrication, or processing is a substantial portion of the price of the end product.

(5) 'Manufactured' means to make or process raw materials into an end product.

(6) 'Office' means a nonmobile place for the regular transaction of business or performance of a particular service which has been operated as such by the bidder for at least one year before the bid opening and during that year the place has been staffed for at least fifty weeks by at least two employees for at least thirty-five hours a week each.

(7) 'Services' means services as defined by Section 11-35-310(29) and also includes services as defined in Section 11-35-310(1)(d).

(8) 'South Carolina end product' means an end product made, manufactured, or grown in South Carolina.

(9) 'United States end product' means an end product made, manufactured, or grown in the United States of America.

(B)(1) When evaluating pricing for purposes of making an award determination, the procurement officer shall decrease by seven percent the price of any offer for a South Carolina end product.

(2) When evaluating pricing for purposes of making an award determination, the procurement officer shall decrease by two percent the price of any offer for a United States end product. This preference does not apply to an item to which the South Carolina end product preference has been applied.

(3) Whether award is to be made by item or lot, the preferences must be applied to the price of each line item of end product. A preference must not be applied to an item for which a bidder does not qualify.

(4) If a contract is awarded to a bidder that received the award as a result of the South Carolina end product or United States end product preference, the contractor may not substitute a nonqualifying end product for a qualified end product. A substitution in violation of this item is grounds for debarment pursuant to Section 11-35-4220. If a contractor violates this provision, the State may terminate the contract for cause and, in addition, the contractor shall pay to the State an amount equal to twice the difference between the price paid by the State and the bidder's evaluated price for a substituted item.

(5) If a bidder is requesting this preference, the bidder, upon request of the procurement officer, must provide documentation that establishes the bidder's qualifications for the preference. Bidder's failure to provide this information promptly is grounds to deny the preference and for enforcement pursuant to subsection (E)(6).

(C)(1) When evaluating pricing for purposes of making an award determination, the procurement officer shall decrease a bidder's price by seven percent if the bidder maintains an office in this State and either: (i) maintains at a location in South Carolina at the time of the bid an inventory of expendable items which are representative of the general type of commodities on which the award will be made and which have a minimum total value, based on the bid price, equal to the lesser of fifty thousand dollars or the annual amount of the contract; (ii) is a manufacturer headquartered and having an annual payroll of at least one million dollars in South Carolina and the end product is made or processed from raw materials into a finished end product by that manufacturer or its affiliate (as defined in Section 1563 of the Internal Revenue Code); or (iii) at the time of bidding, directly employs or has a documented commitment with individuals domiciled in South Carolina that will perform services expressly required by the solicitation and the total direct labor cost to bidder for those individuals to provide those services exceeds fifty percent of the bidder's total bid price.

(2) Whether award is to be made by item or lot, the preferences must be applied to the price of each line item of end product or work, as applicable. A preference must not be applied to an item for which a bidder does not qualify.

(3) If a bidder is requesting this preference, the bidder, upon request by the procurement officer, must provide documentation that establishes the bidder's qualifications for the preference and, for the preference claimed pursuant to subsection (C)(1)(iii), must identify the persons domiciled in South Carolina that will perform the services involved in the procurement upon which bidder relies in qualifying for the preference, the services those individuals are to perform, and

documentation of the bidder's labor cost for each person identified. Bidder's failure to provide this information promptly is grounds to deny the preference and for enforcement under subsection (E)(6) below.

(D)(1) When evaluating pricing for purposes of making an award determination, the procurement officer shall decrease a bidder's price by two percent if:

(a) the bidder has a documented commitment from a single proposed first-tier subcontractor to perform some portion of the services expressly required by the solicitation; and

(b) at the time of the bidding, the subcontractor directly employs or has a documented commitment with individuals domiciled in South Carolina that will perform services expressly required by the solicitation and the total direct labor cost to the subcontractor for those individuals to provide those services exceeds twenty percent of bidder's total bid price.

(2) When evaluating pricing for purposes of making an award determination, the procurement officer shall decrease a bidder's price by four percent if:

(a) the bidder has a documented commitment from a single proposed first-tier subcontractor to perform some portion of the services expressly required by the solicitation; and

(b) at the time of the bidding, the subcontractor directly employs or has a documented commitment with individuals domiciled in South Carolina that will perform services expressly required by the solicitation and the total direct labor cost to the subcontractor for those individuals to provide those services exceeds forty percent of bidder's total bid price.

(3) Whether award is to be made by item or lot, the preferences must be applied to the price of each line item of work. A preference must not be applied to an item for which a bidder does not qualify.

(4) Subject to other limits in this section, an offeror may benefit from applying for more than one of, or from multiple applications of, the preferences allowed by items (1) and (2).

(5)(a) In its bid, a bidder requesting any of the preferences allowed by items (1) and (2) must identify the subcontractor to perform the work, the work the subcontractor is to perform, and the bidder's factual basis for concluding that the subcontractor's work constitutes the required percentage of the work to be performed in the procurement.

(b) If a bidder is requesting a preference allowed by items (1) or (2), upon request by the procurement officer, the bidder shall

identify the persons domiciled in South Carolina that are to perform the services involved in the procurement upon which the bidder relies in qualifying for the preference, the services those individuals are to perform, the employer of those persons, the bidder's relationship with the employer, and documentation of the subcontractor's labor cost for each person identified. Bidder's failure to provide this information promptly will be grounds to deny the preference and for enforcement pursuant to subsection (E)(6) below.

(c) If a contract is awarded to a bidder that received the award as a result of a preference allowed by items (1) or (2), the contractor may not substitute any business for the subcontractor on which the bidder relied to qualify for the preference, unless first approved in writing by the procurement officer. A substitution in violation of this subitem is grounds for debarment pursuant to Section 11-35-4220. If a contractor violates this provision, the procurement officer may terminate the contract for cause. If the contract is not terminated, the procurement officer may require the contractor to pay the State an amount equal to twice the difference between the price paid by the State and the price offered by the next lowest bidder, unless the substituted subcontractor qualifies for the preference.

(E)(1) A business is not entitled to any preferences unless the business, to the extent required by law, has:

(a) paid all taxes assessed by the State; and

(b) registered with the South Carolina Secretary of State and the South Carolina Department of Revenue.

(2) The preferences provided in subsections (B) and (C)(1)(i) and (ii) do not apply to a single unit of an item with a price in excess of fifty thousand dollars or a single award with a total potential value in excess of five hundred thousand dollars.

(3) The preferences provided in subsections (C)(1)(iii) and (D) do not apply to a bid for an item of work by the bidder if the annual price of the bidder's work exceeds fifty thousand dollars or the total potential price of the bidder's work exceeds five hundred thousand dollars.

(4) A solicitation must provide potential bidders an opportunity to request the preferences that apply to a procurement. By submitting a bid and requesting that a preference be applied to that bid, a business certifies that its bid qualifies for the preference for that procurement. For purposes of applying this section, a bidder is not qualified for a preference unless the bidder makes a request for the preference as required in the solicitation. If a solicitation specifies which preferences, if any, apply to a procurement, the applicability of preferences to that

procurement is conclusively determined by the solicitation unless the solicitation document is timely protested as provided in Section 11-35-4210. If two or more bidders are tied after the application of the preferences allowed by this section, the tie must be resolved as provided in Section 11-35-1520(9). Price adjustments required by this section for purposes of evaluation and application of the preferences do not change the actual price offered by the bidder.

(5) This section does not apply to an acquisition of motor vehicles as defined in Section 56-15-10 or an acquisition of supplies or services relating to construction. This section does not apply to a procurement conducted pursuant to Section 11-35-1550(2)(a) or (b), Section 11-35-1530, or Article 9, Chapter 35.

(6) Pursuant to Section 11-35-4220, a business may be debarred if: (i) the business certified that it qualified for a preference, (ii) the business is not qualified for the preference claimed, and (iii) the certification was made in bad faith or under false pretenses. If a contractor has invalidly certified that a preference is applicable, the chief procurement officer may terminate the contract for cause, and the chief procurement officer may require the contractor to pay the State an amount equal to twice the difference between the price paid by the State and the price offered by the next lowest bidder.

(7) The sum of all preferences allowed by items (D)(1) and (D)(2), when applied to the price of a line item of work, may not exceed six percent unless the bidder maintains an office in this State. Under no circumstances may the cumulative preferences applied to the price of a line item exceed ten percent.

(8) As used in items (C)(1)(iii), (D)(1)(b), and (D)(2)(b), the term ‘documented commitment’ means a written commitment by the bidder to employ directly an individual, and by the individual to be employed by the bidder, both contingent on the bidder receiving the award.

(9) The remedies available in this section are cumulative of and in addition to all other remedies available at law and equity.”

Application of the Consolidated Procurement Code

SECTION 3. Section 11-35-40(3) of the 1976 Code, as last amended by Act 153 of 1997, is further amended to read:

“(3) Compliance with Federal Requirements. Where a procurement involves the expenditure of federal assistance, grant, or contract funds, the governmental body also shall comply with federal laws (including

authorized regulations) as are mandatorily applicable and which are not presently reflected in this code. Notwithstanding, where federal assistance, grant, or contract funds are used in a procurement by a governmental body as defined in Section 11-35-310(18), this code, including any requirements that are more restrictive than federal requirements, must be followed, except to the extent such action would render the governmental body ineligible to receive federal funds whose receipt is conditioned on compliance with mandatorily applicable federal law. In those circumstances, the solicitation must identify and explain the impact of such federal laws on the procurement process, including any required deviation from this code."

Preference for resident design service

SECTION 4. Section 11-35-3215 of the 1976 Code, as added by Act 375 of 2006, is amended to read:

"Section 11-35-3215. (A) As used in this section:

(1) 'Design services' means architect-engineer, construction management, or land surveying services as defined in Section 11-35-2910 and awarded pursuant to Section 11-35-3220.

(2) 'Resident' means a business that employs, either directly or through consultants, an adequate number of persons domiciled in South Carolina to perform a majority of the design services involved in the procurement.

(B) A business responding to an invitation involving design services shall submit a certification with its response stating whether the business is a resident for purposes of the procurement. Submission of a certification under false pretenses is grounds for suspension or debarment.

(C) An award to a nonresident of a contract involving design services must be supported by a written determination explaining why the award was made to the selected firm.

(D) In an evaluation conducted pursuant to Section 11-35-3220, a resident firm must be ranked higher than a nonresident firm if the agency selection committee finds the two firms otherwise equally qualified.

(E) This section does not apply to a procurement if either the procurement does not involve construction or the design services are a minor accompaniment to a contract for nondesign services."

Repeal

SECTION 5. Section 11-35-3025 of the 1976 Code is repealed.

Time effective

SECTION 6. This act takes effect upon approval by the Governor and applies to solicitations issued after that date; except that Sections 1, 2, and 4 of this act take effect upon and apply to solicitations issued after the first Monday in September following approval by the Governor.

Ratified the 27th day of May, 2009.

Vetoed by the Governor -- 6/2/09.
Veto overridden by Senate -- 6/16/09.
Veto overridden by House -- 6/16/09.

