Advance Sheet No. 3 | September 27, 2010 | Pages 1569-2193 Acts 222-290

2010 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

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

"Section 32-8-320. (A) In the following order of priority these persons may serve as a decedent's agent and in the absence of a preneed cremation authorization may authorize cremation of the decedent:

(1) the person designated as agent for this purpose by the decedent in a will or other verified and attested document, or a person named in the decedent's United States Department of Defense Record of Emergency Data Form (DD Form 93), or its successor form, if the decedent died while serving in any branch of the United States Armed Services, as defined in 10 U.S.C. Section 1481, and there is no known designation in a will or other verified and attested document of the decedent;

(2) the spouse of the decedent at the time of the decedent's death;

(3) the decedent's surviving adult children;

(4) the decedent's surviving parents;

(5) the persons in the next degree of kinship under the laws of descent and distribution to inherit the estate of the decedent.

(B) In the absence of a person serving as a decedent's agent pursuant to subsection (A), the following may serve as an agent and may authorize a decedent's cremation:

(1) a person serving as executor or legal representative of the decedent's estate and acting according to the decedent's written instructions;

(2) a public administrator, medical examiner, coroner, state appointed guardian, or other public official charged with arranging the final disposition of the decedent if the decedent is indigent or if the final disposition is the responsibility of the State or an instrumentality of the State.

(C) If a dispute arises among persons of equal priority, as provided for in subsection (A), concerning the creation of a decedent, the matter must be resolved by order of the probate court."

Person required to be contacted

SECTION 2. Section 40-19-280(B) of the 1976 Code is amended to read:

"(B) No public officer or employee, the official of any public institution, physician, surgeon, or any other person having a professional relationship with a decedent may send or cause to be sent to a funeral establishment or to a person licensed for the practice of funeral service the remains of a deceased person without having first

made due inquiry as to the desires of the next of kin and of the persons who may be chargeable with the funeral and expenses of the decedent, such as the person named in the decedent's United States Department of Defense Record of Emergency Data Form (DD Form 93), or its successor form, if the decedent died while serving in any branch of the United States Armed Services, as defined in 10 U.S.C. Section 1481. If any kin is found, authority and directions of the kin govern except in those instances where the deceased made prior arrangements in writing, such as the aforementioned Record of Emergency Data."

Time effective

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

Ratified the 2nd day of June, 2010.

Approved the 8th day of June, 2010.

No. 222

(R238, H3536)

AN ACT TO AMEND SECTION 17-5-130, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE QUALIFICATIONS OF CORONERS, SO AS TO INCREASE THOSE QUALIFICATIONS BY REQUIRING THOSE PERSONS TO HAVE OBTAINED CERTAIN LEVELS OF EDUCATION COMBINED WITH VARYING DEGREES OF EXPERIENCE IN THE FIELD, TO REQUIRE THAT A CANDIDATE FOR CORONER FILE A SWORN AFFIDAVIT WITH THE COUNTY EXECUTIVE COMMITTEE OF THE PERSON'S POLITICAL PARTY UNDER SPECIFIED TIME FRAMES, TO PROVIDE FOR THE FILING OF THE AFFIDAVIT BY PETITION CANDIDATES, AND TO DELINEATE THE INFORMATION THAT THE AFFIDAVIT MUST CONTAIN; AND BY ADDING SECTION 17-15-115 SO AS TO PROVIDE CONDITIONS UPON WHICH A DEPUTY CORONER MAY BE TRAINED TO ENFORCE THE LAWS AND RETAIN HIS LAW ENFORCEMENT STATUS.

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

Coroners, qualifications

SECTION 1. Section 17-5-130 of the 1976 Code is amended to read:

"Section 17-5-130. (A)(1) A coroner in this State shall have all of the following qualifications, the person shall:

(a) be a citizen of the United States;

(b) be a resident of the county in which the person seeks the office of coroner for at least one year before qualifying for the election to the office;

(c) be a registered voter;

(d) have attained the age of twenty-one years before the date of qualifying for election to the office;

(e) have obtained a high school diploma or its recognized equivalent by the State Department of Education; and

(f) have not been convicted of a felony offense or an offense involving moral turpitude contrary to the laws of this State, another state, or the United States.

(2) In addition to the requirements of subsection (A)(1), a coroner in this State shall have at least one of the following qualifications, the person shall:

(a) have at least three years of experience in death investigation with a law enforcement agency, coroner, or medical examiner agency;

(b) have a two-year associate degree and two years of experience in death investigation with a law enforcement agency, coroner, or medical examiner agency;

(c) have a four-year baccalaureate degree and one year of experience in death investigation with a law enforcement agency, coroner, or medical examiner agency;

(d) be a law enforcement officer, as defined by Section 23-23-10(E)(1), who is certified by the South Carolina Law Enforcement Training Council with a minimum of two years of experience;

(e) be a licensed private investigator with a minimum of two years of experience; or

(f) have completed a recognized forensic science degree or certification program or be enrolled in a recognized forensic science degree or certification program to be completed within one year of being elected to the office of coroner.

(B)(1) A person who offers his candidacy for the office of coroner, no later than the close of filing, shall file a sworn affidavit with the county executive committee of the person's political party.

(2) The county executive committee of a political party with whom a person has filed his affidavit must file a copy of the affidavit with the appropriate county election commission by noon on the tenth day following the deadline for filing affidavits by candidates. If the tenth day falls on a Saturday, Sunday, or holiday, the affidavit must be filed by noon the following day.

(3) A person who seeks nomination by petition for the office of coroner, no later than the close of filing, shall file a sworn affidavit with the county election commission in the county of his residence.

(4) The affidavit required by the provisions of this subsection must contain the following information:

(a) the person's date and place of birth;

(b) the person's citizenship;

(c) the county the person is a resident of, and how long the person has been a resident of that county;

(d) whether the person is a registered voter;

(e) the date the person obtained a high school diploma or its recognized equivalent by the State Department of Education;

(f) whether the person has been convicted of a felony offense or an offense involving moral turpitude contrary to the laws of this State, another state, or the United States;

(g) the date the person obtained an associate or baccalaureate degree, if applicable;

(h) the date the person completed a recognized forensic science degree or certification program, or information regarding the person's enrollment in a recognized forensic science degree or certification program, if applicable; and

(i) the number of years of experience the person has as a death investigator, certified law enforcement officer, or licensed private investigator, if applicable.

(C) Each person serving as coroner in the person's first term is required to complete a basic training session to be determined by the Department of Public Safety. This basic training session must be completed no later than the end of the calendar year following the person's election as coroner. A person appointed to fill the unexpired term in the office of coroner shall complete a basic training session to be determined by the department within one calendar year of the date of appointment. This section must not be construed to require an individual to repeat the basic training session if the person has

successfully completed the session prior to the person's election or appointment as coroner. A coroner who is unable to attend this training session when offered because of an emergency or extenuating circumstances, within one year from the date the disability or cause terminates, shall complete the standard basic training session required of coroners. A coroner who does not fulfill the obligations of this subsection is subject to suspension by the Governor until the coroner completes the training session.

(D) A person holding the office of coroner or deputy coroner who was elected, appointed, or employed prior to January 1, 1994, and who has served continuously since that time shall attend a minimum of sixteen hours training annually as may be selected by the South Carolina Law Enforcement Training Council on or before December 31, 1995. Each year, all coroners and deputy coroners shall complete a minimum of sixteen hours training annually as selected by the council. Certification or records of attendance or training must be maintained as directed by the council.

(E)(1) The basis for the minimum annual requirement of in-service training is the calendar year. A coroner who satisfactorily completes the basic training session in accordance with the provisions of subsection (C) is excused from the minimum annual training requirements of subsection (D) for the calendar year in which the basic training session is completed.

(2) The Board of Directors of the South Carolina Coroners Association, in its discretion, may grant a waiver of the requirements of the annual in-service training upon presentation of evidence by a coroner that he was unable to complete the training due to an emergency or extenuating circumstances.

(3) A coroner who fails to complete the minimum annual in-service training required by this section may be suspended from office, without pay, by the Governor for ninety days. The Governor may continue to suspend a coroner until the coroner completes the annual minimum in-service training required in this section. The Governor shall appoint, at the time of the coroner's suspension, a qualified person to perform as acting coroner during the suspension.

(F) A coroner in office on the effective date of this section is exempt from the provisions of this section except for the provisions of subsection (D).

(G) The Director of the Department of Public Safety shall appoint a Coroners Training Advisory Committee to assist in the determination of training requirements for coroners and deputy coroners. The committee must consist of no fewer than five coroners and at least one

physician trained in forensic pathology as recommended by the South Carolina Coroners Association. The members of the committee shall serve without compensation.

(H) Expenses of all training authorized or required by this section must be paid by the county the coroner or deputy coroner serves, and the South Carolina Law Enforcement Training Council is authorized to set and collect fees for this training."

Deputy coroners, training and law enforcement status

SECTION 2. Article 3, Chapter 5, Title 17 of the 1976 Code is amended by adding:

"Section 17-5-115. (A) A person appointed by a coroner to the position of deputy coroner may, at the discretion of the coroner, attend the South Carolina Criminal Justice Academy to be trained and certified as a Class III officer.

(B) A law enforcement officer, as defined by Section 23-23-10(E)(1), who is certified by the South Carolina Law Enforcement Training Council and appointed to serve as a deputy coroner, may, at the discretion of the coroner, retain law enforcement status as a Class III officer.

(C) The classification is limited to the deputy coroner's official duties as provided by law and does not authorize the officer to enforce the state's general criminal laws."

Time effective

SECTION 3. This act takes effect on March 1, 2011.

Ratified the 25th day of May, 2010.

Vetoed by the Governor -- 5/28/2010.
Veto overridden by House -- 6/1/2010.
Veto overridden by Senate -- 6/2/2010. -- S.

No. 223

(R268, H3358)

AN ACT TO AMEND SECTION 43-35-10, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE DEFINITION OF TERMS USED IN THE OMNIBUS ADULT PROTECTION ACT, SO AS TO REVISE THE DEFINITION OF "INVESTIGATIVE ENTITY" BY INCLUDING THE VULNERABLE ADULTS INVESTIGATIONS UNIT AND THE MEDICAID FRAUD CONTROL UNIT, TO REVISE THE DEFINITION OF "NEGLECT", AND TO DEFINE "OPERATED FACILITY" AND "CONTRACTED FACILITY"; TO AMEND SECTION 43-35-15, AS AMENDED, RELATING TO RESPONSIBILITIES OF INVESTIGATIVE ENTITIES UPON RECEIPT OF A REPORT, SO AS TO CLARIFY THAT REFERRAL OF A CASE TO A PROSECUTOR MUST BE MADE WHEN FURTHER ACTION IS NECESSARY; TO AMEND SECTION 43-35-35, AS AMENDED, RELATING TO REPORTING DEATHS WHEN ABUSE OR NEGLECT IS SUSPECTED, SO AS TO PROVIDE THAT DEATHS IN A FACILITY REFERRED TO THE VULNERABLE ADULTS INVESTIGATIONS UNIT MUST BE INVESTIGATED PURSUANT TO SECTION 43-35-520; TO AMEND SECTION 43-35-40, AS AMENDED, RELATING TO REQUIREMENTS OF AN INVESTIGATIVE ENTITY UPON RECEIVING A REPORT OF ADULT ABUSE, SO AS TO FURTHER SPECIFY AND CLARIFY PROCEDURES FOR REPORTING CASES IN WHICH THERE IS A REASONABLE SUSPICION OF CRIMINAL CONDUCT; TO AMEND SECTION 43-35-85, AS AMENDED, RELATING TO CRIMINAL PENALTIES FOR FAILING TO REPORT ADULT ABUSE WHEN REQUIRED TO REPORT AND PENALTIES FOR COMMITTING ABUSE, SO AS TO DELETE PROVISIONS REQUIRING ACTUAL KNOWLEDGE OF ABUSE, NEGLECT, OR EXPLOITATION AND TO DELETE PROVISIONS AUTHORIZING DISCIPLINARY ACTION TO BE TAKEN BY A PERSON'S LICENSING BOARD WHEN THE PERSON IS REQUIRED TO REPORT AND FAILS TO MAKE A REPORT WHEN THE PERSON HAS REASON TO BELIEVE THAT ABUSE OCCURRED; TO AMEND SECTION 43-35-520, RELATING TO THE RESPONSIBILITY OF THE VULNERABLE ADULTS

INVESTIGATIONS UNIT TO INVESTIGATE FATALITIES OCCURRING IN FACILITIES OPERATED BY, OR CONTRACTED FOR OPERATIONS BY, THE DEPARTMENT OF MENTAL HEALTH OR THE DEPARTMENT OF DISABILITIES AND SPECIAL NEEDS, SO AS TO REQUIRE THE UNIT TO ALSO INVESTIGATE FATALITIES OCCURRING IN A NURSING HOME CONTRACTED FOR OPERATION BY THE DEPARTMENT OF MENTAL HEALTH WHEN ABUSE OR NEGLECT OR CERTAIN OTHER CIRCUMSTANCES OF THE DEATH ARE PRESENT; BY ADDING SECTION 44-7-295 SO AS TO AUTHORIZE THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL TO ENTER FACILITIES AT ALL TIMES TO INSPECT CONDITIONS RELATING TO THE STATE CERTIFICATION OF NEED AND HEALTH LICENSURE ACT, TO COPY RECORDS, AND TO OBTAIN A WARRANT FOR THESE PURPOSES WHEN ENTRY IS DENIED OR NO EMERGENCY EXISTS; TO AMEND SECTION 44-7-315, AS AMENDED, RELATING TO INFORMATION RECEIVED BY THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL WHEN CONDUCTING INSPECTIONS, SO AS TO PROVIDE THAT THE DEPARTMENT'S AUTHORITY INCLUDES INSPECTIONS OF ACTIVITIES LICENSED BY THE DEPARTMENT AND TO DELETE REFERENCES TO GROUP HOMES; TO AMEND SECTION 44-7-320, RELATING TO SANCTIONS THAT THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL MAY IMPOSE ON A PERSON OR FACILITY FOR VIOLATIONS OF THE STATE CERTIFICATION OF NEED AND HEALTH LICENSURE ACT, SO AS TO PROVIDE THAT THE DEPARTMENT MAY IMPOSE BOTH A MONETARY PENALTY AND SUSPENSION OR REVOCATION OF A LICENSE; AND TO AMEND SECTION 23-3-810, RELATING TO RESPONSIBILITIES OF THE VULNERABLE ADULTS INVESTIGATIONS UNIT, SO AS TO CLARIFY THAT REFERRAL OF A CASE TO A PROSECUTOR MUST BE MADE WHEN FURTHER ACTION IS NECESSARY.

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

Definition revised

SECTION 1. Section 43-35-10(5) of the 1976 Code, as last amended by Act 301 of 2006, is further amended to read:

"(5) 'Investigative entity' means the Long Term Care Ombudsman Program, the Adult Protective Services Program in the Department of Social Services, the Vulnerable Adults Investigations Unit of the South Carolina Law Enforcement Division, or the Medicaid Fraud Control Unit of the Office of the Attorney General."

Definition revised

SECTION 2. Section 43-35-10(6) of the 1976 Code, as added by Act 110 of 1993, is amended to read:

"(6) 'Neglect' means the failure or omission of a caregiver to provide the care, goods, or services necessary to maintain the health or safety of a vulnerable adult including, but not limited to, food, clothing, medicine, shelter, supervision, and medical services and the failure or omission has caused, or presents a substantial risk of causing, physical or mental injury to the vulnerable adult. Noncompliance with regulatory standards alone does not constitute neglect. Neglect includes the inability of a vulnerable adult, in the absence of a caretaker, to provide for his or her own health or safety which produces or could reasonably be expected to produce serious physical or psychological harm or substantial risk of death."

Definitions added

SECTION 3. Section 43-35-10 of the 1976 Code, as last amended by Act 301 of 2006, is further amended by adding:

"(12) 'Operated facility' means those facilities directly operated by the Department of Mental Health or the Department of Disabilities and Special Needs.

(13) 'Contracted facility' means those public and private facilities contracted for operation by the Department of Mental Health or the Department of Disabilities and Special Needs."

Referral procedures for reports of abuse, neglect, or exploitation of a vulnerable adult

SECTION 4. Section 43-35-15(A) of the 1976 Code, as last amended by Act 301 of 2006, is further amended to read:

"(A) The Vulnerable Adults Investigations Unit of the South Carolina Law Enforcement Division shall receive and coordinate the referral of all reports of alleged abuse, neglect, or exploitation of vulnerable adults in facilities operated or contracted for operation by the Department of Mental Health or the Department of Disabilities and Special Needs. The unit shall establish a toll free number, which must be operated twenty-four hours a day, seven days a week, to receive the reports. The unit shall investigate or refer to appropriate law enforcement those reports in which there is reasonable suspicion of criminal conduct. The unit also shall investigate vulnerable adult fatalities as provided for in Article 5, Chapter 35, Title 43. The unit shall refer those reports in which there is no reasonable suspicion of criminal conduct to the appropriate investigative entity for investigation. Upon conclusion of a criminal investigation of abuse, neglect, or exploitation of a vulnerable adult, the unit or other law enforcement shall refer the case to the appropriate prosecutor when further action is necessary. The South Carolina Law Enforcement Division may develop policies, procedures, and memorandum of agreement with other agencies to be used in fulfilling the requirements of this article. However, the South Carolina Law Enforcement Division must not delegate its responsibility to investigate criminal reports of alleged abuse, neglect, and exploitation to the agencies, facilities, or entities that operate or contract for the operation of the facilities. Nothing in this subsection precludes the Department of Mental Health, the Department of Disabilities and Special Needs, or their contractors from performing administrative responsibilities in compliance with applicable state and federal requirements."

Referral of deaths to the Vulnerable Adults Investigations Unit

SECTION 5. Section 43-35-35(B) of the 1976 Code, as last amended by Act 301 of 2006, is further amended to read:

"(B) All deaths involving a vulnerable adult in a facility operated or contracted for operation by the Department of Mental Health, the Department of Disabilities and Special Needs, or their contractors must

be referred to the Vulnerable Adults Investigations Unit of the South Carolina Law Enforcement Division for investigation pursuant to Section 43-35-520."

Responsibilities when a report is received

SECTION 6. Section 43-35-40 of the 1976 Code, as last amended by Act 301 of 2006, is further amended to read:

"Section 43-35-40. Upon receiving a report, the Long Term Care Ombudsman or Adult Protective Services promptly shall:

(1) initiate an investigation; or

(2) review the report within two working days for the purpose of reporting those cases that indicate reasonable suspicion of criminal conduct to local law enforcement or to the Vulnerable Adults Investigations Unit of the South Carolina Law Enforcement Division (SLED). A report to local law enforcement or SLED must be made within one working day of completing the review."

Penalties for failing to report and for committing abuse, neglect, or exploitation of a vulnerable adult

SECTION 7. Section 43-35-85 of the 1976 Code, as last amended by Act 56 of 1999, is further amended to read:

"Section 43-35-85. (A) A person required to report under this chapter who knowingly and wilfully fails to report abuse, neglect, or exploitation is guilty of a misdemeanor and, upon conviction, must be fined not more than twenty-five hundred dollars or imprisoned not more than one year.

(B) Except as otherwise provided in subsections (E) and (F), a person who knowingly and wilfully abuses a vulnerable adult is guilty of a felony and, upon conviction, must be imprisoned not more than five years.

(C) Except as otherwise provided in subsections (E) and (F), a person who knowingly and wilfully neglects a vulnerable adult is guilty of a felony and, upon conviction, must be imprisoned not more than five years.

(D) A person who knowingly and wilfully exploits a vulnerable adult 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, and may be required by the court to make restitution.

(E) A person who knowingly and wilfully abuses or neglects a vulnerable adult resulting in great bodily injury is guilty of a felony and, upon conviction, must be imprisoned not more than fifteen years.

(F) A person who knowingly and wilfully abuses or neglects a vulnerable adult resulting in death is guilty of a felony and, upon conviction, must be imprisoned not more than thirty years.

(G) A person who threatens, intimidates, or attempts to intimidate a vulnerable adult subject of a report, a witness, or any other person cooperating with an investigation conducted pursuant to this chapter is guilty of a misdemeanor and, upon conviction, must be fined not more than five thousand dollars or imprisoned for not more than three years.

(H) A person who wilfully and knowingly obstructs or in any way impedes an investigation conducted pursuant to this chapter, upon conviction, is guilty of a misdemeanor and must be fined not more than five thousand dollars or imprisoned for not more than three years.

(I) As used in this section, '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."

Nursing homes subject to investigation under certain circumstances

SECTION 8. Section 43-35-520 of the 1976 Code, as added by Act 301 of 2006, is amended to read:

"Section 43-35-520. The Vulnerable Adults Investigations Unit of the South Carolina Law Enforcement Division, created pursuant to Section 23-3-810, shall, in addition to its investigation responsibilities under that section or Article 1, investigate cases of vulnerable adult fatalities in facilities operated or contracted for operation by the Department of Mental Health or the Department of Disabilities and Special Needs. Provided, that in a nursing home, as defined in Section 44-7-130, contracted for operation by the Department of Mental Health, the Vulnerable Adults Investigations Unit shall investigate those fatalities for which there is suspicion that the vulnerable adult died as a result of abuse or neglect, the death is suspicious in nature, or the death is referred by a coroner or medical examiner as provided in Section 43-35-35(A)."

Authority to enter facilities to investigate violations

SECTION 9. Article 3, Chapter 7, Title 44 of the 1976 Code is amended by adding:

"Section 44-7-295. The department is authorized to enter at all times in or on the property of any facility or service, whether public or private, licensed by the department or unlicensed, for the purpose of inspecting and investigating conditions relating to a violation of this article or regulations of the department. The department's authorized agents may examine and copy any records or memoranda pertaining to the operation of a licensed or unlicensed facility or service to determine compliance with this article. However, if entry or inspection is denied or not consented to and no emergency exists, the department is empowered to obtain a warrant to enter and inspect the property and its records from the magistrate from the jurisdiction in which the property is located. The magistrate may issue these warrants upon a showing of probable cause for the need for entry and inspection. The department shall furnish a written copy of the results of the inspection or investigation to the owner or operator of the property."

Procedures for disclosure of information by the Division of Health Licensing

SECTION 10. Section 44-7-315(A), of the 1976 Code, as last amended by Act 372 of 2006, is further amended to read:

"(A) Information received by the Division of Health Licensing of the department, through inspection or otherwise, in regard to a facility or activity licensed by the department pursuant to this article or subject to inspection by the department, including a nursing home, a community residential care facility, or an intermediate care facility for the mentally retarded, must be disclosed publicly upon written request to the department. The request must be specific as to the facility or activity, dates, documents, and particular information requested. The department may not disclose the identity of individuals present in a facility licensed by the department pursuant to this article or subject to inspection by the department, including a nursing home, a community residential care facility, or an intermediate care facility for the mentally retarded. When a report of deficiencies or violations regarding a facility licensed by the department pursuant to this article or subject to inspection by the department, including a nursing home, a community

residential care facility, or an intermediate care facility for the mentally retarded, is present in the department's files when a request for information is received, the department shall inform the applicant that it has stipulated corrective action and the time it determines for completion of the action. The department also shall inform the applicant that information on the resolution of the corrective action order is expected to be available upon written request within fifteen days or less of the termination of time it determines for completion of the action. However, if information on the resolution is present in the files, it must be furnished to the applicant."

Sanctions for violations

SECTION 11. Section 44-7-320(A) of the 1976 Code is amended to read:

"(A)(1) The department may deny, suspend, or revoke licenses or assess a monetary penalty, or both, against a person or facility for:

(a) violating a provision of this article or departmental regulations;

(b) permitting, aiding, or abetting the commission of an unlawful act relating to the securing of a Certificate of Need or the establishment, maintenance, or operation of a facility requiring certification of need or licensure under this article;

(c) conduct or practices detrimental to the health or safety of patients, residents, clients, or employees of a facility or service. This provision does not refer to health practices authorized by law;

(d) refusing to admit and treat alcoholic and substance abusers, the mentally ill, or the mentally retarded, whose admission or treatment has been prescribed by a physician who is a member of the facility's medical staff; or discriminating against alcoholics, the mentally ill, or the mentally retarded solely because of the alcoholism, mental illness, or mental retardation;

(e) failing to allow a team advocacy inspection of a community residential care facility by the South Carolina Protection and Advocacy System for the Handicapped, Inc., as allowed by law.

(2) Consideration to deny, suspend, or revoke licenses or assess monetary penalties, or both, is not limited to information relating to the current licensing period but includes consideration of all pertinent information regarding the facility and the applicant.

(3) If in the department's judgment conditions or practices exist in a facility that pose an immediate threat to the health, safety, and

welfare of the residents, the department immediately may suspend the facility's license and shall contact the appropriate agencies for placement of the residents. Within five days of the suspension a preliminary hearing must be held to determine if the immediate threatening conditions or practices continue to exist. If they do not, the license must be immediately reinstated. Whether the license is reinstated or suspension remains due to the immediate threatening conditions or practices, the department may proceed with the process for permanent revocation pursuant to this section."

Referral of cases to a prosecutor

SECTION 12. Section 23-3-810(E) of the 1976 Code, as added by Act 301 of 2006, is amended to read:

"(E) Upon conclusion of a criminal investigation of abuse, neglect, or exploitation of a vulnerable adult, the unit or other law enforcement shall refer the case to the appropriate prosecutor when further action is necessary."

Severability clause

SECTION 13. 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 14. This act takes effect upon approval by the Governor.

Ratified the 1st day of June, 2010.

Approved the 7th day of June, 2010.

No. 224

(R269, H3393)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 40-43-190 SO AS TO REQUIRE THE BOARD OF MEDICAL EXAMINERS TO ISSUE A WRITTEN PROTOCOL AUTHORIZING PHARMACISTS TO ADMINISTER INFLUENZA VACCINES AND CERTAIN MEDICATIONS WITHOUT AN ORDER OF A PRACTITIONER AND TO PROVIDE FOR THE CONTENTS OF THE PROTOCOL; AND BY ADDING SECTION 40-43-200 SO AS TO CREATE A JOINT PHARMACIST ADMINISTERED INFLUENZA VACCINES COMMITTEE UNDER THE BOARD OF MEDICAL EXAMINERS AND TO PROVIDE FOR ITS MEMBERS, POWERS, AND DUTIES, INCLUDING ASSISTING THE BOARD IN ESTABLISHING A WRITTEN PROTOCOL AUTHORIZING PHARMACISTS TO ADMINISTER INFLUENZA VACCINES WITHOUT AN ORDER OF A PRACTITIONER.

Whereas, the primary purpose of this act is to promote, preserve, and protect the public health and safety and to prepare for the threat of pandemic influenza by expanding access to influenza vaccines. Now, therefore,

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

Protocol for pharmacists to administer influenza vaccines and certain medications without order of practioner

SECTION 1. Chapter 43, Title 40 of the 1976 Code is amended by adding:

"Section 40-43-190. (A)(1) The Board of Medical Examiners shall issue a written protocol for the administration of influenza vaccines by

pharmacists without an order of a practitioner. The administration of influenza vaccines as authorized in this section must not be to persons under the age of eighteen years.

(2) The written protocol must further authorize pharmacists to administer without an order of a practitioner those medications necessary in the treatment of adverse events. These medications must be used only in the treatment of adverse events and must be limited to those delineated within the written protocol.

(3) The written protocol must be issued no later than January 1, 2011.

(B) The written protocol must provide that:

(1) A pharmacist seeking authorization to administer influenza vaccines as authorized in this section shall successfully complete a course of training accredited by the Accreditation Council for Pharmacy Education or a similar health authority or professional body approved by the Board of Pharmacy and the Board of Medical Examiners. Training must comply with current Centers for Disease Control guidelines and must include study materials, hands-on training, and techniques for administering influenza vaccines and must provide instruction and experiential training in the following content areas:

(a) mechanisms of action for influenza vaccines, contraindications, drug interactions, and monitoring after vaccine administration;

(b) standards for adult immunization practices;

(c) basic immunology and vaccine protection;

(d) vaccine-preventable diseases;

(e) recommended immunization schedules;

(f) vaccine storage management;

(g) biohazard waste disposal and sterile techniques;

(h) informed consent;

(i) physiology and techniques for vaccine administration;

(j) prevaccine and postvaccine assessment and counseling;

(k) immunization record management;

(l) management of adverse events, including identification, appropriate response, emergency procedures, documentation, and reporting;

(m) understanding of vaccine coverage by federal, state, and local entities;

(n) needle stick management.

(2) A pharmacist administering an influenza vaccine without an order of a practitioner pursuant to this section shall:

(a) obtain the signed written consent of the person being vaccinated or that person's guardian;

(b) maintain a copy of the vaccine administration in that person's record and provide a copy to the person or the person's guardian;

(c) notify that person's designated physician or primary care provider of any influenza vaccine administered;

(d) report administration of an influenza vaccine to any statewide immunization registry established by the Department of Health and Environmental Control as the department may require;

(e) maintain a current copy of the written protocol at each location at which a pharmacist administers an influenza vaccine pursuant to this section.

(3) A pharmacist may not delegate the administration of influenza vaccines to a pharmacy technician as defined in Section 40-43-30 or any other person who is not a pharmacist.

(4) A pharmacist administering influenza vaccines shall, as part of the current continuing education requirements pursuant to Section 40-43-130, complete no less than one hour of continuing education each license year regarding administration of influenza vaccines.

(C) Informed consent must be documented in accordance with the written protocol for influenza vaccine administration issued pursuant to this section.

(D) All records required by this section must be maintained in the pharmacy for a period of at least six years.

Section 40-43-200. (A) There is created a Joint Pharmacist Administered Influenza Vaccines Committee as a committee to the Board of Medical Examiners which consists of seven members with experience regarding influenza vaccines. The committee is comprised of two physicians selected by the Board of Medical Examiners, two pharmacists selected by the Board of Pharmacy, and two advanced practice nurse practitioners selected by the Board of Nursing. One member of the Department of Health and Environmental Control designated by the commissioner of the department also shall serve on the committee. Members of the committee may not be compensated for their service on the board and may not receive mileage, per diem, and subsistence as otherwise authorized by law for members of state boards, committees, and commissions.

(B) The committee shall meet at least once annually and at other times as may be necessary. Five members constitute a quorum for all meetings. At its initial meeting, and at the beginning of each year

thereafter, the committee shall elect from its membership a chairperson to serve for a one year term.

(C) The committee shall assist and advise the Board of Medical Examiners in establishing a written protocol for the purpose of authorizing pharmacists to administer influenza vaccines without an order of a practitioner as authorized by Section 40-43-190 and shall provide a suggested written protocol to the board no later than four months after the passage of this act."

Time effective

SECTION 2. This act takes effect July 1, 2010.

Ratified the 1st day of June, 2010.

Approved the 7th day of June, 2010.

No. 225

(R270, H3706)

AN ACT TO AMEND SECTION 8-13-1348, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE USE OF CAMPAIGN FUNDS FOR PERSONAL EXPENSES, SO AS TO AUTHORIZE A DEBIT CARD OR ONLINE TRANSFER ON A CAMPAIGN ACCOUNT MAY BE USED ON EXPENDITURES MORE THAN TWENTY-FIVE DOLLARS IN ADDITION TO A WRITTEN INSTRUMENT, AND PROVIDE CONDITIONS ON THESE BANKING TRANSACTIONS.

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

Use of campaign funds

SECTION 1. Section 8-13-1348(C) of the 1976 Code, as added by Act 248 of 1991, is amended to read:

"(C)(1) An expenditure of more than twenty-five dollars drawn upon a campaign account must be made by:

(a) a written instrument;

(b) debit card; or
(c) online transfers.

The campaign account must contain the name of the candidate or committee, and the expenditure must contain the name of the recipient. These expenditures must be reported pursuant to the provisions of Section 8-13-1308.

(2) Expenditures of twenty-five dollars or less that are not made by a written instrument, debit card, or online transfer containing the name of the candidate or committee and the name of the recipient must be accounted for by a written receipt or written record."

Time effective

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

Ratified the 1st day of June, 2010.

Approved the 7th day of June, 2010.

No. 226

(R271, H3735)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, TO ENACT THE "ANN S. PERDUE INDEPENDENT AUTOPSY FAIRNESS ACT OF 2010" BY ADDING SECTION 44-43-730 SO AS TO PROVIDE THAT IF A PERSON DIES IN A HOSPITAL OR HEALTH CARE FACILITY WHERE INVASIVE PROCEDURES ARE PERFORMED, THE PERSON AUTHORIZED TO CONSENT HAS THE RIGHT TO HAVE AN AUTOPSY PERFORMED; THE HOSPITAL OR HEALTH CARE FACILITY SHALL INFORM IN WRITING THE PERSON AUTHORIZED TO CONSENT OF THE RIGHT TO HAVE AN AUTOPSY PERFORMED AND THAT IT MUST BE PAID FOR BY A PRIVATE SOURCE; AND TO AMEND SECTION 17-5-530, RELATING TO CIRCUMSTANCES REQUIRING THE CORONER OR MEDICAL EXAMINER TO BE NOTIFIED OF CERTAIN DEATHS, SO AS TO REQUIRE SUCH NOTIFICATION WHEN A PERSON DIES IN A HEALTH

CARE FACILITY, OTHER THAN A NURSING HOME, WITHIN TWENTY-FOUR HOURS OF ENTERING THE HEALTH CARE FACILITY OR WITHIN TWENTY-FOUR HOURS OF HAVING AN INVASIVE SURGICAL PROCEDURE PERFORMED AT THE HEALTH CARE FACILITY, AND TO PROVIDE THAT THE AUTOPSY MUST NOT BE PERFORMED AT THE HEALTH CARE FACILITY OR BY A PHYSICIAN AT THE HEALTH CARE FACILITY.

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

Act citation

SECTION 1. This act may be cited as the "Ann S. Perdue Independent Autopsy Fairness Act of 2010".

Right to have an autopsy performed; payment for autopsy of person who died in a health care facility

SECTION 2. Article 9, Chapter 43, Title 44 of the 1976 Code is amended by adding:

"Section 44-43-730. If a patient dies in a hospital or a health care facility where invasive surgical procedures are performed, the person authorized to consent, as determined in accordance with Section 44-43-710, has the right to have an autopsy performed. The hospital or health care facility where invasive surgical procedures are performed, in writing, shall inform the person authorized to consent of this right. The notification must inform the person that if there is a charge for the autopsy the cost is to be paid by a private source."

Circumstances requiring notice of death to coroner or medical examiner; persons who may not perform autopsy

SECTION 3. Section 17-5-530 of the 1976 Code, is amended to read:

"Section 17-5-530. (A) If a person dies:
(1) as a result of violence;
(2) as a result of apparent suicide;
(3) when in apparent good health;
(4) when unattended by a physician;
(5) in any suspicious or unusual manner;

(6) while an inmate of a penal or correctional institution;

(7) as a result of stillbirth when unattended by a physician; or

(8) in a health care facility, as defined in Section 44-7-130(10) other than nursing homes, within twenty-four hours of entering a health care facility or within twenty-four hours after having undergone an invasive surgical procedure at the health care facility;

a person having knowledge of the death immediately shall notify the county coroner's or medical examiner's office. This procedure also must be followed upon discovery of anatomical material suspected of being or determined to be a part of a human body.

(B) The coroner or medical examiner shall make an immediate inquiry into the cause and manner of death and shall reduce the findings to writing on forms provided for this purpose. If the inquiry is made by a medical examiner, the medical examiner shall retain one copy of the form and forward one copy to the coroner. In the case of violent death, one copy must be forwarded to the county solicitor of the county in which the death occurred.

(C) The coroner or medical examiner shall notify in writing the deceased person's next-of-kin, if known, that in the course of performing the autopsy, body parts may have been retained for the purpose of investigating the cause and manner of death.

(D) In performing an autopsy or post-mortem examination, no body parts, as defined in Section 44-43-305, removed from the body may be used for any purpose other than to determine the cause or manner of death unless the person authorized to consent, as defined in Section 44-43-315, has given informed consent to the procedure. The person giving the informed consent must be given the opportunity to give informed consent and authorize the procedure on a witnessed, written consent form using language understandable to the average lay person after face-to-face communication with a physician, coroner, or medical examiner about the procedure. If the person authorizing the procedure is unable to consent in person, consent may be given through a recorded telephonic communication.

(E) If the coroner or medical examiner orders an autopsy upon review of a death pursuant to item (8) of subsection (A), the autopsy must not be performed at the health care facility where the death occurred or by a physician who treated the patient or is employed by the health care facility in which the death occurred."

Time effective

SECTION 4. This act takes effect July 1, 2010.

Ratified the 1st day of June, 2010.

Approved the 2nd day of June, 2010.

No. 227

(R273, H3800)

AN ACT TO AMEND SECTION 63-7-310, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO PERSONS REQUIRED TO REPORT ABUSE OR NEGLECT OF A CHILD, SO AS TO INCLUDE A SCHOOL ATTENDANCE OFFICER, FOSTER PARENT, JUVENILE JUSTICE WORKER, AND VOLUNTEER NON-ATTORNEY GUARDIAN AD LITEM SERVING ON BEHALF OF THE SOUTH CAROLINA GUARDIAN AD LITEM PROGRAM OR ON BEHALF OF RICHLAND COUNTY CASA AS AMONG THE PEOPLE WHO MUST REPORT CERTAIN ALLEGATIONS OF CHILD ABUSE OR NEGLECT, AND TO ENCOURAGE OTHER PEOPLE, INCLUDING, BUT NOT LIMITED TO, A VOLUNTEER NON-ATTORNEY GUARDIAN AD LITEM SERVING ON BEHALF OF THE SOUTH CAROLINA GUARDIAN AD LITEM PROGRAM OR ON BEHALF OF RICHLAND COUNTY CASA, TO REPORT THIS ABUSE.

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

People required to report a reason to believe child abuse or neglect occurred; additional categories of people required to report

SECTION 1. Section 63-7-310 of the 1976 Code, as added by Act 361 of 2008, is amended to read:

"Section 63-7-310. (A) A physician, nurse, dentist, optometrist, medical examiner, or coroner, or an employee of a county medical examiner's or coroner's office, or any other medical, emergency medical services, mental health, or allied health professional, member of the clergy including a Christian Science Practitioner or religious healer, school teacher, counselor, principal, assistant principal, school

attendance officer, social or public assistance worker, substance abuse treatment staff, or childcare worker in a childcare center or foster care facility, foster parent, police or law enforcement officer, juvenile justice worker, undertaker, funeral home director or employee of a funeral home, persons responsible for processing films, computer technician, judge, or a volunteer non-attorney guardian ad litem serving on behalf of the South Carolina Guardian Ad Litem Program or on behalf of Richland County CASA must report in accordance with this section when in the person's professional capacity the person has received information which gives the person reason to believe that a child has been or may be abused or neglected as defined in Section 63-7-20.

(B) If a person required to report pursuant to subsection (A) has received information in the person's professional capacity which gives the person reason to believe that a child's physical or mental health or welfare has been or may be adversely affected by acts or omissions that would be child abuse or neglect if committed by a parent, guardian, or other person responsible for the child's welfare, but the reporter believes that the act or omission was committed by a person other than the parent, guardian, or other person responsible for the child's welfare, the reporter must make a report to the appropriate law enforcement agency.

(C) Except as provided in subsection (A), a person, including, but not limited to, a volunteer non-attorney guardian ad litem serving on behalf of the South Carolina Guardian Ad Litem Program or on behalf of Richland County CASA, who has reason to believe that a child's physical or mental health or welfare has been or may be adversely affected by abuse and neglect may report, and is encouraged to report, in accordance with this section.

(D) Reports of child abuse or neglect may be made orally by telephone or otherwise to the county department of social services or to a law enforcement agency in the county where the child resides or is found."

Time effective

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

Ratified the 1st day of June, 2010.

Became law without the signature of the Governor -- 6/8/10.

No. 228

(R277, H4233)

AN ACT TO AMEND SECTION 12-21-1010, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO DEFINITIONS FOR PURPOSES OF THE BEER AND WINE LICENSE TAX, SO AS TO CONFORM THE DEFINITION OF "BEER" FOR PURPOSES OF THIS LICENSE TAX TO THE REVISED DEFINITION FOR "BEER" PROVIDED BY LAW FOR THE REGULATION OF BEER AND WINE SALES AND CONSUMPTION.

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

Definition of beer

SECTION 1. Section 12-21-1010(3) of the 1976 Code is amended to read:

"(3) The word 'beer' has the meanings provided pursuant to Section 61-4-10(1) and (2);"

Time effective

SECTION 2. Upon approval by the Governor, the revised definition of "beer" in Section 12-21-1010(3) of the 1976 Code, as amended by this act, applies retroactively to May 2, 2007.

Ratified the 1st day of June, 2010.

Approved the 7th day of June, 2010.

No. 229

(R279, H4505)

AN ACT TO AMEND SECTION 14-1-214, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO PAYMENT OF FINES, FEES, AND COURT COSTS BY CREDIT OR DEBIT CARD, SO AS TO INCLUDE REGISTERS OF DEEDS IN THE LIST OF PERSONS ASSOCIATED WITH THE COURTS WHO MAY ACCEPT PAYMENT BY CREDIT OR DEBIT CARD.

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

Court fees and fines, payment by credit or debit card, include register of deeds

SECTION 1. Section 14-1-214 of the 1976 Code, as added by Act 295 of 2002, is amended to read:

"Section 14-1-214. (A) Clerks of court, registers of deeds, magistrates, and municipal court judges may:

(1) accept payment by credit card or debit card of a fine, fee, assessment, court cost, or other surcharge; and

(2) impose a fee for processing payment by credit card. Notwithstanding fees imposed by other provisions of law, the clerk of court, register of deeds, magistrate, and municipal court judge must impose a separate fee on the person making a payment by credit card that wholly offsets the amount of administrative fees charged to the court.

(B) If a payment by credit card is not honored by the credit card company on which the funds are drawn, the:

(1) court or register of deeds, may collect a service charge from the person who owes the fine, fee, assessment, court cost, or other surcharge. The service charge is an addition to the original fine, fee, assessment, court cost, or other surcharge and is for the collection of that original amount. The amount of the service charge must be the same amount as the fee charged for the collection of a check drawn on an account with insufficient funds; and

(2) underlying obligation survives and the state or local government retains all remedies for enforcement which would have applied if the credit card transaction had not occurred.

(C) The court or register of deeds, collecting a fee or service charge pursuant to this section must deposit the credit card fee or service charge in the general fund of the court's respective governmental unit.

(D) The clerk of court, register of deeds, magistrate, or municipal court judge who accepts payment by credit card or debit card pursuant to this section may refuse acceptance of credit or debit cards of an individual if, the:

(1) individual has been convicted of a violation of Chapter 14, Title 16;

(2) individual has previously tendered to the court a credit or debit card or credit or debit card information which did not ultimately result in payment by the credit or debit card issuer;

(3) bank or credit card issuer does not authorize payment; or

(4) validity of the credit or debit card is not verifiable."

Time effective

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

Ratified the 1st day of June, 2010.

Approved the 7th day of June, 2010.

No. 230

(R280, H4508)

AN ACT TO AMEND SECTION 40-9-10, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO CHIROPRACTORS AND CHIROPRACTIC PRACTICE, SO AS TO ADD CERTAIN DEFINITIONS; TO AMEND SECTION 40-9-20, RELATING TO LICENSES REQUIRED FOR PERSONS PRACTICING CHIROPRACTIC PROCEDURES, SO AS TO EXCLUDE STUDENTS PARTICIPATING IN A PRECEPTORSHIP OR RESIDENCY TRAINING PROGRAM UNDER SPECIFIED CONDITIONS, TO REVISE THE CIRCUMSTANCES WHEN SPECIFIC CHARGES MAY BE MADE, AND TO DELETE THE EXCEPTION FOR SENIOR STUDENTS AT A CHIROPRACTIC COLLEGE CHARTERED BY THE STATE; AND BY ADDING SECTION 40-9-25 SO AS TO PROVIDE THE

CIRCUMSTANCES WHEN A STUDENT ENROLLED IN A PRECEPTORSHIP OR RESIDENCY TRAINING PROGRAM MAY PERFORM CHIROPRACTIC PROCEDURES.

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

Definitions

SECTION 1. Section 40-9-10 of the 1976 Code is amended by adding:

"(e) 'Preceptorship' or 'residency training program' means a clinical program of an approved college of chiropractic in which a chiropractic intern or resident practices chiropractic under the direct supervision of a licensed chiropractor.

(f) 'Chiropractic preceptor' means a person licensed under this chapter who is approved by the board to supervise chiropractic students in the performance of chiropractic at a location other than the premises of a chiropractic college in which the student is enrolled. A chiropractic preceptor must:

(1) have been licensed to practice chiropractic in South Carolina for not less than five years;

(2) not have been publicly or privately sanctioned by a chiropractic licensure board in any state;

(3) sign a sworn statement that he or she has not knowingly violated state or federal rules or regulations including, but not limited to, those pertaining to the repayment of guaranteed federally funded student loans;

(4) receive written approval of the chiropractic college to serve as an adjunct faculty member for the purpose of an individual student's preceptorship or residency training program;

(5) supervise no more than one chiropractic student at a time at a location other than the premises of the chiropractic college in which the student is enrolled.