No. 73

(R64, S351)

AN ACT TO AMEND ARTICLE 1, CHAPTER 3, TITLE 54, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE CREATION AND ORGANIZATION OF THE SOUTH CAROLINA STATE PORTS AUTHORITY, SO AS TO FURTHER PROVIDE FOR ITS ESTABLISHMENT AND ORGANIZATION INCLUDING PROVISIONS TO CLARIFY THAT THE POWERS AND DUTIES OF THE AUTHORITY ARE EXERCISED BY A BOARD OF DIRECTORS, TO PROVIDE THAT CANDIDATES FOR APPOINTMENT MUST POSSESS CERTAIN QUALIFICATIONS, TO PROVIDE THAT CANDIDATES MUST BE SCREENED TO DETERMINE WHETHER THEY POSSESS THE REQUIRED QUALIFICATIONS BEFORE THEY MAY SERVE ON THE BOARD, TO PROVIDE THAT MEMBERS OF THE BOARD MAY BE REMOVED FROM OFFICE ONLY FOR CERTAIN REASONS, TO PROVIDE THAT THE BOARD MUST PERFORM AN ANNUAL PERFORMANCE REVIEW OF THE EXECUTIVE DIRECTOR, TO ESTABLISH THAT DIRECTORS HAVE A DUTY OF GOOD FAITH AND ORDINARY CARE

WHEN DISCHARGING THEIR DUTIES AS A DIRECTOR, AND TO PROHIBIT CONFLICT OF INTEREST TRANSACTIONS; BY ADDING ARTICLE 2 TO CHAPTER 3, TITLE 54 SO AS TO PROVIDE THAT THE BOARD OF DIRECTORS MUST EMPLOY AN EXECUTIVE DIRECTOR OF PORT OPERATIONS AND TO ESTABLISH THE DIRECTOR'S DUTY TO OPERATE THE PORTS IN A MANNER CONSISTENT WITH THE MISSION, POLICIES, AND DIRECTION OF THE BOARD; TO AMEND SECTION 54-3-140, RELATING TO POWERS OF THE PORTS AUTHORITY, SO AS TO PROVIDE THAT THE BOARD OF DIRECTORS MUST ADOPT AN ORGANIZATIONAL STRUCTURE FOR AUTHORITY OPERATIONS, TO REQUIRE A LONG-RANGE PORT DEVELOPMENT AND CAPITAL FINANCING PLAN, TO PROVIDE THAT THE AUTHORITY MUST CONSIDER PUBLIC-PRIVATE PARTNERSHIPS FOR CURRENT AND FUTURE OPERATIONS, AND TO PROVIDE THAT THE AUTHORITY SHALL TAKE REASONABLE STEPS TO ESTABLISH RAIL ACCESS TO PORT FACILITIES; TO AMEND SECTION 54-3-1040, RELATING TO THE ANNUAL FINANCIAL STATEMENT, SO AS TO PROVIDE FOR THE FURNISHING OF THE STATEMENT TO CERTAIN OFFICIALS AND ENTITIES AND ITS POSTING ON THE AUTHORITY'S WEBSITE; BY ADDING SECTION 54-3-1060 SO AS TO PROVIDE THAT THE AUTHORITY MUST MAINTAIN A TRANSACTION REGISTER OF ALL FUNDS EXPENDED OVER ONE HUNDRED DOLLARS AND FOR OTHER REQUIREMENTS IN REGARD TO THE REGISTER; BY ADDING ARTICLE 13 TO CHAPTER 3, TITLE 54 SO AS TO ESTABLISH A REVIEW AND OVERSIGHT COMMISSION ON THE STATE PORTS AUTHORITY AND PROVIDE FOR ITS MEMBERSHIP, DUTIES, AND POWERS; BY ADDING SECTION 54-3-155 SO AS TO PROVIDE THAT WITHOUT PRIOR APPROVAL FROM THE STATE BUDGET AND CONTROL BOARD, THE AUTHORITY MAY NOT SELL ANY REAL PROPERTY OR ANY BUILDINGS, TERMINALS, OR OTHER PERMANENT STRUCTURES, EXCLUDING EQUIPMENT, APPURTENANT TO REAL PROPERTY THAT ARE OR MAY BE USED TO CARRY OUT THE PURPOSES OF THE AUTHORITY; TO AMEND SECTION 54-3-110, RELATING TO STATE HARBORS AND SEAPORTS OPERATED BY THE AUTHORITY, SO AS TO DELETE A

REFERENCE TO PORT ROYAL AND ADD A REFERENCE TO JASPER; TO AMEND SECTION 54-3-130, RELATING TO THE PURPOSES OF THE AUTHORITY, SO AS TO REVISE REFERENCES TO THE PORTS IT IS REQUIRED TO DEVELOP; BY ADDING SECTION 54-3-115 SO AS TO DIRECT THE AUTHORITY TO TAKE ALL ACTION NECESSARY TO EXPEDITIOUSLY DEVELOP A PORT IN JASPER COUNTY IN A SPECIFIED MANNER; BY ADDING SECTION 54-3-117 SO AS TO PROVIDE THAT THE AUTHORITY SHALL TAKE ALL ACTION NECESSARY TO EXPEDITIOUSLY COMPLETE CONSTRUCTION OF A CONTAINER TERMINAL IN NORTH CHARLESTON; BY ADDING SECTION 54-3-118 SO AS TO PROVIDE THAT IT IS THE INTENT OF THE GENERAL ASSEMBLY THAT THE STATE PORTS AUTHORITY BOARD CONSIDER PUBLIC-PRIVATE PARTNERSHIPS WITH PRIVATE INVESTORS THAT INCREASE CAPITAL INVESTMENTS IN PORT FACILITIES AND IN THE STATE OF SOUTH CAROLINA; BY ADDING SECTION 13-1-1355 SO AS TO PROVIDE THAT ALL RAILROAD TRACKS, SPURS, EQUIPMENT, AND OTHER SPECIFIED PROPERTY WHICH ARE NECESSARY FOR THE OPERATION OF ANY RAILROAD LOCATED ON ANY 'APPLICABLE FEDERAL MILITARY INSTALLATION' OR 'APPLICABLE FEDERAL FACILITY' AS DEFINED IN SECTION 12-6-3450 MAY NOT BE TRANSFERRED WITHOUT THE PRIOR APPROVAL OF THE STATE BUDGET AND CONTROL BOARD; TO AMEND SECTION 1-3-240, RELATING TO THE REMOVAL OF OFFICERS BY THE GOVERNOR, SO AS TO ADD THE STATE PORTS AUTHORITY TO THE LIST OF ENTITIES THE GOVERNING BOARD OF WHICH MAY BE REMOVED BY THE GOVERNOR ONLY FOR CERTAIN REASONS CONSTITUTING CAUSE; TO AMEND SECTION 54-3-700, RELATING TO CESSATION OF MARINE TERMINAL OPERATIONS AT PORT ROYAL, SO AS TO FURTHER PROVIDE FOR ITS CESSATION AND THE MANNER IN WHICH THE PORT ROYAL REAL PROPERTY SHALL BE SOLD; BY ADDING SECTION 54-3-119 SO AS TO PROVIDE THAT THE STATE PORTS AUTHORITY BOARD IS DIRECTED TO SELL UNDER THOSE TERMS AND CONDITIONS IT CONSIDERS MOST ADVANTAGEOUS TO THE AUTHORITY AND THE STATE OF SOUTH CAROLINA ALL REAL PROPERTY IT OWNS ON DANIEL ISLAND AND

THOMAS (ST. THOMAS) ISLAND, TO PROVIDE FOR THE MANNER OF SUCH SALE AND DISPOSITION, AND TO PROVIDE EXCEPTIONS; AND TO PROVIDE THAT THE GENERAL ASSEMBLY ENCOURAGES DISCUSSIONS BETWEEN INTERESTED PARTIES AND THE TOWN OF PORT ROYAL CONCERNING THE BUILDING OF A BOAT LANDING NORTH OF THE BROAD RIVER IN BEAUFORT COUNTY, AND TO PROVIDE THAT FUNDS NEGOTIATED BETWEEN THE TOWN OF PORT ROYAL AND THE SOUTH CAROLINA STATE PORTS AUTHORITY PURSUANT TO SECTION 54-3-700 SHOULD BE USED TO BUILD THE BOAT LANDING.

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

Ports Authority organization

SECTION 1. Article 1, Chapter 3, Title 54 of the 1976 Code is amended to read:

"Article 1

Creation and Organization

Section 54-3-10. (A) There is created the South Carolina State Ports Authority. The governing body of the authority is a board of directors consisting of eleven members, nine voting members appointed by the Governor as provided in Section 54-3-20, the Secretary of Transportation, or his designee, and the Secretary of Commerce, or his designee. The voting members shall be responsible for setting policies and direction for the authority so that the authority may achieve its mission. The powers and duties of the authority shall be exercised by the board. The board may delegate to one or more officers, agents, or employees such powers and duties as it determines are necessary and proper for the effective, efficient operation of the port.

(B) The Secretary of Transportation and the Secretary of Commerce:

(1) shall serve on the board, ex officio, as nonvoting members;

(2) are ineligible for election as chairman, vice chairman, secretary, treasurer, or any other office elected by the board; and

(3) may only attend meetings or portions of meetings open to the public. They are not permitted to attend executive session meetings.

Section 54-3-20. (A) The members of the board, except for the Secretary of Transportation and the Secretary of Commerce, shall be appointed by the Governor, with the advice and consent of the Senate, for terms of five years each and until their successors shall have been appointed, screened, and qualified. In the event of a vacancy, however caused, a successor shall be appointed in the manner of original appointment for the unexpired term.

(B) A candidate for appointment to the board may not be confirmed by the Senate or serve on the board, even in an interim capacity, until he is found qualified by possessing the abilities, the experience, and the minimum qualifications contained in Section 54-3-60.

Section 54-3-30. The board shall elect one of its members to serve as chairman who shall serve for a term of two years in this capacity and may not serve more than three consecutive full two-year terms as chairman. The board also shall elect one member to serve as vice chairman, and one member to serve as secretary. The board shall meet upon the call of its chairman and a majority of its voting members shall constitute a quorum for the transaction of its business.

Section 54-3-40. The board shall select one of its members to serve as treasurer. The treasurer shall give a surety bond in an amount fixed by the board and the premium on the bond shall be paid by the authority as a necessary expense.

Section 54-3-50. Members of the board of directors may be removed by the Governor pursuant to Section 1-3-240(C)(1), for a breach of duty required by Section 54-3-80, or for entering into a conflict of interest transaction prohibited by Section 54-3-90.

Section 54-3-60. (A) Each member of the board, except for the Secretary of Transportation and the Secretary of Commerce, or their designees, must possess a four-year baccalaureate or more advanced degree from:

(1) a recognized institution of higher learning requiring face-to-face contact between its students and instructors prior to completion of the academic program;

(2) an institution of higher learning that has been accredited by a regional or national accrediting body; or

(3) an institution of higher learning in this State chartered prior to 1962.

(B) In addition to the requirements in subsection (A), each board member must possess a background of at least five years in any one or any combination of the following fields of expertise:

(a) maritime shipping;
(b) labor related to maritime shipping;
(c) overland shipping by truck or rail, or both;
(d) international commerce;
(e) finance, economics, or statistics;
(f) accounting;
(g) engineering;
(h) law; or
(i) business management gained from serving as a chief executive officer, president, or managing director of a business or any upper level management position with a business that is equivalent in duties and responsibilities to the positions listed in this item.

(C) When making appointments to the board, the Governor shall ensure that the diverse interests represented by the port are represented. To the greatest extent possible, the Governor shall ensure that the membership of the board includes a certified public accountant, a member representing port users such as manufacturers, shippers, and importers, a member representing the state's economic development interests, and a member who has served as a corporate chief executive officer. Consideration of these factors in making an appointment in no way creates a cause of action or basis for an employee grievance for a person appointed or for a person who fails to be appointed.

Section 54-3-70. The board shall conduct an annual performance review of the executive director and submit a written report of its findings to the Governor and the General Assembly. A draft of the performance review must be submitted to the executive director, and the executive director must be provided an opportunity to be heard by the board of directors before the board submits the final draft to the Governor and the General Assembly.

Section 54-3-80. (A) A member of the board of directors shall discharge his duties as a director, including his duties as a member of a committee:

(1) in good faith;

(2) with the care an ordinarily prudent person in a like position would exercise under similar circumstances; and

(3) in a manner he reasonably believes to be in the best interests of the authority. As used in this chapter, best interests means a balancing of the following:

(a) achieving the purposes of the authority as provided in Section 54-3-130;

(b) preservation of the financial integrity of the State Ports Authority and its ongoing operations;

(c) economic development and job attraction and retention;

(d) consideration given to diminish or mitigate any negative effect port operations or expansion may have upon the environment, transportation infrastructure, and quality of life of residents in communities located near existing or proposed port facilities; and

(e) exercise of the powers of the authority in accordance with good business practices and the requirements of applicable licenses, laws, and regulations.

(B) In discharging his duties, a director is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:

(1) one or more officers or employees of the State whom the director reasonably believes to be reliable and competent in the matters presented;

(2) legal counsel, public accountants, or other persons as to matters the director reasonably believes are within the person's professional or expert competence; or

(3) a committee of the board of directors of which he is not a member if the director reasonably believes the committee merits confidence.

(C) A director is not acting in good faith if he has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (B) unwarranted.

(D) Nothing in this article gives rise to a cause of action against a member of the board of directors or any decision of the board of directors regarding duties of the individual director or the board of directors concerning port operations or development. Wilful failure of the board or any individual member of the board to discharge his duties as required by this article may be considered by the Governor in determining whether to reappoint a board member or in the confirmation proceedings of that board member.

Section 54-3-90. (A) A conflict of interest transaction is a transaction with the State Ports Authority in which a director has a direct or indirect interest. A conflict of interest transaction is not voidable by the authority solely because of the director's interest in the transaction if any one of the following is true:

(1) the material facts of the transaction and the director's interest were disclosed or known to the board or a committee of the board, and the board or a committee of the board authorized, approved, or ratified the transaction; or

(2) the transaction was fair to the authority and its customers.

If item (1) has been accomplished, the burden of proving unfairness of any transaction covered by this section is on the party claiming unfairness. If item (1) has not been accomplished, the party seeking to uphold the transaction has the burden of proving fairness.

(B) For purposes of this section, a director has an indirect interest in a transaction if:

(1) another entity in which he has a material financial interest or in which he is a general partner is a party to the transaction;

(2) another entity of which he is a director, officer, member, or trustee is a party to the transaction and the transaction is or should be considered by the board; or

(3) another entity of which an immediate family member has a material financial interest or in which an immediate family member is a general partner, director, officer, member, or trustee is a party to the transaction and the transaction is or should be considered by the board.

(C) For purposes of subsection (A)(1), a conflict of interest transaction is authorized, approved, or ratified if it receives the affirmative vote of a majority of the directors on the board of directors, or on the committee, who have no direct or indirect interest in the transaction, but a transaction may not be authorized, approved, or ratified under this section by a single director. If a majority of the directors who have no direct or indirect interest in the transaction vote to authorize, approve, or ratify the transaction, a quorum is present for the purpose of taking action under this section. The presence of, or a vote cast by, a director with a direct or indirect interest in the transaction does not affect the validity of any action taken under subsection (A)(1) if the transaction is otherwise authorized, approved, or ratified as provided in that subsection."

Ports Authority management

SECTION 2. Chapter 3, Title 54 of the 1976 Code is amended by adding:

"Article 2

Ports Authority Management

Section 54-3-101. The board of directors shall employ an Executive Director of Port Operations who shall serve at the pleasure of the board. A person employed to this position shall possess practical and successful business and executive ability and must be knowledgeable in the field of port operations.

Section 54-3-102. (A) The executive director is charged with the affirmative duty to carry out the mission, policies, and direction of the authority as established by the board of directors. He must represent the authority in its dealings with other state agencies, local governments, special districts, and the federal government.

(B) The executive director shall appoint a director for each division contained in the organizational structure established by the board of directors, who shall serve at the pleasure of the executive director.

(C) For each division established by the organizational structure created by the board, the executive director must employ personnel and prescribe their duties, powers, and functions as he considers necessary and as may be authorized or directed by the board of directors.

Section 54-3-103. Compensation for the executive director and division directors shall be approved by the board of directors in a public vote. For the purpose of this section, compensation includes, but is not limited to, annual salary, bonuses, severance, and vehicle allowances.

Section 54-3-104. The Executive Director of the Port Operations also shall employ a Director of Port Operations for the port of Georgetown. A person employed to this position shall possess practical and successful business and executive ability and must be knowledgeable in the field of port operations.

Section 54-3-105. The Director of Port Operations for the port of Georgetown is charged with the affirmative duty to carry out the

mission, policies, and direction of the authority for the port of Georgetown as established by the board of directors."

Organizational structure

SECTION 3. Section 54-3-140(5) of the 1976 Code is amended to read:

"(5) Shall adopt an organizational structure for authority operations implemented by the executive director;"

Additional powers and duties

SECTION 4. Section 54-3-140 of the 1976 Code is amended by adding appropriately numbered items to read:

"( ) Shall develop a long-range port development and capital financing plan, with a minimum twenty-year forecast period at the time of adoption that provides for the promotion, development, construction, equipping, maintaining, and operation of the state's harbors and seaports to maximize their economic benefit to the State, including, but not limited to, Charleston and Georgetown. The plan must be revised at least every five years, to reflect and account for changing conditions. The long-range plan must be submitted to the General Assembly;

( ) Shall review port operations and proposals for future operations and construction to determine whether utilizing a public-private partnership to achieve the current or proposed operational goals and development is the most advantageous method to the State and would result in the most timely, economical, efficient, and successful fulfillment of the operational goals or completion of the development project;

( ) Shall take all necessary steps it finds reasonable to establish rail access to port facilities in Charleston County by any Class I railway operating in Charleston County on the effective date of this item. The authority shall report annually to the General Assembly and the Governor on the status of efforts to establish rail access."

Financial statement

SECTION 5. Section 54-3-1040 of the 1976 Code is amended to read:

"Section 54-3-1040. At least once each year the authority shall furnish the Governor, the Chairmen of the Senate Transportation Committee and the House of Representatives Ways and Means Committee and conspicuously post on the authority's Internet website, a complete detailed statement of all monies received and disbursed by the authority during the preceding year. Such statement also shall show the several sources from which such funds were received and the balance on hand at the time of publishing the statement and shall show the complete financial condition of the authority."

Transaction register

SECTION 6. Article 11, Chapter 3, Title 54 of the 1976 Code is amended by adding:

"Section 54-3-1060. (A) For the purposes of this section, 'detailed description of the expenditure' means a description of an expenditure that distinguishes that expenditure from other expenditures and is particular enough in its account of the expenditure to discern the purpose of the expenditure.

(B) The authority shall maintain a transaction register that includes a complete record of all appropriated funds expended over one hundred dollars, from whatever source for whatever purpose. The register must be prominently posted on the authority's Internet website and made available for public viewing and downloading.

(C)(1) The register must include for each expenditure:

(a) the transaction amount;

(b) the name of the payee; and

(c) a statement providing a detailed description of the expenditure.

(2) The register must not include an entry for salary, wages, or other compensation paid to individual employees.

(3) The register must not include any information that can be used to identify an individual employee.

(4) The register must be accompanied by a complete explanation of any codes or acronyms used to identify a payee or an expenditure.

(D) The register must be searchable and updated at least once a month. Each monthly register must be maintained on the Internet website for at least five years."

Review and oversight

SECTION 7. Chapter 3, Title 54 of the 1976 Code is amended by adding:

"Article 13

The Review and Oversight Commission on the South Carolina State Ports Authority

Section 54-3-1300. (A) There is hereby established a commission to be known as the Review and Oversight Commission on the South Carolina State Ports Authority, hereinafter referred to as the commission, which must exercise the powers and fulfill the duties described in this article.

(B) The commission is composed of the following ten members:

(1) from the Senate:

(a) the Chairman of the Finance Committee or his designee;

(b) the Chairman of the Judiciary Committee or his designee;

(c) the Chairman of the Transportation Committee or his designee; and

(d) two members appointed by the President Pro Tempore, one member upon the recommendation of the Senate Majority Leader and one member upon the recommendation of the Senate Minority Leader;

(2) from the House of Representatives:

(a) the Chairman of the Ways and Means Committee or his designee;

(b) the Chairman of the Judiciary Committee or his designee;

(c) the Chairman of the Labor, Commerce and Industry Committee, or his designee; and

(d) two members of the House of Representatives appointed by the Speaker of the House of Representatives.

(C) In making appointments to the commission, race, gender, and other demographic factors, such as residence in rural or urban areas, must be considered to assure nondiscrimination, inclusion, and representation to the greatest extent possible of all segments of the population of the State.

(D) The commission must meet as soon as practicable after appointment and organize itself by electing one of its members as chairman and such other officers as the commission may consider necessary. Thereafter, the commission must meet as necessary to

screen candidates for appointment to and at the call of the chairman or by a majority of the members. A quorum consists of six members.

Section 54-3-1310. The commission has the following powers and duties:

(A) To screen each person appointed to serve on the board:

(1) in screening candidates and making its findings, the commission must give due consideration to:

(a) ability, area of expertise, dedication, compassion, common sense, and integrity of each candidate; and

(b) the impact that each candidate would have on the racial and gender composition of the commission, and each candidate's impact on other demographic factors represented on the commission, such as residence in rural or urban areas, to assure nondiscrimination to the greatest extent possible of all segments of the population of the State;

(2) to determine if each candidate is qualified and meets the requirements provided by law to serve as a member of the Board of Directors of the State Ports Authority, make findings concerning whether each candidate is qualified, and deliver its findings to the Clerk of the Senate, the Clerk of the House of Representatives, and the Senate Transportation Committee for confirmation.

(B) To conduct an oversight review of the authority and its operations at least once every two years:

(1) the oversight reviews must consider whether the authority is promoting, developing, constructing, equipping, maintaining, and operating the harbors and seaports of this State in an efficient, effective manner in accordance with all applicable laws and regulations. The oversight reviews also must include an analysis of the performance of the executive director. In performing this analysis, the commission must consider the report required pursuant to Section 54-3-70 in addition to other information collected concerning the executive director's performance;

(a) a draft of a board member's and executive director's performance review and the evaluations of the actions of the board, must be submitted to the appropriate party, and that party must be allowed an opportunity to be heard before the commission conducting the oversight review by the performance review or evaluation, as the case may be, is final;

(b) the final performance review of a board member must be made a part of the member's record for consideration if the member seeks reappointment to the board;

(2) a written report of the findings from each oversight review must be published in the journals of both houses and made available on the General Assembly's Internet website and transmitted to the Governor and the board.

(C) To review and evaluate the complete list of the properties on Daniel and Thomas (St. Thomas) Islands transmitted to the commission. The commission must recommend to the State Budget and Control Board whether to approve the sale or sell, as appropriate, any or all of the real property the authority owns on Daniel Island and Thomas (St. Thomas) Island pursuant to Section 54-3-119.

(D) Undertake any additional reviews, studies, or evaluations as it considers necessary.

Section 54-3-1320. The commission by a two-thirds vote of its membership, may waive the requirements of Section 54-3-60(A) and (B) for a candidate for the Board of Directors of the State Ports Authority.

Section 54-3-1330. State agencies must fully cooperate with requests from the commission for assistance in carrying out its responsibilities and duties as established in this article.

Section 54-3-1340. (A) The oversight report required by this article must at least contain:

(1) a performance review of each member of the board during the previous two years;

(2) a performance review of the State Ports Authority executive director; and

(3) an evaluation of the actions of the board, sufficient to allow the members of the General Assembly to better judge whether these actions serve the best interests of the citizens of South Carolina, both individual and corporate.

(B) To assist the commission in performing the performance reviews and evaluations required by this article, the commission may develop and distribute, as appropriate, an anonymous and confidential survey evaluating the board members and the executive director. At a minimum, the survey must include the following:

(1) knowledge and application of substantive port issues;

(2) the ability to perceive relevant issues;

(3) absence of influence by political considerations;

(4) absence of influence by identities of labor unions;

(5) courtesy to all persons appearing before the board;

(6) temperament and demeanor in general, preparation for hearings, and attentiveness during hearings; and

(7) any other issue the commission deems appropriate.

Section 54-3-1350. In order to discharge their oversight responsibilities in regard to State Ports Authority operations and management, the commission may request and shall be provided within fifteen days after the request with any documents related to the sale or disposition or contemplated sale or disposition of any real property owned by the authority. The provisions of this section supersede any conflicting provisions contained in the Freedom of Information Act and these documents may be shared only with members of the commission, staff assigned to the commission, members of the General Assembly with whom the commission chooses to consult concerning the matter, or legal counsel employed by the Senate or the House of Representatives. These documents and the information contained in them must be kept confidential, and are not subject to public disclosure, or any other disclosure not permitted by the provisions of this section.

Section 54-3-1360. (A) Commission members are entitled to such mileage, subsistence, and per diem as authorized by law for members of boards, committees, and commissions while in the performance of the duties for which appointed. These expenses shall be paid by the State Ports Authority.

(B) The State Ports Authority must pay for all reasonable expenses associated with the commission's duties to screen appointees to the authority's board and conduct oversight as required by this article.

Section 54-3-1370. The commission must use clerical and professional employees of the General Assembly for its staff, who must be made available to the commission. The commission may employ or retain other professional staff, upon the determination of the necessity for other staff by the commission and as may be funded in the legislative appropriation of the annual general appropriations act. The State Ports Authority must pay for all reasonable staff-related expenses associated with the commission's activities."

Sale prohibited

SECTION 8. Article 3, Chapter 3, Title 54 of the 1976 Code is amended by adding:

"Section 54-3-155. Without prior approval from the State Budget and Control Board, the authority may not sell any real property or any buildings, terminals, or other permanent structures, excluding equipment, appurtenant to real property that are or may be used to carry out the purposes of the authority as provided in Section 54-3-130."

Port references changed

SECTION 9. Section 54-3-110 of the 1976 Code is amended to read:

"Section 54-3-110. Through the authority the State may engage in promoting, developing, constructing, equipping, maintaining, and operating the harbors or seaports within the State, namely Charleston, Georgetown, and Jasper, and works of internal improvement incident thereto, including the acquisition or construction, maintenance, and operation at such seaports of harbor watercraft and terminal railroads, as well as other kinds of terminal facilities, and belt line roads or highways and bridges thereon and other bridges and causeways necessary or useful in connection therewith."