(g) 'Direct supervision' means the chiropractic preceptor must be within the immediate patient treatment area and available to the student at all times."

Students in training program and charges

SECTION 2. Section 40-9-20 of the 1976 Code is amended to read:

"Section 40-9-20. (A) No person may practice chiropractic in this State without a license issued by the South Carolina Board of Chiropractic Examiners as provided in this chapter, except students participating in a preceptorship or residency training program may perform without a license chiropractic procedures under the direct supervision of a chiropractic preceptor. These procedures and this supervision must be practiced within the confines of the appropriate chiropractic college or office of a licensed chiropractor.

(B) No charges for professional service may be made to any patient or to his insurance company for any work performed on the patient by the students or by the licensed chiropractor on the college staff while supervising the students or by the licensed chiropractor in an office while supervising the students. However, the chiropractic college or the office of the licensed chiropractor may charge the patient for the actual costs and expenses it incurs for the use of its clinical property or facilities by the patient.

(C) This section does not apply to any chiropractic college which has failed to attain accredited status from the Council on Chiropractic Education or its successors or from the Commission on Accreditation of the Straight Chiropractic Academic Standards Association."

Student may perform procedures

SECTION 3. Chapter 9, Title 40 of the 1976 Code is amended by adding:

"Section 40-9-25. A student enrolled in a preceptorship or residency training program may perform chiropractic procedures only if:

(a) the student has met all academic requirements for graduation from an accredited chiropractic college approved by the board; and

(b) the chiropractic procedures are performed only under the direct supervision of the student's chiropractic preceptor."

Time effective

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

Ratified the 1st day of June, 2010.

Approved the 7th day of June, 2010.

No. 231

(R281, H4572)

AN ACT TO AMEND SECTION 61-4-940, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO PRACTICES BETWEEN MANUFACTURERS, WHOLESALERS, AND RETAILERS OF BEER AND OTHER MALT BEVERAGES, SO AS TO ALLOW WHOLESALERS OF BEER TO TEMPORARILY STORE EQUIPMENT USED IN DELIVERY OF BEER WITH THE RETAILER WITH HIS CONSENT AND TO AUTHORIZE WHOLESALERS OF BEER TO SUPPLY RETAIL DEALERS OF BEER WITH DISPLAYS THAT ARE ALLOWED BY FEDERAL REGULATIONS; BY ADDING SECTION 61-4-1515 SO AS TO ALLOW A BREWERY TO OFFER BEER TASTINGS UNDER CERTAIN CONDITIONS AND TO PROVIDE FOR THE PAYMENT OF APPROPRIATE TAXES; AND BY ADDING SECTION 61-4-960 SO AS TO ALLOW HOLDERS OF RETAIL PERMITS THAT AUTHORIZE THE SALE OF BEER OR WINE FOR OFF-PREMISES CONSUMPTION TO HOLD A LIMITED NUMBER OF BEER TASTINGS AT THE RETAIL LOCATION EACH YEAR UNDER CERTAIN CIRCUMSTANCES.

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

Wholesalers and retailers of beer, storage of equipment, beer displays

SECTION 1. Section 61-4-940(B), (C), and (F) of the 1976 Code is amended to read:

"(B) Except as provided in subsection (C), a manufacturer, brewer, importer, or wholesaler of beer, or a person acting on his behalf, must not furnish, give, rent, lend, or sell, directly or indirectly, to the holder of a retail permit any equipment, fixtures, free beer, or service. The

holder of a retail permit, or a person acting on his behalf, must not accept, directly or indirectly, any equipment, fixtures, free beer, or service referred to in this subsection from a manufacturer, brewer, importer, or wholesaler of beer, except as provided in subsection (C). With the consent of a holder of a retail permit, the wholesaler may store for a temporary period at the permit holder's licensed location equipment primarily utilized by the wholesaler in delivery and stocking of beer including, but not limited to, pallets, carts, and hand trucks.

(C) A wholesaler may furnish at no charge to the holder of a retail permit draft beer equipment replacement parts of nominal value, including washers, gaskets, hoses, hose connectors, clamps, and tap markers, party wagons for temporary use, and point of sale advertising specialties. A wholesaler may furnish at no charge to the holder of a retail permit product displays pursuant to the provisions of 27 C.F.R., Section 6.83, excluding electronic refrigeration equipment. A wholesaler also may furnish the following services to a retailer: cleaning draught lines, setting boxes, rotating stock, affixing price tags to beer products, and building beer displays.

(F) No person or entity in the beer business on one tier may require a person or entity in the beer business on another tier to advertise or participate in a discount or special promotion or furnish the items delineated in subsection (C)."

Breweries, beer tastings

SECTION 2. Article 15, Chapter 4, Title 61 of the 1976 Code is amended by adding:

"Section 61-4-1515. (A) Notwithstanding another provision of law, a brewery in this State is authorized to offer samples of beer brewed in this State on its licensed premises, with or without cost, to consumers under the following conditions:

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

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

(3) a sample shall be no more than two ounces per brand of beer with over eight percent alcohol by weight and no more than four

ounces of beer with under eight percent alcohol by weight brewed at the licensed premises; and

(4) no more than four brands of beer brewed at the licensed premises may be sampled by a consumer in a twenty-four hour period.

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

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

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

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

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

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

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

(C) A person who violates the provisions of this section must be assessed a fine of one hundred dollars for each violation in addition to other applicable fines and penalties. The revenue from the one hundred dollar fine must be directed to the Department of Revenue for supplementing funds required for the department's activities concerning licensure and regulation of alcohol."

Retailers of beer for off-premises consumption, beer tastings

SECTION 3. Article 9, Chapter 4, Title 61 of the 1976 Code is amended by adding:

"Section 61-4-960. (A) Notwithstanding another provision of law or regulation, the holder of a retail permit authorizing the sale of beer for off-premises consumption whose primary product is beer or wine may conduct, in accordance with department rulings or regulations, not

more than twenty-four beer tastings at any one retail location in a calendar quarter, provided that:

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

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

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

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

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

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

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

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

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

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

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

(12) the tasting may not be held in conjunction with a wine tasting pursuant to Section 61-4-737;

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

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

(B) A person who violates the provisions of this section must be assessed a fine of one hundred dollars for each violation in addition to other applicable fines and penalties. The revenue from the one hundred dollar fine must be directed to the Department of Revenue for supplementing funds required for the department's activities concerning licensure and regulation of alcohol."

General Assembly's findings, one subject

SECTION 4. The General Assembly finds that all the provisions contained in this act relate to one subject as required by Section 17, Article III of the South Carolina Constitution in that each provision relates directly to or in conjunction with other sections to the subject of beer provisions concerning retail dealers, wholesalers, and breweries as stated in the title. The General Assembly further finds that a common purpose or relationship exists among the sections, representing a potential plurality but not disunity of topics, notwithstanding that reasonable minds might differ in identifying more than one topic contained in this act.

Severability clause

SECTION 5. The provisions of this act are severable. If any section, subsection, paragraph, item, subitem, 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 the act, the General Assembly hereby declaring that it would have passed 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, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

Time effective

SECTION 6. This act becomes effective upon signature of the Governor.

Ratified the 1st day of June, 2010.

Approved the 7th day of June, 2010.

No. 232

(R282, H4663)

AN ACT TO AMEND SECTION 12-6-3622, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO FIRE SPRINKLER SYSTEM TAX CREDITS, SO AS TO CREATE A STUDY COMMITTEE TO DEVELOP NEW STRATEGIES TO INCREASE PARTICIPATION IN THE TAX CREDIT PROGRAM BY ALL LOCAL TAXING ENTITIES AND TO REVIEW AND MAKE RECOMMENDATIONS FOR INCREASING THE INSTALLATION OF INTERCONNECTED HARD-WIRE SMOKE ALARMS, TO REQUIRE A REPORT OF THE COMMITTEE'S FINDINGS NO LATER THAN JANUARY 30, 2011, TO PROVIDE THE COMMITTEE SHALL DISSOLVE UPON THE DATE OF ITS REPORT, TO PROVIDE THE COMMITTEE'S MEMBERSHIP AND COMPOSITION, AND TO PROVIDE THE COMMITTEE MEMBERS MUST SERVE WITH NO COMPENSATION FOR PER DIEM, MILEAGE, OR SUBSISTENCE; BY ADDING SECTION 6-9-55 SO AS TO PROVIDE THE BUILDING CODES COUNCIL SHALL PROMULGATE AS REGULATIONS ANY PROVISION OF OR AMENDMENT TO A BUILDING CODE THAT WOULD AFFECT CONSTRUCTION REQUIREMENTS FOR ONE-FAMILY OR TWO-FAMILY DWELLINGS, AND THAT A BUILDING CODE PROVISION CONCERNING THESE CONSTRUCTION REQUIREMENTS THAT WOULD OTHERWISE BECOME EFFECTIVE AFTER THE EFFECTIVE DATE OF THIS SECTION MAY NOT BE ENFORCED UNTIL THE EFFECTIVE DATE OF THE REGULATION PROMULGATED PURSUANT TO THIS SECTION, AND TO PROVIDE A REGULATION MANDATING THE INSTALLATION OF AN AUTOMATIC RESIDENTIAL FIRE SPRINKLER SYSTEM IN A ONE-FAMILY OR

TWO-FAMILY DWELLING MAY NOT BECOME EFFECTIVE BEFORE JANUARY 1, 2014; TO AMEND SECTION 58-5-390, RELATING TO FEES FOR THE INSTALLATION OF A FIRE SPRINKLER SYSTEM, SO AS TO PROVIDE NOTHING IN THIS SECTION MAY GIVE THE PUBLIC SERVICE COMMISSION OR THE OFFICE OF REGULATORY STAFF POWER TO REGULATE OR INTERFERE WITH PUBLIC UTILITIES OWNED OR OPERATED BY OR ON BEHALF OF A MUNICIPALITY, COUNTY, OR REGIONAL TRANSPORTATION AUTHORITY; AND TO REPEAL SECTION 6-9-135 RELATING TO CERTAIN ADOPTED FLOOD COVERAGE PROVISIONS OF THE 2006 INTERNATIONAL RESIDENTIAL CODE.

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

Fire Sprinkler System Tax Credit Study Committee created; purposes, duties, dissolution, composition, prohibition on compensation

SECTION 1. Section 12-6-3622 of the 1976 Code, as added by Act 357 of 2008, is amended by adding at the end:

"(E)(1)The General Assembly shall appoint a study committee to develop new strategies to increase participation in the tax credit program by all local taxing entities, and to review and make recommendations for increasing the installation of interconnected hard-wired smoke alarms. The study committee shall make a report of its findings to the General Assembly no later than January 30, 2011. The committee shall dissolve upon the date of its report.

(2) The study committee shall be composed of six members. Three members shall be appointed by the President Pro Tempore of the Senate and three members appointed by the Speaker of the House of Representatives. The study committee must be composed of a representative of the South Carolina Fire Sprinkler Association, a representative of the South Carolina Home Builders Association, a representative of the South Carolina Association of Counties, and a representative of the Municipal Association of South Carolina.

(3) Members of the study committee shall serve without any compensation for per diem, mileage, and subsistence."

Building Codes Council to promulgate certain regulations; regulation mandating installation of automatic residential fire sprinkler system in certain dwellings ineffective before certain date

SECTION 2. Chapter 9, Title 6 of the 1976 Code is amended by adding:

"Section 6-9-55. (A) The council shall promulgate as regulations, in accordance with the procedure and requirements contained in Article 1, Chapter 23, Title 1, any provision of or amendment to any building code that would affect construction requirements for one-family or two-family dwellings. No building code provision that would otherwise become effective after the effective date of this section concerning construction requirements for one-family or two-family dwellings shall be enforced until the effective date of the regulations required to be promulgated by this section.

(B) Notwithstanding subsection (A), a regulation mandating the installation of an automatic residential fire sprinkler system in one-family or two-family dwellings shall not become effective at any time before January 1, 2014."

Fire sprinkler system tap fees; Public Service Commission and Office of Regulatory Staff may not regulate or interfere with certain local public utilities

SECTION 3. Section 58-5-390 of the 1976 Code, as added by Act 357 of 2008, is amended to read:

"Section 58-5-390. (A) A publicly or privately owned utility may not impose a tap fee, other fee, or a recurring maintenance fee of any nature or however described for the installation and maintenance of a fire sprinkler system that exceeds the actual costs associated with the water line to the system.

(B) For purposes of this section, actual costs include direct labor, direct material, the necessity of increased capacity, and other direct charges associated with the separate fire sprinkler line. The direct costs must be documented by either an invoice or work order that specifically assigns the costs to the separate fire sprinkler line. Nothing in this section may be construed as requiring a utility to provide service to support a private fire protection system.

(C) Nothing in this section shall give the commission or the regulatory staff any power to regulate or interfere with public utilities

owned or operated by or on behalf of any municipality, county, or regional transportation authority as defined in Chapter 25 of this title or their agencies."

Repealed section

SECTION 4. Section 6-9-135 of the 1976 Code is repealed.

Time effective

SECTION 5. Except where otherwise provided, this act takes effect upon approval by the Governor.

Ratified the 1st day of June, 2010.

Approved the 7th day of June, 2010.

No. 233

(R287, S974)

AN ACT TO AMEND SECTION 50-9-20, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE DURATION OF HUNTING AND FISHING LICENSES, SO AS TO FURTHER SPECIFY THE DURATION OF TEMPORARY, ANNUAL, THREE-YEAR, THREE-YEAR DISABILITY, AND CATAWBA INDIAN LICENSES; TO AMEND SECTION 50-9-30, RELATING TO RESIDENCY REQUIREMENTS FOR HUNTING AND FISHING LICENSES, SO AS TO FURTHER SPECIFY THESE REQUIREMENTS FOR RECREATIONAL AND COMMERCIAL LICENSES; BY ADDING SECTION 50-9-35 SO AS TO PROVIDE THAT THE DURATION OF A RESIDENT LICENSE CONTINUES UNTIL ITS EXPIRATION IF THE LICENSEE BECOMES A NONRESIDENT; TO AMEND SECTION 50-9-40, AS AMENDED, RELATING TO THE APPLICATION OF FISHING LICENSE REGULATIONS TO RECREATIONAL FRESHWATER FISHING, SO AS TO PROVIDE THAT THE DEPARTMENT OF NATURAL RESOURCES SHALL PRESCRIBE THE FORM AND TYPE OF LICENSES, THE PROCEDURES AND AGREEMENTS

ALLOWING VENDORS TO SELL LICENSES AND PROCEDURES FOR REMITTING FEES COLLECTED TO THE DEPARTMENT; BY ADDING SECTION 50-9-45 SO AS TO PROVIDE THAT SOUTH CAROLINA MEMBERS OF THE ARMED FORCES, UPON PRESENTATION OF PROPER DOCUMENTATION, MAY FISH AND HUNT WITHOUT OBTAINING A LICENSE; TO AMEND SECTION 50-9-75, RELATING TO CRIMINAL PENALTIES FOR ATTEMPTING TO OBTAIN A LICENSE WHEN THE PERSON'S LICENSE IS SUSPENDED, SO AS TO PROVIDE THAT WHEN A PORTION OF A COMBINATION LICENSE IS SUSPENDED, THE HOLDER MUST SURRENDER THE LICENSE AND OBTAIN SEPARATE LICENSES FOR THE UNSUSPENDED ACTIVITIES; BY ADDING SECTION 50-9-350 SO AS TO PROVIDE ACTIONS THE DEPARTMENT MAY TAKE TO ENCOURAGE THE RECRUITMENT OF PERSONS TO BE APPRENTICE HUNTERS WHILE ALSO LEARNING TO BE RESPONSIBLE HUNTERS; TO AMEND ARTICLE 5 OF CHAPTER 9, TITLE 50, RELATING TO HUNTING AND FISHING LICENSES, SO AS TO FURTHER SPECIFY RESIDENT AND NONRESIDENT LICENSE AND PERMIT REQUIREMENTS AND FEES FOR HUNTING, HUNTING BIG GAME, HUNTING ON WILDLIFE MANAGEMENT AREAS, HUNTING MIGRATORY GAME BIRDS AND MIGRATORY WATERFOWL, AND HUNTING AUTHORIZED RELEASED SPECIES ON A LICENSED SHOOTING PRESERVE; TO FURTHER SPECIFY REQUIREMENTS TO OBTAIN A COMBINED STATEWIDE LICENSE FOR HUNTING AND FISHING; TO FURTHER SPECIFY REQUIREMENTS TO OBTAIN A STATEWIDE COMBINATION HUNTING AND FISHING LICENSE; TO FURTHER SPECIFY REQUIREMENTS TO OBTAIN HUNTING AND FISHING LICENSES AT NO COST BY PERSONS WHO ARE DISABLED, PERSONS BASED ON THEIR SENIOR AGE STATUS, AND CATAWBA INDIANS; TO PROVIDE RESIDENT AND NONRESIDENT REQUIREMENTS TO OBTAIN RECREATIONAL STATEWIDE SALTWATER AND FRESHWATER FISHING LICENSES AND TO OBTAIN A LAKES AND RESERVOIRS FISHING PERMIT; TO PROVIDE REQUIREMENTS FOR THE PRIVILEGE OF OPERATING A FISHING PIER OR A CHARTER FISHING VESSEL; AND TO PROVIDE THAT IT IS UNLAWFUL TO HUNT MIGRATORY

GAME BIRDS WITHOUT A MIGRATORY GAME BIRD PERMIT; BY ADDING ARTICLE 6 TO CHAPTER 9, TITLE 50 SO AS TO PROVIDE LICENSURE AND PERMIT REQUIREMENTS FOR HUNTING ANTLERLESS DEER AND MIGRATORY WATERFOWL AND TO PROVIDE THAT THE DEPARTMENT SHALL PRODUCE FOR SALE COMMEMORATIVE STAMPS AND TO PROVIDE FOR THE USE OF FUNDS GENERATED FROM THESE SALES; TO AMEND SECTION 50-9-710, RELATING TO HUNTING AND FISHING LICENSES FOR CHILDREN UNDER SIXTEEN, FISHING IN A PRIVATE POND AND PAY-TO-FISH COMMERCIAL BUSINESSES, SO AS TO FURTHER SPECIFY REQUIREMENTS TO ENGAGE IN THESE ACTIVITIES WITHOUT A LICENSE; TO AMEND ARTICLE 9, CHAPTER 9, TITLE 50, RELATING TO THE DISPOSITION OF FINES AND FORFEITURES FOR VIOLATIONS OF VARIOUS PROVISIONS IN TITLE 50 AND FOR THE DISTRIBUTION OF LICENSE AND PERMIT FEES, SO AS TO FURTHER SPECIFY THE REVENUE SOURCES AND AUTHORIZED USES OF THIS REVENUE FOR THE FISH AND WILDLIFE PROTECTION FUND, FISH AND WILDLIFE DEFERRED LICENSE FUND, MARINE RESOURCES FUND, MARINE RESOURCES DEFERRED LICENSE FUND, AND COUNTY GAME AND FISH FUND; TO AMEND SECTION 50-11-390, RELATING TO THE DEPARTMENT'S REGULATION OF HUNTING ANTLERLESS DEER, SO AS TO DELETE PROVISIONS ENACTED IN OTHER SECTIONS OF THIS ACT; AND TO REPEAL SECTIONS 50-1-160, 50-3-790, 50-3-800, AND 50-11-1240, ALL RELATING TO HUNTING AND FISHING LICENSES, LICENSE FEES, AND DISTRIBUTION OF CERTAIN FEES.

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

Duration of hunting and fishing licenses

SECTION 1. Section 50-9-20 of the 1976 Code, as last amended by Act 15 of 2009, is further amended to read:

"Section 50-9-20. (A) The duration for hunting and fishing licenses, permits, stamps, and tags is as follows:

(1) A temporary privilege expires after the specified number of consecutive days from the start date inclusive of the start date and expiration date.

(2) An annual privilege expires on the last day of the license year for which the license was issued.

(3) A three year privilege expires on the last day of the third license year of issue.

(4) A three year disability license expires three years from the date of issue.

(5) The Catawba Indian license ends October 27, 2092.

(B) License year means: period beginning July first and ending June thirtieth.

(C) This section does not alter the start date or expiration date of a permit which by law has other terms."

Residency requirements for licenses

SECTION 2. Section 50-9-30 of the 1976 Code is amended to read:

"Section 50-9-30. (A) For the purposes of obtaining:

(1) a recreational license, permit, or tag with a duration of three hundred sixty-five days or less, 'resident' means a United States citizen who has been domiciled in this State for thirty consecutive days or more immediately preceding the date of application;

(2) a multiyear recreational license, 'resident' means a United States citizen who has been domiciled in this State for one hundred eighty consecutive days or more immediately preceding the date of application;

(3) a recreational license, permit, or tag in item (1) or (2), the following are considered residents:

(a) a regularly enrolled full-time student in a high school, technical school, college, or university within this State;

(b) an active member of the United States Armed Forces, and the member's dependents, stationed in this State for sixty days or longer or who is domiciled in this State;

(4) a lifetime recreational license, 'resident' means a United States citizen who has been domiciled in this State for one hundred eighty consecutive days or more immediately preceding the date of application;

(5) a disability recreational license, 'resident' means a United States citizen who has been domiciled in this State for three hundred

sixty-five consecutive days or more immediately preceding the date of application;

(6)(a) a commercial license, permit, or tag, 'resident' means a United States citizen who has been domiciled in this State for three hundred sixty-five consecutive days or more immediately preceding the date of application;

(b) a commercial license or permit, issued for a business, 'resident' means a business that has been incorporated and operating in this State for three hundred sixty-five days or more immediately preceding the date of application.

(B) An applicant for a resident license must furnish proof of residency as may be required by the department.

(C)(1) 'Nonresident' means a citizen of a foreign country or a United States citizen who is not domiciled in this State or who maintains a permanent residence in another state or who does not otherwise meet the definition of a resident.

(2) For a business, a 'nonresident' means a business that is not incorporated in this State or that does not otherwise meet the definition of resident in subitem(A)(6)(b)."

Transfer of residency

SECTION 3. Article 1, Chapter 9, Title 50 of the 1976 Code is amended by adding:

"Section 50-9-35. A person who obtains a license, permit, stamp, or tag as a resident and subsequently transfers their domiciled residency outside of this State, does not lose the privileges for the duration of the license. However, a privilege required to engage in hunting and fishing activities not authorized by the license must be obtained as a nonresident."

License procedures and fees

SECTION 4. Section 50-9-40 of the 1976 Code, as last amended by Act 15 of 2009, is further amended to read:

"Section 50-9-40. (A) The department shall prescribe the form of the license and method by which licenses, permits, and tags must be distributed and sold.

(B) The department shall establish procedures and agreements for allowing license sales vendors to sell and distribute certain department licenses and permits.

(C) License and permit fees collected by a license sales vendor, except for any sales vendor's retained fee, must be remitted to the department in the time and manner prescribed by the department."

Licenses for South Carolinians in the Armed Services

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

"Section 50-9-45. An active duty member of the Armed Forces of the United States whose home of record is South Carolina and who is stationed outside of the State, shall, upon presentation of his leave and earnings statement, be allowed to fish and hunt without purchasing a fishing or hunting license."

Surrender of combination licenses

SECTION 6. Section 50-9-75 of the 1976 Code is amended to read:

"Section 50-9-75. (A) It is unlawful to purchase, acquire, or possess or attempt to purchase, acquire, or possess a license, permit, stamp, or tag while privileges allowed by the license, permit, stamp, or tag are suspended.

(B) A combination license holder who has a portion of his privileges suspended must surrender the combination license. To engage in those activities from which he has not been suspended he must obtain a separate license.

(C) A person who violates this section is guilty of a misdemeanor and, upon conviction, must be fined not less than two hundred dollars and not more than five hundred dollars or imprisoned for not more than thirty days. A person convicted pursuant to this section forfeits all hunting and fishing privileges for an additional two years."

Apprentice hunting licenses

SECTION 7. Article 3, Chapter 9, Title 50 of the 1976 Code is amended by adding:

"Section 50-9-350. To encourage the recruitment of persons as responsible hunters:

(1) The certificate of completion requirement may be waived for one license year, and a person only may receive such a waiver one time. An apprentice hunting license may be issued if the applicant:

(a) is at least sixteen years of age and otherwise required to obtain a certificate of completion to obtain a hunting license;

(b) has not been convicted of or received deferred adjudication for violation of the hunter education requirement in this State; and

(c) has not been convicted of a hunting violation.

(2) In addition to obtaining the apprentice hunting license, the applicant must obtain any other license, permit, receipt, stamp, and tag required to participate in a specific hunting activity.

(3) While afield, the apprentice hunter must be accompanied by a licensed hunter who:

(a) has attained the age of twenty-one years;

(b) is not licensed as an apprentice hunter;

(c) stays within a distance that enables uninterrupted, unaided, visual and oral communication with the apprentice hunter and provides adequate direction to the apprentice.

(4) The apprentice license is valid only during the license year in which it is issued, and the duration of any other hunting permits obtained with this license may not exceed that of the apprentice license."

Hunting and fishing licenses

SECTION 8. Chapter 9, Title 50 of the 1976 Code is amended to read:

"Article 5

Hunting and Fishing Licenses

Section 50-9-510. (A) For the privilege of hunting:

(1) a resident shall purchase:

(a) an annual county hunting license, which is valid only in the licensee's county of residence, for five dollars, one dollar of which the issuing sales vendor may retain;

(b) an annual statewide hunting license for twelve dollars, one dollar of which the issuing sales vendor may retain;

(c) a three year statewide hunting license for thirty-six dollars, three dollars of which the issuing sales vendor may retain; or

(d) a lifetime statewide hunting license for three hundred dollars at designated licensing locations;

(2) a resident who meets the qualifications as an apprentice hunter shall purchase an annual statewide apprentice hunting license for twelve dollars, one dollar of which the issuing sales vendor may retain;

(3) a nonresident shall purchase:

(a) a three day temporary statewide hunting license for forty dollars, one dollar of which the issuing sales vendor may retain;

(b) a ten day temporary statewide hunting license for seventy-five dollars, two dollars of which the issuing sales vendor may retain; or

(c) an annual statewide hunting license for one hundred twenty-five dollars, two dollars of which the issuing sales vendor may retain;

(4) a nonresident who meets the qualifications as an apprentice hunter shall purchase an annual statewide apprentice hunting license for one hundred twenty-five dollars, two dollars of which the issuing sales vendor may retain.

(B) For the privilege of hunting big game including bear, deer, and wild turkey:

(1) a resident shall purchase in addition to the required hunting license:

(a) an annual big game permit, in addition to the required hunting license, for six dollars, one dollar of which the issuing sales vendor may retain; or

(b) a three year big game permit for eighteen dollars, three dollars of which the issuing sales vendor may retain; however, the three year permit is only available to a person:

(i) purchasing a three year hunting license;

(ii) holding a three year hunting license in the first year of issue; or

(iii) holding a lifetime hunting license;

(2) a nonresident shall purchase in addition to the required hunting license, a big game permit for one hundred dollars, two dollars of which the issuing sales vendor may retain.

(C)(1) On wildlife management areas, in addition to the required hunting license, a resident shall purchase:

(a) an annual wildlife management area permit for thirty dollars and fifty cents, one dollar of which the issuing sales vendor may retain; or

(b) a three year wildlife management area permit for ninety-one dollars and fifty cents, three dollars of which the issuing sales vendor may retain; however, the three year permit is only available to a person:

(i) purchasing a three year hunting license;

(ii) holding a three year hunting license in its first year;

(iii) holding a lifetime hunting license; or

(iv) holding a lifetime combination license.

(2) On wildlife management areas, the department may issue residents temporary wildlife management area permits from the department's designated licensing locations for department specified hunting events for five dollars and fifty cents.

(3) On wildlife management area lands, in addition to the required hunting license, a nonresident shall purchase a wildlife management area permit for seventy-six dollars, one dollar of which the issuing sales vendor may retain.

(D) For the privilege of hunting migratory game birds, in addition to the required hunting license:

(1) a resident must obtain an annual migratory game bird permit at no cost;

(2) a nonresident must obtain an annual migratory game bird permit at no cost;

(E) For the privilege of hunting migratory waterfowl, in addition to the required hunting license and permits:

(1) a resident shall purchase a migratory waterfowl permit for five dollars and fifty cents, one dollar of which the issuing sales vendor may retain;

(2) a nonresident shall purchase a migratory waterfowl permit for five dollars and fifty cents, one dollar of which the issuing sales vendor may retain.

(F) For the privilege of hunting only the authorized released species on a licensed shooting preserve, in lieu of a hunting license, an individual may purchase an annual statewide shooting preserve license for eight dollars and fifty cents, one dollar of which the issuing sales vendor may retain.

Section 50-9-515. For the combined statewide privilege of:

(1) hunting, including the privilege of hunting big game and freshwater fishing, a resident may purchase:

(a) an annual combination license for twenty-five dollars, two dollars of which the issuing sales vendor may retain; or

(b) a three year combination license for seventy-five dollars, six dollars of which the issuing sales vendor may retain.

(2) hunting, including the privilege of hunting big game and hunting on wildlife management area lands and freshwater fishing:

(a) a resident may purchase:

(i) an annual sportsman's license for fifty dollars, two dollars of which the issuing sales vendor may retain; or

(ii) a three year sportsman's license for one hundred fifty dollars, six dollars of which the issuing sales vendor may retain.

(b) a resident who is at least sixteen years of age but who has not reached eighteen years of age may purchase an annual junior sportsman license for sixteen dollars, one dollar of which the issuing sales vendor may retain.

Section 50-9-520. (A) A resident may obtain a lifetime statewide combination license from the department at its designated licensing locations, which grants the same privileges as an annual combination license. The license fee is based on the age of the applicant. If at the time of application the individual is:

(1) under two years of age, the fee is three hundred dollars;

(2) at least two years of age, but less than sixteen years of age, the fee is four hundred dollars;

(3) at least sixteen years of age but less than sixty-four years of age, the fee is five hundred dollars.

(B) A resident who holds a lifetime combination license may obtain the privilege of statewide saltwater recreational fishing from the department at its designated licensing locations. The license fee is based on the age of the applicant. If at the time of application the individual is:

(1) under two years of age, the fee is one hundred twenty dollars;

(2) at least two years of age but less than sixteen years of age, the fee is one hundred sixty dollars;

(3) at least sixteen years of age but less than sixty-four years of age, the fee is two hundred dollars.

(C) A resident who holds a lifetime combination license may obtain the privilege of hunting migratory waterfowl from the department at its designated licensing locations. The permit fee is based on the age of the applicant. If at the time of application the individual is:

(1) under two years of age, the fee is sixty-six dollars;

(2) at least two years of age but less than sixteen years of age, the fee is eighty-eight dollars;

(3) at least sixteen years of age but less than sixty-four years of age, the fee is one hundred ten dollars.

(D) Privileges in subsections (B) and (C) also may be obtained simultaneously when application is made for licenses in subsection (A).

Section 50-9-525. (A) A resident who is determined to be totally disabled under a Social Security program, the Civil Service Retirement System, the South Carolina State Retirement System, the Railroad Retirement Board, the Veterans Administration, or Medicaid, or their successor agencies or programs, may obtain a three year disability combination license or a three year disability fishing license at no cost. The license must be issued by the department from its designated offices and is valid for three years from the date of issue. Disability recertification is required for renewal. To recertify, an applicant must furnish proof, in the manner prescribed by the department, that he or she is currently receiving disability benefits and is a domiciled resident of this State.

(B) A resident on the date of application for a disability license, with quadriplegia or paraplegia, who is certified as totally disabled, must be issued a lifetime disability combination license or a lifetime disability fishing license at no cost. Disability recertification or renewal of this license is not required.

(C) A resident born after June 30, 1979, who has not completed the required hunter education certification only may obtain a disability fishing license at no cost. Upon completion of the hunter education certification, the licensee may apply to the department for the additional disability hunting privileges at no cost.

(D) A disability license issued to a person who is no longer domiciled in this State is void and the person must obtain the required nonresident licenses, permits, stamps, and tags to hunt and fish in this State.

(E)(1) A disability combination license includes the statewide privileges of hunting big game, hunting migratory waterfowl, hunting on wildlife management area lands, freshwater fishing, and saltwater fishing.

(2) A disability fishing license includes the privileges of freshwater fishing and saltwater fishing.

Section 50-9-530. (A) A resident born before July 1, 1940, may obtain from the department at its designated licensing locations a gratis lifetime hunting and fishing license at no cost.

(B) A resident born after June 30, 1940, who has attained the age of sixty-four years may obtain from the department at its designated licensing locations a senior lifetime hunting and fishing license for nine dollars, one dollar of which the issuing sales vendor may retain.

(C) A resident born after June 30, 1979, who has attained the age of sixty-four years and who has not completed the required hunter education certification, may obtain a senior lifetime fishing license for nine dollars, one dollar of which the issuing sales vendor may retain. Upon completion of the hunter education certification the licensee may apply to the department for the additional senior lifetime hunting privileges at no cost.

(D) A member of the Catawba Indian Tribe, who is a resident of this State, upon application to the department at its designated licensing locations may obtain a Catawba hunting and fishing license at no cost. A certification must be included with the application from the Chief of the Catawba Indian Tribe stating the applicant is a bona fide member of the tribe.

(E) A member of the Catawba Indian Tribe, who is a resident of this State born after June 30, 1979, and who has not completed the required hunter education certification, may obtain a Catawba fishing license at no cost. Upon completion of the hunter education certification the licensee may apply to the department for the additional Catawba hunting privileges at no cost.

(F) Gratis, senior, and Catawba licenses hunting privileges include statewide hunting, hunting big game, hunting on wildlife management area lands, and hunting migratory waterfowl. The fishing privileges of these licenses include freshwater fishing, freshwater fishing using a set hook, and saltwater fishing.

Section 50-9-535. A resident who holds a lifetime hunting, lifetime combination, lifetime freshwater fishing, or lifetime saltwater recreational fishing license, upon attaining the age of sixty-four, may convert that license to a senior lifetime license for a fee of nine dollars, one dollar of which the issuing sales vendor may retain.

Section 50-9-540. (A) For the privilege of recreational statewide fishing in saltwater:

(1) a resident shall purchase:

(a) a fourteen day temporary saltwater fishing license for five dollars, one dollar of which the issuing sales vendor may retain;

(b) an annual saltwater fishing license for ten dollars, one dollar of which the issuing sales vendor may retain;

(c) a three year saltwater fishing license for thirty dollars, one dollar of which the issuing sales vendor may retain; or

(d) a lifetime statewide saltwater fishing license for three hundred dollars at designated licensing locations;

(2) a nonresident shall purchase:

(a) a fourteen day temporary saltwater fishing license for eleven dollars, one dollar of which the issuing sales vendor may retain;

(b) an annual saltwater fishing license for thirty-five dollars, one dollar of which the issuing sales vendor may retain; or

(c) a three year saltwater fishing license for one hundred five dollars, three dollars of which the issuing sales vendor may retain.

(B) For the privilege of recreational statewide fishing in freshwater:

(1) a resident shall purchase:

(a) a fourteen day temporary freshwater fishing license for five dollars, one dollar of which the issuing sales vendor may retain;

(b) an annual freshwater fishing license for ten dollars, one dollar of which the issuing sales vendor may retain;

(c) a three year freshwater fishing license for thirty dollars, three dollars of which the issuing sales vendor may retain; or

(d) a lifetime statewide freshwater fishing license for three hundred dollars at designated licensing locations;

(2) a nonresident shall purchase:

(a) a seven day temporary freshwater fishing license for eleven dollars, one dollar of which the issuing sales vendor may retain;

(b) an annual freshwater fishing license for thirty-five dollars, one dollar of which the issuing sales vendor may retain; or

(c) a three year freshwater fishing license for one hundred five dollars, three dollars of which the issuing sales vendor may retain.

(C) In lieu of obtaining an annual freshwater fishing license, a resident may purchase a lakes and reservoirs permit for three dollars, one dollar of which the issuing sales vendor may retain. The permit is only valid when used with nonmanufactured tackle or natural bait in the following waters:

(1) Catawba and Wateree rivers within Chester, Fairfield, Kershaw, and Lancaster counties, except waters lying more than one hundred yards south of the Wateree Dam in Kershaw County;

(2) Savannah River between the Stevens Creek Dam and the S.C. State Highway 72 bridge, including the waters impounded between Stevens Creek Dam and J. Strom Thurmond Dam;

(3) Lake Ashwood in Lee County;

(4) Lake Greenwood;

(5) Lake Hartwell;

(6) Lake Jocassee;
(7) Lake Keowee;
(8) Lake Marion;
(9) Lake Moultrie, the Diversion Canal, and the Tailrace Canal;
(10) Lake Murray;
(11) Lake Richard B. Russell;
(12) Lake Wiley;
(13) the Parr Hydroelectric Project Fish and Game Management Area:
(a) Parr Reservoir;
(b) Monticello Reservoir;
(c) Monticello Reservoir Sub Impoundment.

The provisions of this subsection do not affect in any way any reciprocal agreement with the State of Georgia as to recognition of residents' fishing licenses or permits.

(D) For the privilege of operating a public fishing pier in the salt waters of this State, the owner or operator must purchase an annual saltwater public fishing pier license. For a pier with a total length:

(1) of one hundred feet or less, the fee is one hundred fifty dollars;

(2) greater than one hundred feet, the fee is three hundred fifty dollars.

(E) For the privilege of operating a charter fishing vessel in the salt waters of this State, the owner or operator shall purchase an annual charter vessel license for each vessel. For a vessel:

(1) to carry six or fewer passengers, the fee is one hundred fifty dollars;

(2) to carry seven but no more than forty-nine passengers, the fee is two hundred fifty dollars;

(3) to carry fifty or more passengers, the fee is three hundred fifty dollars.

Section 50-9-570. (A) It is unlawful to hunt, take, or possess migratory game birds without first obtaining a migratory game bird permit. Migratory game birds include mourning dove, Wilson snipe, woodcock, the Anatidae (commonly known as goose, brant, and duck), and the Rallidae (commonly known as marsh hen, coot, gallinule, and rail).

(B) Residents who have attained the age of sixty-four and hold a lifetime statewide hunting license, lifetime statewide combination license, gratis lifetime hunting and fishing license, senior lifetime

hunting and fishing license, or Catawba hunting and fishing license are not required to obtain a migratory game bird permit."

Permits and tags

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

"Article 6

Permits and Tags

Section 50-9-650. (A) For the privilege of taking antlerless deer, in addition to the required hunting license and big game permit, a hunter shall obtain an annual individual antlerless deer tag issued in his name, and the fee:

(1) for a resident is five dollars per tag;

(2) for a nonresident is five dollars per tag.

(B) A landowner or lessee may apply to the Antlerless Deer Quota Program for an antlerless deer quota permit at a cost of fifty dollars per land tract. The department shall determine an appropriate quota of tags to be issued under each permit, and there is no cost for these tags.

Section 50-9-670. (A) For purposes of this chapter 'migratory waterfowl' means members of the family Anatidae, including brants, ducks, geese, and swans. For the privilege of hunting or taking migratory waterfowl in this State, in addition to a hunting license, a person shall purchase a migratory waterfowl permit.

(B) The department shall produce commemorative stamps as collector's items which must be sold at a price of not less than five dollars and fifty cents. Commemorative stamps are not valid for hunting. These proceeds must be retained by the department. Anyone who purchases a migratory waterfowl permit may obtain a commemorative stamp at no additional cost.

(C) Revenue derived from the sale of the permit and commemorative stamp may be used only for the cost of printing, promoting, and producing the stamp and for those migratory waterfowl projects specified by the board for the development, protection, and propagation of waterfowl in this State. None of the funds may be expended for administrative salaries. All balances must be retained and carried forward annually."

Hunting and fishing licenses for children; private pond fishing; pay-to-fish businesses

SECTION 10. Section 50-9-710 of the 1976 Code is amended to read:

"Section 50-9-710. (A) Except as required by law, children under sixteen years of age are not required to procure or possess a hunting or fishing license or any other permit or license required for hunting or fishing unless that child engages in the taking of wildlife or fish for commercial purposes.

(B) A person is not required to possess a recreational freshwater fishing license if fishing in a private pond. However, if the pond is used for commercial purposes, it is not considered a private pond.

(C) Resident and nonresident patrons of commercial fishing lakes or pay-to-fish commercial businesses are exempt from the requirement to purchase a recreational freshwater fishing license if the commercial fishing lake or pay-to-fish commercial business has a valid aquaculture permit or registration issued by the department."

Revenue; sources; disposition

SECTION 11. Article 9, Chapter 9, Title 50 of the 1976 Code is amended to read:

"Article 9

Revenue

Section 50-9-910. (A) Revenue from fines and forfeitures for violations of Chapters 1 through 16 must be transmitted to the treasurer of the county where the revenue was collected. The treasurer shall transmit the revenue to the department accompanied by a statement showing the names of persons fined, the amount of each fine, the summons or warrant number, and the court in which each fine was collected. The revenue must be remitted to the State Treasurer and credited to the County Game and Fish Fund subaccount for the county from which the revenue was collected.

(B) Revenue from fines and forfeitures for violations on wildlife management area lands must be used for the management and the procurement of wildlife management area lands.

(C) Unless otherwise specified, revenue from the fines and forfeitures for violations of other sections of this title and for all other offenses investigated or prosecuted by the department must be used exclusively for law enforcement operations and any remaining balances must be retained and carried forward by the department and used for the same purposes.

Section 50-9-920. (A) Revenue generated from the sale of lifetime privileges must be deposited in the Wildlife Endowment Fund.

(B) Revenue generated from the sale of other hunting and freshwater fishing licenses, permits, and tags must be remitted to the State Treasurer and credited to the Fish and Wildlife Protection Fund. Revenue from each:

(1) Wildlife management area permit only must be used for the management and the procurement of wildlife management area lands.

(2) A nonresident annual statewide hunting license must be used as follows:

(a) one dollar for the propagation, management, and protection of ducks and geese in this State;

(b) one dollar contributed by the department to proper agencies along the Atlantic Flyway for the propagation, management, and protection of ducks and geese; and

(c) the balance to the Fish and Wildlife Protection Fund.

(3) A nonresident temporary statewide hunting license must be used as follows:

(a) fifty cents for the propagation, management, and protection of ducks and geese in this State;

(b) fifty cents contributed by the department to proper agencies in Canada for the propagation, management, and protection of ducks and geese; and

(c) the balance to the Fish and Wildlife Protection Fund.

(4) A nonresident annual freshwater fishing license must be distributed as follows:

(a) fifty percent to the County Game and Fish Fund account for the respective county in which the license was sold, except that these licenses sold through a central point such as online, call centers, and department mass mailings must be equally allocated to the counties; and

(b) the balance to the Fish and Wildlife Protection Fund.

(5) Application and other fees, permits, and tags for the privilege of taking alligators must be used by the department to support the alligator management program.

(6) Antlerless deer quota permit (ADQP) must be exclusively used to administer the ADQP program and for deer management and research.

(7) Individual antlerless deer tags must be used as follows:

(a) eighty percent to administer the tag program, deer management, and research; and

(b) the remaining twenty percent for law enforcement.

(8) A nonresident annual freshwater fishing license must be distributed as follows:

(a) fifty percent to the County Game and Fish Fund account for the respective county in which the license was sold, except that these licenses sold through a central point such as online, call centers, and department mass mailings must be equally allocated to each county; and

(b) the balance to the Fish and Wildlife Protection Fund.

(9) Lakes and reservoirs permits must be equally distributed to the County Game and Fish Fund of those counties in which the specified bodies of water are found in whole or in part.

(C) Revenue generated from the sale of recreational and commercial marine licenses, permits, and tags must be deposited to the Marine Resources Fund. Revenue must be distributed as follows, from each:

(1) annual or temporary recreational saltwater fishing license:

(a) twenty-five cents to saltwater administration;

(b) one dollar to law enforcement; and

(c) the balance to recreational saltwater programs;

(2) charter vessel license:

(a) five percent to saltwater administration;

(b) twenty percent to law enforcement; and

(c) the balance to recreational saltwater programs;

(3) saltwater fishing pier license:

(a) five percent to saltwater administration;

(b) twenty percent to law enforcement; and

(c) the balance to recreational saltwater programs;

(4) shrimp baiting license:

(a) seventy percent for additional enforcement efforts during the established shrimp baiting period to assist existing law enforcement personnel in monitoring and enforcement of the shrimp baiting laws; and

(b) the balance to the Marine Resources Fund;

(5) sale of stamps, prints, and related articles:

(a) five percent to saltwater administration;

(b) twenty percent to saltwater enforcement; and

(c) the balance to recreational saltwater programs.

(D) Two-thirds of the revenue generated from the sale of multiyear recreational saltwater licenses must be allocated to the Marine Resources Deferred License Fund.

(E) Two-thirds of the revenue generated from the sale of multiyear recreational freshwater fishing and hunting licenses must be allocated to the Fish and Wildlife Deferred License Fund.

(F) Revenue generated from the sale of duplicate or replacement licenses, permits, and tags must be credited to the Fish and Wildlife Protection Fund.