Port references changed

SECTION 10. Section 54-3-130(1) of the 1976 Code is amended to read:

"(1) To develop and improve the harbors or seaports of Charleston, Georgetown, and Jasper for the handling of water-borne commerce from and to any part of the State and other states and foreign countries;"

Port references changed

SECTION 11. Section 54-3-130(8) of the 1976 Code is amended to read:

"(8) To promote, develop, construct, equip, maintain, and operate a harbor or harbors within this State on the Savannah River, and in furtherance thereof have all of the powers, purposes, and authority given by law to the authority in reference to the harbors and seaports of Charleston, Georgetown, and Jasper; and"

Port in Jasper County

SECTION 12. Article 3, Chapter 3, Title 54 of the 1976 Code is amended by adding:

"Section 54-3-115. The authority shall take all action necessary to expeditiously develop a port in Jasper County in accordance with the Intergovernmental Agreement for Development of a Jasper Ocean Terminal on the Savannah River within the State of South Carolina that was entered into between the South Carolina State Ports Authority, the Georgia Ports Authority, and the Georgia Department of Transportation dated on January 27, 2008. In determining whether the development of a Jasper Port is proceeding in an expeditious manner, the board must consider whether timelines or benchmarks included in either the Intergovernmental Agreement or amendments to it or other agreement with a partner to develop the port have been or will be met in a timely manner. A determination that a delay in the planning or construction of the port is reasonable must be based on an objective analysis of all available empirical data and expert opinion, as well as a comparison of the construction timelines of ports of similar size and expected capacity. If it is determined that a partner to an agreement to develop the port is not meeting its obligations that will result in the port not being developed in an expeditious manner, then the authority must take all available and necessary action to compel the partner to meet its obligations and, if necessary, terminate the agreement and transfer to Jasper County the assets and right to develop the port. The authority also shall take all action necessary and as may be requested from time to time by the committees in the House of Representatives and the Senate in connection with the State of South Carolina and the State of Georgia to enter into an Interstate Compact to operate a Jasper Port on or before December 31, 2010, as such compact is generally outlined in the Intergovernmental Agreement. In connection with the development of a port in Jasper County, the authority shall make specific inquiries regarding the merits of using private capital to finance the construction of that port to a greater extent than historically has been used by the

South Carolina State Ports Authority in connection with their existing port operations."

North Charleston container terminal

SECTION 13. Article 3, Chapter 3, Title 54 of the 1976 Code is amended by adding:

"Section 54-3-117. The authority shall take all action necessary to expeditiously complete construction of a container terminal in North Charleston."

Public-private partnerships

SECTION 14. Article 3, Chapter 3, Title 54 of the 1976 Code is amended by adding:

"Section 54-3-118. It is the intent of the General Assembly that the State Ports Authority board consider public-private partnerships with private investors that increase capital investments in port facilities and in the State of South Carolina. However, the board retains all authority associated with entering a public-private partnership on behalf of the port."

Transfer prohibited

SECTION 15. Chapter 1, Title 13 of the 1976 Code is amended by adding:

"Section 13-1-1355. All tracks, spurs, switches, terminal, terminal facilities, road beds, rights of way, bridges, stations, railroad cars, locomotives, or other vehicles constructed for operation over railroad tracks, crossing signs, lights, signals, storage, and all associated structures and equipment which are necessary for the operation of any railroad located on any 'applicable federal military installation' or 'applicable federal facility' as defined in Section 12-6-3450 may not be transferred without the prior approval of the State Budget and Control Board."

Removal of officers

SECTION 16. Section 1-3-240(C)(1) of the 1976 Code, as last amended by Act 114 of 2007, is further amended by adding a new subitem at the end to read:

"(n) State Ports Authority."

Port Royal cessation and sales

SECTION 17. Section 54-3-700 of the 1976 Code, as added by Act 313 of 2004, is amended to read:

"Section 54-3-700. (A) Upon the effective date of this section:

(1) the State Ports Authority has no statutory responsibility to operate a marine terminal at Port Royal; and

(2) marine operations at Port Royal shall cease as soon as practicable.

(B) The State Ports Authority is hereby directed to sell all its real and personal property at Port Royal upon the effective date of this section, but in a manner that is financially responsible and advantageous to the State Ports Authority.

(C)(1) The State Ports Authority, in its discretion, shall determine the manner of the sale, but in no event shall terms of the sale extend beyond December 31, 2009, except for parcels under long-term contract, in which case the South Carolina Ports Authority is directed to terminate these leases as soon as possible through 'lease purchases', 'buy outs', or other lawful means.

(2) The property must be transferred to the State Budget and Control Board for sale if the authority is unable to complete the sale by December 31, 2009. The State Budget and Control Board is vested with all of the board's fiduciary duties to the authority and the authority's bondholders if the property is transferred to the State Budget and Control Board for sale. The acceptance of any sales price by the State Budget and Control Board must be exercised with due regard to the fiduciary duty owed to the authority and for the protection of the interests of the authority's bondholders as set forth in its bond covenants, and otherwise according to law, including the conversion of a nonperforming asset into revenues in the most expeditious manner. The State Budget and Control Board may deduct from the proceeds of the sale an amount equal to the actual costs incurred in conjunction

with the sale of the property. The balance of the proceeds must be transmitted to the authority.

(D) Any real or personal property at Port Royal which is to be sold must be first appraised and then sold at fair market value. The real property appraiser must be a State Certified General Real Estate Appraiser, a member of the Appraisal Institute (MAI), and must be knowledgeable in appraisal and in appraising marine terminal facilities. The appraisal of the real property should include its future development opportunities and those of the surrounding properties. The State Ports Authority Board of Directors shall exercise its lawful discretion in the acceptance of any sales price with due regard to its fiduciary duties to the authority and for the protection of the interests of the authority's bondholders as set forth in its bond covenants, and otherwise according to law, including conversion of a nonperforming asset into revenue in the most expeditious manner. The sale of the real property shall comply with all state procedures, must be approved by the State Budget and Control Board, and must be on an open-bid basis, and no bid may be accepted which is less than the property's fair market value as shown by the appraisal. All proceeds from the sale of real and personal property at Port Royal must be retained by the State Ports Authority; except that the Town of Port Royal may petition the State Budget and Control Board for a portion of the net proceeds from a sale and may be allocated a portion of these net proceeds in an amount not to exceed five percent of the net proceeds upon showing the allocation is necessary to pay for infrastructure needs directly associated with and necessitated by the closing of the port as Port Royal. These funds must be expended at the direction of the Town Council of Port Royal with the approval of the State Budget and Control Board, solely for infrastructure, and shall have priority over all other expenditures except usual and necessary closing costs attributable to a sales contract."

Sale of property directed

SECTION 18. Chapter 3, Title 54 of the 1976 Code is amended by adding:

"Section 54-3-119. (A) Except as provided in subsection (B), the State Ports Authority Board is directed to sell under those terms and conditions it considers most advantageous to the authority and the State of South Carolina all real property it owns on Daniel Island and Thomas (St. Thomas) Island except for the dredge disposal cells that are needed in connection with the construction of the North Charleston

terminal on the Charleston Naval Complex and for harbor deepening and for channel and berth maintenance. The sale shall be timed and concluded on a schedule that prudently considers all market conditions affecting the sale but in any event must be under contract for sale by December 31, 2012, and the sale completed by December 31, 2013. The property must be transferred to the State Budget and Control Board for sale if authority is unable to complete the sale by December 31, 2013. To assist in the sale of the property, the board shall have the property appraised by at least two independent qualified commercial appraisers not affiliated with the authority. The real property appraisers must be a State Certified General Real Estate Appraiser, a member of the Appraisal Institute (MAI), and must be knowledgeable in appraisal and in appraising marine terminal facilities. The appraisal of the real property should include its future development opportunities and those of the surrounding properties. The sale price must be equal to or greater than at least one of the independent appraisals. The approval of the State Budget and Control Board is required to effectuate the sale if completed on or before December 31, 2013.

(B) The board shall give the right of first refusal to those former landowners on Thomas (St. Thomas) Island who sold their land located within the transportation corridor to the authority in anticipation of the authority's exercise of eminent domain. The right of first refusal must provide that the landowner may repurchase his land at the same price for which the authority purchased it from him. Each contract for the sale of a parcel located in the transportation corridor on Thomas Island must contain a covenant creating an easement over the parcel. The easement must permit the authority, and any successor in interest to the authority, reasonable ingress and egress to the real property on Daniel Island owned by the authority as of the effective date of this section. The easement must contain express language that the easement runs with the land.

(C)(1) With regard to the sale of real property pursuant to subsection (A), the State Budget and Control Board is vested with all of the board's fiduciary duties to the authority and the authority's bondholders if the property is transferred to the State Budget and Control Board for sale. The acceptance of any sales price by either the board or the State Budget and Control Board must be exercised with due regard to the fiduciary duty owed to the authority and for the protection of the interests of the authority's bondholders as set forth in its bond covenants, and otherwise according to law, including the conversion of a nonperforming asset into revenues in the most expeditious manner.

(2) The State Budget and Control Board may deduct from the proceeds of the sale an amount equal to the actual costs incurred in conjunction with the sale of the property. The balance of the proceeds must be transmitted to the authority."

Boat landing

SECTION 19. The General Assembly encourages discussions between interested parties and the Town of Port Royal concerning the building of a boat landing north of the Broad River in Beaufort County. Funds negotiated between the Town of Port Royal and the South Carolina State Ports Authority pursuant to Section 54-3-700 should be used to build the boat landing.

Board members

SECTION 20. The provisions of this act related to a time limitation for members of the board of directors serving in a holdover capacity do not apply to board members serving in a holdover capacity as of the effective date of this act but apply to any subsequent term.

Severability clause

SECTION 21. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this act, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

Savings clause

SECTION 22. 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 23. This act takes effect upon approval by the Governor.

Ratified the 27th day of May, 2009.

Vetoed by the Governor -- 6/2/09.
Veto overridden by Senate -- 6/16/09.
Veto overridden by House -- 6/16/09.

No. 74

(R67, S364)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 23-9-25 SO AS TO ENACT THE "VOLUNTEER STRATEGIC ASSISTANCE AND FIRE EQUIPMENT PROGRAM" (V-SAFE) WHOSE PURPOSE, CONTINGENT UPON THE GENERAL ASSEMBLY APPROPRIATING APPROPRIATE FUNDS, IS TO OFFER GRANTS TO ELIGIBLE VOLUNTEER AND COMBINATION FIRE DEPARTMENTS FOR THE PURPOSE OF PROTECTING LOCAL COMMUNITIES AND REGIONAL RESPONSE AREAS FROM INCIDENTS OF FIRE, HAZARDOUS MATERIALS, TERRORISM, TO PROVIDE FOR THE SAFETY OF VOLUNTEER FIREFIGHTERS, TO PROVIDE DEFINITIONS OF CERTAIN TERMS, AND TO PROVIDE FOR THE ADMINISTRATION OF THE GRANTS.

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

Volunteer Strategic Assistance and Fire Equipment Program

SECTION 1. Chapter 9, Title 23 of the 1976 Code is amended by adding:

"Section 23-9-25. (A) It is the purpose of this section to create the 'Volunteer Strategic Assistance and Fire Equipment Program' (V-SAFE).

(B) This section is contingent upon the General Assembly appropriating funds for the offering of grants of not more than thirty thousand dollars to eligible volunteer and combination fire departments for the purpose of protecting local communities and regional response areas from incidents of fire, hazardous materials, terrorism, and to provide for the safety of volunteer firefighters.

(C)(1) As contained in this section:

(a) 'chartered fire department' means a public or governmental sponsored organization providing fire suppression activities with a minimum of a Class 9 rating from the Insurance Services Office;

(b) 'chartered volunteer fire department' means a fire department whose personnel serve for no compensation or are paid on a per-call basis; and

(c) 'chartered combination fire department' means a fire department with both members who are paid and members who serve as volunteer firefighters.

(2) Chartered volunteer fire departments and chartered combination fire departments with a staffing level that is at least fifty percent volunteer are eligible to receive grants pursuant to this section. A chartered fire department that receives a grant must comply with the firefighter registration provisions of Act 60 of 2001 and sign the statewide mutual aid agreement with the South Carolina Emergency Management Division.

(D) The amount of the grants awarded shall not exceed thirty thousand dollars per year for each eligible chartered fire department, with no matching or in-kind money required. A chartered fire department may be awarded only one grant in a three-year period.

(E) The grant money received by a chartered fire department must be used for the following purposes:

(1) fire suppression equipment;

(2) self-contained breathing apparatus;

(3) portable air refilling systems;

(4) hazardous materials spill leak detection, repair, and recovery equipment;

(5) protective clothing and equipment;

(6) new and used fire apparatus;

(7) incident command vehicles;

(8) special operations vehicles;

(9) training;

(10) rescue equipment;

(11) medical equipment;

(12) decontamination equipment; and

(13) safety equipment.

(F)(1) The State Fire Marshal shall administer the grants in conjunction with a peer-review panel.

(2) The peer-review panel shall consist of nine voting members who shall serve without compensation. Seven members must be fire chiefs from each of the seven regions of the State as defined by the State Fire Marshal. The Chairman of the House Ways and Means Committee shall appoint fire chiefs from Regions 1, 2, and 7. The Chairman of the Senate Finance Committee shall appoint fire chiefs from Regions 3, 4, and 6. The Governor shall appoint one fire chief from Region 5 and one fire chief from the State at large. The State Fire Marshal also shall serve as a member. The President of the South Carolina State Firefighters' Association shall serve as a nonvoting member and chairman of the committee.