Section 50-9-950. (A) The Fish and Wildlife Protection Fund is created for the purpose of receiving revenue generated from the following sources:

(1) revenue from the sale of freshwater fisheries and wildlife licenses, permits, stamps, and tags;

(2) application fees for recreational events and charges for room and board on state property where the property was procured with proceeds from the fund and its predecessor funds;

(3) revenue generated from the sale of timber and property procured with proceeds from the fund and its predecessor funds;

(4) revenue transmitted to the department from the Department of Motor Vehicles for specialty license plates;

(5) restricted interest income, contributions, and donations;

(6) any other source of revenue recognized by the United States Fish and Wildlife Service, where the disposition of such revenue to any other fund could be interpreted as a loss of control or misdirection of funds by the department.

These funds must be remitted to the State Treasurer and credited to a special account separate and distinct from the general fund.

(B) Revenue must be expended by the department for the protection, promotion, propagation, and management of freshwater fisheries and wildlife, the enforcement of related laws, the administration of the department, and the dissemination of information, facts, and findings the department considers necessary.

(C) Interest earned on balances in the Fish and Wildlife Protection Fund must be credited to the fund and expended for those same purposes.

(D) Balances in the fund must be retained and carried forward annually and may be used to match available federal funds.

Section 50-9-955. (A) The Fish and Wildlife Deferred License Fund is created for the purpose of receiving revenue generated from the sale of multiyear hunting and freshwater fishing licenses, permits, stamps, and tags.

(B) Revenue generated in prior years for each new license year must be transferred to the Fish and Wildlife Protection Fund the first month of each license year. Not more than one transfer may be made each license year. When transferred, the revenue must be allocated as specified in Section 50-9-920(B).

(C) Interest earned on balances in the Fish and Wildlife Deferred License Fund must be credited to the fund and transferred in the same manner.

(D) Balances in the fund must be retained and carried forward annually.

Section 50-9-960. (A) The Marine Resources Fund is created for the purpose of receiving revenue generated from the following sources:

(1) revenue from the sale of saltwater licenses, permits, stamps, and tags;

(2) revenue generated from the sale of posters, prints, and related articles;

(3) revenue transmitted to the department from the Department of Motor Vehicles for specialty license plates;

(4) restricted interest income, contributions, and donations;

(5) any other source of revenue recognized by the United States Fish and Wildlife Service, where the disposition of such revenue to any other fund could be interpreted as a loss of control or misdirection of funds by the department.

(B) Revenue generated from the sale of:

(1) recreational saltwater privileges must be expended by the department for purposes authorized pursuant to the South Carolina Marine Resources Act of 2000. The Saltwater Recreational Fishing Advisory Committee shall assist in prioritizing the expenditure of saltwater license funds for:

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

(b) development of recreational saltwater fishing facilities;

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

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

(e) an annual report made available on the department website indicating how the previous year's funds were expended;

(2) commercial saltwater privileges, culture and mariculture permits, and marine permits must be expended for the administration and implementation of programs in the Marine Resources Division.

(C) Funds generated pursuant to this section must be remitted to the State Treasurer and credited to a special account separate and distinct from the general fund.

(D) Interest earned on balances in the Marine Resources Fund must be credited to the fund and expended for the same purposes.

(E) Balances in the fund must be retained and carried forward annually and may be used to match available federal funds.

Section 50-9-965. (A) The Marine Resources Deferred License Fund is created for the purpose of receiving revenue generated from the sale of multiyear saltwater licenses, permits, stamps, and tags.

(B) Revenue generated in prior years for each new license year must be transferred to the Marine Resources Fund the first month of each license year. Not more than one transfer may be made each license year. When transferred, the revenue must be allocated as specified in Section 50-9-920(C).

(C) Interest earned on balances in the Marine Resources Deferred License Fund must be credited to the fund and transferred in the same manner.

(D) Balances in the fund must be retained and carried forward annually.

Section 50-9-970. (A) The County Game and Fish Fund is created for the purpose of receiving revenue generated from the following sources:

(1) the designated portion of each annual nonresident freshwater fishing license;

(2) revenue from fines, fees, and forfeitures for violations of Chapters 1 through 16;

(3) unexpended revenue from prior years;

(4) restricted interest income;

(5) revenue generated from the disposal of surplus equipment.

These funds must be remitted to the State Treasurer and credited to a special account separate and distinct from the general fund. The funds only may be used for the purposes set forth in this section.

(B) Revenue must be expended by the department for the protection, promotion, propagation, and management of fisheries and wildlife, the enforcement of related laws, the administration of the department, and the dissemination of information, facts, and findings the department considers necessary.

(C) The fund must be further separated into forty-six subaccounts, one for each county. A report must be made annually to each member of the forty-six county delegations as to the balances in these accounts. Following the annual report distribution, the most recent report of balances available must be furnished to a delegation member making a request. Each county delegation may make recommendations to the department regarding the expenditure of funds from the County Game and Fish Fund for the protection, promotion, propagation, and management of fisheries and wildlife. The department must give these recommendations primary consideration over any other projects.

(D) If any equipment purchased by the department with these funds is sold, the proceeds of the sale retained by the department must be credited to the county fund from which the original purchase was made.

(E) Expenditures from this fund that have the approval of the county delegation are exempt from Act 651 of 1978, as amended.

(F) Interest earned on revenues deposited to the County Game and Fish Fund must be credited to the fund and expended for those same purposes.

(G) Balances must be retained and carried forward annually and may be used to match available federal funds."

Regulation of antlerless deer

SECTION 12. Section 50-11-390 of the 1976 Code is amended to read:

"Section 50-11-390. (A) The Department of Natural Resources may permit the taking of antlerless deer between September fifteenth and January first, inclusive. The department may set bag limits and methods for hunting and taking of antlerless deer and other restrictions for the proper control of hunting and taking of antlerless deer.

(B) In all game zones, the department may issue individual tags for antlerless deer which must be used as prescribed by the department.

These tags are valid statewide, except on properties receiving antlerless deer quota permits pursuant to subsection (C), and must be possessed and used only by the individuals to whom they are issued.

(C) In all game zones, the department may issue antlerless deer quota permits to landowners or lessees.

(D) Antlerless deer taken pursuant to individual tags or quota permits must be tagged with a valid antlerless deer tag and reported to the department as prescribed. Each tag must be attached to the deer as prescribed by the department before the animal is moved from the point of kill. Antlerless deer taken pursuant to quota permits must be tagged, even if taken on designated either-sex days.

(E) The department may suspend the taking of antlerless deer or revoke any quota permit or individual tags when environmental conditions or other factors warrant.

(F) It is unlawful to hunt or take, possess, or transport antlerless deer, except as permitted by this section. A person violating the provisions of this section or the provisions for taking antlerless deer established by the department is guilty of a misdemeanor and, upon conviction, must be fined not less than fifty and not more than five hundred dollars or imprisoned not more than thirty days."

Sections repealed

SECTION 13. Sections 50-1-160, 50-3-790, 50-3-800, and 50-11-1240 of the 1976 Code are repealed.

Severability clause

SECTION 14. 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, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

Time effective

SECTION 15. This act takes effect July 1, 2010.

Ratified the 2nd day of June, 2010.

Approved the 8th day of June, 2010.

No. 234

(R250, S391)

AN ACT TO AMEND CHAPTER 31, TITLE 41, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO CONTRIBUTIONS AND PAYMENTS TO THE UNEMPLOYMENT TRUST FUND, SO AS TO PROVIDE CERTAIN DEFINITIONS, TO CHANGE THE EMPLOYER'S MINIMUM BASE RATE, TO REVISE THE METHOD OF DETERMINING THE BASE RATE OF AN EMPLOYER ELIGIBLE FOR A RATE COMPUTATION, TO IMPOSE CERTAIN SURCHARGES ON EMPLOYERS TO PAY OUTSTANDING DEBT OF UNEMPLOYMENT INSURANCE TRUST FUND IN YEARS WHEN THE FUND IS INSOLVENT, TO DELETE LANGUAGE PROVIDING A STATEWIDE RESERVE RATIO, TO DELETE THE DEFINITION OF A NONPROFIT ORGANIZATION, TO MAKE CONFORMING CHANGES REFLECTING THE CREATION OF THE DEPARTMENT OF EMPLOYMENT AND WORKFORCE, AND TO CORRECT ARCANE LANGUAGE, AMONG OTHER THINGS; TO AMEND SECTION 41-27-310, RELATING TO THE DEFINITION OF THE TERM "INSURED WORKER", SO AS TO INCREASE THE THRESHOLD AMOUNT OF EARNINGS A PERSON MUST HAVE TO QUALIFY AS AN INSURED WORKER, AND TO PROVIDE THAT THIS SECTION DOES NOT APPLY TO AN INDIVIDUAL FOUND QUALIFIED TO RECEIVE UNEMPLOYMENT BENEFITS PRIOR TO THE SECTION'S ENACTMENT; TO AMEND SECTION 41-27-380, AS AMENDED, RELATING TO THE DEFINITION OF THE TERM "WAGES", SO AS TO PROVIDE AN EXCEPTION TO THE TERM; TO AMEND SECTION

41-35-40, RELATING TO WEEKLY BENEFITS, SO AS TO INCREASE THE MINIMUM WEEKLY BENEFIT AMOUNT; BY ADDING SECTION 41-27-760 SO AS TO PROVIDE THESE CANDIDATES MAY NOT DIRECTLY OR INDIRECTLY SEEK THE PLEDGE OF A MEMBER OF THE GENERAL ASSEMBLY FOR THEIR ELECTION TO THE PANEL, AND TO PROVIDE PENALTIES FOR A VIOLATION, AMONG OTHER THINGS; TO AMEND SECTION 41-29-40, AS AMENDED, RELATING TO UNEMPLOYMENT COMPENSATION AND EMPLOYMENT SERVICE DIVISIONS OF THE DEPARTMENT OF EMPLOYMENT AND WORKFORCE, SO AS TO DELETE LANGUAGE REQUIRING DIRECTORS APPOINTED TO THESE DIVISIONS MUST BE MADE ON A NONPARTISAN MERIT BASIS IN ACCORDANCE WITH CERTAIN STATUTORY PROVISIONS; BY ADDING SECTION 41-27-525 SO AS TO PROVIDE IF THE MAJORITY OF WEEKS IN A PERSON'S BASE PERIOD INCLUDES PART-TIME WORK, HE MAY NOT BE DENIED UNEMPLOYMENT BENEFITS UNDER A PROVISION RELATED TO AVAILABILITY OF WORK, ACTIVE SEARCH FOR WORK, OR FAILURE TO ACCEPT WORK SOLELY BECAUSE HE ONLY SEEKS PART-TIME WORK, AND TO DEFINE THE PHRASE "SEEKING ONLY PART-TIME WORK"; TO AMEND SECTION 41-27-150, AS AMENDED, RELATING TO THE DEFINITION OF THE TERM "BASE PERIOD", SO AS TO DEFINE THE TERM "ALTERNATE BASE PERIOD", AND TO PROVIDE WAGES THAT FALL WITHIN THE BASE PERIOD FOR A CLAIM ESTABLISHED UNDER THIS SECTION MUST NOT BE AVAILABLE FOR USE IN QUALIFYING FOR A SUBSEQUENT BENEFIT YEAR; TO AMEND SECTION 41-29-300, RELATING TO THE CREATION AND COMPOSITION OF THE DEPARTMENT OF EMPLOYMENT AND WORKFORCE, SO AS TO IMPOSE A MANDATORY RETIREMENT AGE ON MEMBERS OF THE APPELLATE PANEL; AND TO AMEND SECTION 41-35-125, AS AMENDED, SO AS TO PROVIDE CERTAIN DEFINITIONS, AND TO PROVIDE AN INDIVIDUAL IS ELIGIBLE FOR WAITING WEEK CREDIT AND UNEMPLOYMENT COMPENSATION IF THE DEPARTMENT FINDS HE WAS SEPARATED FROM EMPLOYMENT DUE TO COMPELLING FAMILY CIRCUMSTANCES.

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

Contributions and payments to the Unemployment Trust Fund

SECTION 1. Chapter 31, Title 41 of the 1976 Code is amended to read:

"CHAPTER 31

Contributions and Payments to the Unemployment Trust Fund

Article 1

Rates of Contributions

Section 41-31-5. As used in this chapter:

(1) 'Benefit ratio' means:

(a) for the period of January 1, 2011, through December 31, 2013, the number calculated by dividing the average of all benefits charged to an employer during the forty calendar quarters immediately preceding the calculation date by the employer's average taxable payroll during the same period. If fewer than forty but more than four calendar quarters of data are available, the data from those available calendar quarters shall be used in the calculation. The benefit ratio must be calculated annually on July first to the sixth decimal place;

(b) from January 1, 2014, the number calculated by dividing the average of all benefits charged to an employer during the twelve calendar quarters immediately preceding the calculation date by the employer's average taxable payroll during the same period. If fewer than twelve but more than four calendar quarters of data are available, the data from those available calendar quarters shall be used in the calculation. The benefit ratio must be calculated annually on July first to the sixth decimal place.

(2) 'Department' means the Department of Employment and Workforce.

(3) 'Statewide average required rate' means the amount of income projected to be needed by the unemployment insurance trust fund for the upcoming calendar year divided by the estimated taxable wages over the same period rounded to the sixth decimal place.

(4) 'Statewide average interest surcharge' means the amount of income projected to be needed to pay interest on outstanding federal

advances during the upcoming calendar year divided by the estimated taxable wages for the upcoming calendar year.

Section 41-31-10. Each employer shall pay contributions equal to five and four-tenths percent of wages paid by him during each year except as may be otherwise provided in Chapters 27 through 41 of this title.

Section 41-31-20. (A) The department shall maintain a separate account for each employer and shall credit the account of each with all the contributions paid on his behalf, but nothing in Chapters 27 through 41 of this title shall be construed to grant any employer or individual in his service prior claims or rights to the amounts paid by him into the fund either on his behalf or on behalf of such individuals. Benefits paid to an eligible individual shall be charged, in the amounts provided in Chapters 27 through 41 of this title, against the accounts of his most recent employer. No employer shall be deemed as the most recent employer for the purpose of this section unless the eligible person to whom benefits are paid earned wages in the employ of the employer equal to at least eight times the weekly benefit amount of the eligible claimant.

(B) Any two or more qualified employers in the same or a related trade, occupation, profession, or enterprise, or having a common financial interest may apply to the department to establish a joint account or to merge their several individual accounts in a joint account. The department shall promulgate regulations for the establishment, maintenance, and dissolution of joint accounts. A joint account shall be maintained as if it constituted a single employer's account.

(C) The department shall promulgate regulations concerning the manner in which benefits shall be charged against the accounts of several employers for whom an individual performed employment at the same time. However, in the event benefits paid to an individual are based on wages paid by one or more employers who were liable for payments in lieu of contributions and on wages paid by one or more employers who were liable for payment of contributions, the amount in benefits charged to the account of the most recent employer shall not exceed the amount of benefits which would have been paid solely by reason of the base period wages paid by employers who were liable for payment of contributions.

(D) Nothing in this article shall be construed to limit benefits payable pursuant to Chapter 35 of this title.

Section 41-31-30. The department shall annually classify employers in accordance with their actual experience in the payment of contributions on their own behalf and with respect to benefits charged against their accounts to set contribution rates that reflect the employer's experience. The department shall determine the contribution rate of each employer in accordance with the requirements of Sections 41-31-20 to 41-31-70.

Section 41-31-40. Each employer's base rate for the twelve months commencing January first of any calendar year is determined in accordance with Section 41-31-50 on the basis of his record up to July first of the preceding calendar year, but no employer's base rate is less than the rate applicable for rate class thirteen until there have been twelve consecutive months of coverage after first becoming liable for contributions under Chapters 27 through 41 of this title. Each employer who completes twelve consecutive calendar months of coverage after first becoming liable for contributions during the current calendar year shall have a base rate computed on the basis of his record up through the next occurring June thirtieth, with that base rate being effective for the next calendar year beginning in January.

Section 41-31-45. (A) For the purposes of this section:

(1) 'Average high cost multiple' means the number of years the department could pay unemployment compensation, based upon the statewide reserve ratio, if the department paid the compensation at a rate equivalent to the average benefit cost rate in the three calendar years during the previous twenty calendar years, or the last three recessions, in which the benefit cost rates were the highest.

(2) 'Benefit cost rate' means the rate determined by dividing the unemployment compensation benefits paid during a calendar year by the total covered wages in the State during that year. The calculation of the benefit cost rate may not include the wages and unemployment compensation paid by employers covered under Section 3309 of the Internal Revenue Code of 1986.

(3) 'Income needed to pay benefits' means the estimate of benefits payable in a given calendar year less the estimate of interest to be earned by the unemployment insurance trust fund for that calendar year.

(4) 'Statewide reserve ratio' means the ratio determined by dividing the balance in the trust fund reserve as of June thirtieth by the total covered wages for the previous twelve months in the State as of June thirtieth. The calculation of the statewide reserve ratio may not

include the wages and unemployment compensation paid by employers covered under Section 3309 of the Internal Revenue Code of 1986.

(5) 'Fund adequacy target' means an average high-cost multiple of one.

(6) 'Trust fund reserve' excludes distributions from the federal government pursuant to 42 U.S.C. 1103, commonly referred to as the Reed Act.

(B) For each calendar year during which the state Unemployment Insurance Trust Fund is in debt status, the department must estimate the amount of income necessary to pay benefits for that year, the amount of income necessary to avoid automatic FUTA credit reductions, and an amount of income necessary to repay all outstanding federal loans within five years. Additional estimates of interest costs shall be determined concurrently.

(1) Estimates of the revenue needed to pay benefits will be based on Congressional Budget Office projections for the subsequent calendar year's total unemployment rate. This total unemployment rate will be adjusted for South Carolina based on the historic relationship between the unemployment rate in South Carolina and the national unemployment rate calculated from 1980 to present.

(2) The historic relationship, calculated from 1980 to present, between the total unemployment rate and the insured unemployment rate in South Carolina will be used to adjust the projected total unemployment rate to the rate of insured unemployment.

(3) Estimates of forecasted benefits will be based upon the prior three year average of the annual number of weeks compensated multiplied by an estimate of the average weekly benefit for the next year.

(4) Estimates of amounts to pay to avoid FUTA credit reductions and amount of repayments on the loan will be projected through consultation with officials at the US Department of Labor.

(C) After the fund returns to solvency, the department must promulgate regulations concerning the income needed to pay benefits in each year and return the trust fund to an adequate level as defined in subsection (A)(5).

Section 41-31-50. Each employer eligible for a rate computation shall have his base rate determined in the following manner:

(1)(a)(i) Annually the department must calculate a contribution rate for each employer qualified for an experience rating. The contribution rate must correspond to rate calculated for the employer's benefit ratio class.

(ii) To determine an employer's benefit ratio rank, the department must list all employers by increasing benefit ratios, from the lowest benefit ratio to the highest benefit ratio. The list must be divided into classes ranked one through twenty. Each class must contain approximately five percent of the total taxable wages, excluding reimbursable employment wage, paid in covered employment during the four completed calendar quarters immediately preceding the computation date. Each employer must be placed in the class that corresponds with the employer's benefit ratio.

(iii) If an employer's taxable wages qualify the employer for two separate classes, the employer shall be afforded the class assigned the lower contribution rate. Employers with identical benefit ratios shall be assigned to the same class.

(b) The income needed to pay benefits for the calendar year plus any applicable income needed to reach the solvency target must be divided by the estimated taxable wages for the calendar year. The result rounded to the next higher one-hundredth of one percent is the average required rate needed to pay benefits and achieve solvency targets.

(c) The rate for class twenty will be set such that the entire schedule raises the income required to pay benefits for the year, as well as the income necessary to move the trust fund toward the solvency target, subject to the structure provided in this chapter. However, the rate for class twenty must be at least five and four-tenths percent.

(2)(a) If the calculated rate necessary for benefit rate class twenty exceeds five and four-tenths percent, then the rate for each preceding benefit rate class shall be equal to ninety percent of the rate calculated for the succeeding class, except that rate class twelve shall be set at one-fourth the rate calculated for class twenty, provided that the rate for class one shall be zero.

(b)(i) If the computed rate necessary for class twenty is less than five and four-tenths percent, then the rate for class twenty shall be set at five and four-tenths percent.

(ii) The rate for rate class twelve shall be calculated by multiplying the average tax rate computed in subsection (1)(b) by twenty, subtracting five and four-tenths percent, and dividing by nineteen.

(iii) The contribution rate for rate classes eleven through one shall be equal to ninety percent of the rate for the succeeding class, provided that the rate for class one shall be zero.

(iv) The contribution rate for class thirteen shall be equal to one hundred twenty percent of the rate calculated for rate class twelve.

(v) The contribution rate for rate class nineteen shall be set at an amount that allows for average contributions, beginning with class eighteen and ending with class fourteen, that are equal to ninety percent of the preceding class.

Section 41-31-55. (A) In any calendar year in which the state Unemployment Insurance Trust Fund is insolvent, the State shall impose additional surcharges on all employers to pay interest on the outstanding debt. The estimated amount of interest to be paid in the upcoming year will be divided by the estimated taxable payroll for the calendar year. The result rounded to the next higher one hundredth of one percent is the statewide average surcharge.

(B) The rate for class twenty will be set so that the entire schedule raises the income required to pay interest surcharges for the year, subject to the structure defined in subsection (A). The rate for each preceding benefit rate class shall be equal to ninety percent of the rate calculated for the succeeding class, except that the rate class twelve shall be set at one fourth the rate calculated for rate class twenty.

Section 41-31-60. (A) If on the computation date upon which an employer's base rate is to be computed as provided in Section 41-31-40 there is a delinquent report, a base rate of two and sixty-four hundredths percent must be assigned for the period to which the computation applies. If the base rate for the prior year or the computed base rate for the computation period is greater than two and sixty-four hundredths percent, the higher rate must be assigned until the next computation date.

(B) No employer is permitted to pay his unemployment compensation tax at a reduced base rate for any quarter when a tax execution issued in accordance with Section 41-31-390 with respect to delinquent unemployment compensation tax for a previous quarter is unpaid and outstanding against the employer. If on the computation date upon which an employer's base rate is computed as provided in Section 41-31-40 there is an outstanding tax execution, a base rate of two and sixty-four hundredths percent must be assigned for the period to which the computation applies. If the base rate for the prior year or the computed base rate for the computation period is greater than two and sixty-four hundredths percent, the highest base rate must be assigned until the next computation date or until such time as any outstanding tax execution has been paid.

Section 41-31-70. If the department finds that an employer ceased to render employment solely due to the closing of the business because of the entrance of one or more of the owners, officers, partners, or the majority stockholders into the Armed Forces of the United States, or any of its allies, or of the United Nations after January 1, 1951, such employer's account shall not be terminated; and, if the business is resumed and employment rendered within two years after the discharge or release from active duty in the armed forces of the person or persons, the employer's experience shall be deemed to have been continuous throughout that period. The benefit ratio of the employer shall be the amount calculated pursuant to Section 41-31-5, including benefits paid to any individual during the period the employer was in the armed forces, divided by his average annual payroll for the most recent year during the whole of which the employer has been in business and has rendered employment. This provision shall not be construed to authorize cash refunds and any adjustments required hereunder shall be only by credit certificate.

Section 41-31-90. In the event of a change of name by a corporation, without any change of ownership interest, the department may provide that the experience rating of the old corporation be continued by the new corporation.

Section 41-31-100. Any person or other legal entity who acquires by purchase, merger, consolidation, devise, inheritance or other means substantially all of the business of any employer and continues the acquired business, shall be deemed to be a successor to the predecessor from whom the business was acquired for the purpose of this article and, if not already an employer prior to the acquisition, shall become an employer on the date of the acquisition and shall succeed to the employment benefit experience record of the predecessor. The department shall prescribe by regulation the notice to be given of the acquisition. For the purposes of Chapters 27 through 41 of this title the term 'substantially all' means ninety-five percent or more of the business as determined by the department in a particular case.

Section 41-31-110. (A) Whenever any person or other legal entity has in any manner succeeded to or has acquired substantially all or a distinct and severable portion of the business of another, as provided in Sections 41-31-100 and 41-31-120, the base rates of contributions are computed as follows:

(1) If the successor is not already an employer at the time of the acquisition, the base rate of contributions applicable to the predecessor employer with respect to the period immediately preceding the date of acquisition, if there is only one predecessor employer, shall apply to the successor employer for the remainder of the calendar year.

(2) If the successor is not already an employer at the time of the acquisition and there is more than one transferring employer with a different base rate, the successor employer is assigned the base rate of that transferring employer who has the highest base rate.

(3) If the successor is already an employer at the time of the acquisition, the base rate of contributions applicable at the time of the acquisition to the successor employer shall continue to be the applicable base rate.

(B) For the purposes of items (1), (2), and (3) in subsection (A), the base rate as assigned continues in effect for the remainder of the calendar year and until the time the combined employment benefit experience record meets the requirements as provided in Section 41-31-40.

Section 41-31-120. In the event that any person acquires by purchase, merger, consolidation, devise, inheritance or otherwise, a distinct, severable, identifiable and segregable part of the business of an employer and continues the acquired part of the business of the predecessor, the successor shall succeed to that portion of the employment benefit experience record of the predecessor which is attributable solely to the portion of the business which was acquired, except that a succession to the benefit experience attributable to an identifiable portion of the business of the predecessor shall not occur unless the successor is an employer at the time of the acquisition or becomes an employer within the quarter in which the succession occurs; provided, that no partial transfer of any employment benefit experience record shall be made unless a request is entered by both the predecessor and the successor employer. The department shall prescribe by regulation a period within which notification of the acquisition shall be given and the method by which the experience to be transferred shall be computed.

Section 41-31-125. (A) Notwithstanding the provisions of Sections 41-31-100 and 41-31-120, an employing unit must be assigned all or a portion of the employment benefit record of an existing employing unit when there is an acquisition or change in the form or organization of an existing business enterprise, or severable

portion of an existing business enterprise, and there is a continuity of control of the business enterprise. The employing unit must be assigned the same rate as the predecessor, or the predecessor who has the highest base rate if there is more than one predecessor employing unit with different base rates.

(1) For purposes of this section control of the business enterprise may occur by means of ownership of the organization conducting the business enterprise, ownership of assets necessary to conduct the business enterprise, security arrangements or lease arrangements covering assets necessary to conduct the business enterprise, including workers, or a contract when the ownership, stated arrangements, or contract provide for or allow direction of the internal affairs or conduct of the business enterprise.

(2) For purposes of this section continuity of control exists if one or more persons, entities, or other organizations controlling the business enterprise remain in control of the business enterprise after an acquisition or change in form or there is a transfer to persons within the first degree of kinship to the transferors. Evidence of continuity of control includes, but is not limited to, changes of an individual proprietorship to a corporation, partnership, limited liability company, association, or estate; a partnership to an individual proprietorship, corporation, limited liability company, association, estate, or the addition, deletion, or change of partners; a limited liability company to an individual proprietorship, partnership, corporation, association, estate, or to another limited liability company; a corporation to an individual proprietorship, partnership, limited liability company, association, estate, or to another corporation or from any form to another form.

(B) An employing unit must not be assigned any portion of the employment benefit record of an existing employing unit upon the acquisition of that established business or of an identifiable and segregable part of that established business if:

(1) the acquiring person was not otherwise an employer at the time of the acquisition;

(2) the person has no substantial commonality of interest, including ownership or management, in the business acquired; and

(3) the department finds that the person acquired the business or an identifiable and segregable part of the business solely or primarily for the purpose of obtaining a lower rate of contributions.

(C) If the experience rating account of the predecessor employer contains a debit balance, defined as an excess of total benefits charged over total contributions paid, the experience rating account of the

predecessor employer must be transferred to the successor employer in accordance with the provisions of Section 41-31-140.

(D)(1) An employing unit that knowingly attempts to violate the provisions of this section must be assessed a penalty in an amount equal to the greater of one thousand dollars or ten percent of the tax determined by the department to be due for each report that is submitted in violation of this section. For the purposes of this section, the terms 'knowingly' or 'knowing' mean having actual knowledge of or acting with deliberate ignorance of or reckless disregard for the prohibition in this section. This penalty may be recovered in the manner provided in Article 3 of this chapter for the collection of other penalties. Officers and directors of the enterprise comprising the employing unit are individually liable for the penalties assessed pursuant to this subsection.

(2) A contribution tax return preparer who violates this section or provides advice to an employing unit that results in a knowing violation of the provisions of this section is liable for a penalty of not less than one thousand dollars nor more than ten thousand dollars for each report submitted in violation of this section. This penalty may be recovered by the department in an appropriate civil action in any court of competent jurisdiction.

(3) As used in this section, a 'contribution tax return preparer' is a person who prepares for compensation, or who employs one or more persons to prepare for compensation, any contribution and wage report or report of change in the status of an employing unit required by this chapter or any claim for credit for a tax imposed by this chapter. For purposes of this definition, the completion of a substantial portion of a report is treated as the preparation of the entire report. The term does not include a person merely because the person furnishes typing, reproducing, or other mechanical assistance, prepares a report of the employer, or an officer or employee of the employer, by whom the person is regularly and continuously employed, prepares as a fiduciary a report for any person, or represents a taxpayer in a hearing regarding an issue arising under this chapter.

(E) The department shall establish procedures to identify the transfer or acquisition of a business for purposes of this section.

Section 41-31-130. Nothing in Sections 41-31-110 and 41-31-120 shall be construed to authorize or require the refund of any sums lawfully paid into the unemployment compensation trust fund or to authorize or require sums lawfully paid into the unemployment compensation trust fund for any purpose other than to pay

unemployment compensation benefits. But the department may make the necessary adjustments in conformity with the provisions of this law by deductions of future contribution payments as though such payments or assessments had been made erroneously by any person coming within the provisions of said sections.

Section 41-31-140. (A) For the purposes of this section, 'debit balance' means the excess of total benefits charged over total contributions made.

(B) No transfer of experience rating accounts, in whole or in part, is permitted under the provisions of Sections 41-31-100 to 41-31-130 unless all unemployment compensation taxes based on wages paid by the transferring employer prior to the date of the transfer are paid by the transferring employer when due or assumed by the acquiring employer within sixty days from the date he is notified by the department that the transfer cannot be allowed because of unpaid unemployment compensation taxes. If the experience rating account of the predecessor employer contains a debit balance, the experience rating account of the predecessor employer in any event must be transferred to the successor employer in accordance with the provisions of Sections 41-31-100 and 41-31-120.

Section 41-31-150. In the payment of any contributions or any departmental administrative contingency assessment a fractional part of a cent must be disregarded unless it amounts to one-half cent or more, in which case it must be increased by one cent.

Section 41-31-160. The department shall not require contribution and wage reports more frequently than quarterly. Effective with the quarter ending March 31, 2003, every employer with two hundred fifty or more employees and every individual or organization that, as an agent, reports wages on a total of two hundred fifty or more employees on behalf of one or more subject employers, and effective with the quarter ending March 31, 2005, every employer with one hundred or more employees and every individual or organization that, as an agent, reports wages on a total of one hundred or more employees on behalf of one or more subject employers, shall file that portion of the 'Employer Quarterly Contribution and Wage Reports' containing the employee's social security number, name, and total wages on magnetic tapes, diskettes, or electronically, in a format approved by the department. The department may waive the requirement to file using magnetic media if hardship is shown. In determining whether a

hardship has been shown, the department shall take into account, among other relevant factors, the ability of the taxpayer to comply with the filing requirement at a reasonable cost.

Section 41-31-170. The department annually shall report to any employer the status of his account showing his total charges against it for benefits paid during the annual period and his benefit ratio as calculated pursuant to Section 41-31-5, as applicable. No employer may contest any charge against his account or the status of his account unless he makes protest within thirty days after such report has been mailed by the department.

Article 3

Payment and Collection of Contributions

Section 41-31-310. Contributions shall accrue and become payable by each employer for each calendar year in which he is subject to Chapters 27 through 41 of this title with respect to wages for employment. Contributions shall become due and be paid by each employer to the department for the fund in accordance with regulations promulgated by the department and shall not be deducted, in whole or in part, from the wages of the employer's employees. However, no determination and assessment of contributions, interest, or penalties shall be made, and no action for the collection of contributions, interest, and penalties shall be instituted more than four years after the last day of the month immediately following the calendar quarter for which the contributions, interest, or penalties were payable. This limitation period contained in this section does not apply to employers that wilfully fail to timely file a contribution report with the department, that knowingly make false statements to the department in a contribution report, or that intentionally fail to disclose a material fact to the department concerning a contribution report.

Section 41-31-320. As soon as practicable after a contribution report is filed, the department shall examine it and compute the contribution due. If the amount computed is greater than the amount previously paid, the difference shall be paid to the department within ten days after notice of the amount is mailed by the department.

Section 41-31-330. (A) If the department finds that an additional contribution is due, that the report was made in good faith, that the

understatement of the contribution is not deliberate, then no penalty shall be added because of the understatement. However, the amount of the deficiency shall bear interest at the rate of one percent for each month or fraction of a month that it remains unpaid.

(B) If the department finds that the understatement is due to negligence on the part of the employer, but without intent to defraud, there shall be added to the amount of the deficiency, in addition to interest calculated in the manner provided in subsection (A), a ten percent penalty.

(C) If the department finds that the understatement is false or fraudulent, with intent to evade the payment of the contribution due, there shall be added to the amount of the deficiency, in addition to interest calculated in the manner provided in subsection (A), a one hundred percent penalty.

Section 41-31-340. The department must give notice to an employing unit that has failed to make reports required pursuant to Chapters 27 through 41 of this title, or has filed incorrect or insufficient reports. If the employing unit refuses or neglects to file a proper report within fifteen days after notice has been mailed to it, the department shall determine the amount of the wages payable for employment by the employing unit for the period for which the report is required. The determination must be based upon the department's best information and belief. The department must then determine the amount of contribution due, if any, computing it at double the rate which would otherwise apply. The department may allow further time, not to exceed an additional fifteen days, for filing the proper report after notice is mailed.

Section 41-31-350. An employer that fails to file a report concerning wages or contributions pursuant to Chapters 27 through 41 of this title within fifteen days from the date upon which the department mailed a demand for the report, the department shall assess the employer a penalty of ten percent of the contributions due but no less than twenty-five nor more than one thousand dollars in addition to the contributions payable with respect to the report.

Section 41-31-360. (A) If, not later than four years after the date on which any contributions or interest or employment security administrative contingency assessments became due, an employer who has paid the contributions or interest or employment security administrative contingency assessments shall make application for an

adjustment in connection with subsequent contribution or employment security administrative contingency assessment payments or for a refund because the adjustment cannot be made and the department shall determine that the contributions or interest or employment security administrative contingency assessments or any portion was erroneously collected, the department shall make an adjustment, without interest, in connection with subsequent contribution or employment security administrative contingency assessment payments by him or, if the adjustment cannot be made, shall refund the amount from the fund. For like cause and within the same period an adjustment or refund may be made on the department's own initiative.

(B) A refund or adjustment must be made in any case where the department finds that contributions or interest or employment security administrative contingency assessments were erroneously paid by an employing unit to this State upon wages earned by individuals in employment in another state. The refund or adjustment must be made upon satisfactory proof to the department that the payment of the contributions or interest or employment security administrative contingency assessments have been made to the other state.

Section 41-31-370. (A) Contributions unpaid on the date on which they are due and payable, as prescribed by the department, shall bear interest at the rate of one percent for each month or fraction for which they remain unpaid but contributions as have accrued prior to the establishment of an employer's liability shall bear interest at the rate of one-half of one percent a month or fraction of a month, to the date on which liability is established, unless it is found by the department that the delay in the establishment of liability resulted from wilful negligence of the employer, and shall bear interest at the rate of one percent a month or fraction for which they remain unpaid thereafter.

(B) If any employer's amount of contributions which are due and payable, as prescribed by the department, are unpaid ten days following the date on which an assessment or debit memorandum was issued, a penalty of ten percent of the amount of contributions due and payable, not to exceed one thousand dollars, must be paid in addition to any other interest or penalty which may be applicable.

(C) The department may, for good cause, extend the time for the filing of reports and the payment of contributions. Any person to whom the extension is granted shall pay in addition to the contribution due, interest at the rate of one percent per month or fraction of a month from the due date of the contribution to the date of payment.

Section 41-31-380. The contributions, interest, penalties, departmental administrative contingency assessments, and costs prescribed in this chapter are considered taxes owing the State by the persons against whom they are charged, and are a lien upon the real property or chattels of the person by whom the contributions are due, only after the warrant described in Section 41-31-390 is indexed as prescribed in Section 41-31-400.

Section 41-31-390. (A) If an employer defaults in any payment of contributions, interest, penalties, or departmental administrative contingency assessments, the department shall notify the employer of the amount of contributions, interest, penalties, or departmental administrative contingency assessments due. If the amount is not paid within ten days after notice to the employer, the department shall issue a warrant of execution, directed to its authorized representative, commanding the representative to levy upon and sell the real and personal property of the employer found within that county for the payment of the amount, with interest, the cost of executing the warrant, and any reasonable costs incurred in collecting these amounts, to return the warrant to the department and to pay it the money collected.

(B) The department may contract with a collection agency or the Department of Revenue for the purpose of collecting delinquent payments of contributions, interest, penalties, departmental administrative contingency assessments, and any other reasonable costs authorized by subsection (A).

(C) The department shall promulgate regulations to carry out the provisions of this section.

Section 41-31-400. (A) The department, or its authorized representative, shall file a copy of the execution with the clerk of court of the county or counties of the State in which the employer does business. The clerk of court shall enter in his abstract of judgments the name of the employer identified in the warrant and in the proper columns the amount of the contributions, interest, penalties, and departmental administrative contingency assessments and costs for which the warrant is issued along with the date and hour when the copy is filed. The clerk of court also shall index the warrant upon the index of judgments. The department, or its authorized representative, shall proceed upon the warrant in all respects and with like effect and in the same manner prescribed by law in respect to executions issued against property upon judgments of a court of record and is entitled to the same

fees for service in executing the warrant to be collected in the same manner.

(B) The powers now or hereafter conferred upon the Department of Revenue by Title 12 for the collection of unpaid income taxes are incorporated by reference and are conferred upon the department and its authorized representative for the collection of unpaid contributions, interest, penalties, and departmental administrative assessments and costs, mutatis mutandis.

(C) The department shall promulgate regulations to carry out the provisions of this section.

Section 41-31-410. Any clerk of court or register of deeds, as the case may be, or county treasurer shall be entitled to the fees provided in Section 14-19-100 for filing, enrolling, and satisfying a tax warrant or execution issued by the department.

Section 41-31-420. Subsequent to any distribution of an employer's assets pursuant to a court order, including any receivership, assignment for the benefits of creditors, adjudicated insolvency, composition or similar proceeding, contributions then or thereafter due shall be paid in full on the same basis as all other tax claims but on a parity with claims for wages of not more than two hundred fifty dollars to each claimant earned within six months of the commencement of the proceeding. Subsequent to an employer's adjudication in bankruptcy or judicially confirmed extension proposal or composition under the Federal Bankruptcy Act, contributions then or thereafter due shall be entitled to such priority as is provided in that act.

Article 5

Financing Benefits Paid to Employees of Nonprofit Organizations

Section 41-31-600. For the purposes of this article, 'nonprofit organization' means an organization, or group of organizations, described in Section 501(c)(3) of the United States Internal Revenue Code that is exempt from income taxes under Section 501(a) of that code.

Section 41-31-610. Benefits paid to employees of nonprofit organizations shall be financed in accordance with the provisions of this article.

Section 41-31-620. Any nonprofit organization which, pursuant to item (6) of Section 41-27-210, is, or becomes, subject to Chapters 27 through 41 of this title after December 31, 1971, shall pay contributions under provisions of Section 41-31-10 unless it elects, in accordance with this section, to pay the department for the unemployment fund an amount equal to the amount of regular benefits and one-half the extended benefits paid for any reason, including, but not limited to, payments made as a result of a determination, or payments erroneously or incorrectly paid, or paid as a result of a determination of eligibility or partial eligibility which is subsequently reversed for any reason, if the payments or any portion of the payments were made as a result of wages earned in the employ of the nonprofit organization. After January 1, 1979, the State or any political subdivision or any instrumentality of the political subdivision as defined in subitem (b) of item (2) of Section 41-27-230 is required to reimburse the amount of regular benefits and all extended benefits paid for any reason, including, but not limited to, payments made as a result of a determination, or payments erroneously or incorrectly paid, or paid as a result of a determination of eligibility or partial eligibility which is subsequently reversed for any reason, if the payments or any portion of the payments were made as a result of wages earned in its employ during the effective period of the elections.

(1) Any nonprofit organization which is, or becomes, subject to Chapters 27 through 41 of this title on January 1, 1972, may elect to become liable for payments in lieu of contributions for a period of not less than two calendar years beginning with January 1, 1972, provided, it files with the department a written notice of its election within the thirty-day period immediately following that date.

(2) Any nonprofit organization which becomes subject to Chapters 27 through 41 of this title after January 1, 1972, may elect to become liable for payments in lieu of contributions for a period of not less than two calendar years beginning with the date on which the subjectivity begins by filing a written notice of its election with the department not later than thirty days immediately following the date of the determination of the subjectivity.

(3) Any nonprofit organization which makes an election in accordance with item (1) or item (2) of this section will continue to be liable for payments in lieu of contributions until it files with the department a written notice terminating its election not later than thirty days prior to the beginning of the calendar year for which the termination is first effective.

(4) Any nonprofit organization which has been paying contributions under Chapters 27 through 41 of this title for a period subsequent to January 1, 1972, may change to a reimbursable basis by filing with the department not later than thirty days prior to the beginning of any calendar year a written notice of election to become liable for payments in lieu of contributions. The election is not terminable by the organization for that and the next calendar year.

(5) The department may for good cause extend the period within which a notice of election, or a notice of termination, must be filed and may permit an election to be retroactive but not any earlier than with respect to benefits paid after December 31, 1969.

(6) The department, in accordance with the regulations as may be prescribed, shall notify each nonprofit organization of any determination made with respect to its status as an employer and of the effective date of any election which it makes and of any termination of the election. The determinations are subject to reconsideration, appeal, and review in accordance with the provisions of item (5) of Section 41-31-630.

Section 41-31-630. Payments in lieu of contributions shall be made in accordance with the provisions of subsections (1) and (2) of this section.

(1) At the end of each calendar quarter the department shall bill each nonprofit organization (or group of such organizations) which has elected to make payments in lieu of contributions for an amount equal to the full amount of regular benefits plus one-half of the amount of extended benefits paid during such quarter, and effective January 1, 1979, with respect to the State or any political subdivision or any instrumentality thereof as defined in Section 41-27-230(2)(b) the full amount of regular and extended benefits attributable to services performed in its employ.

(2) Each nonprofit organization that has elected payment of benefits in lieu of contributions shall further elect for the same period to make such payments in accordance with one of the following two methods:

(a) payment of any bill rendered under subsection (1) of this section in accordance with subsection (3) of this section; or

(b) payment of two percent of the quarterly taxable payroll of the nonprofit organization to the department within thirty days after the close of each such calendar quarter. The department shall apply such funds to the payment of bills rendered to the nonprofit organization under subsection (1) of this section. At the end of each calendar year,

the department shall determine whether the total of payments for such year made by the nonprofit organization is less than, or in excess of, the total amount of regular benefits plus one-half of the amount of extended benefits paid to individuals during such calendar year, and effective January 1, 1979, with respect to the State or any political subdivision or any instrumentality thereof as defined in Section 41-27-230(2)(b) the full amount of all regular and extended benefits paid to individuals during such calendar year based on wages attributable to service in its employment. Each nonprofit organization whose total payments for such year are less than the amount so determined shall be liable for payment of the unpaid balance to the fund in accordance with subsection (3) of this section. If the total payments exceed the amount so determined for the calendar year, all or a part of the excess may, at the discretion of the department, be refunded from the fund or retained in the fund as part of the payments which may be required for the next calendar year.

(3) Payment of any bill rendered under either subsection (2)(a) or subsection (2)(b) of this section shall be made not later than thirty days after such bill is mailed to the last known address of the nonprofit organization or is otherwise delivered to it, unless there has been an application for review and redetermination in accordance with subsection (5) of this section.

(4) Payments made by any nonprofit organization under the provisions of this section shall not be deducted or deductible, in whole or in part, from the remuneration of individuals in the employ of the organization.

(5) The amount due specified in any bill from the department shall be conclusive on the organization unless, not later than fifteen days after the bill was mailed to its last known address or otherwise delivered to it, the organization files an application for redetermination by the department setting forth the grounds for the application. After affording the organization a reasonable opportunity for a fair hearing consonant with the provisions of Section 41-35-720, the department shall by its decision make findings of fact and conclusion of law and upon the basis thereof affirm, modify, or reverse its original ruling with respect to the amount originally specified in the bill. Within fifteen days after the date upon which the decision is issued the organization may procure judicial review of the decision by commencing an action in the court of common pleas in any county in which the organization has a place of business against the department for the review of its decision. In such action a petition, which need not be verified, but which shall state the grounds upon which a review is sought, shall be

served upon a member of the department or upon a person as the department shall designate. With its answer the department shall certify and file with the court all evidence and a transcript of all testimony taken in the matter together with its findings of fact and decision therein. In any judicial proceeding under this section the decision of the court shall be based upon the evidence introduced and the testimony received at the hearing before the department. An appeal may be taken from the decision of the court of common pleas in the manner provided by the South Carolina Appellate Court Rules. A petition for judicial review shall act as a supersedeas or stay of any action by the department directed toward the collection of the amount involved in the controversy or the imposition of any penalty or forfeiture by reason of the nonpayment thereof.