(3) An applicant for grant money must submit justification for their project that provides details regarding the project and the project's budget, the benefits to be derived from the project, the applicant's financial need, and how the project would affect the applicant's daily operations in protecting lives and property within their community. Each application must be judged on its own merit. The panelists must consider all expenses budgeted, including administrative or indirect costs, as part of the cost-benefit review. An applicant may demonstrate cost benefit by describing, as applicable, how the grant award will:

(a) enhance a regional approach that is consistent with current capabilities and requests of neighboring organizations or otherwise benefits other organizations in the region;

(b) implement interoperable communications capabilities with other local, state, and federal first responders and other organizations;

(c) allow first responder organizations to respond to all hazards, including incidents involving seismic, atmospheric, or technological events, or chemical, biological, radiological, nuclear, or explosive incidents, as well as fire prevention and suppression.

Applications that best address the grant funding priorities shall score higher than applications that are inconsistent with the priorities. During the panel review process, panelists shall provide a subjective but qualitative judgment on the merit of each request.

Panelists shall evaluate and score the proposed project's clarity, including the project's budget detail, the organization's financial need, the benefits that would result from an award relative to the cost, and the extent to which the grant would enhance daily operations or how the grant will positively impact an organization's ability to protect life and property. Each element shall be equally important for purposes of the panelists' scores. Panelists must review each application in its entirety and rate the application according to the evaluation criteria.

Applications shall be evaluated by the panelists relative to the critical infrastructure within the applicant's area of first-due response. Critical infrastructure includes any system or asset that, if attacked or impacted by a hazardous event, would result in catastrophic loss of life or catastrophic economic loss. Critical infrastructure includes public water or power systems, major business centers, chemical facilities, nuclear power plants, major rail and highway bridges, petroleum and natural gas transmission pipelines or storage facilities, telecommunications facilities, or facilities that support large public gatherings such as sporting events or concerts. Panelists shall assess the infrastructure and the hazards confronting the community to determine the benefits to be realized from a grant to the applicant.

Applicants that falsify their application, or misrepresent their organization in any material manner, shall have their applications deemed ineligible and referred to the Attorney General for further action, as the Attorney General deems appropriate.

(4) The project period for any award grant shall be twelve months from the date of the award. Any equipment purchased with the grant must meet all mandatory regulatory requirements, as well as, all state, national, and Department of Homeland Security adopted standards.

Award recipients must agree to:

(a) perform, within the designated period of performance, all approved tasks as outlined in the application;

(b) retain grant files and supporting documentation for three years after the conclusion and close out of the grant or any audit subsequent to close out;

(c) ensure all procurement actions are conducted in a manner that provides, to the maximum extent possible, open and free competition. In doing so, the recipient must follow its established

procurement law when purchasing vehicles, equipment, and services with the grant. If possible, the recipient must obtain at least two quotes or bids for the items being procured and document the process used in the grant files. Sole-source purchasing is not an acceptable procurement method except in circumstances allowed by law;

(d) submit a performance report to the peer-review panel six months after the grant is awarded. If a grant's period of performance is extended for any reason, the recipient must submit performance reports every six months until the grant is closed out. At grant closeout, the recipient must report how the grant funding was used and the benefits realized from the award in a detailed final report. An accounting of the funds also must be included; and

(e) make grant files, books, and records available, if requested by any person, for inspection to ensure compliance with any requirement of the grant program.

(5) A recipient that completes the approved scope of work prior to the end of the performance period, and still has grant funds available, may:

(a) use the greater of one percent of their award amount or three hundred dollars to continue or expand, the activities for which they received the award;

(b) use excess funds to create or expand, a fire or injury prevention program. Excess funds above the amounts discussed in subitem (a) must be used for fire or injury prevention activities or returned to the program. In order to use excess funds for fire or injury prevention activities, a recipient must submit an amendment to its grant. The amendment request must explain fire or injury prevention efforts currently underway within the organization, where the use of excess funds would fit within the existing efforts, the target audience for the fire or injury prevention project and how this audience was identified, and how the effectiveness of the requested fire or injury prevention project will be evaluated;

(c) use a combination of subitems (a) and (b); or

(d) return excess funds to the program. To return the excess funds, a recipient must close out its award and state in the final performance report that the remaining funds are not necessary for the fulfillment of grant obligations. The recipient also must indicate that it understands that the funds will be unavailable for future expenses.

(6) The State Fire Marshal shall:

(a) develop a grant application package utilizing the established guidelines;

(b) establish and market a written and electronic version of the grant application package;

(c) provide an annual report of all grant awards and corresponding chartered fire department purchases to the Chairman of the Senate Finance Committee, the Chairman of the House Ways and Means Committee, and the Governor;

(d) provide all administrative support to the peer-review panel; and

(e) provide a grants webpage for electronic applications.

(G) Two percent of these funds may be awarded to the South Carolina State Firefighters' Association annually for the express purpose of establishing and maintaining a recruitment and retention program for volunteer firefighters. The association must apply for the grant to the peer-review panel."

Time effective

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

Ratified the 27th day of May, 2009.

Vetoed by the Governor -- 6/2/09.
Veto overridden by Senate -- 6/16/09.
Veto overridden by House -- 6/16/09.

No. 75

(R70, S453)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 47-4-160 SO AS TO PROVIDE THAT UNITS OF LOCAL GOVERNMENT MAY NOT ENACT ORDINANCES, ORDERS, OR OTHER REGULATIONS CONCERNING THE CARE AND HANDLING OF LIVESTOCK AND POULTRY, TO PROVIDE THAT IT IS THE INTENT OF THE GENERAL ASSEMBLY TO OCCUPY THE FIELD CONCERNING THE REGULATION OF THE CARE AND HANDLING OF LIVESTOCK AND POULTRY, TO PROVIDE THAT LOCAL LAWS AND ORDINANCES PERTAINING TO THE REGULATION OF AND

ENFORCEMENT OF THE CARE AND HANDLING OF LIVESTOCK AND POULTRY ARE PREEMPTED AND SUPERSEDED BY STATE LAW AND STATE AGENCY REGULATIONS, AND TO PROVIDE EXCEPTIONS; TO AMEND SECTION 6-1-330, RELATING TO LOCAL FEE IMPOSITION LIMITATIONS, SO AS TO PROVIDE THAT THE GOVERNING BODY OF A COUNTY MAY NOT IMPOSE A FEE ON AGRICULTURAL LANDS, FORESTLANDS, OR UNDEVELOPED LANDS FOR A STORMWATER, SEDIMENT, OR EROSION CONTROL PROGRAM UNLESS CHAPTER 14 OF TITLE 48 ALLOWS FOR THE IMPOSITION OF THIS FEE ON THESE LANDS, AND TO PROVIDE CERTAIN EXCEPTIONS; BY ADDING SECTION 47-9-60 SO AS TO PROVIDE THAT ONLY PROPERTY OWNERS AND RESIDENTS WITHIN A TWO-MILE RADIUS OF A PERMITTED LIVESTOCK AND POULTRY FACILITY, WITH THE EXCEPTION OF A SWINE FACILITY, MAY APPEAL A PERMIT ISSUED BY THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL PERTAINING TO THE FACILITY; AND BY ADDING SECTION 47-9-65 SO AS TO PROVIDE THE COMPOUNDING PHARMACIST WHO FILLS AN ORDER FOR PERFORMANCE ENHANCING MINERAL OR DRUG COMPOUNDS WHICH ARE NOT FDA APPROVED FOR POLO HORSES PRIOR TO A POLO MATCH MUST CERTIFY THE COMPOUND WITH HIS SIGNATURE ACCOMPANIED BY A COMPLETE LISTING OF THE COMPONENTS CONTAINED IN THE COMPOUND AND TO PROVIDE PENALTIES FOR VIOLATIONS.

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

Livestock and poultry regulations and restrictions

SECTION 1. Chapter 4, Title 47 of the 1976 Code is amended by adding:

"Section 47-4-160. (A) For the purposes of this section, 'care and handling' means accepted animal husbandry practices.

(B) Units of local government in this State may not enact ordinances, orders, or other regulations concerning the care and handling of livestock and poultry.

(C) It is the intent of the General Assembly to occupy the field of regulation of care and handling of livestock and poultry. All local laws and ordinances related to the regulation of and the enforcement of the care and handling of livestock and poultry in this State are preempted and superseded by laws enacted by the General Assembly and regulations promulgated by state agencies pursuant to those laws.

(D) The provisions of this section do not apply to Chapter 45, Title 46 concerning nuisance suits related to agricultural operations, commonly referred to as the Right to Farm Act, and do not affect a local unit of government's authority to enact ordinances concerning new swine operations and new slaughterhouse operations.

(E) The provisions of this section do not preclude or limit a unit of local government's right to exercise its land use and zoning authority."

Fee impositions

SECTION 2. Section 6-1-330 of the 1976 Code is amended by adding a new subsection to read:

"(D) The governing body of a county may not impose a fee on agricultural lands, forestlands, or undeveloped lands for a stormwater, sediment, or erosion control program unless Chapter 14, Title 48 allows for the imposition of this fee on these lands; provided, that any county which imposes such a fee on these lands on the effective date of this subsection may continue to impose that fee under its same terms, conditions, and amounts."

Appeal of permits

SECTION 3. Chapter 9, Title 47 of the 1976 Code is amended by adding:

"Section 47-9-60. Notwithstanding any other provision of law, only property owners and residents within a two-mile radius of a permitted livestock or poultry facility, with the exception of a swine facility, may appeal a permit issued by the Department of Health and Environmental Control pertaining to the facility."

Polo horse drug compounds; penalties

SECTION 4. Article 1, Chapter 9, Title 47 of the 1976 Code is amended by adding:

"Section 47-9-65. The compounding pharmacist who fills an order for performance enhancing mineral or drug compounds which are not FDA approved for polo horses prior to a polo match must certify the compound with his signature accompanied by a complete listing of the components contained in the compound. A person who violates the provisions of this section is guilty of a misdemeanor and, upon conviction, must be fined not more than five hundred dollars or imprisoned not more than thirty days."

Time effective

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

Ratified the 27th day of May, 2009.

Vetoed by the Governor -- 6/2/09.
Veto overridden by Senate -- 6/16/09.
Veto overridden by House -- 6/16/09.

No. 76

(R88, H3018)

AN ACT TO AMEND SECTION 12-37-220, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO PROPERTY TAX EXEMPTIONS, SO AS TO EXEMPT FROM PROPERTY TAX THE VALUE OF IMPROVEMENTS TO REAL PROPERTY CONSISTING OF A NEWLY CONSTRUCTED DETACHED SINGLE FAMILY HOME THROUGH THE EARLIER OF THE PROPERTY TAX IN WHICH THE HOME IS SOLD OR OTHERWISE OCCUPIED, OR THE SIXTH PROPERTY TAX YEAR ENDING DECEMBER THIRTY-FIRST AFTER THE HOME IS COMPLETED AND A CERTIFICATE FOR OCCUPANCY ISSUED THEREON IF REQUIRED AND TO PROVIDE THE METHOD OF APPLYING FOR THE EXEMPTION; AND TO AMEND SECTION 12-43-220, AS AMENDED, RELATING TO CLASSIFICATIONS AND VALUATION OF PROPERTY FOR PURPOSES OF PROPERTY TAX, SO AS TO REVISE AN ELIGIBILITY

REQUIREMENT TO RECEIVE THE FOUR PERCENT ASSESSMENT RATIO FOR OWNER-OCCUPIED RESIDENTIAL PROPERTY.

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

Property tax exemption allowed

SECTION 1. Section 12-37-220(B) of the 1976 Code, as last amended by Act 357 of 2008, is further amended by adding a new item at the end appropriately numbered to read:

"( ) one hundred percent of the value of an improvement to real property consisting of a newly constructed detached single family home offered for sale by a residential builder or developer through the earlier of:

(a) the property tax year in which the home is sold or otherwise occupied; or

(b) the property tax year ending the sixth December thirty-first after the home is completed and a certificate of occupancy, if required, is issued thereon.

In lieu of other exemption application requirements, the owner of property eligible for the exemption allowed by this item shall obtain the exemption by notifying the county assessor and county auditor by written affidavit no later than thirty days after the certificate of occupancy is issued and no later than January thirty-first in subsequent exemption eligibility years that the property is of the type eligible for the exemption and unoccupied and if found in order, the exemption is allowed for the applicable property tax year. If the unsold residence is occupied at any time before eligibility for the exemption ends, the owner shall so notify the auditor and assessor and the exemption ends as provided in subitem (a) of this item."

Requirements for four percent assessment ratio revised

SECTION 2. Section 12-43-220(c)(2)(iii) of the 1976 Code is amended to read:

"(iii) For purposes of subitem (ii)(B) of this item, 'a member of my household' means:

(A) the owner-occupant's spouse, except when that spouse is legally separated from the owner-occupant; and

(B) any child under the age of eighteen years of the owner-occupant claimed or eligible to be claimed as a dependent on the owner-occupant's federal income tax return."

Time effective

SECTION 3. This act takes effect upon approval by the Governor and Section 1 applies for single family homes completed and, if required, a certificate of occupancy issued thereon after 2006. No refunds are allowed for property tax years 2007 and 2008 as a result of the exemption allowed pursuant to this act.

Ratified the 27th day of May, 2009.

Vetoed by the Governor -- 6/2/09.
Veto overridden by House -- 6/16/09.
Veto overridden by Senate -- 6/16/09.

No. 77

(R91, H3087)

AN ACT TO AMEND SECTION 23-3-535, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO LIMITATIONS ON PLACES OF RESIDENCE FOR SEX OFFENDERS, SO AS TO PROVIDE THAT A LOCAL GOVERNMENT MAY NOT ENACT AN ORDINANCE THAT EXPANDS OR CONTRACTS THE BOUNDARIES OF THE AREAS IN WHICH A SEX OFFENDER MAY OR MAY NOT RESIDE THAT ARE CONTAINED IN THIS SECTION; AND TO AMEND ACT 333 OF 2008, RELATING TO LIMITATIONS ON PLACES OF RESIDENCE FOR SEX OFFENDERS AND PENALTIES FOR FAILURE TO REGISTER AS A SEX OFFENDER, SO AS TO PROVIDE AN EFFECTIVE DATE FOR VARIOUS PORTIONS OF THIS ACT.

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

Limitations on places of residence of a sex offender

SECTION 1. Section 23-3-535(E) of the 1976 Code, as added by Act 333 of 2008, is amended to read:

"(E) A local government may not enact an ordinance that:

(1) contains penalties that exceed or are less lenient than the penalties contained in this section; or

(2) expands or contracts the boundaries of areas in which a sex offender may or may not reside as contained in subsection (B)."

Revised time effective date

SECTION 2. SECTION 2 of Act 333 of 2008 shall take effect upon approval of this act by the Governor. All other sections of Act 333 of 2008 shall take effect as provided in SECTION 4 of Act 333 of 2008.

Time effective

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

Ratified the 27th day of May, 2009.

Vetoed by the Governor -- 6/2/09.
Veto overridden by House -- 6/16/09.
Veto overridden by Senate -- 6/16/09.

No. 78

(R98, H3301)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 34-39-175 SO AS TO REQUIRE THE CONSUMER FINANCE DIVISION OF THE BOARD OF FINANCIAL INSTITUTIONS TO IMPLEMENT A REAL-TIME INTERNET ACCESSIBLE DATABASE FOR DEFERRED PRESENTMENT PROVIDERS TO VERIFY IF DEFERRED PRESENTMENT TRANSACTIONS ARE OUTSTANDING FOR A PARTICULAR PERSON; BY ADDING SECTION 34-39-270 SO AS TO PROHIBIT A DEFERRED

PRESENTMENT PROVIDER FROM ENTERING INTO A DEFERRED PRESENTMENT TRANSACTION WITH A PERSON WHO HAS AN OUTSTANDING DEFERRED PRESENTMENT TRANSACTION OR WHO HAS ENTERED INTO AN EXTENDED PAYMENT PLAN AGREEMENT AND TO REQUIRE A DEFERRED PRESENTMENT PROVIDER TO VERIFY WHETHER AN INDIVIDUAL IS ELIGIBLE TO ENTER INTO A DEFERRED PRESENTMENT TRANSACTION; BY ADDING SECTION 34-39-280 SO AS TO ALLOW A DEFERRED PRESENTMENT TRANSACTION CUSTOMER WHO IS UNABLE TO REPAY A TRANSACTION WHEN DUE TO ENTER ONE EXTENDED PAYMENT PLAN DURING A TWELVE MONTH PERIOD; TO AMEND SECTION 34-39-130, RELATING TO LICENSURE REQUIREMENTS FOR DEFERRED PRESENTMENT PROVIDERS, SO AS TO PROHIBIT A PERSON FROM ENGAGING IN THE BUSINESS OF DEFERRED PRESENTMENT SERVICES WITH A RESIDENT OF SOUTH CAROLINA EXCEPT IN ACCORDANCE WITH THE PROVISIONS OF CHAPTER 39, TITLE 34; TO AMEND SECTION 34-39-180, RELATING TO DEFERRED PRESENTMENT RESTRICTIONS AND REQUIREMENTS, SO AS TO PROVIDE THAT THE TOTAL AMOUNT ADVANCED TO A CUSTOMER FOR DEFERRED PRESENTMENT OR DEPOSIT, EXCLUSIVE OF PERMISSIBLE FEES, MAY NOT EXCEED FIVE HUNDRED FIFTY DOLLARS; TO AMEND SECTION 34-39-150, RELATING TO THE APPLICATION FOR LICENSURE, SO AS TO INCREASE THE APPLICATION AND RENEWAL FEES AND TO DESIGNATE THE RECIPIENTS AND PERMITTED USES OF RENEWAL FEE COLLECTIONS; BY ADDING SECTION 34-39-290 SO AS TO REQUIRE THE BOARD OF FINANCIAL ADVISORS TO SUBMIT AN ANNUAL REPORT TO THE GENERAL ASSEMBLY DETAILING CERTAIN DEFERRED PRESENTMENT TRANSACTION DATA PROVIDED BY THE DATABASE VENDOR; TO AMEND SECTION 34-39-200, RELATING TO LIMITATIONS ON ACTIVITIES BY PERSONS REQUIRED TO BE LICENSED, SO AS TO IDENTIFY CERTAIN LIMITED EXCEPTIONS; TO AMEND SECTION 34-39-180, RELATING TO DEFERRED PRESENTMENT RESTRICTIONS AND REQUIREMENTS, SO AS TO PROVIDE THAT A LICENSEE SHALL NOT CHARGE A FEE IN EXCESS OF FIFTEEN PERCENT OF THE

PRINCIPAL AMOUNT OF THE TRANSACTION FOR ACCEPTING A CHECK FOR DEFERRED PRESENTMENT OR DEPOSIT; AND TO AMEND SECTION 34-39-180, RELATING TO DEFERRED PRESENTMENT RESTRICTIONS AND REQUIREMENTS, SO AS TO IDENTIFY A LICENSEE'S CIVIL REMEDIES IF A CHECK IS RETURNED DUE TO INSUFFICIENT FUNDS, CLOSED ACCOUNT, OR STOP PAYMENT ORDER.

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

Deferred presentment transaction database

SECTION 1. Chapter 39, Title 34 of the 1976 Code is amended by adding:

"Section 34-39-175. (A) In order to prevent a person from having a deferred presentment transaction that exceeds the limit in Section 34-39-180(B) and Section 34-39-270(A), the Consumer Finance Division of the Board of Financial Institutions shall implement a common database with real-time access through an internet connection for deferred presentment providers, as provided in this subsection. The board shall enter into a contract with a single source private vendor to develop and operate the database. By no later than February 1, 2010, the database must be accessible to the board and the deferred presentment providers to meet the requirements of this chapter and verify if a deferred presentment transaction is outstanding for a particular person. Deferred presentment providers shall submit the person's data to the database provider before entering into a deferred presentment transaction and once a deferred presentment transaction has been paid in full, in a format the board requires by regulation, including the drawer's name, social security number, or employment authorization alien number, address, driver's license number, amount of the transaction, date of transaction, the date that the transaction is closed, and additional information required by the board. The database provider may impose the database verification fee authorized by Section 34-39-270(H) for data required to be submitted by a licensee. The board may adopt procedures to administer and enforce the provisions of this section and to ensure that the database is used by licensees in accordance with this section.

(B) The information provided in the database is limited for the use in determining if a customer is eligible or ineligible to enter into a new

deferred presentment transaction and to describe the reason for the determination of eligibility or ineligibility."

Prohibited deferred presentment transactions and transaction eligibility verification

SECTION 2. Chapter 39, Title 34 of the 1976 Code is amended by adding:

"Section 34-39-270. (A) A licensee may not enter into a deferred presentment transaction with a person:

(1) who has an outstanding deferred presentment transaction;

(2) who has repaid a previous deferred presentment transaction with any licensee on the same business day;

(3) who has repaid a previous deferred presentment transaction with any licensee on the same business day or the previous business day if the transaction being requested would be the customer's eighth or more transaction within a calendar year; or

(4) who has entered into an extended payment plan agreement with any licensee as provided in Section 34-39-280 which has not been paid in full or terminated.

(B) No eighth or subsequent deferred presentment transaction within a calendar year may be entered into on the same or subsequent business day of the repayment of the previous deferred presentment transaction.

(C) Before entering into a deferred presentment transaction with a person, a licensee shall verify whether the person is eligible to enter into the transaction by accessing the deferred presentment transaction database established pursuant to subsection (D).

(D) The board shall contract with a single third party database provider that is SAS 70 certified to establish and operate a deferred presentment transaction database for the purpose of verifying whether a person is eligible to enter into a deferred presentment transaction. The board should give full consideration to Section 11-35-5210 when selecting the third-party database provider to establish and operate the deferred presentment transaction database required by this chapter. The board shall supervise the establishment and operation of the database and shall ensure that the database provider establishes and operates the database pursuant to the provisions of this section. The board shall have full access to the database and all records related to the database for purposes of supervising the establishment and operation of the database. If the database provider violates a provision

of this section, the board shall terminate the contract and immediately substitute another qualified third party database provider. The database must have real-time access through an internet connection and be accessible at all times to the board and licensees. The database provider shall establish and maintain a process for responding to transaction verification requests when technical difficulties prevent the licensee from accessing the database through the internet including, but not limited to, verification by telephone. The database must be established and operated so as to prevent a licensee from entering into a transaction that violates the provisions of this section.

(E) To conduct an inquiry as to whether a person is eligible to enter into a deferred presentment transaction, a licensee shall submit to the database provider such information as the board may require. The response to an inquiry to the database provider by a licensee must state only that a person is eligible or ineligible to enter into a transaction and describe the reason for that determination. The person seeking to enter into the transaction may make a direct inquiry to the database provider to request a more detailed explanation of the basis for the database provider's determination that the person is ineligible to enter into the transaction.

(F) A licensee shall notify the database provider immediately when the licensee enters into a deferred presentment transaction with a person. The licensee shall submit to the database provider such information as the board requires. When the transaction is paid in full, the licensee shall designate the transaction as closed and immediately notify the database provider. When the database provider receives notification that the transaction is paid in full, the database provider immediately shall designate the transaction as paid in full in the database. For purposes of this subsection, an item is paid in full when the payor bank makes final payment on the customer's check pursuant to Section 36-4-215 or the customer has redeemed the check with a cash payment in full.

(G) A licensee shall notify a person seeking to enter into a deferred presentment transaction that the licensee shall access the database to verify whether the person is eligible to enter into a transaction. The licensee also shall notify the person that information related to a new transaction must be entered into the database.

(H) The database provider may charge a database verification fee to a licensee for an inquiry as to whether a person is eligible to enter into a deferred presentment transaction, if that transaction is consummated by the licensee. The fee must be established by the board as the actual cost of verifying a person's eligibility, not to exceed one dollar. A

licensee may charge a person seeking to enter into a deferred presentment transaction one-half of the actual cost of the verification fee.

(I) Except as otherwise provided in this section, all personally identifiable information regarding a person contained within or obtained by way of the database is strictly confidential and is exempt from disclosure under the Freedom of Information Act. The database provider and licensees shall use the information collected pursuant to this section only as prescribed in this section and for no other purpose.

(J) A licensee may rely on the information contained in the database as accurate and is not subject to an administrative penalty or civil liability as a result of relying on inaccurate information contained in the database.

(K) A licensee will give a customer the right to rescind, at no cost, a deferred presentment transaction on or before the close of the following business day.

Section 34-39-280. (A) Subject to the terms and conditions contained in this section, a customer who is unable to repay a deferred presentment transaction when due may elect once in any twelve month period to repay the deferred presentment transaction to the licensee by means of an extended payment plan. The twelve month period is measured from the date the customer enters into one extended payment plan with the licensee until the date that the customer enters into another extended payment plan with licensee.

(B) To request an extended payment plan, the customer, before the due date of the outstanding deferred presentment transaction, must request the plan and sign an amendment to the deferred presentment agreement that memorializes the plan's terms.

(C) The extended payment plan's terms must allow the customer, at no additional cost, to repay the outstanding deferred presentment transaction including any fee due in at least four substantially equal installments. Each plan installment must be due on or after a date on which the customer receives regular income. The customer may prepay an extended payment plan in full at any time without penalty. The licensee shall not charge the customer any interest or additional fees during the term of the extended payment plan. The licensee may, with each payment under the plan by a customer, provide for the return of the customer's prior held check and require a new check for the remaining balance under the plan. Alternatively, the licensee may require the customer at the time the customer enters into the extended

payment plan to provide multiple checks, one for each of the scheduled payments in the amount of those payments.