(6) Past due payments of amounts in lieu of contributions shall be subject to the same interest and penalties that, pursuant to Section 41-31-370, apply to past due contributions.

(7) All of the provisions of Section 41-31-360, applicable to the adjustment or refund of contributions and interest paid or collected, and not inconsistent with the provisions of this section, shall be applicable to payments in lieu of contributions and interest erroneously paid by a nonprofit organization.

(8) All of the remedies, powers, and means available to the department under the provisions of Sections 41-31-380, 41-31-390, 41-31-400, 41-31-410, and 41-31-420 to enforce the payment of contributions, interest, penalties, and costs are applicable to the enforcement of payments in lieu of contributions and interest due under the provisions of this section, and for the purposes of this item the term ‘contributions’ which appears in any such sections means ‘payment in lieu of contributions’ in all particulars.

(9) In the event any governmental entity which is a covered employer under the terms of this chapter and Article 5, Chapter 35 becomes delinquent in payments due under this chapter and Article 5, Chapter 35, upon due notice, and upon certification of the delinquency by the department to the State Treasurer or any other department or agency of the State holding funds that may be payable to the delinquent governmental entity, the amount of such delinquency shall be deducted from any such funds in the hands of the State Treasurer or other department or agency and paid to the department in satisfaction of such delinquency. This remedy shall be in addition to any other collection remedies in this chapter and Article 5, Chapter 35 or otherwise provided by law.

Section 41-31-640. The department in its discretion may adopt regulations requiring any nonprofit organization or group of organizations described in Section 41-31-660(3) which does not possess title to real property and improvements valued in excess of two million dollars to post a surety bond, money deposit, securities, or other security as the department may require to insure the payments in lieu of the contributions required under such election.

(1) The amount of the surety bond, money deposit, securities, or other security required by this subsection shall bear such relationship as the department shall determine to the organization's total wages paid for employment as defined in Section 41-27-380 for the four calendar quarters immediately preceding the effective date of the election, the renewal date in the case of a bond, or the biennial anniversary of the effective date of election in the case of a deposit of money, whichever date shall be most recent and applicable. If the nonprofit organization did not pay wages in each of such four calendar quarters, the amount of the surety bond, cash deposit, securities, or other security shall be as determined by the department.

(2) Any bond deposited under this subsection shall be in force for a period of not less than two calendar years and shall be renewed with the approval of the department, at such times as the department may prescribe, but not less frequently than at two-year intervals as long as the organization continues to be liable for payments in lieu of contributions. The department shall require adjustments to be made in a previously filed bond as it deems appropriate. If the bond is to be increased, the adjusted bond shall be filed by the organization within thirty days of the date of notice of the required adjustment was mailed or otherwise delivered to it. Failure by any organization covered by such bond to pay the full amount of payments in lieu of contributions when due, together with any applicable interest and penalties provided for in Section 41-31-630(6), shall render the surety liable on such bond to the extent of the bond, as though the surety was such organization.

(3) Any deposit of money in accordance with this subsection shall be retained by the department in an escrow account until liability under the election is terminated, at which time it shall be returned to the organization, less any deductions as hereinafter provided. The department may deduct from the money deposited under this subsection by a nonprofit organization to the extent necessary to satisfy any due and unpaid payments in lieu of contributions and any applicable interest and penalties provided for in Section 41-31-630(6). The department shall require the organization within fifteen days following any deduction from a money deposit under the provisions of

this subsection to deposit sufficient additional money to make whole the organization's deposit at the prior level. The department may, at any time, review the adequacy of the deposit made by any organization. If, as a result of such review, it determines that an adjustment is necessary, it shall require the organization to make an additional deposit within fifteen days of written notice of its determination or shall return to the organization such portion of the deposit as it no longer considers necessary, whichever action is appropriate.

Section 41-31-650. If any nonprofit organization fails to file a bond or make a deposit, or to file a bond in an increased amount or to increase or make whole the amount of a previously made deposit, as provided under this section, the department may terminate such organization's election to make payments in lieu of contributions and such termination shall continue for not less than two calendar years beginning with the quarter in which such termination becomes effective; provided, that the department may extend for good cause the applicable filing, deposit, or adjustment period by not more than thirty days.

Section 41-31-660. Each employer that is liable for payment in lieu of contributions shall pay the department for the fund an amount equal to the amount of regular benefits and one-half the extended benefits paid that are attributable to service in the employ of such employer except that after January 1, 1979, the State or any political subdivision or any instrumentality thereof as defined in Section 41-27-230(2)(b) shall be required to reimburse the full amount of regular and extended benefits attributable to service in its employment. If benefits paid to an individual are based on wages paid by more than one employer and one or more of such employers are liable for payments in lieu of contributions, the amount payable to the fund by each employer that is liable for such payments shall be determined in accordance with the provisions of subsection (1) or (2).

(1) If the benefits paid to an individual are based both on base period wages paid by one or more employers that are liable for contributions and on base period wages paid by one or more employers that are liable for payments in lieu of contributions, the amount payable by each employer that is liable for payments in lieu of contributions shall bear the same ratio to the sum of the amounts payable by such employers as the total base period wages paid to the individual by each

employer that is liable for payments in lieu of contributions bear to the total base period wages paid to the individual by all such employers.

(2) If benefits paid to an individual are based on wages paid by two or more employers that are liable for payments in lieu of contributions, the amount of benefits payable by each such employer shall be an amount which bears the same ratio to the total benefits paid to the individual as the total base period wages paid to the individual by such employer bear to the total base period wages paid to the individual by all of his base period employer.

(3) Two or more employers that have been liable for payments in lieu of contributions, in accordance with the provisions of Section 41-31-620 may file a joint application to the department for the establishment of a group account for the purpose of sharing the cost of benefits paid that are attributable to service in the employ of such employers. Each such application shall identify and authorize a group representative to act as the group's agent for the purpose of this section. Upon its approval of the application, the department shall establish a group account for such employers effective as of the beginning of the calendar quarter in which it receives the application and shall notify the group's representative of the effective date of the account. Such account shall remain in effect for not less than two calendar years and thereafter until terminated at the discretion of the department or upon application by the group. Upon establishment of the account, each member of the group shall be liable for payments in lieu of contributions with respect to each calendar quarter in the amount that bears the same ratio to the total benefits paid in such quarter that are attributable to service performed in the employ of all members of the group as the total wages paid for service in employment by such member in such quarter bear to the total wages paid during such quarter for service performed in the employ of all members of the group. The department shall prescribe such regulations as it deems necessary with respect to applications for establishment, maintenance, and termination of group accounts that are authorized by this subsection, for addition of new members to, and withdrawal of active members from such accounts, and for the determination of the amounts that are payable under this subsection by members of the group and the time and manner of such payments.

Section 41-31-670. (A) Any nonprofit organization that prior to January 1, 1969, paid contributions required by Section 41-31-10 and, pursuant to Section 41-31-620, elects within thirty days after January 1, 1972, to make payments in lieu of contributions, is not required to

make any such payment on account of any regular or extended benefits paid, on the basis of wages paid by the organization to individuals for weeks of unemployment which begin on or after the effective date of the election until the total amount of the benefits equals the amount of the positive balance in the experience rating account of the organization.

(B) Any nonprofit organization which has elected to become liable for payments in lieu of contributions under the provisions of Sections 41-31-620 and 41-31-630 and thereafter terminates the election shall become an employer liable for the payments of contributions upon the effective date of the termination but no such employer's base rate thereafter may be less than two and sixty-four hundredths percent until there have been twenty-four consecutive calendar months of coverage after so becoming liable for the payment of contributions. If the employer has been an employer liable for the payment of contributions prior to election to become liable for payments in lieu of contributions, the balance in the experience rating account of the employer as of the termination date of the election to become liable for payments in lieu of contributions is transferred to the new experience rating account then established for the employer.

Article 7

Financing Benefits Paid to Employees of Governmental Entities

Section 41-31-810. Benefits paid to employees of a governmental entity as provided for by Sections 41-27-210(5), 41-27-230(2), and 41-35-10, shall be financed to the same extent, in similar manner, and by like procedure as is set out in Article 5 of this chapter with respect to the financing of benefits paid to employees of nonprofit organizations, except that the provisions of Section 41-31-640 shall not be applicable thereto, and except that for the purposes of Section 41-31-670 no governmental entity as defined in Section 41-27-230(2) may use any credit balance in its experience rating account for payment, credit, set off, or reduction of reimbursement of any amount of regular or extended benefits attributable to service in its employment.

Section 41-31-820. (A) Unemployment compensation premiums collected from state agencies will be deposited into a separate account and used to pay unemployment compensation benefits to eligible employees of the State. Premiums will be based on experience ratings

provided by private consultants and the State Budget and Control Board. The Unemployment Compensation Funds' contribution level must be reviewed no less than biennially to ensure that premiums are commensurate with the cost of operating the Unemployment Compensation Fund. All interest earned on this account must be retained by the Unemployment Compensation Fund and used to offset costs.

(B) Notwithstanding the amounts annually appropriated as 'Unemployment Compensation Insurance' to cover unemployment benefit claims paid to employees of the state government who are entitled under federal law, the State Treasurer and the Comptroller General, are hereby authorized and directed to pay from the general fund of the State to the department funds necessary to cover actual benefit claims paid during the current fiscal year which exceed the amounts paid in for this purpose by the various agencies, departments, and institutions subject to unemployment compensation claims. The department must certify quarterly to the State Budget and Control Board the state's liability for such benefit claims actually paid to claimants who were employees of the State of South Carolina and entitled under federal law. The amount so certified must be remitted to the department.

Article 9

Payment and Collection of Departmental Administrative Contingency Assessments

Section 41-31-910. Departmental administrative contingency assessments must accrue and become payable by each employer who is subject to the assessments as defined in Section 41-27-410 for each calendar year in which he is subject to Chapters 27 through 41 of this title with respect to wages for employment. The assessments are due and payable by each subject employer to the department for the departmental administrative contingency fund and are not deductible, in whole or in part, from the wages of individuals in the employer's employ. No determination and assessments may be instituted more than four years after the last day of the month immediately following the calendar quarter for which the assessments were payable. The limitation period contained in this section does not apply to an employer that wilfully fails to file a departmental contingency assessment report pursuant to this section or pursuant to regulations promulgated by the department, or has knowingly made a false

statement or has intentionally failed to disclose a material fact on a departmental contingency assessment report.

Section 41-31-920. Departmental administrative contingency assessments must be reported on the employer's quarterly contribution report according to the same rules as the department may prescribe for contributions.

Section 41-31-930. If any employer's amount of the departmental administrative contingency assessment which is due and payable, as prescribed by the department, is unpaid ten days following the date on which an assessment or debit memorandum has been issued, a penalty of ten dollars may be assessed."

"Insured Worker" definition revised; application limited

SECTION 2. Section 41-27-310 of the 1976 Code is amended to read:

"Section 41-27-310. An 'insured worker' is an individual who has been paid wages in his base period for insured work equal to or exceeding one and one-half times the total of his wages paid in the quarter of such base period in which his wages for insured work were highest; provided, however, that no individual shall qualify as an insured worker unless he has been paid at least four thousand four hundred fifty-five dollars in his base period for insured work and one thousand ninety-two dollars in that quarter of his base period in which such wages were highest.

This section must not be applied to individuals who were found qualified to receive unemployment benefits prior to enactment of this section."

"Wages" definition revised

SECTION 3. Section 41-27-380(2) of the 1976 Code, as last amended by Act 146 of 2010, is further amended to read:

"(2) For the purpose of Chapter 31, Article 1 of this title, 'wages' does not include that part of remuneration which, after remuneration equal to ten thousand dollars for the period of January 1, 2011, through December 31, 2011, twelve thousand dollars for the period of January 1, 2012, through December 31, 2014, and fourteen thousand dollars from January 1, 2015, has been paid in a calendar year to an individual

by an employer or his predecessor or with respect to employment during any calendar year, is paid to the individual by the employer during the calendar year unless that part of the remuneration is subject to a tax under a federal law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment fund. For the purposes of this subsection, employment includes service constituting employment under any unemployment compensation law of another state."

Weekly benefits; minimum increased

SECTION 4. Section 41-35-40 of the 1976 Code is amended to read:

"Section 41-35-40. An insured worker's weekly benefit amount is fifty percent of his weekly average wage, as defined in Section 41-27-140, and the weekly benefit amount, if not a multiple of one dollar, must be computed to the next lower multiple of one dollar. However, no insured worker's weekly benefit amount may be less than forty-two dollars nor greater than sixty-six and two-thirds percent of the statewide average weekly wage most recently computed before the beginning of the individual's benefit year."

Candidates for Department of Employment and Workforce Appellate Panel; support pledges limited; ramifications for violations

SECTION 5. Article 7, Chapter 27, Title 41 of the 1976 Code, as added by Act 146 of 2010, is amended by adding:

"Section 41-27-760. (A) No candidate for or person intending to become a candidate for the Department of Employment and Workforce Appellate Panel may seek, directly or indirectly, the pledge of a member of the General Assembly's vote or contact, directly or indirectly, a member of the General Assembly or the review committee regarding screening for the Department of Employment and Workforce Appellate Panel, until the qualifications of all candidates for that office have been determined by the Department of Employment and Workforce Review Committee, and the review committee has formally released its report as to the qualifications of all candidates for the office to the General Assembly. For purposes of this section, 'indirectly seeking a pledge' means the candidate, or someone acting on behalf of or at the request of the candidate, requests a person to contact a

member of the General Assembly on behalf of the candidate before the review committee has formally released its report as to the qualifications of all candidates to the General Assembly. The prohibitions of this section do not extend to an announcement of candidacy by the candidate or statement by the candidate detailing the candidate's qualifications.

(B)(1) No member of the General Assembly may pledge or offer his pledge for his vote for a candidate until the qualifications of all candidates for the Department of Employment and Workforce Appellate Panel have been determined by the Department of Employment and Workforce Review Committee, and the review committee has formally released its report as to the qualifications of all candidates to the General Assembly. The formal release of the report of qualifications must occur no earlier than forty-eight hours after the names of all candidates found qualified by the review committee have been initially released to members of the General Assembly.

(2) No member of the review committee may pledge or offer his pledge to find a candidate qualified prior to the review committee's determination of qualifications.

(C) No member of the General Assembly may trade anything of value, including pledges to vote for legislation or for other candidates, in exchange for another member's pledge to vote for a candidate for the Department of Employment and Workforce Appellate Panel.

(D)(1) Violations of this section may be considered by the Department of Employment and Workforce Review Committee when it considers the candidate's qualifications.

(2) Violations of this section by members of the General Assembly must be reported by the review committee to the House or Senate Ethics Committee, as may be applicable.

(3) Violations of this section by incumbent appellate panelists seeking reelection must be reported by the Department of Employment and Workforce and the Department of Employment and Workforce Appellate Panel to the State Ethics Commission. A violation of this section is a misdemeanor and, upon conviction, the violator must be fined not more than one thousand dollars or imprisoned not more than ninety days, or both. Cases tried under this section may not be transferred from general sessions court pursuant to Section 22-3-545."

Unemployment Compensation and Employment Services Divisions; appointment of directors not mandatorily bipartisan

SECTION 6. Section 41-29-40 of the 1976 Code, as last amended by Act 146 of 2010, is further amended to read:

"Section 41-29-40. There are created under the department two coordinate divisions, the South Carolina State Employment Service Division, and a division to be known as the Unemployment Compensation Division. Each division must be administered by a full-time salaried director, who is subject to the supervision and direction of the department. The department may appoint, fix the compensation of, and prescribe the duties of the directors of these divisions. The director of each division shall be responsible to the department for the administration of his respective division and has the power and authority as vested in him by the department."

Availability of benefits for certain person seeking part-time work; "seeking only part-time work" defined

SECTION 7. Article 5, Chapter 27, Title 41 of the 1976 Code is amended by adding:

"Section 41-27-525. If the majority of the weeks of work in an individual's base period includes part-time work, the individual shall not be denied unemployment benefits under any provisions of this act relating to availability for work, active search for work, or failure to accept work, solely because the individual is seeking only part-time work. The phrase 'seeking only part-time work', as used in this subsection, means the individual claiming unemployment benefits is available for a number of hours per week that are comparable to the individual's part-time work experience in the base period."

"Alternate base period" defined

SECTION 8. Section 41-27-150 of the 1976 Code, as last amended Act 146 of 2010, is further amended to read:

"Section 41-27-150. (A) Except as provided in subsection (B), 'base period' means the first four of the last five completed calendar quarters immediately preceding the first day of an individual's benefit year. However, in the case of a combined wage claim filed by an

individual in accord with an arrangement entered into by the department pursuant to the provisions of Section 41-29-140(2), the base period is that applicable provided by the law of the paying state.

(B)(1) 'Alternate base period' means for benefit years effective after May 31, 2010, if an individual does not have sufficient wages in the base period defined in subsection (A) to qualify for benefits, his base period must be the four calendar quarters completed most recently before the individual's benefit year if this period qualifies him for benefits, provided these quarters were not previously used to establish a prior valid benefit year.

(2) If the wage information for an individual's most recently completed calendar quarter is not available to the department from regular quarterly reports of systematically accessible wage information, the department promptly must contact the individual's employer to establish such wage information. The director shall establish rules necessary to implement this subsection.

(C) Wages that fall within the base period, if claims established under this section, must not be available for use in qualifying for a subsequent benefit year."

Department of Employment and Workforce Appellate Panel; mandatory retirement age

SECTION 9. Section 41-29-300 of the 1976 Code, as added by Act 146 of 2010, is amended by adding:

"(G) Notwithstanding another provision of law, it shall be mandatory for a member of the Department of Employment and Workforce Appellate Panel to retire not later than the end of the fiscal year in which he reaches his seventy-second birthday."

Waiting week credit and unemployment compensation; related terms defined; availability for compelling family circumstances

SECTION 10. Section 41-35-125 of the 1976 Code, as last amended by Act 146 of 2010, is further amended to read:

"Section 41-35-125. (A)(1) Notwithstanding the provisions of Section 41-35-120, an individual is eligible for waiting week credit and for unemployment compensation if the department finds that the individual has left work voluntarily or has been discharged because of circumstances directly resulting from domestic abuse and:

(a) reasonably fears future domestic abuse at or en route to the workplace;

(b) needs to relocate to avoid future domestic abuse; or

(c) reasonably believes that leaving work is necessary for his safety or the safety of his family.

(2) When determining if an individual has experienced domestic abuse for the purpose of receiving unemployment compensation, the department must require him to provide documentation of domestic abuse including, but not limited to, police or court records or other documentation of abuse from a shelter worker, attorney, member of the clergy, or medical or other professional from whom the individual has sought assistance.

(3) Documentation or evidence of domestic abuse acquired by the department pursuant to this section must be kept confidential unless consent for disclosure is given, in writing, by the individual.

(B)(1) For the purposes of this subsection:

(a) 'Immediate family member' means a claimant's spouse, parents, or minor children.

(b) 'Illness' means a verified disability that necessitates the care of the disabled person for a period of time that exceeds the amount of time the employer will provide paid or unpaid leave. Disability, includes, but is not limited to, mental and physical disabilities, permanent and temporary disabilities, and partial and total disabilities.

(c) 'Compelling family circumstances' means:

(i) that a claimant was separated from employment with the employer because of the illness or disability of the claimant and, based upon available information, the department finds that it was medically necessary for the claimant to stop working or change occupations;

(ii) the claimant was separated from work due to the illness or disability of an immediate family member; and

(iii) the claimant's spouse was transferred or employed in another city or state, the family is required to move to the location of that job, the location is outside the commuting distance of the claimants previous employment, and the claimant separates from employment in order to move to the new location with his spouse.

(2) Notwithstanding the provisions of Section 41-35-120, an individual is eligible for waiting week credit and for unemployment compensation if the department finds that the individual was separated from employment due to compelling family circumstances."

Time effective

SECTION 11. This act takes effect January 1, 2011.

Ratified the 1st day of June, 2010.

Approved the 3rd day of June, 2010.

No. 235

(R286, S286)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING CHAPTER 8 TO TITLE 44 SO AS TO REQUIRE THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL TO IMPLEMENT A TARGETED COMMUNITY HEALTH PROGRAM IN THREE TO FIVE COUNTIES OF NEED FOR DENTAL HEALTH EDUCATION, SCREENING, AND TREATMENT REFERRALS IN PUBLIC SCHOOLS FOR CHILDREN IN KINDERGARTEN, THIRD, SEVENTH, AND TENTH GRADES OR UPON ENTRY INTO PUBLIC SCHOOLS; TO REQUIRE PROGRAM GUIDELINES TO BE PROMULGATED IN REGULATIONS; TO PROVIDE FOR A COMMUNITY ORAL HEALTH COORDINATOR TO ASSIST COUNTY HEALTH DEPARTMENTS AND SCHOOL DISTRICTS TO STRENGTHEN ORAL HEALTH IN THEIR COMMUNITIES; TO REQUIRE AN ACKNOWLEDGMENT OF DENTAL SCREENING TO BE ISSUED UPON COMPLETION OF THE SCREENING AND TO REQUIRE THIS ACKNOWLEDGMENT TO BE PRESENTED TO THE CHILD'S SCHOOL; TO REQUIRE NOTIFICATION TO THE CHILD'S PARENT IF PROFESSIONAL ATTENTION IS INDICATED BY THE SCREENING AND IF AUTHORIZED BY THE CHILD'S PARENTS; TO PROVIDE NOTIFICATION TO THE COMMUNITY HEALTH COORDINATOR TO FACILITATE FURTHER ATTENTION IF NEEDED; TO PROVIDE THAT A SCREENING MUST BE COMPLETED UNLESS A CHILD'S PARENT COMPLETES AN EXEMPTION FORM; TO PROVIDE THAT IMPLEMENTATION OF THIS PROGRAM IS

CONTINGENT UPON THE APPROPRIATION OF ADEQUATE FUNDING; AND TO REPEAL SECTION 44-1-240 RELATING TO A PILOT PROGRAM FOR DENTAL HEALTH SCREENINGS OF CHILDREN.

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

Targeted community program for dental health education, screening, and treatment referral for children in certain grades in three to five counties of need

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

"CHAPTER 8

Community Oral Health Coordinator

Section 44-8-10. The Department of Health and Environmental Control shall implement a targeted community program for dental health education, screening, and treatment referral in the public schools for children in kindergarten, third, seventh, and tenth grades or upon entry into a South Carolina school. The department shall target three to five counties of need. The program must seek collaboration from local school districts, other governmental entities, school nurses, and dentists to coordinate federal Medicaid assistance and any volunteer efforts to reduce costs to the State to the extent practicable. Program guidelines must be promulgated in regulations and must include procedures for screenings and for the issuance of an Acknowledgment of Dental Screening for a child indicating that the child has had the dental screening. These guidelines also must provide that the screenings required by this section be made by an authorized provider at no charge.

Section 44-8-20. Unless a different meaning is required by the context:

(1) 'Acknowledgment of Dental Screening' means a document designed to serve as official confirmation that a child has had a dental screening.

(2) 'Authorized practitioner' means dentists, hygienists, certified dental assistants, physicians, and nurses, and anyone who has qualified under the department's training module.

(3) 'Community oral health coordinator' means someone located in the county of need that will provide support to county health departments and school districts to strengthen the capacity to respond to the oral health needs of school children. They will assist in facilitating the removal of barriers to dental care, partnership development or enhancement, building or enhancing of dental safety net systems, oral health training and education, and strategic planning for accessing additional resources.

(4) 'County of need' means any county in this State that is considered to be a dentally underserved area based on the most recent Oral Health Needs Assessment or any other data deemed appropriate by the department.

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

(6) 'School' means any public school operating within the county, as defined by Section 59-1-120.

(7) 'Screening' means a visual scan of the oral cavity and facial structures performed consistent with national standards as recognized and approved by the department.

Section 44-8-30. In the target counties of need, no later than one hundred twenty calendar days following a child's start date to five year old kindergarten, third grade, seventh grade, tenth grade, or upon entry into a South Carolina school, the student shall present to the school an Acknowledgment of Dental Screening signed by an authorized practitioner.

Section 44-8-40. When a dental screening is performed by an authorized practitioner in a school setting in one of the targeted counties of need, the practitioner shall issue an Acknowledgment of Dental Screening for the child. The school nurse or other school employee designated by the school district superintendent shall notify and advise the child's parent or guardian to seek further professional attention for the child if indicated by the screening. Upon receipt of written permission from the parent or guardian, the school also shall notify the community oral health coordinator who will serve as a facilitator if further attention is needed upon completion of the screening. The community oral health coordinator also shall maintain all records and data determined necessary by the department.

Section 44-8-50. A screening must be performed for students in the targeted counties of need unless a parent or guardian completes an

exemption form provided to them by the school. The school shall accept a parental exemption form in place of the Acknowledgment of Dental Screening.

Section 44-8-60. The initial and continued implementation of the provisions of this chapter is contingent upon the appropriation of adequate funding. There is no mandatory financial obligation to the Department of Health and Environmental Control, the Department of Education, or school districts within the counties chosen to participate if adequate funding is not appropriated or made available."

Section repealed

SECTION 2. Section 44-1-240 of the 1976 Code is repealed.

Time effective

SECTION 3. This act takes effect July 1, 2010, and applies to students in the grade levels specified in Section 44-8-30 of the 1976 Code, as added by Section 1 of this act, no later than the 2011-2012 school year, contingent upon regulations authorized in Section 44-8-10 of the 1976 Code, as added by Section 1 of this act, being effective and funding for this program being available to the Department of Health and Environmental Control.

Ratified the 2nd day of June, 2010.

Became law without the signature of the Governor -- 6/9/2010.

No. 236

(R294, S104)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING CHAPTER 53 TO TITLE 46 SO AS TO PROVIDE THAT AN AGRITOURISM PROFESSIONAL IS NOT LIABLE FOR AN INJURY TO OR DEATH OF A PARTICIPANT RESULTING FROM AN INHERENT RISK OF AN AGRITOURISM ACTIVITY OR LOSS OR DAMAGES TO THE PARTICIPANT RESULTING THEREFROM, UNDER

CERTAIN CONDITIONS, TO PROVIDE FOR THE EXTENT OF THE LIABILITY PROVIDED AND THE DEFENSES WHICH MAY BE PLED, TO PROVIDE THAT AN AGRITOURISM PROFESSIONAL MUST POST A WARNING NOTICE WHERE THE AGRITOURISM ACTIVITIES ARE CONDUCTED, TO PROVIDE THAT WARNING NOTICES MUST BE INCLUDED IN CONTRACTS THE AGRITOURISM PROFESSIONAL ENTERS INTO WITH PARTICIPANTS, AND TO PROVIDE THAT THE AGRITOURISM PROFESSIONAL'S LIABILITY IS NOT LIMITED IF THE PROPER WARNING NOTICES ARE NOT PROVIDED TO PARTICIPANTS OR WARNING SIGNS POSTED.

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

Agritourism activity liability

SECTION 1. Title 46 of the 1976 Code is amended by adding:

"CHAPTER 53

Agritourism Activity Liability

Section 46-53-10. As used in this chapter:

(1) 'Agritourism activity' means any activity carried out on a farm or ranch that allows members of the general public, for recreational, entertainment, or educational purposes, to participate in rural activities.

(2) 'Agritourism professional' means any person who is engaged in the business of providing one or more agritourism activities, whether or not for compensation.

(3) 'Inherent risks of an agritourism activity' means those dangers or conditions that are inherent to an agritourism activity, including hazards related to surface and subsurface conditions, natural conditions of land, vegetation, and water at the agritourism location, the behavior of wild or domestic animals, except dogs, and ordinary dangers associated with structures or equipment commonly used in farming and ranching operations. Inherent risks of an agritourism activity also includes a participant that acts in a negligent manner that causes or contributes to an injury to or the death of the participant or others, including failing to follow instructions given by the agritourism professional or failing to exercise reasonable caution while engaging in an agritourism activity. Inherent risk does not include any wilful,

wanton, or reckless act or omission by the agritourism professional or any defect to land, structures, or equipment commonly used in farming and ranching operations that the agritourism professional knew or should have known existed.

(4) 'Participant' means any person, other than the agritourism professional, who engages in an agritourism activity.

(5) 'Person' means an individual, fiduciary, firm, association, partnership, limited liability company, corporation, unit of government, or any other group acting as a unit.

(6) 'Rural activity' means wildlife management, farming and ranching, and associated historic, scientific research, cultural, harvest-your-own, and natural activities and attractions.

Section 46-53-20. An agritourism professional is not liable for an injury to or the death of a participant resulting from an inherent risk of an agritourism activity, and no participant or participant's representative may make a claim against, maintain an action against, or recover from an agritourism professional for injury, loss, damage, or death of the participant resulting from an inherent risk of an agritourism activity unless the agritourism professional:

(1) intentionally injured or caused the death of the participant or committed an act or omission that constitutes wilful, wanton, or reckless disregard for the safety of the participant and that act or omission caused the injury or death; or

(2) owns, leases, rents, or otherwise is in lawful possession and control of the land or facilities upon which the participant sustained injuries or death because of a dangerous latent condition which was known or should have been known to the agritourism professional.

Section 46-53-30. In an action for damages against an agritourism professional for an injury to or death of a participant, the agritourism professional may plead assumption of the risk of an agritourism activity as an affirmative defense.

Section 46-53-40. Any limitation on legal liability afforded by this chapter to an agritourism professional is in addition to any other limitations of legal liability otherwise provided by law.

Section 46-53-50. (A) Every agritourism professional must post and maintain at least one sign that contains a warning notice. The sign must be clearly visible and placed at the entrance of the agritourism activity or another conspicuous location on or near where agritourism

activities are conducted. Each letter on the sign must be a minimum of one inch in height.

(B) Every written contract entered into with a participant by an agritourism professional for professional services, instruction, or rental of equipment related to an agritourism activity, must have a printed warning notice in or affixed to the contract. The warning notice must be clearly legible, and the words must be in boldface, twelve-point type.

(C) The warning notices required in this section must contain the following statement:

'WARNING !

Under South Carolina law, an agritourism professional is not liable for an injury to or the death of a participant in an agritourism activity resulting from an inherent risk associated with the agritourism activity. (Chapter 53, Title 46, Code of Laws of South Carolina, 1976).'

(D) Failure to comply with the requirements in this section concerning warning signs and notices prevents an agritourism professional from pleading assumption of the risk of an agritourism activity as provided in Section 46-53-30 and invoking the privileges of immunity provided in Section 46-53-20."

Savings

SECTION 2. The repeal or amendment by this act of any law, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release, or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

Severability

SECTION 3. 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 4. This act takes effect September 1, 2010, and shall only apply to causes of action arising after that date.

Ratified the 7th day of June, 2010.

Became law without the signature of the Governor -- 6/14/2010.

No. 237

(R295, S217)

AN ACT TO AMEND SECTION 24-3-20, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE DESIGNATION OF PLACES OF CONFINEMENT FOR INMATES, BY THE DEPARTMENT OF CORRECTIONS, SO AS TO PROVIDE THAT THE DEPARTMENT MAY DESIGNATE CERTAIN REGIONAL AND MUNICIPAL FACILITIES AS PLACES OF CONFINEMENT AND TO INCLUDE MUNICIPAL CHIEF ADMINISTRATOR, OR THE EQUIVALENT AS PERSONS WHO THE STATE MUST OBTAIN CONSENT FROM TO HOUSE AS AN INMATE IN A LOCAL GOVERNMENTAL FACILITY; TO AMEND SECTION 24-3-27, RELATING TO THE ESTABLISHMENT OF LOCAL REGIONAL CORRECTIONAL FACILITIES, SO AS TO PROVIDE THAT THE DECISION TO ASSIGN WORK OR DISQUALIFY A PERSON FROM WORK IN A FACILITY IS IN THE SOLE DISCRETION OF THE OFFICIAL IN CHARGE OF THE FACILITY AND MAY NOT BE CHALLENGED; TO

AMEND SECTION 24-3-30, RELATING TO DESIGNATION OF PLACES OF CONFINEMENT, SO AS TO REVISE THE LIST OF PERSONS FROM WHICH THE STATE MUST OBTAIN CONSENT BEFORE AN INMATE MAY BE PLACED IN A FACILITY MAINTAINED BY A LOCAL GOVERNMENTAL ENTITY; TO AMEND SECTION 24-3-40, RELATING TO THE DISPOSITION OF THE WAGES OF A PRISONER ALLOWED TO WORK AT PAID EMPLOYMENT, SO AS TO PROVIDE A PROCEDURE FOR PAYMENT OF A PRISONER WHO IS CONFINED TO A LOCAL CORRECTIONAL FACILITY OR PROGRAM, TO REVISE HOW A PRISONER'S WAGES MUST BE DISTRIBUTED WHEN RESTITUTION HAS NOT BEEN ORDERED OR SATISFIED; TO AMEND SECTION 24-3-50, RELATING TO THE PENALTY FOR A PRISONER WHO FAILS TO REMAIN WITHIN THE EXTENDED LIMITS OF HIS CONFINEMENT, SO AS TO PROVIDE THAT THIS PROVISION APPLIES TO A PRISONER CONFINED IN A LOCAL FACILITY, AND TO MAKE A TECHNICAL CHANGE; TO AMEND SECTION 24-3-60, RELATING TO THE CLERKS OF COURT PROVIDING NOTICE TO THE DEPARTMENT OF CORRECTIONS OF THE NUMBER OF CONVICTS SENTENCED TO IMPRISONMENT IN THE PENITENTIARY, SO AS TO MAKE TECHNICAL CHANGES; TO AMEND SECTION 24-3-70, RELATING TO ALLOWABLE EXPENSES INCURRED FOR THE TRANSPORTATION OF CONVICTS TO THE PENITENTIARY, SO AS TO MAKE TECHNICAL CHANGES; TO AMEND SECTION 24-3-80, RELATING TO THE DETENTION OF A PRISONER BY COMMITMENT AUTHORIZED BY THE GOVERNOR, SO AS TO SUBSTITUTE THE TERM "STATE PRISON SYSTEM" FOR THE TERM "PENITENTIARY"; TO AMEND SECTION 24-3-81, RELATING TO CONJUGAL VISITS WITHIN THE STATE PRISON SYSTEM, SO AS TO PROVIDE THAT NO PRISONER IN THE STATE PRISON SYSTEM OR WHO IS BEING DETAINED IN A LOCAL GOVERNMENTAL FACILITY IS PERMITTED TO HAVE CONJUGAL VISITS; TO AMEND SECTION 24-3-130, RELATING TO THE USE OF INMATE LABOR ON PUBLIC WORKS PROJECTS, SO AS TO MAKE A TECHNICAL CHANGE; TO AMEND SECTION 24-3-131, RELATING TO THE SUPERVISION OF INMATES USED ON PUBLIC PROJECTS, SO AS TO SUBSTITUTE THE TERM "INMATE" FOR THE TERM "CONVICT"; TO AMEND SECTION 24-3-140,

RELATING TO THE USE OF CONVICT LABOR AT THE STATE HOUSE, SO AS TO SUBSTITUTE THE TERM "INMATE" FOR THE TERM "CONVICT"; TO AMEND SECTION 24-3-160, RELATING TO THE COST OF MAINTAINING CONVICTS BY STATE INSTITUTIONS, SO AS TO SUBSTITUTE THE TERM "INMATES" FOR THE TERM "CONVICTS", AND THE TERM "PRISON SYSTEM" FOR THE TERM "PENITENTIARY"; TO AMEND SECTION 24-3-170, RELATING TO THE USE OF CONVICTS BY CLEMSON UNIVERSITY, SO AS TO SUBSTITUTE THE TERMS "FEE" FOR THE TERM "HIRE", "INMATES" FOR THE TERM "CONVICTS", "EMPLOYEES" FOR THE TERM "GUARDS", AND "PRISON" FOR THE TERM "PENITENTIARY"; TO AMEND SECTION 24-3-180, RELATING TO THE PROVISION OF TRANSPORTATION AND CLOTHING FOR CONVICTS WHO HAVE BEEN DISCHARGED, SO AS TO SUBSTITUTE THE TERM "INMATE" FOR THE TERM "CONVICT" AND THE TERM "STATE PRISON" FOR THE TERM "PENITENTIARY"; TO AMEND SECTION 24-3-190, RELATING TO APPROPRIATION OF CLOSE OF THE YEAR BALANCES FOR THE SUPPORT OF THE PENITENTIARY, SO AS TO SUBSTITUTE THE TERM "DEPARTMENT" FOR THE TERM "PENITENTIARY" AND THE TERM "INMATES" FOR THE TERM "CONVICTS"; TO AMEND SECTION 24-3-310, RELATING TO THE GENERAL ASSEMBLY'S INTENT FOR ESTABLISHING A PRISON INDUSTRIES PROGRAM, SO AS TO SUBSTITUTE THE TERM "PRISON" FOR THE TERM "CONVICT", AND THE TERM "INMATES" FOR THE TERM "CONVICTS"; TO AMEND SECTION 24-3-320, RELATING TO THE PURCHASE OF EQUIPMENT AND MATERIALS AND EMPLOYMENT OF PERSONNEL FOR THE ESTABLISHMENT AND MAINTENANCE OF PRISON INDUSTRIES, SO AS TO MAKE TECHNICAL CHANGES, SUBSTITUTE THE TERM "INMATES" FOR THE TERM "CONVICTS" AND TO DELETE THE TERM "PENITENTIARY"; TO AMEND SECTION 24-3-330, RELATING TO THE PURCHASE OF PRODUCTS PRODUCED BY CONVICT LABOR, SO AS TO SUBSTITUTE THE TERM "INMATE" FOR THE TERM "CONVICT"; TO AMEND SECTION 24-3-340, RELATING TO THE STATE'S PURCHASE OF PRODUCTS THAT ARE NOT PRODUCED BY CONVICT LABOR, SO AS TO MAKE A TECHNICAL CHANGE; TO

AMEND SECTION 24-37-370, RELATING TO THE PRIORITY OF DISTRIBUTION OF PRODUCTS PRODUCED BY CONVICT LABOR, SO AS TO SUBSTITUTE THE TERM "INMATE" FOR THE TERM "CONVICT"; TO AMEND SECTION 24-3-400, RELATING TO THE PRISON INDUSTRIES ACCOUNT, SO AS TO SUBSTITUTE THE TERM "INMATE" FOR THE TERM "CONVICT"; TO AMEND SECTION 24-3-420, RELATING TO PENALTIES FOR VIOLATIONS OF THE PROVISIONS RELATING TO THE PRISON INDUSTRIES PROGRAM, SO AS TO DELETE THE TERM "JAIL"; TO AMEND SECTION 24-3-520, RELATING TO THE TRANSPORTATION OF A PERSON SENTENCED TO DEATH, SO AS TO REVISE THIS PROVISION AND PROVIDE THAT THE FACILITY MANAGER WHO HAS CUSTODY OF THE INMATE HAS THE AUTHORITY TO TRANSFER HIM TO THE DEPARTMENT OF CORRECTIONS; TO AMEND SECTION 24-3-540, RELATING TO THE DEATH CHAMBER AND THE TRANSPORTING OF A PERSON TO A PLACE TO BE ELECTROCUTED, SO AS TO SUBSTITUTE THE TERM "PRISON SYSTEM" FOR THE TERM "PENITENTIARY", AND TO MAKE TECHNICAL CHANGES; TO AMEND SECTION 24-3-550, RELATING TO WITNESSES THAT MAY BE PRESENT DURING AN EXECUTION, SO AS TO SUBSTITUTE THE TERM "INMATE" FOR THE TERM "CONVICT"; TO AMEND SECTION 24-3-560, RELATING TO THE CERTIFICATION OF THE EXECUTION OF A PERSON, SO AS TO MAKE TECHNICAL CHANGES; TO AMEND SECTION 24-3-570, RELATING TO THE DISPOSITION OF THE BODY OF A PERSON WHO HAS BEEN EXECUTED, SO AS TO MAKE TECHNICAL CHANGES, TO SUBSTITUTE THE TERM "INMATES" FOR THE TERM "CONVICTS", AND THE TERM "PRISON SYSTEM" FOR THE TERM "PENITENTIARY"; TO AMEND SECTION 24-3-710, RELATING TO THE INVESTIGATION OF THE MISCONDUCT THAT OCCURS IN THE STATE PRISON SYSTEM, SO AS TO MAKE TECHNICAL CHANGES, SUBSTITUTE THE TERM "PRISON SYSTEM" FOR THE TERM "PENITENTIARY", AND PROVIDE THAT THE DIRECTOR OF THE STATE PRISON SYSTEM'S AUTHORITY TO INVESTIGATE MISCONDUCT IN THE STATE PRISON SYSTEM IS THE SAME AUTHORITY THAT AN OFFICIAL IN CHARGE OF A LOCAL FACILITY MAY EXERCISE; TO AMEND SECTION 24-3-720, RELATING

TO ENLISTING THE AID OF CITIZENS TO SUPPRESS PRISON RIOTS AND DISORDERS, SO AS TO MAKE A TECHNICAL CHANGE; TO AMEND SECTION 24-3-740, RELATING TO THE COMPENSATION OF A PERSON WHO ASSISTS THE DIRECTOR OF THE DEPARTMENT OF CORRECTIONS, SO AS TO MAKE A TECHNICAL CHANGE; TO AMEND SECTION 24-3-750, RELATING TO PROVIDING IMMUNITY TO A PERSON WHO ASSISTS THE DEPARTMENT OF CORRECTIONS IN SUPPRESSING DISORDER, RIOT, OR INSURRECTION, SO AS TO MAKE TECHNICAL CHANGES; TO AMEND SECTION 24-3-760, RELATING TO THE POWERS OF THE KEEPER WHEN THE DIRECTOR OF THE DEPARTMENT OF CORRECTIONS IS ABSENT, SO AS TO MAKE TECHNICAL CHANGES; TO AMEND SECTION 24-3-920, AS AMENDED, RELATING TO REWARDS FOR THE CAPTURE OF AN ESCAPED CONVICT, SO AS TO SUBSTITUTE THE TERM "INMATE" FOR THE TERM "CONVICT"; TO AMEND SECTION 24-3-930, RELATING TO EXEMPTING CERTAIN PERSONS EMPLOYED BY THE PENITENTIARY FROM SERVING ON JURIES AND MILITARY OR STREET DUTY, SO AS TO SUBSTITUTE THE TERM "STATE PRISON SYSTEM" FOR THE TERM "PENITENTIARY", AND TO MAKE TECHNICAL CHANGES; TO AMEND SECTION 24-3-940, RELATING TO PROHIBITING PRISONERS FROM GAMBLING, SO AS TO MAKE TECHNICAL CHANGES; TO AMEND SECTION 24-3-951, RELATING TO THE POSSESSION OR USE OF MONEY BY PRISONERS, SO AS TO MAKE A TECHNICAL CHANGE; TO AMEND SECTION 24-3-965, RELATING TO THE TRIAL OF CERTAIN OFFENSES RELATED TO CONTRABAND IN MAGISTRATES COURT, SO AS TO SUBSTITUTE THE TERM "INMATE" FOR THE TERM "PRISONER", TO PROVIDE THAT THIS PROVISION ALSO APPLIES TO REGIONAL DETENTION FACILITIES AND PRISON CAMPS, AND TO DEFINE THE TERM "CONTRABAND"; TO AMEND SECTION 24-5-12, RELATING TO COUNTIES THAT ASSUME CERTAIN RESPONSIBILITIES WITH REGARD TO THE CUSTODY OF COUNTY JAILS, SO AS TO SUBSTITUTE THE TERM "FACILITY MANAGER" FOR THE TERM "JAILER", AND TO PROVIDE THE CIRCUMSTANCES IN WHICH A COUNTY CAN DEVOLVE ITS POWER TO OPERATE A JAIL UPON A

SHERIFF; TO AMEND SECTION 24-5-20, RELATING TO THE EMPLOYMENT OF A JAILER, SO AS TO DELETE THE PROVISION THAT ALLOWS A SHERIFF WHO DOES NOT LIVE IN A JAIL TO APPOINT A JAILER, TO PROVIDE THAT A SHERIFF WHO HAS CONTROL OF A JAIL SHALL APPOINT A FACILITY MANAGER WHO HAS CONTROL AND CUSTODY OF THE JAIL UNDER THE SUPERVISION OF THE SHERIFF, AND TO PROVIDE THAT IN CASES WHERE THE SHERIFF DOES NOT CONTROL A JAIL, THE COUNTY'S GOVERNING BODY SHALL APPOINT THE FACILITY MANAGER; TO AMEND SECTION 24-5-50, RELATING TO A SHERIFF'S KEEPING OF PRISONERS COMMITTED BY A CORONER, SO AS TO SUBSTITUTE THE TERM "FACILITY MANAGERS" FOR THE TERM "JAILERS", AND TO PROVIDE THAT THIS PROVISION ALSO APPLIES TO GOVERNING BODIES THAT HAVE CUSTODY OF A JAIL, AND TO MAKE A TECHNICAL CHANGE; TO AMEND SECTION 24-5-60, RELATING TO SHERIFFS AND JAILERS KEEPING PRISONERS COMMITTED BY THE UNITED STATES GOVERNMENT, SO AS TO SUBSTITUTE THE TERM "GOVERNING BODIES" FOR THE TERM "JAILERS", AND TO PROVIDE THAT A SHERIFF OR GOVERNING BODY MAY CHARGE A FEE FOR KEEPING THESE PRISONERS; TO AMEND SECTION 24-5-80, RELATING TO PROVIDING BLANKETS AND BEDDING TO PRISONERS, SO AS TO REVISE THE ITEMS THAT A PRISONER MUST BE FURNISHED TO INCLUDE SUFFICIENT FOOD, WATER, CLOTHING, HYGIENE PRODUCTS, BEDDING, SHELTER, AND ACCESS TO MEDICAL CARE; TO AMEND SECTION 24-5-90, RELATING TO THE UNLAWFUL DISCRIMINATION IN THE TREATMENT OF PRISONERS, SO AS TO DELETE THE TERM "JAILER", MAKE TECHNICAL CHANGES, AND REVISE THE PENALTY FOR A VIOLATION OF THIS PROVISION; TO AMEND SECTION 24-5-110, RELATING TO THE RETURN TO COURT BY A SHERIFF OF THE NAMES OF PRISONERS WHO ARE CONFINED ON THE FIRST DAY OF THE TERM OF GENERAL SESSIONS COURT, SO AS TO SUBSTITUTE THE TERM "FACILITY MANAGER" FOR THE TERM "SHERIFF", AND TO PROVIDE THAT THE USE OF ELECTRONIC RECORDS SATISFIES THIS REQUIREMENT; TO AMEND SECTION 24-5-120, RELATING TO A SHERIFF'S

ANNUAL REPORT ON THE CONDITION OF A JAIL, SO AS TO SUBSTITUTE THE TERM "FACILITY MANAGER" FOR THE TERM "SHERIFF"; TO AMEND SECTION 24-5-170, RELATING TO THE REMOVAL OF PRISONERS FROM A JAIL THAT MAY BE DESTROYED, SO AS TO PROVIDE THAT THIS PROVISION ALSO APPLIES TO A JAIL THAT IS RENDERED UNINHABITABLE, AND TO REVISE THE PROCEDURES TO TRANSFER THESE PRISONERS TO ANOTHER FACILITY; TO AMEND SECTIONS 24-5-300, 24-5-310, 24-5-320, AS AMENDED, 24-5-330, 24-5-350, 24-5-360, AS AMENDED, 24-5-370, 24-5-380, AND 24-5-390, ALL RELATING TO DEFINITIONS, APPOINTMENT, TRAINING, PHYSICAL COMPETENCE, DUTIES, IDENTIFICATION CARDS, UNIFORMS, AND WORKERS' COMPENSATION BENEFITS FOR RESERVE DETENTION OFFICERS, SO AS TO DELETE THE TERM "JAILER", AND TO SUBSTITUTE THE TERM "SOUTH CAROLINA CRIMINAL JUSTICE ACADEMY" FOR THE TERM "DEPARTMENT OF PUBLIC SAFETY"; TO AMEND SECTION 24-7-60, RELATING TO THE CARE OF CONVICTS SENTENCED TO LABOR ON A COUNTY PUBLIC WORKS PROJECT, SO AS TO MAKE TECHNICAL CHANGES, AND TO SUBSTITUTE THE TERM "INMATES" FOR THE TERM "CONVICTS", AND THE TERM "GENERAL FUND" FOR THE TERM "ROAD FUND"; TO AMEND SECTION 24-7-110, RELATING TO THE HEALTH OF CONVICTS IN A COUNTY'S CUSTODY, SO AS TO MAKE TECHNICAL CHANGES, SUBSTITUTE THE TERMS "MEDICAL PERSONNEL" FOR THE TERM "PHYSICIAN", "INMATES" FOR THE TERM "CONVICTS", "COUNTY JAIL, DETENTION FACILITY, PRISON CAMP, OR OTHER LOCAL FACILITIES" FOR THE TERM "CHAIN GANG", AND TO REVISE THE PROCEDURE TO PROVIDE AND PAY FOR HEALTH CARE SERVICES FOR INMATES IN A COUNTY'S CUSTODY; TO AMEND SECTION 24-7-120, RELATING TO THE INCARCERATION OF CONVICTS BY MUNICIPAL AUTHORITIES, SO AS TO PROVIDE STANDARDS THAT A MUNICIPAL AUTHORITY MUST MAINTAIN WHEN IT SUPERVISES PERSONS SENTENCED TO A PUBLIC WORK DETAIL, OR OPERATES A JAIL, AND TO REVISE THIS PROVISION TO ALLOW A MUNICIPALITY TO ENTER INTO AGREEMENTS TO HOUSE THEIR PRISONERS IN COUNTY FACILITIES; TO AMEND SECTION 24-7-155, RELATING TO

THE PROHIBITION OF CONTRABAND IN A COUNTY OR MUNICIPAL PRISON, SO AS TO PROVIDE THAT THIS SECTION APPLIES TO MULTIJURISDICTIONAL FACILITIES, TO SUBSTITUTE THE TERM "INMATE" FOR THE TERM "PRISONER" AND THE TERM "PRISON CAMP" FOR THE TERM "PRISON", TO DELETE A REFERENCE TO THE TERM "SUPERINTENDENT OF THE FACILITY", AND TO PROVIDE THAT THE FACILITY MAY DESIGNATE ADDITIONAL ITEMS OF CONTRABAND THAT ARE PROHIBITED; TO AMEND SECTION 24-9-30, RELATING TO MINIMUM STANDARDS THAT MUST BE MET BY FACILITIES THAT HOUSE PRISONERS OR PRETRIAL DETAINEES, SO AS TO DELETE THE PROVISION THAT REQUIRES A COPY OF CERTAIN INSPECTION REPORTS BE SENT TO CERTAIN JUDGES OF THE JUDICIAL CIRCUIT IN WHICH THE FACILITY IS LOCATED, AND TO MAKE TECHNICAL CHANGES; TO AMEND SECTION 24-9-35, RELATING TO REPORTS OF DEATHS OF INCARCERATED PERSONS, SO AS TO MAKE TECHNICAL CHANGES, TO PROVIDE THAT THIS PROVISION APPLIES TO MULTIJURISDICTIONAL FACILITIES AND TO SUBSTITUTE THE TERM "FACILITY MANGER" FOR THE TERM "JAILER"; TO AMEND SECTION 24-9-40, RELATING TO THE CERTIFICATION OF ARCHITECTURAL PLANS BEFORE A CONFINEMENT FACILITY IS CONSTRUCTED, SO AS TO PROVIDE THAT THE STATE FIRE MARSHAL ALSO SHALL BE PROVIDED A COPY OF ARCHITECTURAL PLANS BEFORE A FACILITY MAY BE CONSTRUCTED OR RENOVATED AND TO PROVIDE THAT THIS SECTION ALSO APPLIES TO THE RENOVATION OF CONFINEMENT FACILITIES; TO AMEND SECTIONS 24-13-10, 24-13-20, 24-13-30, 24-13-40, 24-13-50, 24-13-80, 24-13-125, 24-13-150, 24-13-210, 24-13-230, 24-13-235, 24-13-260, 24-13-410, 24-13-420, 24-13-430, 24-13-440, 24-13-450, 24-13-460, 24-13-470, 24-13-640, 24-13-660, 24-13-910, 24-13-915, 24-13-940, AND 24-13-1540, ALL RELATING TO THE INCARCERATION OF PRISONERS, THE REDUCTION IN A PRISONER'S SENTENCE, PRISONER OFFENSES, THE PRISON WORK RELEASE PROGRAM, FURLOUGHS, THE SHOCK INCARCERATION PROGRAM, AND THE HOME DETENTION PROGRAM, SO AS TO SUBSTITUTE THE TERM "LOCAL DETENTION FACILITIES" FOR THE TERM "CHAIN GANGS",

SUBSTITUTE THE TERMS "INMATES" AND "CONVICTS" FOR THE TERM "PRISONERS", TO MAKE TECHNICAL CHANGES, TO SUBSTITUTE THE TERM "FACILITY MANAGER" FOR THE TERM "OFFICIAL", TO REVISE THE DEFINITION OF THE TERM "DETENTION FACILITY", TO REVISE THE TYPE AND COST OF MEDICAL SERVICES THAT MAY BE PAID FROM AN INMATE'S ACCOUNT, TO PROVIDE THAT IT IS UNLAWFUL FOR A PRISONER TO ESCAPE FROM CUSTODY OR TO POSSESS ITEMS THAT MAY BE USED TO FACILITATE AN ESCAPE, AND TO DELETE A REFERENCE TO THE TERM "LOCAL CORRECTIONAL FACILITY", AND TO PROVIDE THAT PERSONS CONVICTED OF CERTAIN OFFENSES ARE ELIGIBLE FOR WORK RELEASE; TO AMEND SECTION 16-7-140, RELATING TO PENALTIES FOR VIOLATING PROVISIONS THAT PROHIBIT THE WEARING OF MASKS AND PLACING A BURNING CROSS ON A PROPERTY WITHOUT ITS OWNER'S PERMISSION, SO AS TO DELETE A REFERENCE TO THE TERM "COUNTY JAIL", AND TO MAKE TECHNICAL CHANGES; TO AMEND SECTION 63-3-620, RELATING TO PENALTIES FOR A PERSON'S FAILURE TO OBEY CERTAIN ORDERS OF A COURT AND STATUTES RELATING TO THE CHILDREN'S CODE, SO AS TO SUBSTITUTE THE TERM "DETENTION FACILITY" FOR THE TERM "CORRECTIONAL FACILITY", AND TO DELETE A PROVISION THAT PLACES RESTRICTIONS ON WHO MAY PARTICIPATE IN A WORK/PUNISHMENT PROGRAM; TO REPEAL SECTIONS 24-3-150, 24-3-200, 24-5-30, 24-5-70, 24-5-100, 24-5-140, 24-5-150, 24-5-160, 24-7-70, 24-7-80, 24-7-130, 24-7-140, 24-7-150, AND 24-3-45 RELATING TO THE TRANSFER OF CONVICTS TO A COUNTY CHAIN GANG, THE TRANSFER OF A PRISONER TO A COUNTY OTHER THAN THE COUNTY WHERE HE WAS SENTENCED, THE APPOINTMENT OF A JAILER BY A SHERIFF, THE USE OF FEDERAL PRISONERS BY A COUNTY, A SHERIFF'S IMPRESSING A SUFFICIENT NUMBER OF GUARDS TO SECURE A PRISONER WHO IS ACCUSED OF A CAPITAL OFFENSE, THE HOUSING OF FEMALE CONVICTS, THE CONFINEMENT OF PERSONS CHARGED WITH A CRIME IN A PRISON LOCATED IN AN INDUSTRIAL COMMUNITY, THE LEASE OF COUNTY CONVICTS, THE DIETING AND CLOTHING AND MAINTENANCE OF CERTAIN PRISONERS

BY LOCAL GOVERNMENTAL AUTHORITIES, THE COLLECTION AND DISPOSITION OF MONEY BY A COUNTY FOR THE HIRING OF CONVICTS AND THE DEDUCTIONS FROM WAGES OF INMATES ENGAGED IN PAID EMPLOYMENT IN A COMMUNITY; BY ADDING ARTICLE 2 TO CHAPTER 5, TITLE 24 SO AS TO ENACT THE LOCAL DETENTION FACILITY MUTUAL AID AND ASSISTANCE ACT TO ALLOW LOCAL DETENTION FACILITIES TO ASSIST EACH OTHER IN PROVIDING SAFE AND SECURE HOUSING OF INMATES UNDER CERTAIN CIRCUMSTANCES; AND TO AMEND SECTION 24-21-560, RELATING TO THE DEPARTMENT OF PROBATION, PAROLE AND PARDON SERVICES COMMUNITY SUPERVISION PROGRAM, SO AS TO REVISE THE MAXIMUM AGGREGATE AMOUNT OF TIME A PRISONER MAY BE REQUIRED TO BE INCARCERATED WHEN SENTENCED FOR SUCCESSIVE COMMUNITY SUPERVISION PROGRAM REVOCATIONS.

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

Designation of places of confinement for prisoners

SECTION 1. Section 24-3-20(A) of the 1976 Code is amended to read:

"(A) A person convicted of an offense against this State and sentenced to imprisonment for more than three months is in the custody of the South Carolina Department of Corrections, and the department shall designate the place of confinement where the sentence must be served. Nothing in this section prevents a court from ordering a sentence to run concurrently with a sentence being served in another state or an active federal sentence. The department may designate as a place of confinement any available, suitable, and appropriate institution or facility, including a regional, county, or municipal jail or prison camp, whether maintained by the department or by some other entity. If the facility is not maintained by the department, the consent of the sheriff of the county or municipal chief administrative officer, or the equivalent, where the facility is located must first be obtained. However, a prisoner who escapes or attempts to escape while assigned to medium, close, or maximum custody may not serve his sentence for the original conviction or an additional sentence for the escape or

attempted escape in a minimum security facility for at least five years after the escape or attempted escape and one year before his projected release date."

Local regional correctional facilities

SECTION 2. Section 24-3-27(B) of the 1976 Code is amended to read:

"(B) Every sentenced person committed to a local regional correctional facility constructed or operated pursuant to this section, unless disqualified by sickness or otherwise, must be kept at some useful employment suited to his age and capacity and which may tend to promote the best interest of the citizens of this State. In all cases, the decision to assign work, or disqualify a person from work, or both, is the sole discretion of the official in charge of the facility, and in all cases, no person has a basis to challenge this decision."

Designation of places of confinement

SECTION 3. Section 24-3-30(A) of the 1976 Code is amended to read:

"(A) Notwithstanding any other provision of law, a person convicted of an offense against the State must be in the custody of the Department of Corrections, and the department shall designate the place of confinement where the sentence must be served. The department may designate as a place of confinement an available, a suitable, and an appropriate institution or facility including, but not limited to, a regional, county, or municipal jail or prison camp, whether maintained by the Department of Corrections, or by some other entity. If the facility is not maintained by the department, the consent of the sheriff of the county or municipal chief administrative officer, or the equivalent, where the facility is located must be obtained first. If imprisonment for three months or less is ordered by the court as the punishment, all persons so convicted must be placed in the custody, supervision, and control of the appropriate officials of the county in which the sentence was pronounced, if the county has facilities suitable for confinement. A county or municipality, through mutual agreement or contract, may arrange with another county or municipality or a local regional correctional facility for the detention of its prisoners. The Department of Corrections must be notified by the governing body

concerned not less than six months before the closing of a local detention facility which would result in the transfer of those state prisoners confined in the local facility to facilities of the department."

Employment of prisoners

SECTION 4. Section 24-3-40 of the 1976 Code is amended to read:

"(A) Unless otherwise provided by law, the employer of a prisoner authorized to work at paid employment in the community under Sections 24-3-20 to 24-3-50 or in a prison industry program provided under Article 3 of this chapter shall pay the prisoner's wages directly to the Department of Corrections.

If the prisoner is serving his sentence in a local detention or correctional facility pursuant to a designated facilities agreement or in a local work/punishment program, or if the local governing body elects to operate one, then the same provisions for payment directly to the official in charge of the facility shall apply if the facility has the means to account for such monies.

The Director of the Department of Corrections, or the local detention or correctional facility manager, if applicable, shall deduct the following amounts from the gross wages of the prisoner:

(1) If restitution to a particular victim or victims has been ordered by the court, then twenty percent must be used to fulfill the restitution obligation. If a restitution payment schedule has been ordered by the court pursuant to Section 17-25-322, the twenty percent must be applied to the scheduled payments. If restitution to a particular victim or victims has been ordered but a payment schedule has not been specified by the court, the director shall impose a payment schedule of equal monthly payments and use twenty percent to meet the payment schedule so imposed.

(2) If restitution to a particular victim or victims has not been ordered by the court, or if court-ordered restitution to a particular victim or victims has been satisfied then:

(a) if the prisoner is engaged in work at paid employment in the community, five percent must be placed on deposit with the State Treasurer for credit to a special account to support victim assistance programs established pursuant to the Victims of Crime Act of 1984, Public Law 98-473, Title II, Chapter XIV, Section 1404, and fifteen percent must be retained by the department to support services provided by the department to victims of the incarcerated population; or

(b) if the prisoner is employed in a prison industry program, ten percent must be directed to the State Office of Victim Assistance for use in training, program development, victim compensation, and general administrative support pursuant to Section 16-3-1410 and ten percent must be retained by the department to support services provided by the department to victims of the incarcerated population.

(3) Thirty-five percent must be used to pay the prisoner's child support obligations pursuant to law, court order, or agreement of the prisoner. These child support monies must be disbursed to the guardian of the child or children or to appropriate clerks of court, in the case of court ordered child support, for application toward payment of child support obligations, whichever is appropriate. If there are no child support obligations, then twenty-five percent must be used by the Department of Corrections to defray the cost of the prisoner's room and board. Furthermore, if there are no child support obligations, then ten percent must be made available to the inmate during his incarceration for the purchase of incidentals pursuant to subsection (4). This is in addition to the ten percent used for the same purpose in subsection (4).

(4) Ten percent must be available to the inmate during his incarceration for the purchase of incidentals. Any monies made available to the inmate for the purchase of incidentals also may be distributed to the person or persons of the inmate's choice.

(5) Ten percent must be held in an interest bearing escrow account for the benefit of the prisoner.

(6) The remaining balance must be used to pay federal and state taxes required by law. Any monies not used to satisfy federal and state taxes must be made available to the inmate for the purchase of incidentals pursuant to subsection (4).

(B) The Department of Corrections, or the local detention or correctional facility, if applicable, shall return a prisoner's wages held in escrow pursuant to subsection (A) as follows:

(1) A prisoner released without community supervision must be given his escrowed wages upon his release.

(2) A prisoner serving life in prison or sentenced to death shall be given the option of having his escrowed wages included in his estate or distributed to the persons or entities of his choice.

(3) A prisoner released to community supervision shall receive two hundred dollars or the escrow balance, whichever is less, upon his release. Any remaining balance must be disbursed to the Department of Probation, Parole and Pardon Services. The prisoner's supervising agent shall apply this balance toward payment of the prisoner's housing

and basic needs and dispense any balance to the prisoner at the end of the supervision period."

Failure of a prisoner to remain with the extended limits of confinement

SECTION 5. Section 24-3-50 of the 1976 Code is amended to read:

"Section 24-3-50. The wilful failure of a prisoner to remain within the extended limits of his confinement as authorized by Section 24-3-20(b), or to return within the time prescribed to the designated place of confinement, including a local facility, is an escape and is punishable as provided in Section 24-13-410."

Notice of the number of convicts sentenced to imprisonment

SECTION 6. Section 24-3-60 of the 1976 Code is amended to read:

"Section 24-3-60. The county clerks of court, upon the adjournment of the court of general sessions in their respective counties, immediately shall notify the Department of Corrections of the number of prisoners sentenced by the court to imprisonment in the state prison system. The department, as soon as it receives such notice, shall send a suitable number of employees to transfer the prisoners to the state prison system."

Allowable expenses

SECTION 7. Section 24-3-70 of the 1976 Code is amended to read:

"Section 24-3-70. No sum beyond the actual expenses incurred in transferring prisoners to the Department of Corrections must be allowed for these services. This sum must be paid to the department by the State Treasurer upon the warrant of the Comptroller General."

Detention of prisoners

SECTION 8. Section 24-3-80 of the 1976 Code is amended to read:

"Section 24-3-80. The director of the prison system shall admit and detain in the Department of Corrections for safekeeping any prisoner tendered by any law enforcement officer in this State by commitment

duly authorized by the Governor, provided, a warrant in due form for the arrest of the person so committed shall be issued within forty-eight hours after such commitment and detention. No person so committed and detained shall have a right or cause of action against the State or any of its officers or servants by reason of having been committed and detained in the state prison system."

Conjugal visits

SECTION 9. Section 24-3-81 of the 1976 Code is amended to read:

"Section 24-3-81. A prisoner who is incarcerated within the state prison system or who is being detained in a local jail, local detention facility, local correctional facility, or local prison camp, whether awaiting a trial or serving a sentence, is not permitted to have conjugal visits."

Inmate labor

SECTION 10. Section 24-3-130(A) of the 1976 Code is amended to read:

"(A) The Department of Corrections may permit the use of inmate labor on state highway projects or other public projects that may be practical and consistent with safeguarding of the inmates employed on the projects and the public. The Department of Transportation, another state agency, or a county, municipality, or public service district making a beneficial public improvement may apply to the department for the use of inmate labor on the highway project or other public improvement or development project. If the director determines that the labor may be performed with safety and the project is beneficial to the public, he may assign inmates to labor on the highway project or other public purpose project. The inmate labor force must be supervised and controlled by officers designated by the department but the direction of the work performed on the highway or other public improvement project must be under the control and supervision of the person designated by the agency, county, municipality, or public service district responsible for the work. No person convicted of criminal sexual conduct in the first, second, or third degree or a person who commits a violent crime while on a work release program may be assigned to perform labor on a project described by this section."

Supervision of inmates used on public projects

SECTION 11. Section 24-3-131 of the 1976 Code is amended to read:

"Section 24-3-131. The Department of Corrections shall determine whether an agency permitted to utilize inmate labor on public projects pursuant to Section 24-3-130 can adequately supervise the inmates. If the director determines that the agency lacks the proper personnel, the agency shall be required to reimburse the department for the cost of maintaining correctional officers to supervise the inmates. In these cases the Department of Corrections shall be responsible for adequate supervision of the inmates."

Use of convict labor at the State House

SECTION 12. Section 24-3-140 of the 1976 Code is amended to read:

"Section 24-3-140. The Director of the Department of Corrections shall, when called upon by the keeper of the State House and Grounds, furnish such inmate labor as he may need to keep the State House and Grounds in good order."

Cost of maintaining inmates

SECTION 13. Section 24-3-160 of the 1976 Code is amended to read:

"Section 24-3-160. An institution of this State getting inmates from the state prison system by any act or joint resolution of the General Assembly is required to pay to the Director of the Department of Corrections all monies expended by him for transportation, guarding, clothing, and feeding the inmates while working for the institutions and also for medical attention, and the officer in charge of any such institution also shall execute and deliver to the director, at the end of each year, a receipt of five dollars and fifty cents each month for the work of each inmate so employed."

Use of inmates by Clemson University

SECTION 14. Section 24-3-170 of the 1976 Code is amended to read:

"Section 24-3-170. Clemson University shall pay to the Department of Corrections a fee for all inmates used by the college at the rate of six dollars each month and shall pay the cost of clothing, feeding, and guarding the inmates while used and also the transportation of the inmates and employees back and forth from the prison to the university."

Provision of transportation and clothing to inmates

SECTION 15. Section 24-3-180 of the 1976 Code is amended to read:

"Section 24-3-180. Whenever an inmate is discharged from a state prison, the Department of Corrections shall furnish the inmate with a suit of common clothes, if necessary, and transportation from the prison to his home or as near to it as can be done by public conveyances. The cost of transportation and clothes must be paid by the State Treasurer, on the draft of the department, countersigned by the Comptroller General."

Support for the Department of Corrections

SECTION 16. Section 24-3-190 of the 1976 Code is amended to read:

"Section 24-3-190. The balance in the hands of the Department of Corrections at the close of any year, together with all other amounts received or to be received from the hire of inmates or from any other source during the current fiscal year, are appropriated for the support of the department."

Prison industries program

SECTION 17. Section 24-3-310 of the 1976 Code is amended to read:

"Section 24-3-310. Since the means now provided for the employment of prison labor is inadequate to furnish a sufficient number of inmates with employment, it is the intent of this article to:

(1) further provide more adequate, regular, and suitable employment for the inmates of this State, consistent with proper penal purposes;

(2) further utilize the labor of inmates for self-maintenance and for reimbursing this State for expenses incurred by reason of their crimes and imprisonment;

(3) effect the requisitioning and disbursement of prison products directly through established state authorities with no possibility of private profits; and

(4) provide prison industry projects designed to place inmates in a realistic working and training environment in which they are able to acquire marketable skills and to make financial payments for restitution to their victims, for support of their families, and for the support of themselves in the institution."

Prison industries program

SECTION 18. Section 24-3-320 of the 1976 Code is amended to read:

"Section 24-3-320. The Department of Corrections may purchase, in the manner provided by law, equipment, raw materials, and supplies and engage the supervisory personnel necessary to establish and maintain for this State at any penal farm or institution now, or hereafter, under control of the department, industries for the utilization of services of inmates in the manufacture or production of such articles or products as may be needed for the construction, operation, maintenance, or use of any office, department, institution, or agency supported in whole or in part by this State and its political subdivisions."

Purchase of products produced by inmate labor

SECTION 19. Section 24-3-330(A) of the 1976 Code is amended to read:

"(A) All offices, departments, institutions, and agencies of this State supported in whole or in part by this State shall purchase, and all political subdivisions of this State may purchase, from the Department of Corrections, articles or products made or produced by inmate labor in this State or another state as provided for by this article. These articles and products must not be purchased by an office, a department, an institution, or an agency from another source, unless excepted from the provisions of this section, as provided by law. All purchases must be made from the Department of Corrections, upon requisition by the proper authority of the office, department, institution, agency, or political subdivision of this State requiring the articles or products."

Purchase of products

SECTION 20. Section 24-3-340 of the 1976 Code is amended to read:

"Section 24-3-340. Notwithstanding the provisions of Sections 24-3-310 to 24-3-330 and 24-3-360 to 24-3-420, no office, department, institution, or agency of this State, which is supported in whole or in part by this State, shall be required to purchase any article or product from the Department of Corrections unless the purchase price of such article or product is no higher than that obtainable from any other producer or supplier."

Products produced with inmate labor

SECTION 21. Section 24-3-370 of the 1976 Code is amended to read:

"Section 24-3-370. The articles or products manufactured or produced by inmate labor in accordance with the provisions of this article shall be devoted, first, to fulfilling the requirements of the offices, departments, institutions, and agencies of this State which are supported in whole or in part by this State; and, secondly, to supplying the political subdivisions of this State with such articles or products."

Prison industries account

SECTION 22. Section 24-3-400 of the 1976 Code is amended to read:

"Section 24-3-400. All monies collected by the Department of Corrections from the sale or disposition of articles and products manufactured or produced by inmate labor, in accordance with the provisions of this article, must be forthwith deposited with the State Treasurer to be kept and maintained as a special revolving account designated 'Prison Industries Account', and the monies so collected and deposited must be used solely for the purchase of manufacturing supplies, equipment, machinery, and buildings used to carry out the purposes of this article, as well as for the payment of the necessary personnel in charge, and to otherwise defray the necessary expenses incident thereto and to discharge any existing obligation to the Sinking Funds and Property Division of the State Budget and Control Board, all of which must be under the direction and subject to the approval of the Director of the Department of Corrections. The Department of Corrections shall contribute an amount of not less than five percent nor more than twenty percent of the gross wages paid to inmate workers participating in any prison industry project established pursuant to the Justice Assistance Act of 1984 (P.L. 98-473) and promptly place these funds on deposit with the State Treasurer for credit to a special account to support victim assistance programs established pursuant to the Victims of Crime Act of 1984 (P.L. 98-473, Title 2, Chapter 14, Section 1404). The Prison Industries Account must never be maintained in excess of the amount necessary to efficiently and properly carry out the intentions of this article. When, in the opinion of the Director of the Department of Corrections, the Prison Industries Account has reached a sum in excess of the requirements of this article, the excess must be used by the Department of Corrections for operating expenses and permanent improvements to the state prison system, subject to the approval of the State Budget and Control Board."

Prison industries program

SECTION 23. Section 24-3-420 of the 1976 Code is amended to read:

"Section 24-3-420. Any person who wilfully violates any of the provisions of this article other than Section 24-3-410 is guilty of a

misdemeanor and, upon conviction, shall be confined not less than ten days nor more than one year, or fined not less than ten dollars nor more than five hundred dollars, or both, in the discretion of the court."

Transportation of death row inmate

SECTION 24. Section 24-3-520 of the 1976 Code is amended to read:

"Section 24-3-520. The facility manager who has custody of an inmate for the county in which the inmate is sentenced shall transfer the inmate as soon as practical to the custody of the Department of Corrections at a place designated by its director, unless otherwise directed by the Governor or unless a stay of execution has been caused by appeal or the granting of a new trial or other order of a court of competent jurisdiction."

Death chamber

SECTION 25. Section 24-3-540 of the 1976 Code is amended to read:

"Section 24-3-540. The Department of Corrections shall provide a death chamber and all necessary appliances for inflicting this penalty and pay the costs thereof out of any funds in its hands. The expense of transporting an inmate to the state prison system must be borne by the county in which the offense was committed."

Witnesses present at an execution

SECTION 26. Section 24-3-550(A)(5) of the 1976 Code is amended to read:

"(5) the counsel for the inmate and a religious leader. However, the inmate may substitute one person from his immediate family for either his counsel or a religious leader, or two persons from his immediate family for both his counsel and a religious leader. For purposes of this item, 'immediate family' means those persons eighteen years of age or older who are related to the inmate by blood, adoption, or marriage within the second degree of consanguinity."

Certification of an execution

SECTION 27. Section 24-3-560 of the 1976 Code is amended to read:

"Section 24-3-560. The executioner and the attending physician shall certify the fact of such execution to the clerk of the court of general sessions in which the sentence was pronounced. The certificate shall be filed by the clerk with the papers in the case."

Disposition of the body of a person who has been executed

SECTION 28. Section 24-3-570 of the 1976 Code is amended to read:

"Section 24-3-570. The body of the person executed must be delivered to his relatives. If no claim is made by relatives for the body, it must be disposed of in the same manner as bodies of inmates who die in the state prison system. If the nearest relatives of a person executed desire that the body be transported to the person's former home, the expenses for this transportation must be paid by the state prison system."

Investigation of misconduct

SECTION 29. Section 24-3-710 of the 1976 Code is amended to read:

"Section 24-3-710. The director may investigate any misconduct occurring in the state prison system, provide suitable punishment and execute it, and take all precautionary measures as in his judgment will make for the safe conduct and welfare of the institutions. The director may suppress any disorders, riots, or insurrections that may take place in the prison system and prescribe rules and promulgate regulations which in his judgment are reasonably necessary to avoid any occurrence. This same authority applies to the official in charge of a county, municipal, or regional jail, detention facility, or other local facility that houses individuals awaiting trial, serving sentence, or awaiting transfer to another facility, or both."

Suppression of prison riots

SECTION 30. Section 24-3-720 of the 1976 Code is amended to read:

"Section 24-3-720. In order to suppress any disorders, riots, or insurrection among the prisoners, the Director of the Department of Corrections may require the aid and assistance of any of the citizens of the State."

Compensation

SECTION 31. Section 24-3-740 of the 1976 Code is amended to read:

"Section 24-3-740. Any person so aiding and assisting the Director of the Department of Corrections shall receive a reasonable compensation, to be paid by the department, and allowed him on the settlement of his account."

Suppression of prison riots

SECTION 32. Section 24-3-750 of the 1976 Code is amended to read:

"Section 24-3-750. If, in suppressing a disorder, riot, or insurrection, a person who is acting, aiding, or assisting in committing the same is wounded or killed, the Director of the Department of Corrections, the keeper or a person aiding or assisting him must be held as justified and guiltless."

Powers of the keeper

SECTION 33. Section 24-3-760 of the 1976 Code is amended to read:

"Section 24-3-760. In the absence of the Director of the Department of Corrections, the keeper has the same power in suppressing disorders, riots, and insurrections and in requiring aid and assistance in so doing that is given to the director."

Rewards for capture of an inmate

SECTION 34. Section 24-3-920 of the 1976 Code, as last amended by Act 353 of 2008, is further amended to read:

"Section 24-3-920. The Director of the Department of Corrections may award up to two thousand dollars for information leading to the capture of each escaped inmate. Funds to support such awards shall be generated from monies or things of value used as money found in the unlawful possession of a prisoner and confiscated as contraband by the Department of Corrections."

Jury service exemptions

SECTION 35. Section 24-3-930 of the 1976 Code is amended to read:

"Section 24-3-930. All guards, keepers, officers, and other employees who are employed at the state prison system are exempted from serving on juries and from military or street duty."

Gambling prohibition

SECTION 36. Section 24-3-940 of the 1976 Code is amended to read:

"Section 24-3-940. Gambling is not permitted at a prison, farm, or camp where inmates are kept or worked. An officer or employee engaging in, or knowingly permitting, gambling at a prison, farm, or camp must be dismissed immediately."

Use of money by prisoners

SECTION 37. Section 24-3-951 of the 1976 Code is amended to read:

"Section 24-3-951. Effective July 1, 1995, notwithstanding Section 24-3-956 and any other provision of law, United States currency or money, as it relates to use within the state prison system, is declared contraband and must not be utilized as a medium of exchange for barter or financial transaction between prisoners or prison officials and prisoners within the state prison system, except prisoners on work

release or in other community based programs. Inmates must not possess United States currency. All financial disbursements to prisoners or mediums of exchange between prisoners and between the prison system and prisoners shall be transacted with a system of credits."

Contraband

SECTION 38. Section 24-3-965 of the 1976 Code is amended to read:

"Section 24-3-965. Notwithstanding the provisions of Sections 22-3-540, 22-3-545, 22-3-550, 24-3-950, and 24-7-155, the offenses of furnishing contraband, other than weapons or illegal drugs, to an inmate under the jurisdiction of the Department of Corrections or to an inmate in a county jail, municipal jail, regional detention facility, prison camp, work camp, or overnight lockup facility, and the possession of contraband, other than weapons or illegal drugs, by an inmate under the jurisdiction of the Department of Corrections or by an inmate in a county jail, municipal jail, regional detention facility, prison camp, work camp, or overnight lockup facility must be tried exclusively in magistrates court. Matters considered contraband within the meaning of this section are those which are designated as contraband by the Director of the Department of Corrections or by the local facility manager."

Custody of detention facilities

SECTION 39. Section 24-5-12 of the 1976 Code is amended to read:

"Section 24-5-12. Notwithstanding the provisions of Section 24-5-10 or any other provision of law, the sheriff of any county may, upon approval of the governing body of the county, devolve all of his powers and duties relating to the custody of the county jail and the appointment of a facility manager on the governing body of the county; provided, a sheriff who has been defeated in a primary or general election may not devolve said duties on the governing body of the county. Once a sheriff has devolved these powers and duties to the governing body, custody of the jail shall remain with the governing body unless, by mutual agreement and approval of the sheriff, the governing body devolves its powers and duties relating to the custody of the county jail to the sheriff."

Facilities manager

SECTION 40. Section 24-5-20 of the 1976 Code is amended to read:

"Section 24-5-20. Except as otherwise provided, every sheriff in this State who has control of a jail shall appoint a qualified person as facility manager. This person shall have the control and custody of the jail under the supervision of the sheriff. However, should the sheriff not have control of the jail, then this appointment falls to the chief administrative officer of the county in whose jurisdiction the jail lies."

Keeping of prisoners

SECTION 41. Section 24-5-50 of the 1976 Code is amended to read:

"Section 24-5-50. All sheriffs or governing bodies that have custody of the jail and their respective facility managers are required to receive and keep securely all persons committed by the coroner as required by law."

Keeping of prisoners

SECTION 42. Section 24-5-60 of the 1976 Code is amended to read:

"Section 24-5-60. The sheriffs or governing bodies of the respective counties of this State shall keep in safe custody all such prisoners as may be committed to them under the authority of the United States until such prisoners are discharged by due course of law of the United States, under the like penalties as in case of prisoners committed under the authority of this State and upon the terms of the resolution of the Congress of the United States at its session begun and held on March 4, 1789. The sheriff or governing body may charge a fee for such prisoners pursuant to the terms and conditions set forth in Section 23-19-20."

Care of prisoners

SECTION 43. Section 24-5-80 of the 1976 Code is amended to read:

"Section 24-5-80. The governing body of each county in this State shall furnish, at all times, sufficient food, water, clothing, personal

hygiene products, bedding, blankets, cleaning supplies, and shelter from extreme heat or cold or rain for all persons confined in a jail and access to medical care."

Treatment of prisoners

SECTION 44. Section 24-5-90 of the 1976 Code is amended to read:

"Section 24-5-90. It is unlawful to discriminate in the treatment of prisoners placed in the custody of the sheriff or local governing body.

A violation of this section is a misdemeanor and, upon conviction, the person convicted must be fined not less than twenty-five dollars and imprisoned for not more than one year."

Electronic records

SECTION 45. Section 24-5-110 of the 1976 Code is amended to read:

"Section 24-5-110. A facility manager shall make a return to the court of general sessions of his county on the first day of the term of the name of every prisoner and the time and cause of his confinement, whether civil or criminal. The use of electronic records satisfies this requirement."

Annual report

SECTION 46. Section 24-5-120 of the 1976 Code is amended to read:

"Section 24-5-120. A facility manager annually shall report to the governing body of his county the actual condition of the jail, the repairs which may be wanted, and their probable cost."

Removal of prisoners from a jail

SECTION 47. Section 24-5-170 of the 1976 Code is amended to read:

"Section 24-5-170. When a person is apprehended or in confinement according to law in a county in this State where the jail may be destroyed or rendered uninhabitable by fire or other accident, he must

be committed to the jail nearest to the one destroyed for safekeeping. However, the jail must have sufficient bed space. If the jail does not have sufficient bed space, then the official in charge of the jail that was destroyed, or rendered uninhabitable shall contact the facility managers of the jails in the nearest proximity and utilize any available resources to receive and keep the prisoners in custody. The facility managers of this State may enter into mutual aid agreements to assist each other in the event of an emergency or as other needs arise. If sufficient resources are not available within the several counties, then the official in charge of the jail that was destroyed or rendered uninhabitable may request the assistance of the South Carolina Department of Corrections and its resources until the emergency has passed."

Definitions

SECTION 48. Section 24-5-300 of the 1976 Code is amended to read:

"Section 24-5-300. For the purposes of this article:

(1) 'Reserve detention officer' means a person assigned part-time detention officer duties without being regularly assigned to full-time detention officer duties and who serves in that capacity without compensation.

(2) 'Director' means the detention director, jail administrator, or other manager employed for the operation of a county, municipal, or multijurisdictional local detention facility.

(3) 'Responsible authority' means the sheriff, county administrator, mayor, city manager, or other appropriate official who has legal responsibility for the management of a local detention facility within a particular jurisdiction."

Appointment of reserve detention officers

SECTION 49. Section 24-5-310 of the 1976 Code is amended to read:

"Section 24-5-310. The director, in his discretion, may appoint the number of reserve detention officers approved by the responsible authority, but not exceeding the number of regular full-time detention officers funded and employed at the facility, if participation in the reserve detention officer program has been approved by the governing body having jurisdiction over the detention facility. The number of

full-time detention officers must not be decreased because of the institution or expansion of a reserve force. Each period of time a reserve serves must be determined and specified by the director in writing. The powers and duties of a reserve are subject to the provisions of this article and must be prescribed by the director and approved by the responsible authority.

A reserve is subject to removal by the director at any time. A criminal history inquiry and other appropriate background inquiry must be conducted on an applicant before his selection as a reserve.

Before assuming his duties, a reserve must:

(1) take the oath of office required by law;

(2) be bonded in an amount determined by the governing body of the county, municipality, or other political entity and which must be not less than one thousand five hundred dollars; and

(3) successfully complete the course of training required by this article."

Reserve detention officers

SECTION 50. Section 24-5-320 of the 1976 Code, as last amended by Act 335 of 2008, is further amended to read:

"Section 24-5-320. No reserve shall assume a detention officer function until he has completed successfully a jail preservice training program approved by the South Carolina Criminal Justice Academy pursuant to Chapter 23, Title 23 and passed a comprehensive test prepared by the South Carolina Criminal Justice Academy and administered by the director of the local detention facility. Within one year of appointment, a reserve must successfully complete a jail operations training program promulgated by the South Carolina Criminal Justice Academy pursuant to Chapter 23, Title 23 in order to be eligible for continuation as a reserve. A reserve who serves more than one year must complete the same annual in-service training requirements as regular full-time detention officers. All training which is provided locally or regionally is subject to review by the South Carolina Law Enforcement Training Council and approval of the South Carolina Criminal Justice Academy."

Reserve detention officers

SECTION 51. Section 24-5-330 of the 1976 Code is amended to read:

"Section 24-5-330. Before final acceptance as a reserve, a candidate, at his own expense or through the offices of the doctor of his political entity, shall submit to the director a summary of the results of a current physical examination for the satisfaction of the director concerning physical competence and capability. Other minimum selection standards recognized by law as applicable to full-time detention officers also shall apply to reserves."

Reserve detention officers

SECTION 52. Section 24-5-350 of the 1976 Code is amended to read:

"Section 24-5-350. A reserve shall serve and function as detention officer only on specific orders and directions of the director. To maintain status, a reserve shall perform a minimum logged service time of ten hours a month or thirty hours a quarter.

No reserve detention officer shall perform any jailer or detention officer duties except under the direct supervision of a full-time detention officer. A reserve shall not assume full-time duties of detention officers without complying with the requirements for full-time detention officers.

A department utilizing reserves shall have at least one full-time officer as a coordinator-supervisor who must be responsible directly to the director."

Reserve detention officers

SECTION 53. Section 24-5-360 of the 1976 Code, as last amended by Act 335 of 2008, is further amended to read:

"Section 24-5-360. A reserve who has been in active status for at least two years and desires to become a full-time detention officer, upon application of his director to the South Carolina Criminal Justice Academy and upon completion of other existing requirements, may be accepted at the South Carolina Criminal Justice Academy for additional hours of training required by the South Carolina Criminal Justice Academy pursuant to Chapter 23, Title 23."

Reserve detention officers

SECTION 54. Section 24-5-370 of the 1976 Code is amended to read:

"Section 24-5-370. A currently certified full-time detention officer who leaves his position under honorable conditions within twelve months, at the request of his director and with the concurrence of the South Carolina Criminal Justice Academy, may be issued a registration card identifying him as a member of the reserve if the use of reserve detention officers has been approved by the responsible authority. The officer is not required to undergo the preliminary training for reserves but is required to have a current physical exam and to continue the same annual in-service training requirements as regular full-time detention officers."

Reserve detention officers

SECTION 55. Section 24-5-380 of the 1976 Code is amended to read:

"Section 24-5-380. The uniforms and equipment issued by the political entity shall remain the property of the entity but, in the discretion of the director, may be entrusted to the care and control of the reserve. A reserve shall wear a uniform which will identify him as a detention officer. Handguns, if issued, must be of a caliber approved by the responsible authority."

Workers' compensation benefits

SECTION 56. Section 24-5-390 of the 1976 Code is amended to read:

"Section 24-5-390. Workers' compensation benefits may be provided for reserves by the governing body in the same manner that benefits are provided for full-time detention officers.

For purposes of compensation or benefits arising from duty-related injury or death, reserves must be considered employees of the political entities for which they were appointed and must be included with regular duty detention officers in the assigned responsibility for prevention, suppression, and control of crime."

Feeding and supervision of inmates

SECTION 57. Section 24-7-60 of the 1976 Code is amended to read:

"Section 24-7-60. The governing body of the county shall feed and provide suitable and sufficient employee supervision for the safekeeping of all persons who have received a sentence to public work detail. It also shall provide all necessary equipment and machinery for performing the work required of inmates, all costs and expenses of which must be paid out of the county general fund in the same manner as other charges against the fund are paid."

Medical care for inmates

SECTION 58. Section 24-7-110 of the 1976 Code is amended to read:

"Section 24-7-110. The governing body of each county shall provide access to institutional medical personnel whenever necessary to render medical aid to sick inmates whether awaiting trial or serving a sentence and to preserve the health of the inmate in the county jail, detention facility, prison camp, or other local facility used for the detention of inmates. The fees and expenses of such medical services, as well as for medicines prescribed, shall be paid out of any available funds. This section does not affect the requirements of Section 24-13-80 or other existing federal, state, county, or municipal requirements that provide for the medical care of inmates."

Inmate labor

SECTION 59. Section 24-7-120 of the 1976 Code is amended to read:

"Section 24-7-120. The municipal authority of any city or town which utilizes inmate labor shall feed and provide suitable and sufficient employee supervision for the safekeeping of all persons who have received a sentence to public work detail. It shall likewise provide all necessary equipment and machinery for performing the work required of the inmates, all costs and expenses of which must be paid out of the municipal general fund in the same manner as other charges against these funds are paid.

A municipality may operate its own jail for the purpose of detaining those persons charged with a criminal offense pending release on bond or trial and for the purpose of detaining those individuals who have been tried and convicted of a criminal offense in the municipal court. The governing body of the municipality must provide suitable and sufficient employee supervision and equipment to safely keep all persons charged or detained and must pay all costs and expenses. Where the municipality elects not to operate its own jail, then the municipality may enter into an agreement with other municipalities, preferably in the county of jurisdiction, to operate a joint facility to hold these individuals.