(D) If the customer fails to pay any extended payment plan installment when due, the customer shall be in default of the payment plan and the licensee immediately may accelerate payment on the remaining balance. Upon default, the licensee may take action to collect all amounts due.

(E) If a customer enters into an extended repayment plan, the licensee must enter that information into the database established in Section 34-39-175, and the customer and a licensee is prohibited from entering into a subsequent deferred presentment transaction until repayment in full of the original deferred presentment transaction.

(F) At each licensed location, a licensee shall prominently post a notice in at least twenty-four point bold type, in a form established or approved by the board, informing persons that if they are unable to repay a deferred presentment transaction when due they shall be eligible to enter into one extended payment plan in a twelve month period. A licensee also shall notify a person of his right to an extended payment plan by displaying the following statement, in at least twelve point bold type, on the first page of each deferred presentment agreement: 'If you are unable to repay a deferred presentment transaction when due, you are eligible to request one extended payment plan in a twelve month period.'"

Licensure requirements

SECTION 3. Section 34-39-130 of the 1976 Code, as added by Act 433 of 1998, is further amended by adding an appropriately lettered subsection at the end to read:

"( ) A person may not engage in the business of deferred presentment services with a customer residing in this State, whether or not that person has a location in South Carolina, except in accordance with the provisions of this chapter and without having first obtained a license pursuant to this chapter."

Restrictions and requirements for deferred presentment or deposit of check

SECTION 4. Section 34-39-180(B) of the 1976 Code, as added by Act 433 of 1998, is further amended to read:

"(B) The total amount advanced by a licensee to any customer at one time for deferred presentment or deposit may not exceed five hundred fifty dollars, exclusive of the fees allowed in Section 34-39-180(E). A licensee may not advance to a customer an amount for deferred presentment or deposit which causes this limit to be exceeded by the customer."

Application for licensure

SECTION 5. Section 34-39-150 of the 1976 Code, as added by Act 433 of 1998, is further amended to read:

"Section 34-39-150. (A) An application for licensure pursuant to this chapter must be in writing, under oath, and on a form prescribed by the board. The application must set forth all of the following:

(1) the legal name and residence and business addresses of the applicant and, if the applicant is a partnership, association, or corporation, of every member, officer, managing employee, and director of it;

(2) the location of the registered office of the applicant;

(3) the registered agent of the applicant if the applicant is required by other law to have a registered agent;

(4) the addresses of the locations to be licensed; and

(5) other information concerning the financial responsibility, background experience, and activities, such as other partnerships, associations, and corporations located at or adjacent to the licensed location of the applicant and its members, officers, managing employees, and directors as the board requires.

(B) Upon receipt of an application in the form prescribed by the board, accompanied by the required fee, the board shall investigate whether the qualifications for licensure are satisfied. If the board finds that the qualifications are satisfied, it shall issue to the applicant a license to engage in the deferred presentment services business. If the board fails to issue a license, it shall notify the applicant of the denial and the reasons for it. The provisions of the Administrative Procedures Act apply to the appeal of the denial of a license.

(C) The application must be accompanied by payment of an application fee of one thousand dollars and an investigation fee of five hundred dollars. These fees are not refundable or abatable. If the license is granted, however, payment of the application fee satisfies the fee requirement for the first license year or its remainder.

(D) A license expires annually and may be renewed upon payment of a license fee of one thousand dollars. The annual license renewal fee for an applicant with more than one location is one thousand dollars for the first location and two hundred fifty dollars for each additional location.

(E) One-half of the renewal fees collected pursuant to subsection (D) must be credited to the Board of Financial Institutions for enforcement of this chapter and one-half must be credited to the Attorney General to prosecute actions brought for violations of this chapter."

Annual Report to General Assembly

SECTION 6. Chapter 39, Title 34 of the 1976 Code is amended by adding:

"Section 34-39-290. (A) Based upon data provided by the database vendor, the Board of Financial Institutions annually shall report to the General Assembly the following information for loans made in South Carolina in the previous reporting year, specifically the number of:

(1) loans made in South Carolina by loan amount and the dollar amount of fees collected by loan amount;

(2) borrowers by loan amount and the number of borrowers by the number of times each borrower took out a loan;

(3) borrowers who chose to pay off their loans through an extended payment plan by loan amount;

(4) loans that were not paid off in the previous year by loan amount;

(5) loans on which the lender submitted the check for collection by loan amount and the number of loans on which the lender took action for collection; and

(6) the number of twenty-four hour periods within which a successive loan is conducted after a prior loan is completed.

(B) The Senate Banking and Insurance Committee and the House of Representatives Labor, Commerce and Industry Committee must annually meet, jointly or separately, to hold a hearing concerning the data provided by the database vendor and the report submitted by the Board of Financial Institutions. The vendor and the Board of Financial Institutions must testify at the meeting and answer questions, including questions related to the data and the report."

Limitations on activities by persons required to be licensed by chapter

SECTION 7. Section 34-39-200(9) of the 1976 Code, as added by Act 433 of 1998, is amended to read:

"(9) engage in the retail sale of goods or services, other than deferred presentment services and Level I check-cashing services as defined in Section 34-41-10, at the location licensed pursuant to this chapter, except that the sale of money orders, postage stamps, payment of utility bills with no additional fee to the customer, vending machines for food or beverage, facsimile services, wire transfer services, or the rental of postal boxes at rates not higher than allowed by the United States Postal Service are not the sale of goods or services prohibited by this subsection;"

Restrictions and requirements for deferred presentment or deposit of check

SECTION 8. Section 34-39-180(E) of the 1976 Code, as added by Act 433 of 1998, is amended to read:

"(E) A licensee shall not charge, directly or indirectly, a fee or other consideration in excess of fifteen percent of the principal amount of the transaction for accepting a check for deferred presentment or deposit. The fee or other consideration authorized by this subsection may be imposed only once for each written agreement. Records must be kept by each licensee with sufficient detail to ensure that the fee or other consideration authorized by this subsection may be imposed only once for each written agreement."

Restrictions and requirements for deferred presentment or deposit of check

SECTION 9. Section 34-39-180(G) of the 1976 Code, as added by Act 433 of 1998, is amended to read:

"(G) If a check is returned to the licensee from a payor financial institution due to insufficient funds, closed account, or stop payment order, the licensee may pursue all legally available civil means to collect the check except for the imposition of a returned check charge.

An individual who issues a personal check to a licensee under a deferred presentment agreement is not subject to criminal liability."

Severability clause

SECTION 10. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this act, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

Time effective

SECTION 11. SECTIONS 2, 3, and 4 of this act take effect upon implementation of the common database as required in SECTION 1. The remaining SECTIONS of this act take effect upon approval by the Governor.

Ratified the 27th day of May, 2009.

Vetoed by the Governor -- 6/2/09.
Veto overridden by House -- 6/16/09.
Veto overridden by Senate -- 6/16/09.

No. 79

(R115, H3762)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING ARTICLE 77 TO CHAPTER 3, TITLE 56 SO AS TO PROVIDE THAT THE DEPARTMENT OF MOTOR VEHICLES MAY ISSUE "OUR FARMS-OUR FUTURE" SPECIAL LICENSE PLATES; TO AMEND ARTICLE 45, CHAPTER 3, TITLE 56, RELATING TO THE DEPARTMENT OF MOTOR VEHICLES ISSUANCE OF

"SPECIAL COMMEMORATIVE LICENSE PLATES", SO AS TO CHANGE THE NAME OF THESE LICENSE PLATES TO THE "SOUTH CAROLINA WILDLIFE LICENSE PLATES", TO PROVIDE THE PROCEDURES WHEREBY THE DEPARTMENT SHALL ISSUE THESE LICENSE PLATES, AND TO PROVIDE THAT THE "GAME PROTECTION FUND" IS RENAMED THE "FISH AND WILDLIFE PROTECTION FUND"; TO AMEND SECTION 56-3-9910, AS AMENDED, RELATING TO THE ISSUANCE OF "GOLD STAR FAMILY SPECIAL LICENSE PLATES", SO AS TO REVISE THE PROCEDURES REGARDING THE ISSUANCE AND COST OF THESE SPECIAL LICENSE PLATES; AND BY ADDING ARTICLE 79 TO CHAPTER 3, TITLE 56 SO AS TO PROVIDE THAT THE DEPARTMENT OF MOTOR VEHICLES MAY ISSUE "RECYCLING SPECIAL LICENSE PLATES".

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

Our Farms-Our Future Special License Plates

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

"Article 77

Our Farms-Our Future Special License Plates

Section 56-3-7890. (A) The Department of Motor Vehicles may issue special motor vehicle license plates to owners of private passenger carrying motor vehicles, as defined in Section 56-3-630, or motorcycles registered in their names which shall have imprinted on the plate 'Our Farms-Our Future' and which may have a design representative of agriculture. The South Carolina Farm Bureau Federation shall submit to the department for its approval a design it desires to be used for this special license plate. The South Carolina Farm Bureau Federation may request a change in the design not more than once every five years. The fee for this special license plate is seventy 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 fees collected pursuant to this section above the cost of the regular motor vehicle registration fee must be distributed to the 501(c)(3) nonprofit South Carolina Farm Bureau Federation 'Ag in the Classroom' fund.

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

South Carolina Wildlife License Plates

SECTION 2. A. Article 45, Chapter 3, Title 56 of the 1976 Code is amended to read:

"Article 45

South Carolina Wildlife License Plates

Section 56-3-4510. (A) The Department of Motor Vehicles shall issue a series of special commemorative motor vehicle license plates for use by the owner on his private passenger motor vehicle for the purposes of the 'Nongame Wildlife and Natural Areas Fund' provided in Section 50-1-280. The special fee for the commemorative license plate is thirty dollars and this amount must be placed in the fund. This fee is in addition to the regular motor vehicle registration fee set forth in Article 5, Chapter 3 of Title 56. The commemorative plate must be of the same size and general design of regular motor vehicle license plates and must be imprinted with the words 'South Carolina Protects Endangered Species'. The plates must be issued or revalidated for a biennial period, which expires twenty-four months from the month they are issued. Once the plate supply is exhausted, any revenues derived from a renewal or transfer of a 'South Carolina Protects Endangered Species' plate must be distributed as directed in this subsection.

(B) The department shall issue a collection of special motor vehicle license plates to owners of private passenger carrying motor vehicles and motorcycles. The fee for each special license plate is thirty dollars every two years in addition to the regular motor vehicle license fee set forth in Article 5, Chapter 3 of this title. Each special license plate must be of the same size and general design of regular motor vehicle license plates, and must be imprinted with the words 'South Carolina Wildlife'. 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.

(C) Of the fees collected pursuant to this section, the Comptroller General shall place sufficient funds into a special restricted account to be used by the Department of Motor Vehicles to defray the expenses of the department in producing and administering this special license plate collection. The remaining funds collected from each special motor vehicle license plate fee must be deposited in the Game Protection Fund provided for in Title 50.

(D) The department simultaneously may make available more than one special license plate. However, before the department produces and distributes a special license plate with the South Carolina Wildlife collection pursuant to this section, it must comply with the provisions contained in Section 56-3-8100."

B. The name of the "Game Protection Fund" as contained in Title 50 is hereby changed to the "Fish and Wildlife Protection Fund". Wherever the term "Game Protection Fund" appears in the 1976 Code, it shall mean the "Fish and Wildlife Protection Fund" and the Code Commissioner is directed to change this reference at a time and in a manner that is timely and cost effective.

Gold Star Family Special License Plates

SECTION 3. Section 56-3-9910 of the 1976 Code, as last amended by Act 347 of 2008, is further amended to read:

"Section 56-3-9910. (A) The Department of Motor Vehicles may issue 'Gold Star Family' special license plates to owners of private passenger motor vehicles, as defined in Section 56-3-630, registered in the names of members of the immediate family of United States armed forces killed in action. There is no fee for this special license plate. The license plates issued pursuant to this section must conform to a design agreed to by the department and the chief executive officer of the South Carolina Chapter of American Gold Star Mothers, Inc. or other similar organization operating in this State.

(B) Notwithstanding another provision of law, the provisions contained in Section 56-3-8000(B) and (C) do not apply to the production and distribution of 'Gold Star Family' special license plates.

(C) For the purposes of this section, 'members of the immediate family' means a person who is a parent, spouse, sibling, or child of an

armed forces member killed in action. Each qualifying person is entitled to a limit of two 'Gold Star Family' special license plates."

Recycling Special License Plates

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

"Article 79

Recycling Special License Plates

Section 56-3-7940. (A) The Department of Motor Vehicles may issue special motor vehicle license plates to owners of private passenger carrying motor vehicles, as defined in Section 56-3-630, or motorcycles registered in their names which shall have imprinted on the plate 'Reduce, Reuse, Recycle' and the recycling logo. The Carolina Recycling Association shall submit to the department for its approval a design it desires to be used for this special license plate. The Carolina Recycling Association may request a change in the design not more than once every five years. 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 fees collected pursuant to this section above the cost of the regular motor vehicle registration fee must be distributed to the Carolina Recycling Association to promote the growth of the South Carolina recycling industry.