The municipality also may elect, in the alternative, to enter into an agreement with the county governing body in which the municipality is located. The agreement may require the municipality to pay a fee to offset the costs of detaining the offenders to include, but not be limited to, medical care and treatment of the offenders, all lodging and meal expenses, all transportation and security for court appearances, medical appointments, other transportation as may be necessary, and other miscellaneous expenses as may be mutually agreed upon. Those persons so detained must be in the custody of the county official who has custody of the jail or of the prison camp, as appropriate.

Municipal inmates sentenced to the county jail or prison camp, pursuant to an agreement, must remain in the custody of the county jail or prison camp and must perform labor as assigned by the facility manager."

Contraband

SECTION 60. Section 24-7-155 of the 1976 Code is amended to read:

"Section 24-7-155. It is unlawful for a person to furnish or attempt to furnish a prisoner in any county, municipal, or multijurisdictional jail, prison camp, work camp, or overnight lockup facility with a matter declared to be contraband. It is unlawful for an inmate of a facility to possess a matter declared to be contraband. Matters considered contraband within the meaning of this section are those which are designated as contraband and published by the Department of Corrections as Regulation 33-1 of the Department of Corrections and this regulation must be displayed in a conspicuous place available and visible to visitors and inmates at the facility. The facility manager of a local detention facility, with the approval of the sheriff or chief

administrative officer as appropriate, may designate additional items as contraband. Notice of the additional items must be displayed with Regulation 33-1.

A person violating the provisions of this section is guilty of a felony and, upon conviction, must be punished by a fine of not less than one thousand dollars nor more than ten thousand dollars or imprisonment for not less than one year nor more than ten years, or both."

Inspection of confinement facilities

SECTION 61. Section 24-9-30 of the 1976 Code is amended to read:

"Section 24-9-30. (A) If an inspection under this chapter discloses that a local confinement facility does not meet the minimum standards established by the South Carolina Association of Counties and adopted by the Department of Corrections, or the appropriate fire and health codes and regulations, or both, the Director of the South Carolina Department of Corrections shall notify the governing body of the political subdivision responsible for the local confinement facility. The governing body promptly shall meet to consider the inspection reports, and the inspection personnel shall appear, if requested, to advise and consult concerning appropriate corrective action. The governing body shall initiate appropriate corrective action within ninety days or may voluntarily close the local confinement facility or objectionable portion thereof.

(B) If the governing body fails to initiate corrective action within ninety days after receipt of the reports of the inspections, or fails to correct the disclosed conditions, the Director of the South Carolina Department of Corrections may order that the local confinement facility, or objectionable portion thereof, be closed at such time as the order may designate. However, if the director determines that the public interest is served by permitting the facility to remain open, he may stipulate actions to avoid or delay closing the facility. The governing body and the resident or presiding judge of the judicial circuit shall be notified by certified mail of the director's order closing a local confinement facility.

(C) The governing body has the right to appeal the director's order to the resident or presiding judge of the circuit in which the facility is located. Notice of the intention to appeal shall be given by certified mail to the Director of the South Carolina Department of Corrections and to the resident or presiding judge within fifteen days after receipt

of the director's order. The right of appeal is waived if notice is not given as provided in this section.

(D) The appeal must be heard before the resident or presiding judge of the circuit who shall give reasonable notice of the date, time, and place of the hearing to the Director of the South Carolina Department of Corrections and the governing body concerned. The hearing must be conducted without a jury in accordance with the rules and procedures of the Circuit Court. The Department of Corrections, the governing body concerned, other responsible local officials, and fire and health inspection personnel have a right to be present at the hearing and present evidence which the court deems appropriate to determine whether the local confinement facility met the required minimum standards, or appropriate fire and health codes and regulations, or both, on the date of the last inspection. The court may affirm, reverse, or modify the director's order."

Death of an inmate

SECTION 62. Section 24-9-35 of the 1976 Code is amended to read:

"Section 24-9-35. If a person dies while incarcerated or in the custody of a municipal, county, or multijurisdictional overnight lockup or jail, county prison camp, or state correctional facility, the facility manager or any other person physically in charge of the facility at the time death occurs immediately shall notify the coroner of the county in which the institution is located. The facility manager or other person in charge also shall report the death and circumstances surrounding it within seventy-two hours to the Jail and Prison Inspection Division of the Department of Corrections. The division shall retain a permanent record of the reports. Reports must be made on forms prescribed by the division.

A person knowingly and wilfully violating the provisions of this section is guilty of a misdemeanor and, upon conviction, must be fined not more than one hundred dollars."

Compliance with minimum design standards

SECTION 63. Section 24-9-40 of the 1976 Code is amended to read:

"Section 24-9-40. In order to certify compliance with minimum design standards, the Jail and Prison Inspection Division of the Department of Corrections and the State Fire Marshal shall be provided

with architectural plans before construction or renovation of any state or local confinement facility. Further, the Jail and Prison Inspection Division shall be notified not less than fifteen days prior to the opening of any state or local prison or detention facility so that inspections and reports may be made. Ninety days prior to the closing of any state or local prison or detention facility, the division shall be notified by the officials concerned."

Separation of sexes in all prisons

SECTION 64. Section 24-13-10 of the 1976 Code is amended to read:

"Section 24-13-10. In all prisons and local detention facilities in the State, a separation of the sexes must be observed at all times."

Arrest of escaped inmates

SECTION 65. Section 24-13-20 of the 1976 Code is amended to read:

"Section 24-13-20. The sheriffs of this State under the penalty provided, in this section must arrest in their respective counties, with or without a warrant, all escaped inmates from the state prisons or from the local detention facilities found in their respective counties. Upon an arrest a sheriff must notify immediately the proper authority from whose care the inmate escaped. Upon the wilful neglect or failure by a sheriff to comply with the provisions of this section, he is guilty of a misdemeanor and, upon conviction, must be fined in a sum of not more than five hundred dollars nor less than one hundred dollars or be imprisoned for not more than six months or must be fined and imprisoned, at the discretion of the court."

Safekeeping of inmates

SECTION 66. Section 24-13-30 of the 1976 Code is amended to read:

"Section 24-13-30. A person officially charged with the safekeeping of inmates, whether the inmates are awaiting trial or have been sentenced and confined in a state correctional facility, local detention facility, or prison camp or work camp, may use necessary force to

maintain internal order and discipline and to prevent the escape of an inmate lawfully in his custody without regard to whether the inmate is charged with or convicted of a felony or misdemeanor."

Computation of a sentence

SECTION 67. Section 24-13-40 of the 1976 Code is amended to read:

"Section 24-13-40. The computation of the time served by prisoners under sentences imposed by the courts of this State must be calculated from the date of the imposition of the sentence. However, when (a) a prisoner shall have given notice of intention to appeal, (b) the commencement of the service of the sentence follows the revocation of probation, or (c) the court shall have designated a specific time for the commencement of the service of the sentence, the computation of the time served must be calculated from the date of the commencement of the service of the sentence. In every case in computing the time served by a prisoner, full credit against the sentence must be given for time served prior to trial and sentencing. Provided, however, that credit for time served prior to trial and sentencing shall not be given: (1) when the prisoner at the time he was imprisoned prior to trial was an escapee from another penal institution; or (2) when the prisoner is serving a sentence for one offense and is awaiting trial and sentence for a second offense in which case he shall not receive credit for time served prior to trial in a reduction of his sentence for the second offense."

Written report of inmates in custody

SECTION 68. Section 24-13-50 of the 1976 Code is amended to read:

"Section 24-13-50. Every municipal and county facility manager responsible for the custody of persons convicted of a criminal offense on or before the fifth day of each month must file with the Department of Corrections a written report stating the name, race, age, criminal offense, and date and length of sentence of all prisoners in their custody during the preceding month."

Money credited to the account of an inmate

SECTION 69. Section 24-13-80 of the 1976 Code is amended to read:

"Section 24-13-80. (A) As used in this section:

(1) 'Detention facility' means a municipal or county jail, a local detention facility, or a state correctional facility used for the detention of persons charged with or convicted of a felony, misdemeanor, municipal offense, or violation of a court order.

(2) 'Inmate' means a person who is detained in a detention facility by reason of being charged with or convicted of a felony, a misdemeanor, a municipal offense, or violation of a court order.

(3) 'Medical treatment' means each visit initiated by the inmate to an institutional physician, physician's extender including a physician's assistant or a nurse practitioner, dentist, optometrist, or psychiatrist for examination or treatment.

(4) 'Administrator' means the county administrator, city administrator, or the chief administrative officer of a county or municipality.

(5) 'Director' means the agency head of the Department of Corrections.

(B) The administrator or director, whichever is appropriate, may establish, by rules, criteria for a reasonable deduction from money credited to the account of an inmate to:

(1) repay the costs of:

(a) public property wilfully damaged or destroyed by the inmate during his incarceration;

(b) medical treatment for injuries inflicted by the inmate upon himself or others;

(c) searching for and apprehending the inmate when he escapes or attempts to escape. The costs must be limited to those extraordinary costs incurred as a consequence of the escape; or

(d) quelling a riot or other disturbance in which the inmate is unlawfully involved;

(2) defray the costs paid by a municipality or county for medical services for an inmate, which have been requested by the inmate, if the deduction does not exceed five dollars for each occurrence of treatment received by the inmate. If the balance in an inmate's account is less than ten dollars, the fee must not be charged. However, a deficiency balance must be carried forward and, upon a deposit or credit being made to the inmate's account, any outstanding balance may be

deducted from the account. This deficiency balance may be carried forward after release of the inmate and may be applied to the inmate's account in the event of subsequent arrests and incarcerations. This item does not apply to medical costs incurred as a result of injuries sustained by an inmate or other medically necessary treatment for which that inmate is determined not to be responsible.

(C) All sums collected for medical treatment must be reimbursed to the inmate, upon the inmate's request, if the inmate is acquitted or otherwise exonerated of all charges for which the inmate was being held.

(D) The detention facility may initiate an action for collection of recovery of medical costs incurred pursuant to this section against an inmate upon his release or his estate if the inmate was executed or died while in the custody of the detention facility."

Work release

SECTION 70. Section 24-13-125 of the 1976 Code is amended to read:

"Section 24-13-125. (A) Notwithstanding any other provision of law, except in a case in which the death penalty or a term of life imprisonment is imposed, or as provided in this subsection, an inmate convicted of a 'no parole offense', as defined in Section 24-13-100, and sentenced to the custody of the Department of Corrections, including an inmate serving time in a local facility pursuant to a designated facility agreement authorized by Section 24-3-20 or Section 24-3-30, is not eligible for work release until the inmate has served not less than eighty percent of the actual term of imprisonment imposed. This percentage must be calculated without the application of earned work credits, education credits, or good conduct credits, and is to be applied to the actual term of imprisonment imposed, not including any portion of the sentence which has been suspended. A person is eligible for work release if the person is sentenced for voluntary manslaughter (Section 16-3-50), kidnapping (Section 16-3-910), carjacking (Section 16-3-1075), burglary in the second degree (Section 16-11-312(B)), armed robbery (Section 16-11-330(A)), or attempted armed robbery (Section 16-11-330(B)), the crime did not involve any criminal sexual conduct or an additional violent crime as defined in Section 16-1-60, and the person is within three years of release from imprisonment. Except as provided in this subsection, nothing in this section may be construed to allow an inmate convicted of murder or an inmate

prohibited from participating in work release by another provision of law to be eligible for work release.

(B) If an inmate sentenced to the custody of the Department of Corrections and confined in a facility of the department, confined in a local facility pursuant to a designated facility agreement authorized by Section 24-3-20 or Section 24-3-30, or temporarily confined, held, detained, or placed in a facility which is not under the direct control of the department, to include an inmate on a labor crew or any other assigned detail or placement, or an inmate in transport status, commits an offense or violates one of the rules of the institution during his term of imprisonment, all or part of the credit he has earned may be forfeited in the discretion of the Director of the Department of Corrections. If an inmate sentenced to a local detention facility or upon the public works of any county in this State, even when temporarily confined, held, detained, or placed in any facility which is not under the direct control of the local detention facility, to include an inmate on a labor crew or any other assigned detail or placement, or an inmate in transport status, commits an offense or violates one of the rules of the local detention facility during his term of imprisonment, all or part of the credit he has earned may be forfeited in the discretion of the local official having charge of the inmate. The decision to withhold credits is solely the responsibility of officials named in this subsection."

No parole offense

SECTION 71. Section 24-13-150 of the 1976 Code is amended to read:

"Section 24-13-150. (A) Notwithstanding any other provision of law, except in a case in which the death penalty or a term of life imprisonment is imposed, an inmate convicted of a 'no parole offense' as defined in Section 24-13-100 and sentenced to the custody of the Department of Corrections, including an inmate serving time in a local facility pursuant to a designated facility agreement authorized by Section 24-3-20 or Section 24-3-30, is not eligible for early release, discharge, or community supervision as provided in Section 24-21-560, until the inmate has served at least eighty-five percent of the actual term of imprisonment imposed. This percentage must be calculated without the application of earned work credits, education credits, or good conduct credits, and is to be applied to the actual term of imprisonment imposed, not including any portion of the sentence which has been suspended. Nothing in this section may be construed

to allow an inmate convicted of murder or an inmate prohibited from participating in work release, early release, discharge, or community supervision by another provision of law to be eligible for work release, early release, discharge, or community supervision.

(B) If an inmate sentenced to the custody of the Department of Corrections and confined in a facility of the department, confined in a local facility pursuant to a designated facility agreement authorized by Section 24-3-20 or Section 24-3-30, or temporarily confined, held, detained, or placed in a facility which is not under the direct control of the department, to include an inmate on a labor crew or any other assigned detail or placement, or an inmate in transport status, commits an offense or violates one of the rules of the institution during his term of imprisonment, all or part of the credit he has earned may be forfeited in the discretion of the Director of the Department of Corrections. If an inmate sentenced to a local detention facility or upon the public works of any county in this State, even when temporarily confined, held, detained, or placed in any facility which is not under the direct control of the local detention facility, to include an inmate on a labor crew or any other assigned detail or placement, or an inmate in transport status, commits an offense or violates one of the rules of the institution during his term of imprisonment, all or part of the credit he has earned may be forfeited in the discretion of the local official having charge of the inmate. The decision to withhold credits is solely the responsibility of officials named in this subsection."

No parole offense

SECTION 72. Section 24-13-210 of the 1976 Code is amended to read:

"Section 24-13-210. (A) An inmate convicted of an offense against this State, except a 'no parole offense' as defined in Section 24-13-100, and sentenced to the custody of the Department of Corrections, including an inmate serving time in a local facility pursuant to a designated facility agreement authorized by Section 24-3-20 or Section 24-3-30, whose record of conduct shows that he has faithfully observed all the rules of the institution where he is confined and has not been subjected to punishment for misbehavior, is entitled to a deduction from the term of his sentence beginning with the day on which the service of his sentence commences to run, computed at the rate of twenty days for each month served. When two or more consecutive

sentences are to be served, the aggregate of the several sentences is the basis upon which the good conduct credit is computed.

(B) An inmate convicted of a 'no parole offense' against this State as defined in Section 24-13-100 and sentenced to the custody of the Department of Corrections, including an inmate serving time in a local facility pursuant to a designated facility agreement authorized by Section 24-3-20 or Section 24-3-30, whose record of conduct shows that he has faithfully observed all the rules of the institution where he is confined and has not been subjected to punishment for misbehavior, is entitled to a deduction from the term of his sentence beginning with the day on which the service of his sentence commences to run, computed at the rate of three days for each month served. However, no inmate serving a sentence for life imprisonment or a mandatory minimum term of imprisonment for thirty years pursuant to Section 16-3-20 is entitled to credits under this provision. No inmate convicted of a 'no parole offense' is entitled to a reduction below the minimum term of incarceration provided in Section 24-13-125 or 24-13-150. When two or more consecutive sentences are to be served, the aggregate of the several sentences is the basis upon which the good conduct credit is computed.

(C) An inmate convicted of an offense against this State and sentenced to a local detention facility, or upon the public works of any county in this State, whose record of conduct shows that he has faithfully observed all the rules of the institution where he is confined, and has not been subjected to punishment for misbehavior, is entitled to a deduction from the term of his sentence beginning with the day on which the service of his sentence commences to run, computed at the rate of one day for every two days served. When two or more consecutive sentences are to be served, the aggregate of the several sentences is the basis upon which good conduct credits must be computed.

(D) If an inmate sentenced to the custody of the Department of Corrections and confined in a facility of the department, confined in a local facility pursuant to a designated facility agreement authorized by Section 24-3-20 or Section 24-3-30, or temporarily confined, held, detained, or placed in any facility which is not under the direct control of the department, to include an inmate on a labor crew or any other assigned detail or placement, or an inmate in transport status, commits an offense or violates one of the rules of the facility during his term of imprisonment, all or part of the good conduct credit he has earned may be forfeited in the discretion of the Director of the Department of Corrections. If an inmate sentenced to a local detention facility or

upon the public works of any county in this State, even when temporarily confined, held, detained, or placed in any facility that is not under the direct control of the local detention facility, to include a prisoner on a labor crew or any other assigned detail or placement, or a prisoner in transport status, commits an offense or violates one of the rules of the institution during his term of imprisonment, all or part of the good conduct credit he has earned may be forfeited in the discretion of the local official having charge of the inmate. The decision to withhold forfeited good conduct time is solely the responsibility of officials named in this subsection.

(E) Any person who has served the term of imprisonment for which he has been sentenced less deductions allowed for good conduct is considered upon release to have served the entire term for which he was sentenced unless the person is required to complete a community supervision program pursuant to Section 24-21-560. If the person is required to complete a community supervision program, he must complete his sentence as provided in Section 24-21-560 prior to discharge from the criminal justice system.

(F) No credits earned pursuant to this section may be applied in a manner which would prevent full participation in the Department of Probation, Parole and Pardon Services' prerelease or community supervision program as provided in Section 24-21-560."

No parole offense

SECTION 73. Section 24-13-230 of the 1976 Code is amended to read:

"Section 24-13-230. (A) The Director of the Department of Corrections may allow an inmate sentenced to the custody of the department, except an inmate convicted of a 'no parole offense' as defined in Section 24-13-100, who is assigned to a productive duty assignment, including an inmate who is serving time in a local facility pursuant to a designated facility agreement authorized by Section 24-3-20 or Section 24-3-30 or who is regularly enrolled and actively participating in an academic, technical, or vocational training program, a reduction from the term of his sentence of zero to one day for every two days he is employed or enrolled. A maximum annual credit for both work credit and education credit is limited to one hundred eighty days.

(B) The Director of the Department of Corrections may allow an inmate sentenced to the custody of the department serving a sentence

for a 'no parole offense' as defined in Section 24-13-100, who is assigned to a productive duty assignment, including an inmate who is serving time in a local facility pursuant to a designated facility agreement authorized by Section 24-3-20 or Section 24-3-30 or who is regularly enrolled and actively participating in an academic, technical, or vocational training program, a reduction from the term of his sentence of six days for every month he is employed or enrolled. However, no prisoner serving a sentence for life imprisonment or a mandatory minimum term of imprisonment for thirty years pursuant to Section 16-3-20 is entitled to credits under this provision. No prisoner convicted of a 'no parole offense' is entitled to a reduction below the minimum term of incarceration provided in Section 24-13-125 or 24-13-150. A maximum annual credit for both work credit and education credit is limited to seventy-two days.

(C) No credits earned pursuant to this section may be applied in a manner which would prevent full participation in the Department of Probation, Parole and Pardon Services' prerelease or community supervision program as provided in Section 24-21-560.

(D) The amount of credit to be earned for each duty classification or enrollment must be determined by the director and published by him in a conspicuous place available to inmates at each correctional institution. If a prisoner commits an offense or violates one of the rules of the institution during his term of imprisonment, all or part of the work credit or education credit he has earned may be forfeited in the discretion of the Director of the Department of Corrections.

(E) The official in charge of a local detention facility must allow an inmate sentenced to the custody of the facility who is assigned to a mandatory productive duty assignment a reduction from the term of his sentence of zero to one day for every two days so employed. The amount of credit to be earned for each duty classification must be determined by the official in charge of the local detention facility and published by him in a conspicuous place available to inmates.

(F)(1) An individual is eligible for the educational credits provided for in this section only upon successful participation in an academic, technical, or vocational training program.

(2) The educational credit provided for in this section, is not available to any individual convicted of a violent crime as defined in Section 16-1-60.

(G) The South Carolina Department of Corrections may not pay any tuition for college courses."

Voluntary program

SECTION 74. Section 24-13-235 of the 1976 Code is amended to read:

"Section 24-13-235. Notwithstanding any other provision of law, the governing body of any county may authorize the sheriff or the chief administrative officer, or the equivalent, in charge of a local detention facility to offer a voluntary program under which any person committed to such facility may perform labor on the public works or ways. The confinement of the person must be reduced by one day for every eight hours of labor on the public works or ways performed by the person. As used in this section, 'labor on the public works or ways' means manual labor to improve or maintain public facilities, including, but not limited to, streets, parks, and schools.

The governing body of the county may prescribe reasonable regulations under which this labor is to be performed and may provide that these persons wear clothing of a distinctive character while performing this work.

Nothing contained in this section may be construed to require the sheriff or another official to assign labor to a person pursuant to this section if it appears from the record that the person has refused to perform labor as assigned satisfactorily or has not satisfactorily complied with the reasonable regulations governing this assignment. A person is eligible for supervised work under this section only if the sheriff or other responsible official concludes that the person is a fit subject.

If a court sentences a defendant to a period of confinement of fifteen days or more, the court may restrict or deny the defendant's eligibility for the supervised work program.

The governing body of the county may prescribe a program administrative fee, not to exceed the pro rata cost of administration, to be paid by each person in the program, according to the person's ability to pay."

Deduction in time of serving sentence

SECTION 75. Section 24-13-260 of the 1976 Code is amended to read:

"Section 24-13-260. An officer having charge of an inmate who refuses to allow a deduction in time of serving sentence is guilty of a

misdemeanor and, upon conviction, must be imprisoned for not less than thirty days or pay a fine of not less than one hundred dollars."

Unlawful escape

SECTION 76. Section 24-13-410 of the 1976 Code is amended to read:

"Section 24-13-410. (A) It is unlawful for a person, lawfully confined in a prison or local detention facility or while in the custody of an officer or another employee, to escape, to attempt to escape, or to have in his possession tools, weapons, or other items that may be used to facilitate an escape.

(B) A person who violates this section is guilty of a felony and, upon conviction, must be imprisoned not less than one year nor more than fifteen years.

(C) The term of imprisonment is consecutive to the original sentence and to other sentences previously imposed upon the escapee by a court of this State."

Unlawful escape

SECTION 77. Section 24-13-420 of the 1976 Code is amended to read:

"Section 24-13-420. (A) It is unlawful for a person, lawfully confined in a prison, local detention facility, or under the supervision of an officer or other employee, whether awaiting trial or serving sentence, to escape, to attempt to escape, or to have in his possession tools, weapons, or other items that may be used to facilitate an escape.

(B) A person who knowingly harbors or employs an escaped inmate is guilty of a felony and, upon conviction, must be fined in the discretion of the court or imprisoned not more than ten years, or both."

Conspiracy to incite a riot

SECTION 78. Section 24-13-430 of the 1976 Code is amended to read:

"Section 24-13-430. (A) An inmate of the Department of Corrections or of a local detention facility who conspires with another inmate to incite the inmate to riot or commit any other acts of violence

is guilty of a felony and, upon conviction, must be sentenced in the discretion of the court.

(B) An inmate of the Department of Corrections or of a local detention facility who participates in a riot or any other acts of violence is guilty of a felony and, upon conviction, must be imprisoned for not less than five years nor more than ten years."

Unlawful weapons

SECTION 79. Section 24-13-440 of the 1976 Code is amended to read:

"Section 24-13-440. It is unlawful for an inmate of a state correctional facility or of a local detention facility to carry on his person or to have in his possession a dirk, slingshot, metal knuckles, razor, firearm, or an object, homemade or otherwise, that may be used for the infliction of personal injury upon another person, or to wilfully conceal any weapon within any Department of Corrections facility or other place of confinement.

A person violating this section is guilty of a felony and, upon conviction, must be imprisoned not more than ten years. A sentence imposed under this section must be served consecutively to any other sentence the inmate is serving."

Holding of hostages

SECTION 80. Section 24-13-450 of the 1976 Code is amended to read:

"Section 24-13-450. An inmate of a state correctional facility, a local detention facility, or a private entity that contracts with a state, county, or city to provide care and custody of inmates, including persons in safekeeper status, acting alone or in concert with others, who by threats, coercion, intimidation, or physical force takes, holds, decoys, or carries away any person as a hostage or for any other reason is guilty of a felony and, upon conviction, must be imprisoned for a term of not less than five years nor more than thirty years. This sentence must not be served concurrently with any sentence being served at the time the offense is committed."

Unlawful alcoholic beverages or drugs

SECTION 81. Section 24-13-460 of the 1976 Code is amended to read:

"Section 24-13-460. It is unlawful for a person in this State to furnish a prisoner in a local detention facility any alcoholic beverages or narcotic drugs, including prescription medications and controlled substances that have not been issued legally to the prisoner. A person violating the provisions of this section is guilty of a misdemeanor and, upon conviction, must be punished by a fine of five hundred dollars, or imprisonment for six months, or both."

Throwing of fluids

SECTION 82. Section 24-13-470 of the 1976 Code is amended to read:

"Section 24-13-470. (A) An inmate, a detainee, a person taken into custody, or a person under arrest, who attempts to throw or throws body fluids including, but not limited to, urine, blood, feces, vomit, saliva, or semen on an employee of a state correctional facility or local detention facility, a state or local law enforcement officer, a visitor of a state correctional facility or local detention facility, or any other person authorized to be present in a state correctional facility or local detention facility in an official capacity is guilty of a felony and, upon conviction, must be imprisoned not more than fifteen years. A sentence under this provision must be served consecutively to any other sentence the inmate is serving. This section shall not prohibit the prosecution of an inmate for a more serious offense if the inmate is determined to be HIV-positive or has another disease that may be transmitted through body fluids.

(B) A person accused of a crime contained in this section may be tested for a blood borne disease within seventy-two hours of the crime if a health care professional believes that exposure to the accused person's body fluid may pose a significant health risk to a victim of the crime.

(C) This section does not apply to a person who is a 'patient' as defined in Section 44-23-10(3)."

Statewide prison uniform

SECTION 83. Section 24-13-640 of the 1976 Code is amended to read:

"Section 24-13-640. Notwithstanding any other provision of law, any state or local prisoner who is not in the highest trusty grade and who is assigned to a work detail outside the confines of any state correctional facility or local detention facility must wear a statewide uniform. The uniform must be of such a design and color as to easily be identified as a prisoner's uniform and stripes must be used in the design. The Department of Corrections Division of Prison Industries must manufacture the statewide uniform and make it available for sale to the local detention facilities. The Director of the Department of Corrections may determine, in his discretion, that the provisions of this section do not apply to certain prisoners."

Public service work

SECTION 84. Section 24-13-660 of the 1976 Code is amended to read:

"Section 24-13-660. (A) A criminal offender committed to incarceration anywhere in this State may be required by prison or jail officials to perform public service work or related activities while under the supervision of appropriate employees of a federal, state, county, or municipal agency, or of a regional governmental entity or special purpose district. Prison or jail officials shall make available each inmate who is assigned to the program for transportation to his place of work on all days when work is scheduled and shall receive each inmate back into confinement at the respective facility after work is concluded. This public service work is considered to be a contribution by the inmate toward the cost of his incarceration and does not entitle him to additional compensation.

(B) No offender may be allowed to participate in these public service work activities unless he first is properly classified and approved to be outside the prison or jail without armed escort.

(C) The public service work requirement in subsection (A) operates only when adequate supervision and accountability can be provided by the agency, entity, district, or organization which is responsible for the work or related activity. The types of public service work permitted to

be performed include, but are not limited to, litter control, road and infrastructure repair, and emergency relief activities.

(D) The South Carolina Department of Corrections may enter into a contractual agreement with any federal, state, county, or municipal agency, or with any regional governmental entity or public service district, to provide public service work or related activities through the use of inmate labor under authorized circumstances and conditions. A county municipal, or multijurisdictional jail, detention facility, or prison camp also may provide public service work or related activities through the use of inmate labor in accordance with the Minimum Standards for Local Detention Facilities in South Carolina and with applicable statutes and ordinances.

(E) It is the policy of this State and its subdivisions to utilize criminal offenders for public service work or related activities whenever it is practical and is consistent with public safety. All eligible agencies, entities, districts, and organizations are encouraged to participate by using a labor force that can be adequately supervised and for which public service work or related activities are available.

(F) Nothing in this section may be construed to prohibit or otherwise to limit the use of inmate labor by the South Carolina Department of Corrections within its own facilities or on its own property, or by any local governing body within its own facilities or on its own property. Further, nothing in this section prevents the South Carolina Department of Corrections or a local detention facility from escorting and supervising any inmate for a public purpose when the department or the local detention facility provides its own security."

Public works employment

SECTION 85. Section 24-13-910 of the 1976 Code is amended to read:

"Section 24-13-910. Beginning January 1, 1988, local governing bodies may establish regulations consistent with regulations of the Department of Corrections, and administer a program under which a person convicted of an offense against this State or other local jurisdiction and confined in a local detention facility, or punished for contempt of court in violation of Section 63-3-620 and confined in a local detention facility may, upon sentencing, and while continuing to be confined in the facility at all times other than when the prisoner is either seeking employment, working, attending his education, or traveling to or from the work or education location, be allowed to seek

work and to work at paid employment in the community, be assigned to public works employment, or continue his education. Each governing body shall designate the sheriff, the chief administrative officer, or the equivalent, as the official in charge. A person sentenced under these provisions is eligible for programs under this article except that a person punished for a violation of Section 63-3-620 is eligible for these programs only upon a finding by the sentencing judge that he is eligible."

Definition

SECTION 86. Section 24-13-915 of the 1976 Code is amended to read:

"Section 24-13-915. Wherever in the Code of Laws of South Carolina, 1976, as amended, a reference is made to a local detention facility, it means a county, municipal, or multijurisdictional detention facility."

Work/punishment program

SECTION 87. Section 24-13-940 of the 1976 Code is amended to read:

"Section 24-13-940. The official administering the work/punishment program may contract with the South Carolina Department of Corrections or with other governmental bodies to allow inmates committed to serve sentences in the custody of the department or in other local detention facilities to participate in the program and be confined in the local detention facility of the receiving official."

Home detention program

SECTION 88. Section 24-13-1540 of the 1976 Code is amended to read:

"Section 24-13-1540. If a department desires to implement a home detention program, it must promulgate regulations that prescribe reasonable guidelines under which a home detention program may operate. These regulations must require that the participant remain within the interior premises or within the property boundaries of his

residence at all times during the hours designated by the department. Approved absences from the home for a participant may include:

(1) hours in employment approved by the department or traveling to or from approved employment;

(2) time seeking employment approved for the participant by the department;

(3) medical, psychiatric, mental health treatment, counseling, or other treatment programs approved for the participant by the department;

(4) attendance at an educational institution or a program approved for the participant by the department;

(5) attendance at a regularly scheduled religious service at a place of worship approved by the department; or

(6) participation in a community work punishment or community service program approved by the department."

Misdemeanor

SECTION 89. Section 16-7-140 of the 1976 Code is amended to read:

"Section 16-7-140. A person who violates any provision of Sections 16-7-110 and 16-7-120 is guilty of a misdemeanor and, upon conviction, must be punished by a fine of not more than five hundred dollars or by imprisonment for a period not to exceed twelve months."

Contempt of court

SECTION 90. Section 63-3-620 of the 1976 Code, is amended to read:

"Section 63-3-620. An adult who wilfully violates, neglects, or refuses to obey or perform a lawful order of the court, or who violates any provision of this chapter, may be proceeded against for contempt of court. An adult found in contempt of court may be punished by a fine, by a public works sentence, or by imprisonment in a local detention facility, or by any combination of them, in the discretion of the court, but not to exceed imprisonment in a local detention facility for one year, a fine of fifteen hundred dollars, or public works sentence of more than three hundred hours, or any combination of them. An adult sentenced to a term of imprisonment under this section may earn good time credits pursuant to Section 24-13-210 and work credits

pursuant to Section 24-13-230 and may participate in a work/punishment program pursuant to Section 24-13-910."

Repeal

SECTION 91. Sections 24-3-150, 24-3-200, 24-5-30, 24-5-70, 24-5-100, 24-5-140, 24-5-150, 24-5-160, 24-7-70, 24-7-80, 24-7-130, 24-7-140, 24-7-150, and 24-3-45 are repealed.

Savings clause

SECTION 92. 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.

Local Detention Facility Mutual Aid and Assistance Act

SECTION 93. Chapter 5, Title 24 of the 1976 Code is amended by adding:

"Article 2

Local Detention Facility Mutual Aid and Assistance Act

Section 24-5-200. This article may be cited as the 'Local Detention Facility Mutual Aid and Assistance Act'.

Section 24-5-210. (A) For purposes of this article, 'local detention facility' means a municipal, county, or multijurisdictional jail, prison camp, or overnight lockup used for the detention of persons charged with or convicted of a felony, misdemeanor, local ordinance, or violation of a court order.

(B) There is a need for the safe and secure housing of inmates, and there may be situations where inmates need to be temporarily housed in other local detention facilities in order to maintain the public peace, safety, and welfare. Therefore, local detention facilities of this State are authorized to enter into mutual aid and assistance agreements with other local detention facilities as may be necessary.

(C) The facility manager, with the approval and consent of the local governing body, may provide this assistance while acting in accordance with the policies, ordinances, and procedures set forth by the governing body of the providing local detention facility. If sufficient resources are not available within the several counties, officials responsible for the requesting local detention facility may seek assistance of the South Carolina Department of Corrections and its resources until the emergency has passed.

Section 24-5-220. (A) Mutual aid and assistance agreements may include, but are not limited to, the following:

(1) statement of the services to be provided;

(2) arrangements for the use of equipment and facilities;

(3) records to be maintained on behalf of the receiving local detention facility;

(4) authority of the providing facility manager to maintain control over the receiving local detention facility's inmates or other personnel;

(5) terms of financial agreements between the parties;

(6) duration, modification, and termination of the agreement; and

(7) legal contingencies for any lawsuits or the payment of damages that arise from the provided services.

(B) Nothing in this article requires a local detention facility to have a written mutual aid and assistance agreement, nor does it preclude mutual aid to take place absent a written agreement in the case of an emergency.

Section 24-5-230. (A) The provisions of this article shall not conflict with any existing mutual aid and assistance agreements or contracts between local detention facilities.

(B) Nothing in this article may be construed to alter, amend, or affect any rights, duties, or responsibilities of law enforcement authorities established by the Constitution or laws of this State, or by ordinance of local governing bodies, except as expressly provided for in this chapter."

Community supervision

SECTION 94. Section 24-21-560(D) of the 1976 Code is amended to read:

"(D) If a prisoner's community supervision is revoked by the court and the court imposes a period of incarceration for the revocation, the prisoner also must complete a community supervision program of up to two years as determined by the department pursuant to subsection (B) when he is released from incarceration.

A prisoner who is sentenced for successive revocations of the community supervision program may be required to serve terms of incarceration for successive revocations, as provided in Section 24-21-560(C), and may be required to serve additional periods of community supervision for successive revocations, as provided in Section 24-21-560(D). The maximum aggregate amount of time a prisoner may be required to serve when sentenced for successive revocations may not exceed an amount of time equal to the length of incarceration imposed limited by the amount of time remaining on the original 'no parole offense'. The prisoner must not be incarcerated for a period longer than the original sentence. The original term of incarceration does not include any portion of a suspended sentence.

If a prisoner's community supervision is revoked due to a conviction for another offense, the prisoner must complete a community supervision program of up to two continuous years as determined by the department after the prisoner has completed the service of the sentence for the community supervision revocation and any other term of imprisonment which may have been imposed for the criminal offense, except when the subsequent sentence is death or life imprisonment."

Severability clause

SECTION 95. 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 96. This act takes effect upon approval by the Governor.

Ratified the 7th day of June, 2010.

Approved the 11th day of June, 2010.

No. 238

(R275, H3964)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING ARTICLE 13 TO CHAPTER 21, TITLE 46 SO AS TO UPDATE AND CLARIFY SEED ARBITRATION PROCEDURES; TO AMEND ARTICLE 1, CHAPTER 21, TITLE 46, RELATING TO GENERAL PROVISIONS OF SEED AND PLANT CERTIFICATION, SO AS TO REPLACE OBSOLETE DEFINITIONS, TO REVISE ENFORCEMENT MECHANISMS, TO CLARIFY LICENSING PROCEDURES, AND TO PROVIDE EXEMPTIONS; TO AMEND ARTICLE 3, CHAPTER 21, TITLE 46, RELATING TO LABELS AND TAGS REGARDING SEEDS AND PLANTS, SO AS TO REVISE THE LABELING REQUIREMENTS FOR SEED PRODUCTS, AND TO IMPOSE ADDITIONAL PROHIBITIONS; TO AMEND ARTICLE 5, CHAPTER 21, TITLE 46, RELATING TO ANALYSES AND TESTS REGARDING SEEDS AND PLANTS, SO AS TO DELETE REDUNDANT PROVISIONS, TO PROVIDE THAT DEPARTMENT OF AGRICULTURE OFFICIALS SHALL HAVE ACCESS TO SEED RECORDS AND SAMPLES, TO PROVIDE THAT SEED RECORDS SHALL BE MAINTAINED FOR TWO YEARS, AND TO CLARIFY WHO IS ENTITLED TO FREE SEED TESTING AT THE STATE SEED LABORATORY; TO AMEND ARTICLE 7, CHAPTER 21, TITLE 46, RELATING TO WITHDRAWAL, CONFISCATION, AND SALE OF SEEDS

REGARDING SEEDS AND PLANTS, SO AS TO INCREASE PENALTIES FOR VIOLATIONS FROM A MAXIMUM OF ONE HUNDRED DOLLARS FOR EACH VIOLATION TO ONE THOUSAND DOLLARS FOR EACH VIOLATION, TO CLARIFY THE ROLE OF THE ATTORNEY GENERAL IN PROSECUTING VIOLATIONS, AND TO PROVIDE FOR INJUNCTIVE RELIEF TO PREVENT VIOLATIONS; TO AMEND ARTICLE 9, CHAPTER 21, TITLE 46, RELATING TO SEED AND PLANT CERTIFICATION, SO AS TO CLARIFY CLEMSON UNIVERSITY'S SEED AND PLANT CERTIFICATION AUTHORITY; AND TO REPEAL ARTICLE 11, CHAPTER 21, TITLE 46 RELATING TO SEED IRISH POTATOES IN CHARLESTON COUNTY.

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

Seed arbitration

SECTION 1. Chapter 21, Title 46 of the 1976 Code is amended by adding:

"Article 13

Seed Arbitration

Section 46-21-1010. (A) When a buyer claims to have been damaged by the failure of seed for planting to produce or perform as represented by the label required to be attached to seed pursuant to Section 46-21-215, or by warranty, or as a result of negligence, as a prerequisite to the buyer's right to maintain a legal action against the dealer or another seller of the seed, the buyer shall first submit the claim to arbitration as provided in Section 46-21-1010(C)(2). The applicable period of limitations with respect to the claim must be tolled until ten days after the filing of the report of arbitration with the Commissioner as provided in Section 46-21-1020.

No claim may be asserted as a counterclaim or defense in an action brought by a seller against a buyer, until the buyer has submitted a claim to arbitration as provided in this section and in Section 46-21-1020. Upon the buyer's filing of a written notice of intention to assert the claim as a counterclaim or defense in the action, accompanied by a copy of the buyer's complaint in arbitration filed pursuant to Section 46-21-1020(B)(1), the action must be stayed, and

the applicable statute of limitations must be suspended with respect to the claim, until ten days after the filing of the report of arbitration with the Commissioner as provided in Section 46-21-1020.

(B) The following notice or calling attention to the requirement for arbitration pursuant to this section must be included on the analysis label required pursuant to Section 46-21-215, or attached to or printed on the seed bag or package. Arbitration is not required unless this notice is included:

'NOTICE
ARBITRATION/CONCILIATION/MEDIATION REQUIRED BY SEVERAL STATES

Pursuant to the seed law of several states arbitration, mediation, or conciliation is required as a prerequisite to maintaining a legal action based upon the failure of seed to which this notice is attached to produce as represented. The consumer shall file a complaint along with the required filing fee, if applicable, with the Commissioner of Agriculture, Seed Commissioner, or Chief Agricultural Officer within that time as to permit inspection of the crops, plants, or trees by the designated agency and the seedsman from whom the seed was purchased. A copy of the complaint must be sent to the seller by certified or registered mail or as otherwise provided by state statute.'

(C) Effect of arbitration.

(1) The report of arbitration is binding upon all parties who have agreed to binding arbitration in a contract governing the sale of the seed.

(2) In the absence of an agreement to be bound by arbitration, a buyer may commence legal proceedings against a seller or assert the claim as a counterclaim or defense in an action brought by the seller, at any time after the receipt of the report of arbitration.

(3) In litigation involving a complaint which has been the subject of arbitration pursuant to this section, a party may offer into evidence the facts of the arbitration report. The court may give weight to the committee's findings and recommendations as to damages and costs as the court may see fit based upon all the evidence before the court. The court also may consider the findings of the committee with respect to the failure of a party to cooperate in the arbitration proceedings, including the findings as to the effect of delay in filing the arbitration claim upon the committee's ability to determine the facts of the case.

Section 46-21-1020. (A) The Commissioner shall appoint an arbitration committee composed of five members and five alternate members. One member and one alternate must be appointed upon the recommendation of each of the following:

(1) the Dean of Extension, College of Agriculture, Clemson University;

(2) the Dean of Research, College of Agriculture, Clemson University;

(3) the President of the Seedsman's Association of South Carolina, or if there is no association, then a seedsman residing in this State who is designated by the President of the American Seed Trade Association;

(4) the president of a farmer organization of South Carolina as the Commissioner may determine to be appropriate; and

(5) the Commissioner.

Each alternate member shall serve only in the absence of the member for whom the person is an alternate. The committee shall elect a chairman and a secretary from its membership. The chairman shall conduct meetings and deliberations of the committee and direct all other activities. The secretary shall keep accurate records of all meetings and deliberations and perform other duties for the committee as the chairman may direct. All hearings must be taped with an audio recorder for the purpose of establishing a record. The purpose of the committee is to conduct arbitration as provided in this section. The committee may be called into session by or at the direction of the Commissioner or upon direction of its chairman to consider matters referred to it by the Commissioner or the chairman in accordance with this section.

(B) Procedures.

(1) A buyer may invoke arbitration by filing a sworn complaint with the Commissioner together with a filing fee of fifty dollars. The buyer shall serve a copy of the complaint upon the seller by certified mail. Except in the case of seed which has not been planted, the claim must be filed in time to permit effective inspection of the plants under field conditions. The statute of limitations for filing a claim with the seed arbitration committee is one year from the date of planting. Failure to file a timely claim will preclude the seed arbitration committee from hearing the complaint.

(2) Within fifteen days after receipt of a copy of the complaint, the seller shall file with the Commissioner an answer to the complaint and serve a copy of the answer upon the buyer by certified mail.

(3) The Commissioner shall refer the complaint and answer to the committee for investigation, findings, and recommendations.

(4) Upon referral of a complaint for investigation, the committee shall make a prompt and full investigation of the matters complained of and report its findings of fact and recommendations to the Commissioner within sixty days of referral or if a grow out is being conducted, at a later date as parties may determine. But in no instance shall a report be issued more than eighteen months after the day of filing.

(5) The report of the committee shall include findings of fact and recommendations as to cost damages, if any.

(6) In the course of its investigation, the committee or its members may examine the buyer and the seller on all matters which the committee may:

(a) consider relevant;

(b) grow to production a representative sample of the seed through the facilities of the Commissioner or designated university under the Commissioner's supervision if considered necessary; and

(c) hold informal hearings at a time and place as the committee chairman may direct upon reasonable notice to all parties.

(7) The committee may delegate all or part of an investigation to one or more of its members. A delegated investigation must be summarized in writing and considered by the committee in its report.

(8) The members of the committee shall receive no compensation for the performance of their duties but will be reimbursed for travel expenses.

(9) After the committee has made its report, the Commissioner promptly shall transmit the report by certified mail to all parties."

Department of Agriculture

SECTION 2. Article 1, Chapter 21, Title 46 of the 1976 Code is amended to read:

"Article 1

General Provisions

Section 46-21-15. As used in this chapter, except for Article 9:

(1) 'Advertisement' means all representations, other than those on the label, relating to seed within the scope of this chapter.

(2) 'Agricultural seed' means grass, forage, cereal, oil, fiber, and other kinds of crop seeds commonly recognized within this State as agriculture seeds, lawn seeds, and combinations of these seeds and may include noxious weed seeds when the Commissioner determines that the seed is being used as agricultural seed.

(3) 'Blend' means seed consisting of more than one variety of a kind, each in excess of five percent by weight of the whole.

(4) 'Brand' means a word, name, symbol, number, or design used to identify seed of one person to distinguish it from seed of another person.

(5) 'Bulk' means a volume of seed in a container larger than a typical individual packing unit for that kind, such as bulk bags and boxes, bins, trucks, railcars, or barges.

(6) 'Certified seed', 'registered seed', or 'foundation seed' means seed that has been produced and labeled in accordance with the procedures and in compliance with the regulations of an agency authorized by the laws of this State or the laws of another state.

(7) 'Certifying agency' means:

(a) an agency authorized under the laws of a state, territory or possession to officially certify seed and which has standards and procedures approved by the U.S. Secretary of Agriculture to assure the genetic purity and identity of the seed certified; or

(b) an agency of a foreign country determined by the U.S. Secretary of Agriculture to adhere to procedures and standards for seed certification comparable to those adhered to generally by seed certifying agencies under subitem (a).

(8) 'Coated seed' or 'encrusted seed' means seed that has been covered, by at least one layer of material that obscures the original shape and size of the seed resulting in a substantial weight increase. The coating or encrusting may contain biologicals, identifying colorants or dyes, pesticides, polymers, or other ingredients.

(9) 'Complete record' means all information that relates to the origin, treatment, germination, purity, kind, and variety of each lot of agriculture seed sold in this State, or which relates to the treatment, germ, kind, and variety of each lot of vegetable and flower seed sold in this State. This information includes seed samples and records of declarations, labels, purchases, sales, conditioning, bulking, treatment, handling, storage, analyses, tests, and examinations.

(10) 'Conditioning' means drying, cleaning, scarifying, and other operations which could change the purity or germination of the seed and require the seed lot to be retested to determine the label information.

(11) 'Cost damages' means actual expenditures by the grower for the cost of seed, labor, equipment, fertilizer, insecticide, herbicide, land rent and other directly related costs, less the value received from the crop actually grown and sold.

(12) 'Date of test' means the month and year the percentage of germination appearing on the label was obtained by laboratory test.

(13) 'Dormant' means viable seed, excluding hard seed, which fail to germinate when provided the specified germination conditions for the kind of seed in question.

(14) 'Film-coated seed' means seed that retains its shape and general size with minimal weight gain. The film coating may contain biologicals, identifying colorants, dyes, pesticides, polymers, or other ingredients. The coating shall result in a continuous covering.

(15) 'Flower seeds' includes seeds of herbaceous plants grown for their blooms, ornamental foliage, or other ornamental parts, and commonly known and sold under the name of flower or wildflower seeds in this State.

(16) 'Genuine grower declaration' means a statement signed by the grower which gives for each lot of seed the lot number, kind, variety (if known), origin, weight, year of production, date of shipment, and to whom the shipment was made.

(17) 'Germination' means the emergence and development from the seed embryo of those essential structures which, for the kind of seed in question, or indicative of the ability to produce a normal plant under favorable conditions.

(18) 'Hermetically sealed seed' means seed packed in a moisture-proof container when the container and the seed in the container meet the requirements specified by regulation.

(19) 'Hard seeds' means seeds which remain hard at the end of the prescribed test period because they have not absorbed water due to an impermeable seed coat.

(20) 'Hybrid' means the first generation seed of a cross produced by controlling the pollination and by combining:

(a) two or more inbred lines;

(b) one inbred or a single cross with an open pollinated variety; or

(c) two varieties or species, except open-pollinated varieties of corn (Zea mays). The second generation or subsequent generations from these crosses are not regarded as hybrids. Hybrid designations are treated as variety names.

(21) 'Inert matter' means all matter not seed, which includes broken seed, sterile florets, chaff, fungus bodies, and stones as determined by methods defined by regulation.

(22) 'Inoculated seed' means seed which has received a coating of a preparation containing a microbial production.

(23) 'Kind' means one or more related species or subspecies which singly or collectively is known by one common name, for example, corn, oats, alfalfa, and timothy.

(24) 'Labeling' means a tag or other device attached to or written, stamped, or printed on a container or accompanying a lot of bulk seed purporting to set forth the information required on the seed label by this act, and it may include other information relating to the labeled seed.

(25) 'Lawn and turf' means seeds of the grass family (Poaceae) that are used within the industry for lawn and turf applications.

(26) 'Lot' means a definite quantity of seed identified by a unique lot number or other mark, every portion or bag of which is uniform within recognized tolerances for the factors which appear in the labeling.

(27) 'Mix', 'mixed', or 'mixture' means seed consisting of more than one kind, each in excess of five percent by weight of the whole.

(28) 'Noxious weed seeds' are divided into the following two classes:

(a) 'Prohibited noxious weed seeds' means those seeds that are prohibited from being present in agricultural, vegetable, or flower seed and are the seeds of weeds that are highly destructive and difficult to control by good cultural practices and the use of herbicides.

(b) 'Restricted noxious weed seeds' means those weed seeds that are objectionable in agricultural crops, lawns, and gardens of this State and may be controlled by good cultural practices or the use of herbicides.

(29) 'Official sample' means a sample taken from a lot of seed by a representative of a seed regulatory official of a state or federal government agency following prescribed methods.

(30) 'Origin' means the state, District of Columbia, Puerto Rico, possession of the United States or the foreign country where the seed was grown. Regional distinctions also may be included.

(31) 'Other crop seed' means seeds of plants grown as crops, other than the kind or variety included in the pure seed, as determined by methods defined by regulation.

(32) 'Pelleted seed' means coated or encrusted seed that also improves plantability or singulation of the seed.

(33) 'Person' means an individual, partnership, corporation, company, association, receiver, trustee, or agent.

(34) 'Private hearing' means a discussion of facts between the person charged and the enforcement officer.

(35) 'Pure seed' means seed exclusive of inert matter and all other seeds not of the seed being considered as determined by methods defined by regulation.

(36) 'Seizure' means a legal process carried out by court order against a definite amount of seed.

(37) 'Stop sale' means an administrative order provided by law restraining the sale, use, disposition, and movement of a definite amount of seed.

(38) 'Submitted sample' means a nonofficial sample that does not guarantee chain of custody.

(39) 'Treated' means that the seed has received an application of a substance or that it has been subjected to a process for which a claim is made.

(40) 'Treated seed' means seed with a minimal covering of material whose objective is to reduce or control disease organisms, insects, or other pests attacking the seed or seedlings growing and may contain identifying colorants or dyes.

(41) 'Type' means a group of varieties so nearly similar that the individual varieties cannot be clearly differentiated except under special conditions.

(42) 'Variety' means a subdivision of a kind which is distinct, uniform, and stable.

(a) 'Distinct' means the variety can be differentiated by one or more identifiable morphological, physiological, or other characteristics from all other varieties of public knowledge.

(b) 'Uniform' means that the variations in essential and distinctive characteristics are describable.

(c) 'Stable' means the variety will remain unchanged in its essential and distinctive characteristics and its uniformity when reproduced or reconstituted as required by the different categories of varieties.

(43) 'Vegetable seeds' means the seeds of those crops which are grown in gardens and on truck farms and are generally known and sold under the name of vegetable or herb seeds in this State.

(44) 'Weed seed' means the seeds of all plants generally recognized as weeds within this State, as determined by methods defined by regulation, and includes the prohibited and restricted noxious weed seeds.

Section 46-21-25. (A) The Commissioner of Agriculture or his authorized agents shall enforce this chapter and execute its provisions and requirements. The Commissioner or his authorized agents shall:

(1) sample, inspect, make analysis of, and test seeds subject to the provisions of this chapter that are transported, sold or offered or exposed for sale within the State for sowing purposes, at such time and place and to the extent as he may deem necessary to determine whether the seeds are in compliance with provisions of this chapter, and promptly to notify the person who sold, offered, or exposed the seed for sale and, if appropriate, the person who labeled or transported the seed, of a violation, stop sale order, or seizure; and

(2) prescribe, amend, adopt, and publish after following due public notice:

(a) regulations governing the method of sampling, inspecting, analyzing, testing, and examining seeds subject to provisions of this chapter and the tolerances to be used and other regulations necessary to secure efficient enforcement of this chapter;

(b) a prohibited and restricted noxious weed list;

(c) regulations establishing reasonable standards of germination for agriculture, vegetable seeds, and flower seeds;

(d) regulations for labeling flower seeds in respect to kind and variety or type and performance characteristics as required by Section 46-21-215;

(e) a list of the flower seeds subject to the flower seed germination labeling requirements of Section 46-21-215; and

(f) a list of the vegetable seeds subject to the vegetable seed germination labeling requirements of Section 46-21-215.

(B) For the purpose of carrying out the provisions of this chapter, state seed law enforcement officers are authorized to:

(1) enter upon a public or private premises during regular business hours in order to have access to seeds and the records subject to this chapter and regulations under them, a truck or other conveyor by land, water, or air at any time when the conveyor is accessible, for the same purpose;

(2) issue and enforce a written or printed ‘stop sale’ order to the owner or custodian of a lot of seed subject to the provisions of this chapter when the enforcement officer finds a violation of the provisions of this chapter or regulations promulgated pursuant to this chapter, which order prohibits further sale, conditioning, and movement of the seed, except on approval of the enforcing officer, until the officer has evidence that the law has been complied with, and he has issued a

release from the 'stop sale' order of the seed, provided that in respect to seed which has been denied sale, conditioning, and movement as provided in this item, the owner or custodian of the seed shall have the right to appeal from the order to a court of competent jurisdiction in the locality in which the seeds are found, seeking a judgment as to the justification of the order and for the discharge of the seeds from the order prohibiting the sale, condition, and movement in accordance with the findings of the court. The provisions of this item must not be construed as limiting the right of the enforcement officer to proceed as authorized by other sections of this chapter;

(3) establish and maintain a seed testing laboratory, to employ qualified persons, and to incur expenses as may be necessary to comply with the provisions of this chapter;

(4) make or provide for purity and germination tests of seed for farmers and dealers on request; to promulgate regulations governing the testing; and to fix and collect charges, where applicable, for the tests made. Fees collected for these purposes must be set by regulation, and the fees must be retained by the Department of Agriculture to cover the costs of administering this chapter; and

(5) cooperate with the United States Department of Agriculture and other agencies in seed law enforcement.

(C) All authority vested in the Commissioner by virtue of the provisions of this chapter may with like force and effect be executed by Department of Agriculture employees as the Commissioner may designate.

(D) This chapter and its provisions are of statewide concern and occupy the whole field of regulation regarding the registration, licensing, labeling, sale, storage, transportation, distribution, notification of use, and use of seeds to the exclusion of all local regulations. Except as otherwise specifically provided in this chapter, no ordinance or regulation of another political subdivision may prohibit or in any way attempt to regulate a matter relating to the registration, certification, licensing, labeling, sale, storage, transportation, distribution, notification of use or use of seeds, if any of these ordinances, laws, or regulations are in conflict with this chapter.

Section 46-21-35. The Department of Agriculture shall maintain a seed laboratory with necessary equipment for carrying out the provisions of this chapter.

Section 46-21-45. (A) A person, except as provided in subsection (D), before selling, distributing for sale, offering for sale, exposing for

sale, handling for sale, or soliciting orders for the purchase of agricultural, vegetable, or flower seed, or mixture thereof, shall first register each place of business in this State with the Department of Agriculture. The application for a seed license shall include the name and location of each place of business at which the seed is sold, distributed for sale, offered for sale, exposed for sale, or handled for sale. The application for a seed license must be accompanied by an annual license fee for each place of business based on the gross receipts from the sale of seed for the last preceding license year. The fees must be set forth in the regulations promulgated pursuant to this chapter. For places of business not previously in operation, the fee will be based on anticipated receipts for the first license year.

(B) Payment of the licensing fee and a written receipt from the department for the fee shall constitute a sufficient permit for the dealer to engage in or continue in the business of selling, distributing for sale, offering or exposing for sale, handling for sale, or soliciting orders for the purchase of any agricultural, vegetable, or flower seed within the State.

(C) A person selling, distributing for sale, offering for sale, exposing for sale, handling for sale, or soliciting orders for the purchase of any agricultural, vegetable, or flower seed in the State, is subject to the requirements of this section.

(D) The provisions of this chapter shall not apply to on-farm sales by farmers who sell uncleaned, unprocessed, unpackaged, and unlabeled seed.

Section 46-21-55. (A) The provisions of Sections 46-21-215 and 46-21-217 do not apply to:

(1) seed or grain not intended for sowing purposes;

(2) seed in storage in, or being transported or consigned to a cleaning or conditioning establishment for cleaning or conditioning, provided, that the invoice or label accompanying a shipment of said seed bears the statement ‘seeds for conditioning’; and provided that any labeling or other representation which may be made with respect to the uncleaned or unconditioned seed shall be subject to this chapter; or

(3) a carrier in respect to seeds transported or delivered for transport in the ordinary course of its business as a carrier; provided, that the carrier is not engaged in producing, conditioning, or marketing seeds subject to the provisions of this chapter.

(B) A person is not subject to the penalties of this chapter for having sold or offered for sale seed subject to provisions of this chapter which were incorrectly labeled or represented as to kind, species, and

subspecies, if appropriate, variety, type, or origin, if required, which seeds cannot be identified by examination, unless he has failed to obtain an invoice, genuine growers declaration, or other labeling information and to take precautions as may be reasonable to insure the identity to be that stated. A genuine grower's declaration of variety shall affirm that the grower holds records of proof concerning parent seed.

Section 46-21-65. Clemson University shall cooperate with the South Carolina Foundation Seed Association in a foundation seed program responsible for the fostering of the production, processing, and distribution of pure varieties of crop seeds and plants as Clemson University recommends for increase in this State. The South Carolina Department of Agriculture will assist in these efforts as directed by the Commissioner or his designee."

Labels and tags

SECTION 3. Article 3, Chapter 21, Title 46 of the 1976 Code is amended to read:

"Article 3

Labels and Tags

Section 46-21-215. Each container of agricultural, vegetable, and flower seeds were sold, offered for sale, or exposed for sale, or transported within this State for sowing purposes shall state or have affixed in a conspicuous place a plainly written or printed label or tag in the English language, giving the following information, which statement may not be modified or denied in the labeling or on another label attached to the container.

(A) For all agricultural, vegetable, and flower seeds treated as defined in this chapter for which a separate label may be used:

(1) a word or statement indicating that the seed has been treated;

(2) the commonly accepted coined, chemical, abbreviated chemical, or generic name of the applied substance or description of the process used;

(3) if the substance in the amount present with the seed is harmful to human or other vertebrate animals, a caution statement such as 'do not use for food, feed, or oil purposes'. The caution for

mercurials and similarly toxic substances must be a poison statement or symbol; and

(4) if the seed is treated with an inoculant, the date beyond which the inoculant is not to be considered effective, date of expiration.

(B) For agricultural seeds, except for cool season lawn and turf grass seeds and mixtures as provided in item (C) and for hybrids which contain less than ninety-five percent hybrid seed as provided in item (I):

(1) the name of the kind and variety for each agricultural seed component present in excess of five percent of the whole and the percentage by weight of each; in order of its predominance where more than one component is required to be named the word 'mixture' or the word 'mixed' must be shown conspicuously on the label. Hybrids must be labeled as hybrids;

(2) lot number or other lot identification;

(3) origin, state or foreign country, if known; if unknown, the fact must be stated;

(4) percentage by weight of all weed seeds;

(5) the name and rate of occurrence per pound of each kind of restricted noxious weed seed present;

(6) percentage by weight of other crop seed;

(7) percentage by weight of inert matter;

(8) the total of subitems (1), (4), (6), and (7) must equal one hundred percent;

(9) for each named agricultural seed:

(a) percentage of germination, exclusive of hard seed;

(b) percentage of hard seeds, if present; and

(c) the calendar month and year the test was completed to determine the percentages. Following subitems (a) and (b) the 'total germination and hard seed' may be stated, if desired; and

(10) name and address of the person who labeled the seed, or who sells, offers or exposes the seed for sale within this State.

(C) For cool season lawn and turf grasses including Kentucky bluegrass, red fescue, chewing fescue, hard fescue, tall fescue, perennial ryegrass, intermediate ryegrass, annual ryegrass, colonial bentgrass, creeping bentgrass, and mixtures of them:

(1) for single kinds, the name of the kind or kind and variety;

(2) for mixtures:

(a) the terms 'mix', 'mixed', or 'mixture' or 'blend' must be stated with the name of the mixture;

(b) the heading 'Pure Seed' and 'Germination' or 'Germ' must be used in the proper places;

(c) commonly accepted name of kind and variety of each agricultural seed component in excess of five percent of the whole, and the percentage by weights of pure seed in order of its predominance;

(3) lot number or other lot identification;

(4) origin, state or foreign country, if known; if unknown, it must be stated;

(5) percentage by weight of all weed seeds;

(6) the name and rate of occurrence per pound of each kind of restricted noxious weed seed present;

(7) percentage by weight of other crop seed;

(8) percentage by weight of inert matter;

(9) the total of subitems (1), (2), (5), (7), and (8) must be one hundred percent; and

(10) for each agricultural seed named under subitem (1) or (2):

(a) percentage of germination, exclusive of hard seed;

(b) percentage of hard seed, if present;

(c) calendar month and year the test was completed to determine percentages. Oldest test date must be used;

(d) the statement 'Sell by _____', which may be no more than fifteen months from the date of test exclusive of the month of test; and

(e) name and address of the person who labeled the seed, or who sells, offers or exposes said seed for sale within the State.

(D) For agricultural seeds that are coated:

(1) percentage by weight of pure seeds with coating material removed;

(2) percentage by weight of coating material;

(3) percentage by weight of inert material exclusive of coating material; and

(4) in addition to the provisions of this subsection, labeling of coated seed must comply with the requirements of subsections (A), (B), and (C).

(E) For vegetable seeds in packets as prepared for use in home gardens or household plantings or vegetable seeds in preplanted containers, mats, tapes, or other plant devices:

(1) name of kind and variety of seed;

(2) lot identification, such as by lot number or other means;

(3)(a) the calendar month and year the germination test was completed and the statement 'Sell by _____', which may be no more than twelve months from the date of test exclusive of the month of test;

(b) the year for which the seed was packaged for sale as 'Packed for _____' and the statement 'Sell by_____' which, must be for a calendar year; or

(c) the percentage of germination and the calendar month the test was completed to determine the percentage, provided that the germination test must have been completed within twelve months exclusive of the month of test;

(4) name and address of the person who labeled the seed or who sells, offers, or exposes the seed for sale within this State; and

(5) for seeds placed in a germination medium, mat, tape, or other device in such a way as to make it difficult to determine the quantity of seed without removing the seeds from the medium, mat, tape, or device, a statement to indicate the minimum number of seeds in the container.

(F) For vegetable seeds in containers other than packets prepared for use in home gardens or household planting and other than preplanted containers, mats, tapes, or other planting devices:

(1) the name of each kind and variety present in excess of five percent and the percentage by weight of each in order of its predominance;

(2) lot number or other lot identification;

(3) for each named vegetable seed:

(a) percentage of germination exclusive of hard seed;

(b) percentage of hard seed, if present;

(c) the calendar month and year the test was completed to determine the percentages; and

(d) germination test must have been completed within twelve months exclusive of the month of test.

Following subitems (a) and (b) the 'total germination and hard seed' may be stated, if desired;

(4) name and address of the person who labeled the seed, or who sells, offers, or exposes the seed for sale within this State; and

(5) the labeling requirements for vegetable seeds in containers of more than one pound is deemed to have been met if the seed is weighed from a properly labeled container in the presence of the purchaser.

(G) For flower seeds in packets prepared for use in home gardens or household plantings or flower seeds in preplanted containers, mat, tapes, or other planting devices:

(1) for all kinds of flower seeds:

(a) the name of the kind and variety or a statement of type and performance characteristics as prescribed in regulations promulgated pursuant to the provisions of this chapter;

(b)(i) the calendar month and year the germination test was completed and the statement 'Sell by _____', which may be no more than twelve months from the date of test exclusive of the month of test;

(ii) the year the seed was packed for sale as 'Packed for _____' and the statement 'Sell by _____', which must be for a calendar year; or

(iii) the percentage of germination and the calendar month and year the test was completed to determine the percentage provided that the germination test must have been completed within twelve months exclusive of the month of test;

(c) the name and address of the person who labeled the seed or who sells, offers, or exposes the seed for sale within the State; and

(2) for seeds placed in a germination medium, mat, tape, or other device in such a way as to make it difficult to determine the quantity of seed without removing the seeds from the medium, mat, tape, or device, a statement to indicate the minimum number of seeds in the container.

(H) For flower seeds in containers other than packets and other than preplanted containers, mats, tapes, or other planting devices and not prepared for use in home flower gardens or household plantings:

(1) the name of the kind and variety or a statement of type and performance characteristics as prescribed by regulations promulgated pursuant to the provisions of this chapter, and for wildflowers, the genus and species and subspecies, if appropriate;

(2) the lot number or other lot identification;

(3) for wildflower seed only with a pure seed percentage of less than ninety percent:

(a) the percentage, by weight, of each component listed in order of their predominance;

(b) the percentage by weight of weed seed if present; and

(c) the percentage by weight of inert matter;

(4) for seeds for which standard testing procedures are prescribed:

(a) percentage of germination exclusive of hard or dormant seed;

(b) percentage of hard or dormant seed, if present;

(c) the calendar month and year that the test was completed to determine the percentages; germination test must have been completed within twelve months exclusive of the month of test; and

(5) name and address of the person who labeled the seed or who sells, offers, or exposes the seed for sale within this State.

(I) For agricultural and vegetable hybrid seed which contain less than ninety-five percent hybrid seed:

(a) kind or variety must be labeled as 'hybrid';

(b) the percent which is hybrid must be labeled parenthetically in direct association following named variety; such as, 'Comet (85% hybrid)'; and

(c) varieties in which the pure seed contain less than seventy-five percent hybrid seed may not be labeled hybrids.

Section 46-21-217. (A) It is unlawful for a person to sell, offer for sale, expose for sale, or transport for sale any agricultural, vegetable, or flower seeds within this State:

(1) if subject to the germination requirement of Section 46-21-215, unless otherwise stipulated in the section, the test to determine the percentage of germination required by Section 46-21-215 must have been completed within a nine month period exclusive of the calendar month in which the test was completed, immediately prior to sale, exposure for sale, or offering for sale or transportation. This prohibition does not apply to agricultural or vegetable seeds in hermetically sealed containers. Agricultural or vegetable seeds packaged in hermetically sealed containers under the conditions defined in regulations promulgated pursuant to the provisions of this chapter may be sold, exposed for sale or offered for sale or transportation for a period of thirty-six months after the last day of the month that the seeds were tested for germination prior to packaging. If seeds in hermetically sealed containers are sold, exposed for sale, or offered for sale or transportation more than thirty-six months after the last day of the month in which they were tested prior to packaging, they must have been retested within a nine-month period, exclusive of the calendar month in which the retest was completed, immediately prior to sale, exposure for sale, or offering for sale or transportation;

(2) not labeled in accordance with the provisions of this chapter or having false or misleading labeling;

(3) pertaining to which there has been false or misleading advertisement;

(4) consisting of or containing prohibited noxious weed seeds, subject to recognized tolerances;

(5) consisting of or containing restricted noxious weed seeds per pound in excess of the number prescribed by regulations promulgated pursuant to this chapter;

(6) containing more than two percent by weight of all weed seeds;

(7) if any labeling, advertising, or other representation subject to this chapter represents the seed to be certified seed or any class thereof unless:

(a) it has been determined by a seed certifying agency that the seed conformed to standards of purity and identified as to kind, species and subspecies, if appropriate, or variety in compliance with the regulations of the agency pertaining to the seed; and

(b) that the seed bears an official label issued for the seed by a seed certifying agency certifying that the seed is of a specified class and a specified kind, species and subspecies, if appropriate, or variety; and

(8) labeled with a variety name but not certified by an official seed certifying agency when it is a variety of which a U.S. certificate of plant variety protection under the Plant Variety Protection Act (7 U.S.C. 2321 et seq.) specifies sale only as a class of certified seed; provided, that seed from a certified lot may be labeled as to variety name when used in a mixture by, or with the approval of, the owner of the variety.

(B) It is unlawful for a person in this State to:

(1) detach, alter, deface, or destroy any label provided for in this chapter or the regulations promulgated thereunder, or to alter or substitute seed in a manner that may defeat the purpose of this chapter;

(2) use relabeling stickers without having both the calendar month and year the germination test was completed, the sell by date, as stated in Section 46-21-215, and the lot number that matches the existing, original lot number. A relabeling may not occur more than one time;

(3) disseminate any false or misleading advertisements concerning seeds subject to this chapter in any manner or by any means;

(4) hinder or obstruct in any way, an authorized person in the performance of his duties pursuant to this chapter;

(5) fail to comply with a ‘stop sale’ order or to move or otherwise handle or dispose of any lot of seed held under a ‘stop sale’ order or attached tags, except with express permission of the enforcing officer, and for the specified purpose;

(6) use the word ‘trace’ or the phrase ‘contains less than .01%’ as a substitute for a required statement;

(7) use the word ‘type’ in any labeling in connection with the name of any agricultural seed variety; or

(8) alter or falsify a seed label, seed test, laboratory report, record, or other document to create a misleading impression as to kind, kind of variety, history, quality, or origin of seed."

Analyses and tests of seeds

SECTION 4. Article 5, Chapter 21, Title 46 of the 1976 Code is amended to read:

"Article 5

Analyses and Tests

Section 46-21-315. Before being offered for sale or distribution, all seeds sold in this State first must be examined and tested according to the provisions of this chapter.

Section 46-21-325. A person whose name appears on the label as handling agricultural, vegetable, or flower seed subject to this chapter shall keep for a period of two years complete records of each lot of agricultural, vegetable, or flower seed handled and keep for one year a file sample of each lot of seed after final disposition of the lot. All records and samples pertaining to the shipment or shipments involved must be accessible for inspection by the Commissioner or his agent during customary business hours.

Section 46-21-335. The Commissioner of Agriculture may publish or cause to be published, at his discretion, the results of the examinations and tests made of samples of agricultural, vegetable, or flower seeds or mixtures of agricultural seeds drawn as provided for in Section 46-21-325, together with other information he may deem advisable.

Section 46-21-345. A resident of this State may have samples of seeds tested for germination and purity free of charge in the State Seed Laboratory. In state firms, corporations, and other entities submitting seed samples for testing by the State Seed Laboratory must be charged at a rate established by regulation. Out-of-state individuals and entities will be charged at a similar rate. Charges for special tests performed by the State Seed Laboratory also must be established by regulation. All tests used must be established by the Association of Official Seed Analysts (AOSA) through the Rules for Testing Seed. The fees

charged for these seed tests must be retained by the Department of Agriculture for the purposes of carrying out the provisions of this chapter."

Withdrawal, confiscation, and sale of seeds

SECTION 5. Article 7, Chapter 21, Title 46 of the 1976 Code is amended to read:

"Article 7

Withdrawal, Confiscation, and Sale of Seeds; Penalties

Section 46-21-415. To promote normal crop production, the Commissioner or his designee, after providing reasonable notice, may withdraw impure seed or seed that lack reasonable germination even though they may have been properly labeled.

Section 46-21-425. Agricultural, vegetable, or flower seed that is sold, offered, or exposed for sale or distribution in this State without complying with the requirements of Articles 1, 3, 5, and 7 of this chapter may be seized and condemned and disposed of or destroyed at the discretion of the Commissioner of Agriculture, or his authorized representative, and the proceeds from the sale must be deposited into the state treasury for the use of the Department of Agriculture. The Commissioner may in his discretion release the seed withdrawn when the requirements of this chapter have been complied with and upon payment of all the costs or expenses incurred in a proceeding connected with seizure and withdrawal.

Section 46-21-435. A lot of seed not in compliance with the provisions of this chapter are subject to seizure on complaint of the Commissioner to a court of competent jurisdiction in the locality in which the seed is located. In the event the court finds the seed to be in violation of this chapter and orders the condemnation of the seed, it must be denatured, processed, destroyed, relabeled, or disposed of in compliance with the laws of this State, provided, that in no instance shall the court order the disposition of the seed without first having given the claimant an opportunity to apply to the court for the release of the seed or permission to condition or relabel it in compliance with this chapter.

Section 46-21-445. A violation of the provisions of this chapter, other than Article 9, is deemed a misdemeanor and punishable by a fine of not more than one thousand dollars.

Section 46-21-455. When the Commissioner finds that a person has violated a provision of this chapter, he or his authorized agent or agents may institute proceedings in a court of competent jurisdiction in the locality in which the violation occurred or where the seed is located; or the Commissioner may file with the Attorney General with a view toward prosecution, evidence as necessary; provided, however, that no prosecution pursuant to this chapter may be instituted without the defendant first having been given an opportunity to appear before the Commissioner or his authorized agent to introduce evidence either in person or by agent or attorney at a private hearing. If, after the hearing, or without a hearing in case the defendant or his agent or attorney fails or refuses to appear, the Commissioner is of the opinion that the evidence warrants prosecution, he shall proceed as provided in this chapter.

The Attorney General or, in his discretion and at his direction, the attorney of the county or city in which the alleged violation has occurred, shall institute proceedings immediately against the person charged with the violation. The proceedings for violations may be instituted after exhaustion of all remedies with the Commissioner has occurred. After judgment by the court in a case arising pursuant to this chapter, the Commissioner shall publish the information pertinent to the issuance of the judgment by the court in the media as he may designate.

Section 46-21-465. Prosecutions for violations of Articles 1, 3, 5, or 7 of this chapter, if the evidence of violations is based on tests or analyses, must be instituted as follows: When the Commissioner of Agriculture finds that the articles have been violated, as shown by test examination or analysis, he shall give notice to the person in possession of the seed, designating a time and place for a hearing. This hearing must be private, and the person involved shall have the right to introduce evidence, either in person, by agent or attorney. If, after the hearing, or without the hearing in case the person fails or refuses to appear, the Commissioner decides that the evidence warrants prosecution, he shall proceed as provided in Section 46-21-455.

Section 46-21-475. When in the performance of his duties the Commissioner applies to a court for a temporary or permanent

injunction restraining a person from violating or continuing to violate the provisions of this chapter or the regulations promulgated pursuant to this chapter, the injunction is to be issued without bond."

Seed and plant certification

SECTION 6. Article 9, Chapter 21, Title 46 of the 1976 Code is amended to read:

"Article 9

Seed and Plant Certification

Section 46-21-615. Clemson University shall maintain a program of seed and plant certification which shall have as its aim the fostering of the production and distribution of pure varieties of seeds and plants in South Carolina.

Section 46-21-625. In order to carry out the program the University may employ the necessary personnel, establish and promulgate regulations, and provide other facilities necessary for the certification of seeds and plants and for aiding in the distribution and promotion of the use of certified seeds and plants.

Section 46-21-635. Insofar as the State Department of Agriculture, the Clemson University Cooperative Extension Service, the Clemson University Experiment Station, and the State Crop Pest Commission have to do with the sampling, testing, breeding, production, certification, and distribution of seeds and plants, these agencies shall actively cooperate with the University in carrying out the purposes of this article.

Section 46-21-645. Certification of seeds and plants in regard to germination and mechanical purity of the seed depends upon the reports of the seed laboratory of the State Department of Agriculture. Seeds may not be certified by the University unless the germination and purity test reports of the seed laboratory of the department indicate that the seeds comply with the agricultural seed laws of this State.

Section 46-21-655. It is a misdemeanor, punishable by fine or imprisonment, in the discretion of the court, for a person selling seeds or plants in this State to use evidence of certification, such as a blue tag

or the word ‘certified’, or both, on a package of seeds or plants unless the seeds or plants are inspected and certified as provided for in this article or by a similar legally constituted agency of another state or foreign country. The duty of enforcing the provisions of this article is vested in the Commissioner of Agriculture.

Section 46-21-665. (1) The terms ‘certification’ and ‘certified’ as applied to seeds and plants pursuant to this article are defined as a guarantee that all necessary precautions have been taken to see that the seeds and plants conform to commonly recognized standards of quality for seeds and plants as established by Clemson University.

(2) The term ‘seed’ as used in this article refers to the true seeds of all field crops, vegetables, flowers, or other plants.

(3) The term ‘plant’ includes seedlings, nursery stock, roots, tubers, bulbs, cuttings, and other plant parts used in the propagation of field crops, vegetables, fruits, flowers, or other plants.

(4) The term ‘variety’ means its original meaning and includes strains of varieties which are sufficiently different from the parent variety to justify special designation.”

Repeal

SECTION 7. Article 11, Chapter 21, Title 46 of the 1976 Code is repealed.

Time effective

SECTION 8. This act takes effect upon approval by the Governor and applies to all claims or actions arising after that date.

Ratified the 1st day of June, 2010.

Became law without the signature of the Governor -- 6/8/2010.

No. 239

(R306, S1027)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 50-11-770 SO AS TO

ENACT THE "RENEGADE HUNTER ACT", TO PROVIDE IT IS UNLAWFUL FOR A PERSON TO HUNT FROM A ROAD, RIGHT OF WAY, PROPERTY LINE, BOUNDARY, OR PROPERTY UPON WHICH HE DOES NOT HAVE HUNTING RIGHTS WITH THE AID OR USE OF A DOG WHEN THE DOG HAS ENTERED UPON THE LAND OF ANOTHER WITHOUT WRITTEN PERMISSION OR OVER WHICH THE PERSON DOES NOT HAVE HUNTING RIGHTS, TO PROVIDE THE PROVISIONS OF THIS SECTION APPLY WHETHER THE PERSON IN CONTROL OF THE DOG INTENTIONALLY OR UNINTENTIONALLY RELEASES, ALLOWS, OR OTHERWISE CAUSES THE DOG TO ENTER UPON THE LAND OF ANOTHER WITHOUT PERMISSION OF THE LANDOWNER, TO PROVIDE CERTAIN DEFINITIONS, TO PROVIDE EXCEPTIONS, AND TO PROVIDE PENALTIES.

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

"Renegade Hunter Act" enacted

SECTION 1. This act may be referred to and cited as the "Renegade Hunter Act".

Use of hunting dogs to hunt on certain lands prohibited; definitions, exceptions, penalties

SECTION 2. Chapter 11, Title 50 of the 1976 Code is amended by adding:

"Section 50-11-770. (A) For purposes of this section:

(1) 'Hunting' includes:

(a) attempting to take any game animal, hog, or coyote by occupying stands, standing, or occupying a vehicle while; and

(b) possessing, carrying, or having readily accessible:

(i) a centerfire rifle with ammunition capable of being fired in that rifle; or

(ii) a shotgun with shot size larger than number four that is capable of being fired from that shotgun.

(2) 'Possessing', 'carrying', or 'having readily available' does not include a centerfire rifle or a shotgun that is:

(a) unloaded and cased in a closed compartment or vehicle;

(b) unloaded and cased in a vehicle trunk or tool box;

(c) in a vehicle traveling in a normal manner on a public road or highway; or

(d) in case of a stander with no vehicle, encased or unloaded with the shells at least thirty feet away and stacked, piled, or otherwise gathered together in like fashion.

(B) Notwithstanding the provisions contained in Section 50-11-760, it shall be unlawful for any person to hunt from any road, right of way, property line, boundary, or property upon which he does not have hunting rights with the aid or use of a dog when the dog has entered upon the land of another without written permission or over which the person does not have hunting rights. The provisions of this section apply whether the person in control of the dog intentionally or unintentionally releases, allows, or otherwise causes the dog to enter upon the land of another without permission of the landowner.

(C) It is not a violation of this section if a person, with the landowner's permission, uses a single dog to recover a dead or wounded animal on the land of another and maintains sight and voice contact with the dog.

(D) A dog that has entered upon the land of another without permission given to the person in control of the dog shall not be killed, maimed, or otherwise harmed simply because the dog has entered upon the land. A person who violates this subsection may be fined not more than five hundred dollars or imprisoned for not more than thirty days. The penalties for violations of this section as provided in subsection (E) do not apply to violations of this subsection.

(E) A person who violates this section is guilty of a misdemeanor and, upon conviction, must be fined not more than five hundred dollars, no part of which may be suspended, or imprisoned for not more than thirty days, or both. The court must transmit record of the conviction to the department for hunting license suspension pursuant to subsection (F).

(F) In addition to any other penalties provided by law, a person convicted of a violation of this section must have his hunting privileges suspended by the department for one year from the date of his conviction. He may not have his hunting privileges reinstated by the department until after he successfully completes a hunter education class administered by the department.

(G)(1) The provisions of this section do not apply to bear hunting.

(2) The provisions of this section do not apply to Game Zones 1 or 2."

Time effective

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

Ratified the 7th day of June, 2010.

Approved the 11th day of June, 2010.

No. 240

(R307, S1030)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 1-1-714 SO AS TO DESIGNATE THE MARSH TACKY AS THE OFFICIAL STATE HERITAGE HORSE OF SOUTH CAROLINA; AND BY ADDING SECTION 1-1-714A SO AS TO DESIGNATE THE MULE AS THE OFFICIAL STATE HERITAGE WORK ANIMAL OF SOUTH CAROLINA.

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

Findings

SECTION 1. The General Assembly finds:

(1) The Marsh Tacky, a rare colonial Spanish horse breed unique to South Carolina, has played a significant role in South Carolina's history. After abandonment by the Spanish on the South Carolina Sea Islands and along the South Carolina coast some five hundred years ago, the Marsh Tacky survived on its own and developed into a unique strain of colonial Spanish horse. These tough, little horses assisted our forefathers in the development and defense of our State and were the major source of transportation in the Lowcountry before the introduction of the automobile. Marsh Tackies were important to the Gullah community and became an integral part of agricultural life for Lowcountry families. Marsh Tackies were used wherever horsepower was needed; to pull plows and wagons, herd cattle, hunt wild game, deliver the mail, transport families, and as loyal, sturdy war mounts. Most Lowcountry families had Marsh Tackies in their fields or gardens.

(2) During the American Revolution, Marsh Tackies assisted in the victories of the famous "Swamp Fox" General Francis Marion, whose troops of "Irregulars" had the advantage of being mounted on small, agile horses that were superbly adapted to the Lowcountry's rough, swampy terrain. Marsh Tackies required little care from the troops, were able to travel long distances without fatigue, and survived on forage, reducing the need for supply wagons carrying grain. The sure-footed Marsh Tacky enabled the militia to out maneuver the British troops who rode larger European horse breeds that could not traverse the swampy forests.

(3) Marsh Tackies served the southern Confederate cavalry during the Civil War. Unlike northern troops who were issued horses, southern recruits were often required to provide their own mounts, which were trained and familiar with their riders, giving an early advantage to the southern forces.

(4) In World War II, Marsh Tackies were used by the Coast Guard's Mounted Beach Patrol to protect our mainland from enemy spies and saboteurs. The "Beach Pounders" who patrolled the southeastern shore were trained at the Mounted Beach Patrol and Dog Training Center in Hilton Head, South Carolina, and patrolled the coast from Florida to North Carolina.

(5) Marsh Tackies have little changed since the colonial period. Relative isolation on the Sea Islands and secluded areas of the Lowcountry, along with owner dedication to the preservation of the breed, has allowed the Marsh Tacky to remain relatively untouched. Owners often comment on the built-in "woods sense" of the breed and how the horses have a natural way of traversing water obstacles and swamps. Many horses display characteristics and primitive markings carried by their Spanish ancestors including dorsal stripes, zebra leg stripes, and lengthy manes and tails.

(6) In 2007, Marsh Tacky owners and enthusiasts across the State formed the Carolina Marsh Tacky Association to preserve and promote the history and heritage of the Marsh Tacky horse. The association works closely with the American Livestock Breeds Conservancy to provide ongoing registry, stud book, and breeding program to ensure the survival of the Marsh Tacky.

(7) With its rich heritage, resilience, and perseverance, the Marsh Tacky embodies the very spirit of South Carolina. The Marsh Tacky is uniquely of South Carolina and remains a living piece of history in its native State, a claim that no other breed can make. The Marsh Tacky has earned the title of State Heritage Horse of South Carolina.

State Heritage Horse

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

"Section 1-1-714. The Marsh Tacky is designated as the official State Heritage Horse of South Carolina."

State Heritage Work Animal

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

"Section 1-1-714A. The mule is hereby designated as the official State Heritage Work Animal of South Carolina."

Time effective

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

Ratified the 7th day of June, 2010.

Approved the 11th day of June, 2010.

No. 241

(R308, S1120)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 16-3-1360 SO AS TO PROHIBIT HEALTH CARE PROVIDERS FROM ENGAGING IN DEBT COLLECTION ACTIVITIES RELATING TO MEDICAL AND PSYCHOLOGICAL TREATMENT RECEIVED IN CONNECTION WITH A CLAIM FOR COMPENSATION OF A VICTIM OF CRIME UNTIL AN AWARD IS MADE OR A CLAIM IS DENIED OR NINETY DAYS HAVE PASSED SINCE THE HEALTH CARE PROVIDER RECEIVED NOTICE OF THE CLAIM AND TO STAY THE STATUTE OF LIMITATIONS FOR THE COLLECTION OF THIS DEBT UNDER CERTAIN CIRCUMSTANCES.

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

Collection activities prohibited

SECTION 1. Article 13, Chapter 3, Title 16 of the 1976 Code is amended by adding:

"Section 16-3-1360. (A) When a person files a claim pursuant to this article, a health care provider that has received written notice of a pending claim is prohibited from all debt collection activities relating to medical and psychological treatment received by the person in connection with the claim until an award is made on the claim or the claim is determined to be noncompensable and is denied, or ninety days have passed after the health care provider first received notice of a pending claim. The statute of limitations for collection of the debt is suspended during the period in which the applicable health care provider is required to refrain from debt collection activities.

(B) For purposes of this section, 'debt collection activities' means repeatedly calling or writing to the claimant and threatening to turn the matter over to a debt collection agency or to an attorney for collection, enforcement, or filing of other process. The term does not include routine billing or inquiries about the status of the claim."

Time effective

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

Ratified the 7th day of June, 2010.

Approved the 11th day of June, 2010.

No. 242

(R309, S1137)

AN ACT TO AMEND SECTION 44-53-398, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO MONITORING THE SALE OF PRODUCTS CONTAINING EPHEDRINE OR PSEUDOEPHEDRINE, SO AS TO ALSO MONITOR

PHENYLPROPANOLAMINE AND THE SALE AND PURCHASE OF THESE PRODUCTS, TO ALSO MAKE IT ILLEGAL TO PURCHASE CERTAIN AMOUNTS OF THESE PRODUCTS IN CERTAIN TIME PERIODS, TO PROVIDE THAT INFORMATION GATHERED FROM THE PURCHASER AT THE TIME OF THE SALE OF THESE PRODUCTS MUST BE ENTERED IN AN ELECTRONIC LOG, RATHER THAN A WRITTEN LOG, TO PROVIDE THAT THE INFORMATION MUST BE TRANSMITTED TO A DATA COLLECTION SYSTEM THAT MUST COLLECT THIS DATA IN REAL TIME AND THAT MUST GENERATE A STOP SALE ALERT IF THE SALE WOULD RESULT IN A VIOLATION, TO PROVIDE THAT A RETAILER WHO RECEIVES A STOP SALE ALERT MUST NOT COMPLETE THE SALE UNLESS BODILY HARM IS FEARED, TO REQUIRE ALL SALES TO BE REPORTED TO THE COLLECTION SYSTEM UNLESS THE SYSTEM IS NOT OPERATIONAL AND TO PROVIDE IMMUNITY AND PROCEDURES FOR DELAYED SUBMISSION OF THIS DATA, TO PROVIDE AN EXEMPTION FROM THE ELECTRONIC LOG REQUIREMENT FOR CERTAIN RETAILERS, TO PROVIDE PROCEDURES AND PENALTIES FOR NONCOMPLIANCE FOR THOSE KEEPING WRITTEN LOGS, AND TO REQUIRE THE SHERIFF OR CHIEF OF POLICE TO MONITOR RETAILERS FOR COMPLIANCE WITH SALE AND PURCHASE REPORTING REQUIREMENTS; AND BY ADDING ARTICLE 14 TO CHAPTER 3, TITLE 23 SO AS TO PROVIDE THAT THE STATE LAW ENFORCEMENT DIVISION (SLED) SHALL HAVE AN ELECTRONIC MONITORING SYSTEM WHICH WILL SERVE AS THE REPOSITORY FOR INFORMATION THE DATA COLLECTION SYSTEM GATHERS AND TRANSFERS TO SLED PERTAINING TO THE SALE AND PURCHASE OF PRODUCTS CONTAINING EPHEDRINE, PSEUDOEPHEDRINE, AND PHENYLPROPANOLAMINE, TO PROVIDE THAT SLED'S SYSTEM MUST HAVE CERTAIN CAPABILITIES, TO PROHIBIT IMPOSING FEES ON RETAILERS AND LAW ENFORCEMENT FOR ACCESS TO THE DATA REPORTING AND COLLECTION SYSTEM, TO PROVIDE THAT THE INFORMATION IN SLED'S SYSTEM IS CONFIDENTIAL, TO AUTHORIZE SLED AND RETAILERS TO PARTICIPATE IN OTHER DATA COLLECTION SYSTEMS, AND TO REQUIRE SLED TO ENTER INTO A

MEMORANDUM OF AGREEMENT WITH THE NATIONAL ASSOCIATION OF DRUG DIVERSION INVESTIGATORS, AS THE DATA COLLECTION SYSTEM, AND TO PROVIDE PROCEDURES, CERTAIN CONTENTS OF THE MEMORANDUM, AND ROLES AND RESPONSIBILITIES OF THE PARTIES.