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

Time effective

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

Ratified the 27th day of May, 2009.

Vetoed by the Governor -- 6/2/09.
Veto overridden by House -- 6/16/09.
Veto overridden by Senate -- 6/16/09.

No. 80

(R118, H3919)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 2-1-250 SO AS TO ESTABLISH THE SOUTH CAROLINA HOUSING COMMISSION, TO PROVIDE RECOMMENDATIONS ON AN ANNUAL BASIS TO ENSURE AND FOSTER THE AVAILABILITY OF SAFE, SOUND, AND AFFORDABLE HOUSING AND WORKFORCE HOUSING FOR EVERY SOUTH CAROLINIAN, TO PROVIDE FOR THE MEMBERSHIP OF THE COMMISSION, AND FOR OTHER PROCEDURAL MATTERS.

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

South Carolina Housing Commission

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

"Section 2-1-250. (A) The South Carolina Housing Commission (commission) is hereby established. The purpose of the commission is to provide recommendations to the Governor and the General Assembly on an annual basis to ensure and foster the availability of safe, sound, and affordable housing and workforce housing for every South Carolinian. The commission also may make recommendations relating to such other housing, real property, and community development issues as it considers desirable.

(B) The commission shall consist of fifteen members. Of these members, five must be members of the House of Representatives to be appointed by the Speaker of the House; five must be members of the

Senate to be appointed by the President Pro Tempore of the Senate; and five must be nonlegislative members selected by the other legislative members. All members must be qualified electors of this State.

Legislative members shall serve terms concurrent with their terms of office. Nonlegislative members shall serve for terms of four years each. Appointments to fill vacancies, other than by expiration of a term, must be for the unexpired terms. Legislative and nonlegislative members may be reappointed for successive terms. Vacancies must be filled in the same manner as the original appointments.

The commission shall elect a chairman and vice chairman every two years from among its membership, who must be members of the General Assembly.

(C) A majority of the members shall constitute a quorum. The meetings of the commission shall be held at the call of the chairman or whenever the majority of the members request.

No recommendation of the commission shall be adopted if a majority of the Senate members or a majority of the House members appointed to the commission vote against the recommendation.

(D) The commission shall have the following powers and duties:

(1) undertake analyses, gather information and data, and pursue such other activities as may be desirable to accomplish its purposes;

(2) report annually on its activities during the preceding year and include a discussion of analyses made and recommendations for administrative or legislative action; and

(3) review newly enacted federal legislation pertaining to mortgage lending and brokering and determine if the federal legislation necessitates amendments to the laws of this State.

(E) The chairman shall submit to the General Assembly and the Governor an annual summary of the activity and work of the commission together with its recommendations no later than the first day of each regular session of the General Assembly.

(F) Staff for the commission shall be provided from the standing committees of the House of Representatives and the Senate with jurisdiction over the subject matter being studied by the commission.

(G) Members of the commission shall serve without compensation, subsistence, per diem, or mileage."

Time effective

SECTION 2. This act takes effect July 1, 2009.

Ratified the 27th day of May, 2009.

Vetoed by the Governor -- 6/2/09.
Veto overridden by House -- 6/16/09.
Veto overridden by Senate -- 6/16/09.

No. 81

(R121, S12)

AN ACT TO ESTABLISH THE SOUTH CAROLINA TAXATION REALIGNMENT COMMISSION, TO PROVIDE FOR THE COMMISSION'S MEMBERSHIP, POWERS, DUTIES, AND RESPONSIBILITIES, TO PROVIDE THAT THE COMMISSION SHALL CONDUCT A COMPREHENSIVE STUDY OF THE STATE'S TAX SYSTEM AND SUBMIT A REPORT OF ITS RECOMMENDED CHANGES TO FURTHER THE GOAL OF MAINTAINING AND ENHANCING THE STATE AS AN OPTIMUM COMPETITOR IN THE EFFORT TO ATTRACT BUSINESSES AND INDIVIDUALS TO LOCATE, LIVE, WORK, AND INVEST IN THE STATE, TO PROVIDE A SCHEDULE OF REPORTING AND REQUIRE THE COMMISSION TO CONCLUDE ITS BUSINESS BY JANUARY 1, 2011, UNLESS EXTENDED BY LAW, TO PROVIDE FOR PROCEDURES GOVERNING THE CONSIDERATION OF LEGISLATION RESULTING FROM THE COMMISSION'S RECOMMENDATIONS, TO LIMIT RECEIPT BY THE COMMISSION OF INFORMATION FROM LOBBYISTS TO FORMAL PRESENTATIONS TO THE COMMISSION IN A SCHEDULED MEETING AND PROVIDE A PENALTY FOR VIOLATIONS; AND TO AMEND ACT 388 OF 2006, RELATING TO TAXATION, SO AS TO DELETE PROVISIONS ESTABLISHING THE JOINT SALES TAX EXEMPTIONS REVIEW COMMITTEE.

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

South Carolina Taxation Realignment Commission created

SECTION 1. (A) There is created the South Carolina Taxation Realignment Commission to be comprised of eleven members appointed as follows:

(1) one member each appointed by the President Pro Tempore of the Senate, the Senate Finance Committee Chairman, the Senate Majority Leader, and the Senate Minority Leader;

(2)(a) two members appointed by the Speaker of the House;

(b) two members appointed by Chairman of the House Ways and Means Committee;

(3) two members appointed by the Governor; and

(4) the Director of the Department of Revenue, to serve ex officio.

Members of the General Assembly may not be appointed to the commission. Members of the commission must have substantial academic or professional experience or specialization in one or more areas of public finance, government budgeting and administration, tax administration, economics, accounting, business, or tax law. Members of the commission must have been a resident of South Carolina since January 1, 1997.

(B) The members of the commission:

(1) must meet as soon as practicable after appointment and organize itself by electing one of its members as chairman and other officers as the commission may consider necessary. Thereafter, the commission must meet as necessary to fulfill the duties required by this act at the call of the chairman or by a majority of the members. A quorum consists of six members. The commission may engage or employ staff or consultants as may be necessary and prudent to assist the commission in the performance of its duties and responsibilities. Any staff or consultants must possess an academic background or substantial career experience in one or more fields including, but not limited to, economics, government budgeting and administration, urban and regional economic development, economic forecasting, state and local public finance, or business;

(2) shall serve without compensation, and are ineligible for the usual mileage, subsistence, and per diem allowed by law for members of state boards, committees, and commissions. Staffs of the Senate Finance Committee and the House Ways and Means Committee shall be available to assist the commission in its work. Any other expenses incurred by the commission shall be paid equally from each respective

house's approved account subject to the approval of the Senate Operations and Management Committee and the Speaker of the House;

(3) unless authorized by a further or subsequent enactment, conclude the commission's business by January 1, 2011, at which time the commission is dissolved. The General Assembly may extend the dates by which the commission shall submit reports required by this act.

(C) The duties of the commission shall be to:

(1) develop criteria for assessing the effectiveness of the current tax system structure, as well as the likely systemic impact of any proposed changes affecting tax revenues and report the criteria to the General Assembly within three months of the effective date of this act, provided that all such criteria must be designed with an emphasis on the systemic balance of the state's revenue structure from the standpoint of adequacy, equity, and efficiency and with the goal of maintaining and enhancing the State as an optimum competitor in efforts to attract businesses and individuals to locate, live, work, and invest in the State; and

(2) no later than March 15, 2010, prepare and deliver a report and recommendation to the Chairman of the Senate Finance Committee and the Chairman of the House Ways and Means Committee, including the text of an amendment that effectuates the recommendations. The commission's report must be a detailed, comprehensive, and careful evaluation of the state's tax system structure. The commission's report shall consider:

(a) sales and use tax exemptions or limitations to be retained, modified, or repealed;

(b) the assessment of state and local taxes levied and other provisions affecting state and local revenue to fund the operation and responsibilities of state and local government, respectively; and

(c) any fee, fine, license, forfeiture, or Other Funds.

After reviewing the adequacy, equity, and efficiency of the state's revenue structure, the commission's report may recommend that no changes are necessary if it determines that such findings are warranted. Following the report and recommendation required by subsection (C)(2), the commission shall continue studying the subjects identified in subsection (C)(2). The commission may make further legislative recommendations at any time. Also, the commission must submit a report to the Chairman of the Senate Finance Committee and the Chairman of the House Ways and Means Committee on August first and February first of each year detailing the commission's progress and points of focus.

For purposes of the scope of the commission's study, local taxes are defined as local levies related to ad valorem taxation, including, but not limited to, assessment ratios, classification and valuation of property, assessable transfers of interest, valuation limitation, local millages, and fee in lieu of taxes agreements; however, local taxes do not include the exemption of owner-occupied residential property as provided in Section 12-37-220(B)(47).

The commission's report may not recommend any action that would nullify any existing agreement entered into by a local government.

The commission must forward its recommendation to the Board of Economic Advisors that must prepare a revenue impact detailing the sources of revenue at the state and local level the commission recommends should be increased or decreased, the projected amount of increase or decrease to each source of revenue, and the net gain or loss of total revenue at both the state and local levels that would result from the recommendation. The report must be attached to any legislative recommendation made by the commission prior to it being submitted to any member of the General Assembly.

(D) The text of any amending language pursuant to subsection (C)(2) must be delivered to the Chairman of the Senate Finance Committee, the Chairman of the House Ways and Means Committee, and upon request, to any member of the General Assembly.

(E) Further legislative recommendations made by the commission must be delivered to the Chairman of the Senate Finance Committee, the Chairman of the House Ways and Means Committee, and upon request, to any member of the General Assembly.

(F) Commission members shall not receive information regarding the business of the commission from a lobbyist except through formal presentation to the commission at a meeting called in compliance with the Freedom of Information Act. Any lobbyist violating the provisions of this subsection is deemed guilty of a misdemeanor and, upon conviction, must be punished as provided in Section 2-17-130 of the 1976 Code.

(G) In addition to those duties of the commission provided pursuant to subsection (C) of this section, the commission shall study and make recommendations to the General Assembly of the advantages and drawbacks of a revenue neutral replacement of the state individual and corporate income tax, state imposed sales and use tax, estate tax, bank tax, savings and loan association tax, and taxes on beer, wine, and alcoholic beverages with a broadly based consumption tax modeled on the proposed federal Fair Tax as that form of tax would have to be adapted to apply on the state level. In its study, the commission shall

specifically consider how such a tax swap would affect jobs creation, savings and investment, and tax compliance costs for South Carolina taxpayers. The result of the study and recommendations required pursuant to this subsection must be made on the schedule provided in subsection (C)(2) of this section.

Joint Sales Tax Exemptions Review Committee deleted

SECTION 2. Act 388 of 2006 is amended by deleting SECTION 1 of Part V, which reads:

"SECTION 1. (A) The sales tax exemptions in Section 12-36-2120 of the 1976 Code shall be reviewed by the General Assembly not later than its 2010 Session and thereafter as the General Assembly deems appropriate but not later than its session every ten years after the first review.

(B)(1) There is established the Joint Sales Tax Exemptions Review Committee composed of seven members; three of whom must be members of the Senate appointed by the Chairman of the Senate Finance Committee, one of whom must be a member of the minority party; three of whom must be members of the House of Representatives appointed by the Chairman of the House Ways and Means Committee, one of whom must be a member of the minority party; and one of whom must be the Governor or the Governor's appointee who shall serve at the Governor's pleasure. The committee shall elect a chairman and vice chairman from among its members. All legislative members shall serve ex officio. The committee shall assist the General Assembly in performing its duties under the provisions of subsection (A) in addition to its duties required by this subsection.

(2) In carrying out its responsibilities under this act, the committee shall:

(a) make a detailed and careful study of the state's sales tax exemptions, comparing South Carolina laws to other states;

(b) publish a comparison of the state's sales tax exemptions to other states' laws;

(c) recommend changes, and recommend introduction of legislation when appropriate;

(d) submit reports and recommendations annually to the Governor and the General Assembly regarding sales tax exemptions.

(3) In carrying out its responsibilities under this act, the committee may:

(a) hold public hearings;

(b) receive testimony of any employee of the State or any other witness who may assist the committee in its duties;

(c) call for assistance in the performance of its duties from any employee or agency of the State.

(4) The committee may adopt by majority vote rules not inconsistent with this act that it considers proper with respect to matters relating to the discharge of its duties under this section. Professional and clerical services for the committee must be made available from the staffs of the General Assembly, the State Budget and Control Board, and the Department of Revenue. The members of the committee may not receive mileage, per diem, subsistence, or any form of compensation for their service on the committee."

Time effective

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

Ratified the 24th day of June, 2009.

Approved the 30th day of June, 2009.

This edition, containing the last of the General and Permanent Laws for 2009, concludes the Advance Sheets for this year.