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

Certain pseudoephedrine etc. sales and purchases prohibited; procedures; electronic logs; real-time reporting requirements; enforcement

SECTION 1. Section 44-53-398 of the 1976 Code, as added by Act 275 of 2006, is amended to read:

"Section 44-53-398. (A) Nonprescription products whose sole active ingredient is ephedrine, pseudoephedrine, or phenylpropanolamine may be offered for retail sale only if sold in blister packaging. The retailer shall ensure that such products are not offered for retail sale by self-service but only from behind a counter or other barrier so that such products are not directly accessible by the public but only by an employee or agent of the retailer.

(B)(1) A retailer may not sell to an individual in any single day a nonprescription product or a combination of nonprescription products containing more than 3.6 grams of ephedrine, pseudoephedrine, or phenylpropanolamine; and a retailer may not sell to an individual in a thirty-day period a nonprescription product or a combination of nonprescription products containing more than nine grams of ephedrine, pseudoephedrine, or phenylpropanolamine.

(2) An individual may not purchase in any single day a nonprescription product or a combination of nonprescription products containing more than 3.6 grams of ephedrine, pseudoephedrine, or phenylpropanolamine; and an individual may not purchase in a thirty-day period a nonprescription product or a combination of nonprescription products containing more than nine grams of ephedrine, pseudoephedrine, or phenylpropanolamine.

(C) It is unlawful for a retailer to purchase any product containing ephedrine, pseudoephedrine, or phenylpropanolamine from any person or entity other than a manufacturer or a wholesale distributor registered by the United States Drug Enforcement Administration.

(D)(1) A retailer selling nonprescription products containing ephedrine, pseudoephedrine, or phenylpropanolamine shall require the purchaser to produce a government issued photo identification showing the date of birth of the person and require the purchaser to sign an electronic log showing the date and time of the transaction, the person's name and address, the type, issuing governmental entity, identification number, and the amount of the compound, mixture, or preparation. The retailer shall determine that the name entered in the log corresponds to the name on the identification and that the date and time entered are correct and shall enter in the log the name of the product and the quantity sold. The retailer shall ensure that the product is delivered directly into the custody of that purchaser. The log must include a notice to purchasers that entering false statements or misrepresentations in the log may subject the purchaser to criminal penalties.

(2) Before completing a sale of a product regulated by this section, the retailer electronically shall transmit the information entered in the log to a data collection system provided by the National Association of Drug Diversion Investigators, or a successor or similar entity. The system must collect this data in real time and generate a stop sale alert if the sale would result in a violation of subsection (B) or a federal quantity restriction, which must be assessed on the basis of sales or purchases made in any state to the extent that information is available in the data collection system. If the retailer receives a stop sale alert, the retailer must not complete the sale unless the retailer, upon notifying the purchaser the sale cannot be completed, reasonably fears bodily harm if he denies the sale due to the stop sale alert. A product regulated by this section may not be sold without being reported to the data collection system unless the system is experiencing temporary technical difficulties that prevent a retailer from reporting the information to the system, and in that case, the retailer shall enter the necessary information in a written log, which must subsequently be entered into the electronic log within three business days of each business day that the electronic log was not operational. A retailer using a written log under these circumstances is immune from liability during the time the system is temporarily disabled.

(3) Any information entered in the electronic log that is retained by a retailer, or information maintained by a retailer pursuant to subsection (J)(2), is confidential and not a public record as defined in Section 30-4-20(C) of the Freedom of Information Act. A retailer or an employee or agent of a retailer who in good faith releases information in a log to federal, state, or local law enforcement

authorities is immune from civil liability for the release unless the release constitutes gross negligence or intentional, wanton, or wilful misrepresentation.

(E) Except as authorized by this section, it is unlawful for any person to possess, have under his or her control, manufacture, deliver, distribute, dispense, administer, purchase, sell, or possess with intent to distribute, any substance containing any amount of ephedrine, pseudoephedrine, or phenylpropanolamine or any of their salts, optical isomers, or salts of optical isomers which have been altered from their original condition so as to be powdered, liquefied, dissolved, solvated, or crushed. This subsection does not apply to any of the substances identified within this subsection which are possessed or altered for a legitimate medical purpose as directed by a person licensed under Title 40 and authorized to prescribe legend drugs.

(F) It is unlawful for a person to enter false statements or misrepresentations on the log required pursuant to subsection (D)(1).

(G) This section preempts all local ordinances or regulations governing the retail sale or purchase of nonprescription products containing ephedrine, pseudoephedrine, or phenylpropanolamine except such local ordinances or regulations that existed on or before December 31, 2004.

(H)(1) Except as otherwise provided in this section, it is unlawful for a retailer knowingly to violate subsection (A), (B)(1), (C), (D)(1), or (D)(2), and it is unlawful for a person knowingly to violate subsection (B)(2), (E), or (F).

(2) A retailer convicted of a violation of subsection (A) or (B)(1) is guilty of a misdemeanor and, upon conviction for a first offense, must be fined not more than five thousand dollars and, upon conviction for a second or subsequent offense, must be fined not more than ten thousand dollars.

(3) A retailer convicted of a violation of subsection (C) is guilty of a misdemeanor and, upon conviction for a first offense, must be imprisoned not more than one year or fined not more than one thousand dollars, or both and, upon conviction for a second or subsequent offense, must be imprisoned not more than three years or fined not more than five thousand dollars, or both.

(4) A retailer convicted of a violation of subsection (D)(1), (D)(2), or (J)(2) is guilty of a misdemeanor and, upon conviction for a first offense, must be fined not more than one thousand dollars and not less than five hundred dollars. Upon conviction for a second offense, a retailer must be fined not more than five thousand dollars and not less than one thousand dollars. Upon conviction for a third or subsequent

offense, a person must be fined not more than ten thousand dollars and not less than five thousand dollars.

(5) A person convicted of a violation of subsection (B)(2) or (E) is guilty of a felony and, upon conviction for a first offense, must be imprisoned not more than five years and fined not more than five thousand dollars. The court, upon approval from the solicitor, may request as part of the sentence, that the offender enter and successfully complete a drug treatment program. For a second or subsequent offense, the offender is guilty of a felony and, upon conviction, must be imprisoned not more than ten years or fined not less than ten thousand dollars.

(6) A person convicted of a violation of subsection (F), upon conviction for a first offense, is guilty of a misdemeanor and must be fined not more than one thousand dollars and, upon conviction for a second or subsequent offense, is guilty of a felony and must be fined not more than five thousand dollars.

(7) It is an affirmative defense to a violation of subsection (A), (C), or (D)(1) if a retailer provided the training, maintained records, and obtained employee and agent statements of agreement required by subsection (I) for all employees and agents at the retail location where the violation occurred and at the time the violation occurred.

(8) It is an affirmative defense to completing a sale following receipt of a stop sale alert received pursuant to subsection (D)(2) if the retailer, upon notifying the purchaser the sale cannot be completed, reasonably fears bodily harm if he denies the sale due to the stop sale alert.

(I) A retailer shall provide training on the requirements of this section to all agents and employees who are responsible for delivering the products regulated by this section into the custody of purchasers or who deal directly with purchasers by obtaining payments for the products. A retailer shall obtain a signed, written agreement from each employee or agent that the employee or agent agrees to comply with the requirements of this section. The retailer shall maintain records demonstrating that these employees and agents have been provided this training and the documents executed by the retailer's employees and agents agreeing to comply with this section.

(J)(1) The following are exempt from the electronic log requirements of this section but shall maintain a written log containing the information required to be entered in the electronic log, as provided for in subsection (D)(1):

(a) a retailer that only sells single dose packages of nonprescription ephedrine, pseudoephedrine, or phenylpropanolamine;

(b) a pharmacy that does not have a compatible point of sale system.

(2) A retailer who maintains a written log pursuant to this subsection shall retain the written log for two years after which the log may be destroyed. The log must be made available for inspection within twenty-four hours of a request made by a local, state, or federal law enforcement officer.

(3) A retailer who violates the requirements of maintaining a written log as provided for in subsection (J)(2) is subject to the penalties provided for in subsection (H)(4).

(K) The sheriff or chief of police shall monitor and determine if retailers, other than licensed pharmacies, are in compliance with the provisions of this section by ensuring that a retailer:

(1) is entering all sales of a product regulated by this section in an electronic log as required by this section;

(2) if not maintaining an electronic log, is exempt as provided for in subsection (J)(1), and is continuing to maintain the written log as provided for in subsection (J);

(3) is not selling products regulated by this section.

(L) This section does not apply to:

(1) pediatric products labeled pursuant to federal regulation as primarily intended for administration to children under twelve years of age according to label instructions;

(2) products that the Board of Pharmacy, upon application of a manufacturer, exempts because the product is formulated in such a way as to effectively prevent the conversion of the active ingredient into methamphetamine or its salts or precursors; and

(3) a purchase of a single sales package containing not more than sixty milligrams of pseudoephedrine.

(M) For purposes of this section ‘retailer’ means a retail distributor, including a pharmacy, where ephedrine, pseudoephedrine, or phenylpropanolamine products are available for sale and does not include an employee or agent of a retailer.”

SLED electronic monitoring system for certain pseudoephedrine etc. sales and purchases

SECTION 2. Chapter 3, Title 23 of the 1976 Code is amended by adding:

"Article 14

Electronic Monitoring System

Section 23-3-1200. (A) The State Law Enforcement Division (SLED) shall serve as the statewide, central repository for log information submitted electronically in real time to the data collection system pursuant to Section 44-53-398(D)(2) and transferred to SLED in order to monitor the sales and purchases of nonprescription products containing ephedrine, pseudoephedrine, or phenylpropanolamine. SLED shall maintain the information received from the data collection system in SLED's electronic monitoring system and must not be charged any vendor or other fees associated with the requirements of this chapter.

(B) The data collection system upon which SLED's electronic monitoring system is based must have the capability to:

(1) calculate state and federal sales and purchase limitations for ephedrine, pseudoephedrine, and phenylpropanolamine;

(2) match similar purchaser identification information;

(3) alert retailers of potential illegal sales and purchases;

(4) allow a retailer to override an alert of a potential illegal sale or purchase;

(5) receive ephedrine, pseudoephedrine, and phenylpropanolamine sales data from retailers in the format in which the data was submitted so that retailers are not required to use any one particular vendor's product to comply with the requirements of this section and Section 44-53-398(D)(2); and

(6) interface with existing and future operational systems used by pharmacies at no cost to these pharmacies.

(C) The data transmitted to the data collection system must be recorded in real time and the storage of this data must be housed by an information technology company operating under strict security standards that only may be accessed by local, state, or federal law enforcement authorized by SLED.

(D)(1) No fee may be charged to retailers for access to the data collection system to which information is required to be transmitted pursuant to Section 44-53-398(D)(2), and no other fee or assessment may be imposed on retailers to fund program operations.

(2) No fee may be charged to local, state, or federal law enforcement officers or entities for access to or retention, analysis, or use of information in the system concerning sales and purchases of

nonprescription ephedrine, pseudoephedrine, and phenylpropanolamine that violate or potentially violate subsection 44-53-398(B)(1) or (2).

(E) The information in SLED's electronic monitoring system is confidential and not a public record as defined in Section 30-4-20(C) of the Freedom of Information Act. SLED only shall provide access to information maintained in the monitoring system to:

(1) a local, state, or federal law enforcement official, a state attorney, or a United States attorney;

(2) a local, state, or federal official who requests access to the monitoring system for the purpose of facilitating a product recall necessary for the protection of the public health and safety; and

(3) the Board of Pharmacy for the purpose of investigating misconduct or a suspicious transaction committed by a retailer, a pharmacist, or an employee or agent of a pharmacy.

(F) For purposes of this section 'retailer' means a retail distributor, including a pharmacy, where ephedrine, pseudoephedrine, or phenylpropanolamine products are available for sale and does not include an employee or agent of a retailer.

(G) The division shall promulgate regulations necessary to carry out its responsibilities under this section.

(H) Nothing in this chapter prohibits SLED or any retailer from participating in other data submission, collection, or monitoring systems that monitor the sales and purchases of nonprescription products containing ephedrine, pseudoephedrine, or phenylpropanolamine."

Memorandum of agreement

SECTION 3. Before January 1, 2011, the State Law Enforcement Division (SLED) shall enter into a memorandum of agreement with the National Association of Drug Diversion Investigators (NADDI), or a successor or other entity, to identify the roles and responsibilities of SLED and NADDI, or a successor or other entity, in carrying out the collection of sales and purchase data of ephedrine, pseudoephedrine, or phenylpropanolamine products and the transference of this information to the State Law Enforcement Division as provided for in this act. The memorandum must provide that the data and information in SLED's electronic monitoring system is property of the State and that NADDI will provide SLED with that data and information at least four times a year in a format agreed to by SLED and NADDI and that is consistent with the most recent standards adopted by the American Society for

Automation in Pharmacy (ASAP), as well as the most recent standards adopted by the National Information Exchange Model (NIEM).

Implementation date

SECTION 4. The electronic logbook, central data collection system, and the State Law Enforcement Division electronic monitoring system required pursuant to Section 44-53-398 of the 1976 Code, as amended in Section 1 of this act, and Section 23-3-1200, as added by Section 2 of this act, must be implemented before January 1, 2011, and take effect upon this implementation.

Time effective

SECTION 5. Except as otherwise provided for in this act, this act takes effect July 1, 2010.

Ratified the 7th day of June, 2010.

Became law without the signature of the Governor -- 6/14/2010.

No. 243

(R311, S1296)

AN ACT TO AMEND SECTION 50-11-710, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO NIGHT HUNTING, SO AS TO PROVIDE THAT COYOTES AND ARMADILLOS MAY BE HUNTED AT NIGHT UNDER SPECIFIED CONDITIONS, TO PROVIDE EXCEPTIONS, AND TO PROVIDE PENALTIES FOR VIOLATION.

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

Night hunting of coyotes and armadillos

SECTION 1. Section 50-11-710 of the 1976 Code is amended to read:

"Section 50-11-710. (A) Night hunting in this State is unlawful except that:

(1) raccoons, opossums, foxes, coyotes, mink, and skunk may be hunted at night; however, they may not be hunted with artificial lights except when treed or cornered with dogs, or with buckshot or any shot larger than a number four, or any rifle ammunition of larger than a twenty-two rimfire; and

(2) coyotes and armadillos may be hunted at night with an artificial light that is carried on the hunter's person attached to a helmet or hat, or part of a belt system worn by the hunter. Coyotes and armadillos may be hunted with a rifle or sidearm no larger than .22 caliber rimfire, a shotgun with a shot size no larger than a BB, or a sidearm of any caliber that has iron sites and a barrel length not exceeding nine inches. Any weapon used to hunt coyotes or armadillos may not be equipped with a butt-stock, scope, laser site, or light emitting or light enhancing device. It is unlawful to have in one's possession any shot size larger than a BB while legally hunting coyotes and armadillos at night with a shotgun, and coyotes and armadillos may not be hunted at night from a vehicle, unless specifically permitted by the department. A person who violates this item 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.

(B) For the purposes of this section, 'night' means that period of time between one hour after official sundown of a day and one hour before official sunrise of the following day.

(C) Any person violating the provisions of this section, upon conviction, must be fined for the first offense not more than one thousand dollars, or be imprisoned for not more than one year, or both; for the second offense within two years from the date of conviction for the first offense, not more than two thousand dollars nor less than four hundred dollars, or be imprisoned for not more than one year nor for less than ninety days, or both; for a third or subsequent offense within two years of the date of conviction for the last previous offense, not more than three thousand dollars nor less than five hundred dollars, or be imprisoned for not more than one year nor for less than one hundred twenty days, or both. Any person convicted under this section after more than two years have elapsed since his last conviction must be sentenced as for a first offense.

(D) In addition to any other penalty, any person convicted for a second or subsequent offense under this section within three years of the date of conviction for a first offense shall have his privilege to hunt in this State suspended for a period of two years. No hunting license may be issued to an individual while his privilege is suspended, and any license mistakenly issued is invalid. The penalty for hunting in

this State during the period of suspension, upon conviction, must be imprisonment for not more than one year nor less than ninety days.

(E) The provisions of this section may not be construed to prevent any owner of property from protecting the property from destruction by wild game as provided by law.

(F) It is unlawful for a person to use artificial lights at night, except vehicle headlights while traveling in a normal manner on a public road or highway, while in possession of or with immediate access to both ammunition of a type prohibited for use at night by the first paragraph of this section and a weapon capable of firing the ammunition. A violation of this paragraph is punishable as provided by Section 50-11-720."

Time effective

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

Ratified the 7th day of June, 2010.

Approved the 11th day of June, 2010.

No. 244

(R274, H3803)

AN ACT TO AMEND SECTIONS 62-1-201, 62-1-304, 62-1-401, 62-1-403, 62-2-205, 62-2-402, 62-3-203, 62-3-401, 62-3-403, 62-3-409, 62-3-414, 62-3-502, 62-3-503, 62-3-604, 62-3-607, 62-3-611, 62-3-806, 62-3-911, 62-3-1001, 62-3-1008, 62-3-1101, 62-3-1102, 62-3-1309, 62-5-101, 62-5-303, 62-5-305, 62-5-307, 62-5-309, 62-5-310, 62-5-401, 62-5-402, 62-5-405, 62-5-407, 62-5-411, 62-5-412, 62-5-416, 62-5-419, 62-5-428, 62-5-430, 62-5-501, 62-5-504, AS AMENDED, 62-5-604, AND 62-5-608, CODE OF LAWS OF SOUTH CAROLINA, 1976, ALL RELATING TO THE VARIOUS ACTIONS AND PROCEEDINGS CONCERNING THE AFFAIRS OF DECEDENTS, PROTECTED PERSONS, MINORS, AND INCAPACITATED PERSONS FALLING UNDER THE SUBJECT MATTER JURISDICTION OF THE PROBATE COURT, SO AS TO DIFFERENTIATE BETWEEN A FORMAL

PROCEEDING AND AN APPLICATION TO THE COURT AND THE PROCEDURAL RULES GOVERNING EACH, TO REQUIRE THE FILING AND SERVICE OF A SUMMONS AND PETITION TO COMMENCE A FORMAL PROCEEDING, AND TO DISTINGUISH THAT REQUIREMENT OF SUMMONS AND PETITION FROM THE NOTICE REQUIREMENTS FOR A HEARING ON A PETITION; AND TO AMEND SECTIONS 62-1-403, 62-3-703, 62-7-105, 62-7-201, 62-7-303, 62-7-305, 62-7-414, 62-7-505, 62-7-604, 62-7-709, 62-7-814, 62-7-902, 62-7-903, 62-7-904, 62-7-933, AND 62-7-1013, ALL RELATING TO THE SOUTH CAROLINA TRUST CODE, SO AS TO SUBSTITUTE "PERSON" FOR "PARENT" AND "ISSUE" FOR "CHILD", DELETE THE REQUIREMENT OF A TAXPAYER IDENTIFICATION NUMBER ON A CERTIFICATE OF TRUST, ALLOW CERTAIN REIMBURSEMENTS TO A PROSPECTIVE TRUSTEE, AND MAKE TECHNICAL CHANGES.

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

Definitions

SECTION 1. Section 62-1-201(1), (15), (19), (31), and (43) of the 1976 Code is amended to read:

"(1) 'Application' means a written request to the probate court for an order. An application does not require a summons and is not governed by or subject to the rules of civil procedure adopted for the circuit court.

(15) 'Formal proceedings' means actions commenced by the filing of a summons and petition with the probate court and service of the summons and petition upon the interested persons. Formal proceedings are governed by and subject to the rules of civil procedure adopted for the circuit court and other rules of procedure in this title.

(19) 'Informal proceedings' means those commenced by application and conducted without notice to interested persons by the court for probate of a will or appointment of a personal representative. Informal proceedings are not governed by or subject to the rules of civil procedure adopted for the circuit court.

(31) 'Petition' means a complaint as defined in the rules of civil procedure adopted for the circuit court. A petition requires a summons and is governed by and subject to the rules of civil procedure adopted for the circuit court and other rules of procedure in this title.

(43) 'Testacy proceeding' means a formal proceeding to establish a will or determine intestacy."

Rules govern proceedings

SECTION 2. Section 62-1-304 of the 1976 Code is amended to read:

"Section 62-1-304. The South Carolina Rules of Civil Procedure (SCRCP) adopted for the circuit court and other rules of procedure in this title govern formal proceedings pursuant to this title. A formal proceeding is a 'civil action' as defined in Rule 2, SCRCP, and must be commenced as provided in Rule 3, SCRCP."

Notice provisions

SECTION 3. Section 62-1-401 of the 1976 Code is amended by adding at the end:

"(d) Notwithstanding a provision to the contrary, the notice provisions in this section do not, and are not intended to, constitute a summons that is required for a petition."

Applicability

SECTION 4. Section 62-1-403 of the 1976 Code is amended to read:

"Section 62-1-403. In formal proceedings involving trusts or estates of decedents, minors, protected persons, or incapacitated persons and in judicially supervised settlements the following apply:

(1) Interests to be affected must be described in pleadings that give reasonable information to owners by name or class by reference to the instrument creating the interests or in other appropriate manner.

(2) Persons are bound by orders binding others in the following cases:

(i) Orders binding the sole holder or all coholders of a power of revocation or a presently exercisable general power of appointment, including one in the form of a power of amendment, bind other persons

to the extent their interests (as objects, takers in default, or otherwise) are subject to the power.

(ii) To the extent there is no conflict of interest between them or among persons represented, orders binding a conservator bind the person whose estate he controls; orders binding a guardian bind the ward if no conservator of his estate has been appointed; orders binding a trustee bind beneficiaries of the trust in proceedings to probate a will establishing or adding to a trust to review the acts or accounts of a prior fiduciary and in proceedings involving creditors or other third parties; and orders binding a personal representative bind persons interested in the undistributed assets of a decedent's estate in actions or proceedings by or against the estate. If there is no conflict of interest and no conservator or guardian has been appointed, a person may represent his minor or unborn issue.

(iii) A minor or unborn or unascertained person who is not otherwise represented is bound by an order to the extent his interest is adequately represented by another party having a substantially identical interest in the proceeding.

(3) Service of summons, petition, and notice is required as follows:

(i) Service of summons, petition, and notice must be given to every interested person or to one who can bind an interested person as described in (2)(i) or (2)(ii) above. Service of summons and petition upon, as well as notice, may be given both to a person and to another who may bind him.

(ii) Service upon and notice is given to unborn or unascertained persons who are not represented under (2)(i) or (2)(ii) above by giving notice to all known persons whose interests in the proceedings are substantially identical to those of the unborn or unascertained persons.

(4) At any point in a proceeding, a court may appoint a guardian ad litem to represent the interest of a minor, an incapacitated, unborn, or unascertained person, or a person whose identity or address is unknown, if the court determines that representation of the interest otherwise would be inadequate. If not precluded by conflict of interests, a guardian ad litem may be appointed to represent several persons or interests. The court shall set out its reasons for appointing a guardian ad litem as a part of the record of the proceeding."

Surviving spouse may elect

SECTION 5. Section 62-2-205(a) of the 1976 Code is amended to read:

"(a) The surviving spouse may elect to take his elective share in the probate estate by filing in the court and serving upon the personal representative, if any, a summons and petition for the elective share within eight months after the date of death or within six months after the probate of the decedent's will, whichever limitation last expires."

Selections

SECTION 6. Section 62-2-402(a) of the 1976 Code is amended to read:

"(a) If the estate is otherwise sufficient, property specifically devised is not used to satisfy rights to exempt property. Subject to this restriction, the surviving spouse, the guardians or conservators of the minor children, or children who are adults may select property of the estate as exempt property. The personal representative may make these selections if the surviving spouse, the children, or the guardians or conservators of the minor children are unable or fail to do so within a reasonable time or if there are no guardians or conservators of the minor children. The personal representative may execute an instrument or deed of distribution to establish the ownership of property taken as exempt property. The personal representative or any interested person aggrieved by any selection, determination, payment, proposed payment, or failure to act under this section may make application to the court for appropriate relief."

Appointment

SECTION 7. Section 62-3-203(d) of the 1976 Code is amended to read:

"(d) Appointment of one who does not have priority may be made in formal or informal proceedings. Before appointing one without priority, the court must determine that those having priority, although given notice of the proceedings, have failed to request appointment or to nominate another for appointment, and that administration is necessary."

Formal testacy proceeding

SECTION 8. The first undesignated paragraph in Section 62-3-401 of the 1976 Code is amended to read:

"A formal testacy proceeding is litigation to determine whether a decedent left a valid will. A formal testacy proceeding must be commenced by an interested person filing and serving a summons and a petition as described in Section 62-3-402(a) in which he requests that the court, after notice and hearing, enter an order probating a will, or a petition to set aside an informal probate of a will or to prevent informal probate of a will which is the subject of a pending application, or a petition in accordance with Section 62-3-402(b) for an order that the decedent died intestate."

Time and place of hearing fixed by court

SECTION 9. Section 62-3-403 of the 1976 Code is amended to read:

"Section 62-3-403. (a) Upon commencement of a formal testacy proceeding or at any time after that, the court shall fix a time and place of hearing. Notice must be given in the manner prescribed by Section 62-1-401 by the petitioner to the persons herein enumerated and to any additional person who has filed a demand for notice under Section 62-3-204. The following persons must be properly served with summons and petition: the surviving spouse, children, and other heirs of the decedent (regardless of whether the decedent died intestate and determined as if the decedent died intestate), the devisees, and personal representatives named in any will that is being, or has been, probated, or offered for informal or formal probate in the county, or that is known by the petitioner to have been probated, or offered for informal or formal probate elsewhere, and any personal representative of the decedent whose appointment has not been terminated.

(b) If it appears by the petition or otherwise that the fact of the death of the alleged decedent may be in doubt, or on the written demand of any interested person, a copy of the summons, petition, and notice of the hearing on the petition shall be sent by registered mail to the alleged decedent at his last known address. The court shall direct the petitioner to report the results of, or make and report back concerning, a reasonably diligent search for the alleged decedent in any manner that may seem advisable, including any or all of the following methods:

(1) by inserting in one or more suitable periodicals a notice requesting information from any person having knowledge of the whereabouts of the alleged decedent;

(2) by notifying law enforcement officials and public welfare agencies in appropriate locations of the disappearance of the alleged decedent;

(3) by engaging the services of an investigator.

The costs of any search so directed shall be paid by the petitioner if there is no administration or by the estate of the decedent in case there is administration."

Proof of service of summons and petition

SECTION 10. Section 62-3-409 of the 1976 Code is amended to read:

"Section 62-3-409. Upon proof of service of the summons and petition, and after any hearing and notice that may be necessary, if the court finds that the testator is dead, venue is proper, and that the proceeding was commenced within the limitation prescribed by Section 62-3-108, it shall determine the decedent's domicile at death, his heirs (regardless of whether the decedent died intestate and determined as if the decedent died intestate), and his state of testacy. Any will found to be valid and unrevoked must be formally probated. Termination of any previous informal appointment of a personal representative, which may be appropriate in view of the relief requested and findings, is governed by Section 62-3-612. The petition must be dismissed or appropriate amendment allowed if the court is not satisfied that the alleged decedent is dead. A will from a place which does not provide for probate of a will after death may be proved for probate in this State by a duly authenticated certificate of its legal custodian that the copy introduced is a true copy and that the will has become effective under the law of the other place."

Service of summons and petition

SECTION 11. Section 62-3-414(b) of the 1976 Code is amended to read:

"(b) After service of the summons and petition to interested persons, including all persons interested in the administration of the estate as successors under the applicable assumption concerning testacy, any previously appointed personal representative and any person having or claiming priority for appointment as a personal representative, the court shall determine who is entitled to appointment under Section 62-3-203,

make a proper appointment, and, if appropriate, terminate any prior appointment found to have been improper as provided in cases of removal under Section 62-3-611."

Petition for administration

SECTION 12. Section 62-3-502 of the 1976 Code is amended to read:

"Section 62-3-502. A petition for administration under Part 5 [Sections 62-3-501 et seq.] may be filed by any interested person or by a personal representative at any time, a prayer for administration under Part 5 [Sections 62-3-501 et seq.] may be joined with a petition in a testacy or appointment proceeding, or the court may order administration under Part 5 [Sections 62-3-501 et seq.] on its own motion. If the testacy of the decedent and the priority and qualification of any personal representative have not been adjudicated previously, the petition for administration under Part 5 [Sections 62-3-501 et seq.] shall include the matters required of a petition in a formal testacy proceeding and the notice requirements and procedures applicable to a formal testacy proceeding apply. If not previously adjudicated, the court shall adjudicate the testacy of the decedent and questions relating to the priority and qualifications of the personal representative in any case involving a request for administration under Part 5 [Sections 62-3-501 et seq.], even though the request for administration under Part 5 [Sections 62-3-501 et seq.] may be denied. After service of the summons and petition and upon notice to interested persons, the court shall order administration under Part 5 [Sections 62-3-501 et seq.] of a decedent's estate: (1) if the decedent's will directs administration under Part 5 [Sections 62-3-501 et seq.], it shall be ordered unless the court finds that circumstances bearing on the need for administration under Part 5 [Sections 62-3-501 et seq.] have changed since the execution of the will and that there is no necessity for administration under Part 5 [Sections 62-3-501 et seq.]; (2) if the decedent's will directs no administration under Part 5 [Sections 62-3-501 et seq.], then administration shall be ordered only upon a finding that it is necessary for protection of persons interested in the estate; or (3) in other cases if the court finds that administration under Part 5 [Sections 62-3-501 et seq.] is necessary under the circumstances."

Personal representative not to exercise power

SECTION 13. Section 62-3-503(c) of the 1976 is amended to read:

"(c) After service of the summons and petition upon the personal representative and notice of the filing of a petition for administration under Part 5 [Sections 62-3-501 et seq.], a personal representative who has been appointed previously shall not exercise his power to distribute any estate. The filing of the petition does not affect his other powers and duties unless the court restricts the exercise of any of them pending full hearing on the petition."

Bond

SECTION 14. Section 62-3-604 of the 1976 Code is amended to read:

"Section 62-3-604. If bond is required and the provisions of the will or order do not specify the amount, unless stated in his application or petition, the person qualifying shall file a statement under oath with the court indicating his best estimate of the value of the personal estate of the decedent and of the income expected from the personal estate during the next year, and he shall execute and file a bond with the court, or give other suitable security, in an amount not less than the estimate. The court shall determine that the bond is duly executed by a corporate surety, or one or more individual sureties whose performance is secured by pledge of personal property, mortgage on real property, or other adequate security. The court may permit the amount of the bond to be reduced by the value of assets of the estate deposited with a domestic financial institution (as defined in Section 62-6-101) in a manner that prevents their unauthorized disposition. Upon application by the personal representative or another interested person or upon the court's own motion, the court may increase or reduce the amount of the bond, release sureties, dispense with security or securities, or permit the substitution of another bond with the same or different sureties."

Court may restrain personal representative

SECTION 15. Section 62-3-607(a) of the 1976 Code is amended to read:

"(a) Upon application of any person who appears to have an interest in the estate, the court by temporary order may restrain a personal representative from performing specified acts of administration, disbursement or distribution, or exercise of any powers or discharge of any duties of his office, or make any other order to secure proper performance of his duty, if it appears to the court that the personal representative otherwise may take some action which would jeopardize unreasonably the interest of the applicant or of some other interested person. Persons with whom the personal representative may transact business may be made parties."

Person may petition for removal of personal representative

SECTION 16. Section 62-3-611(a) of the 1976 Code is amended to read:

"(a) A person interested in the estate may petition for removal of a personal representative for cause at any time. Upon filing of the petition, the court shall fix a time and place for hearing. Notice shall be given by the petitioner to the personal representative, and to other persons as the court may order. Except as otherwise ordered as provided in Section 62-3-607, after service of the summons and petition upon the personal representative and receipt of notice of removal proceedings, the personal representative shall not act except to account, to correct maladministration, or preserve the estate. If removal is ordered, the court also shall direct by order the disposition of the assets remaining in the name of, or under the control of, the personal representative being removed."

Claims

SECTION 17. Section 62-3-806(b) of the 1976 Code is amended to read:

"(b) Upon service of the summons and petition of the personal representative or of a claimant in a proceeding for the purpose, the court may allow in whole or in part any claim or claims presented to the personal representative or filed with the court in due time and not barred by subsection (a) of this section. Notice of hearing in this proceeding shall be given to the claimant, the personal representative, and those other persons interested in the estate as the court may direct by order entered at the time the proceeding is commenced."

Personal representative may petition court to make partition

SECTION 18. Section 62-3-911 of the 1976 Code is amended to read:

"Section 62-3-911. When two or more heirs or devisees are entitled to distribution of undivided interests in any personal or real property of the estate, the personal representative or one or more of the heirs or devisees may petition the court prior to the closing of the estate, to make partition. After service of summons and petition and after notice to the interested heirs or devisees, the court shall partition the property in kind if it can be fairly and equitably partitioned in kind. If not subject to fair and equitable partition in kind, the court shall direct the personal representative to sell the property and distribute the proceeds."

Personal representative must file with court

SECTION 19. Section 62-3-1001(a), (c), and (d) of the 1976 Code is amended to read:

"(a) Within one year after the date of the first publication of notice to creditors (or if a state or federal estate tax return was filed, within ninety days after the receipt of a state or federal estate tax closing letter, whichever is later), a personal representative must file with the court:

(1) a full account in writing of his administration;

(2) a proposal for distribution of assets not yet distributed;

(3) an application for settlement of the estate to consider the final account or approve an accounting distribution and adjudicate the final settlement and distribution of the estate; and

(4) proof that a notice of right to demand hearing and copies of the account, the proposal for distribution, and the application for settlement of the estate have been sent to all interested persons including all creditors or other claimants of whom the personal representative is aware whose claims are neither paid nor barred.

(c) After thirty days from the filing by the personal representative of proof that a notice of right to demand hearing has been sent to all persons entitled to such notice under subsection (a), the court may enter an order or orders approving settlement and directing or approving distribution of the estate, terminating the appointment of the personal

representative, and discharging the personal representative from further claim or demand of any interested person. However, if any interested person files with the court a written demand for hearing within thirty days after the personal representative files proof that a notice of right to demand hearing has been sent to all persons entitled to such notice under subsection (a), the court may enter its order or orders only after notice to all interested persons in accordance with Section 62-1-401 and hearing.

(d) If one or more heirs or devisees were omitted as parties in, or were not given notice of, a previous formal testacy proceeding, the court, on proper petition for an order of complete settlement of the estate under this section, and after notice of hearing to the omitted or unnotified persons and other interested parties determined to be interested on the assumption that the previous order concerning testacy is conclusive as to those given notice of the earlier proceeding, may determine testacy as it affects the omitted persons and confirm or alter the previous order of testacy as it affects all interested persons as appropriate in the light of the new proofs. In the absence of objection by an omitted or unnotified person, evidence received in the original testacy proceeding constitutes prima facie proof of due execution of any will previously admitted to probate, or of the fact that the decedent left no valid will if the prior proceedings determined this fact."

New appointment

SECTION 20. Section 62-3-1008 of the 1976 Code is amended to read:

"Section 62-3-1008. If other property of the estate is discovered after an estate has been settled and the personal representative discharged or for other good cause, the court upon application of any interested person and upon notice as it directs may appoint the same or a successor personal representative to administer the subsequently opened estate. If a new appointment is made, unless the court orders otherwise, the provisions of this code apply as appropriate; but no claim previously barred may be asserted in the subsequent administration."

Compromise of controversy is binding

SECTION 21. Section 62-3-1101 of the 1976 Code is amended to read:

"Section 62-3-1101. A compromise of a controversy as to admission to probate of an instrument offered for formal probate as the will of a decedent, the construction, validity, or effect of a probated will, the rights or interests in the estate of the decedent, of a successor, or the administration of the estate, if approved by the court after hearing, is binding on all the parties including those unborn, unascertained, or who could not be located. An approved compromise is binding even though it may affect a trust or an inalienable interest. A compromise does not impair the rights of creditors or of taxing authorities who are not parties to it. A compromise approved pursuant to this section is not a settlement of a claim subject to the provisions of Section 62-5-433."

Court may approve agreement, conditions

SECTION 22. Section 62-3-1102(3) of the 1976 Code is amended to read:

"(3) Upon application to the court and after notice to all interested persons or their representatives, including the personal representative of the estate and all affected trustees of trusts, the court, if it finds that the contest or controversy is in good faith and that the effect of the agreement upon the interests of persons represented by fiduciaries or other representatives is just and reasonable, shall make an order approving the agreement and directing all fiduciaries subject to its jurisdiction to execute the agreement. Minor children represented only by their parents may be bound only if their parents join with other competent persons in execution of the compromise. Upon the making of the order and the execution of the agreement, all further disposition of the estate is in accordance with the terms of the agreement."

Time to answer

SECTION 23. Section 62-3-1309 of the 1976 Code is amended to read:

"Section 62-3-1309. The time to answer or otherwise respond by motion to the summons and petition is at least thirty days from the date of service. Should the personal representative (if not the petitioner) or any of the heirs or devisees, or other parties, if any, desire to answer or otherwise respond by motion it must be in writing and the court shall in

regular order, as in the case of other litigated cases, proceed to determine the issues made by petition, subsequent pleadings, and motions and if the court decides that the real estate should be sold it shall then, in its discretion, either (a) order the personal representative to sell the same at private sale upon such terms and conditions as the court may impose; or (b) proceed to sell the same upon the next or some subsequent convenient sales day after publishing a notice of such sale three weeks prior thereto in some paper published in the county. Upon the sale being made, after the payment of the costs and expenses thereof, the court shall pay over to the personal representative the net proceeds of such sale. The personal representative shall administer such proceeds in like manner as proceeds of personal property coming into his hands. Nothing in this part may be construed to abridge homestead exemptions."

Guardianship proceeding

SECTION 24. Section 62-5-101(5) of the 1976 Code is amended to read:

"(5) A 'guardianship proceeding' is a formal proceeding under the provisions of Part 3 of Article 5 (Section 62-5-301, et seq.) to determine if a person is an incapacitated person, or to appoint a guardian for an incapacitated person."

Petition by or for incapacitated person

SECTION 25. Section 62-5-303 of the 1976 Code is amended to read:

"Section 62-5-303. (a) The incapacitated person or a person interested in his welfare may petition for a finding of incapacity and appointment of a guardian.

(b) Upon the filing and service of the summons and the petition the court shall send a visitor to the place where the allegedly incapacitated person resides to observe conditions and report in writing to the court. The court shall set a date for hearing on the issues of incapacity and unless the allegedly incapacitated person has counsel of his own choice, it shall appoint an attorney to represent him in the proceedings and that attorney shall have the powers and duties of a guardian ad litem. The person alleged to be incapacitated shall be examined by two examiners, one of whom shall be a physician appointed by the court

who shall submit their reports in writing to the court. The person alleged to be incapacitated is entitled to be present at the hearing in person, and to see or hear all evidence bearing upon his condition. He is entitled to be represented by counsel, to present evidence including testimony by a physician of his own choosing, to cross-examine witnesses, including the court-appointed examiners. The issue may be determined at a closed hearing if the person alleged to be incapacitated or his counsel so requests."

Guardian submits personally to jurisdiction of court

SECTION 26. Section 62-5-305 of the 1976 Code is amended to read:

"Section 62-5-305. By accepting appointment, a guardian submits personally to the jurisdiction of the court in any proceeding relating to the guardianship that may be instituted by any interested person. Notice of any proceeding shall be delivered to the guardian or mailed to him by ordinary first class mail at his address as listed in the court records and to his address as then known to the petitioner."

Court may remove guardian, conditions

SECTION 27. Section 62-5-307 of the 1976 Code is amended to read:

"Section 62-5-307. (a) After service of the summons and petition of the ward or any person interested in his welfare, the court may remove a guardian and appoint a successor if in the best interests of the ward. On petition of the guardian, the court may accept his resignation and make any other order which may be appropriate.

(b) An order adjudicating or readjudicating incapacity may specify a minimum period, not exceeding one year, during which no petition for an adjudication that the ward is no longer incapacitated may be filed without special leave. Subject to this restriction, the ward may make a request for an order from the court that he is no longer incapacitated, and for removal of the guardian. A request for this order may be made by informal letter to the court or judge and any person who knowingly interferes with transmission of this kind of request to the court or judge may be adjudged guilty of contempt of court.

(c) Before acting upon any such petition or request, the court shall send a visitor to the residence of the present guardian and to the place

where the ward resides or is detained to observe conditions and report in writing to the court. After reviewing the report of the visitor, the court may order termination of the ward's incapacity or a hearing following the procedures set forth in Section 62-5-303."

Proceeding properly commenced, conditions

SECTION 28. Section 62-5-309 of the 1976 Code is amended to read:

"Section 62-5-309. (A) In a proceeding that is properly commenced by filing and service of the summons and petition for the appointment or removal of a guardian of an incapacitated person other than the appointment of a temporary guardian or temporary suspension of a guardian, the following persons must be properly served:

(1) the ward or the person alleged to be incapacitated and his spouse, parents, and adult children;

(2) a person who is serving as his guardian, conservator, or attorney in fact under a durable power of attorney pursuant to Section 62-5-501 or who has his care and custody;

(3) if no other person is notified under item (1), at least one of his closest adult relatives, if one can be found.

(B) Notice of hearing must be given as provided in Section 62-1-401. Waiver of notice by the person alleged to be incapacitated is not effective unless he attends the hearing or his waiver of notice is given by his attorneys or, in proceedings for removal, confirmed in an interview with the visitor, which may be done at any time. Representation of the alleged incapacitated person by a guardian ad litem is not necessary."

Emergency preliminary findings by court

SECTION 29. Section 62-5-310(A)-(D) of the 1976 Code is amended to read:

"(A) If the court makes emergency preliminary findings that:

(1) a physician has certified to the court, orally or in writing, that the person is incapacitated;

(2) no guardian has been appointed previously; and

(3) the welfare of the incapacitated person requires immediate action; then the court, with or without petition or notice, may appoint a

temporary guardian for a specified period not to exceed six months in accordance with the priorities set out in Section 62-5-311.

(B) If the court makes emergency preliminary findings that:

(1) the appointed guardian or temporary guardian is not effectively performing his duties; and

(2) the welfare of the allegedly incapacitated person requires immediate action, then the court may appoint, with or without petition or notice, a temporary guardian for a specified period not to exceed six months in accordance with the priorities set out in Section 62-5-311.

(C)(1) The court may itself exercise the power of temporary guardian, with or without petition or notice, if the court makes emergency preliminary findings that either no person appears to have authority to act on behalf of the incapacitated person or more than one person is authorized to make health care decisions for the incapacitated person, and these authorized persons disagree on whether certain care must be provided and:

(a) the person has been adjudicated as being incapacitated, or a physician has certified to the court, orally or in writing, that the person is incapacitated; and

(b) an emergency exists.

(2) For health care purposes, 'emergency' means that a delay caused by (i) further attempts to locate a person authorized to make health care decisions or (ii) proceedings for appointment of a guardian would present a serious threat to the life, health, or bodily integrity of the incapacitated person.

(D) If a temporary guardian is appointed without petition or notice under this section, a hearing to review the appointment must be held after petition and notice and within thirty days after the appointment of the temporary guardian."

Appointment of conservator

SECTION 30. Section 62-5-401 of the 1976 Code is amended to read:

"Section 62-5-401. After service of the summons and petition and notice of hearing in accordance with the provisions of this part, the court may appoint a conservator or make other protective order for cause as follows:

(1) Appointment of a conservator or other protective order may be made in relation to the estate and affairs of a minor if the court determines that a minor owns money or property that requires

management or protection which cannot otherwise be provided, has or may have business affairs which may be jeopardized or prevented by his minority, or that funds are needed for his support and education and that protection is necessary or desirable to obtain or provide funds.

(2) Appointment of a conservator or other protective order may be made in relation to the estate and affairs of a person if the court determines that (i) the person is unable to manage his property and affairs effectively for reasons such as mental illness, mental deficiency, physical illness or disability, advanced age, chronic use of drugs, chronic intoxication, confinement, detention by a foreign power, or disappearance; and (ii) the person has property which will be wasted or dissipated unless proper management is provided, or that funds are needed for the support, care, and welfare of the person or those entitled to be supported by him and that protection is necessary or desirable to obtain or provide funds."

Powers of probate court after certain actions

SECTION 31. Section 62-5-402 of the 1976 Code is amended to read:

"Section 62-5-402. After the service of the summons and petition in a proceeding seeking the appointment of a conservator or other protective order and until termination of the proceeding, the probate court in which the summons and petition are filed has:

(1) exclusive jurisdiction to determine the need for a conservator or other protective order until the proceedings are terminated;

(2) exclusive jurisdiction to determine how the estate of the protected person which is subject to the laws of this State must be managed, expended, or distributed to or for the use of the protected person or any of his dependents; and

(3) concurrent jurisdiction to determine the validity of claims for or against the person or estate of the protected person except as limited by Section 62-5-433."

Person to be protected must be served personally

SECTION 32. Section 62-5-405 of the 1976 Code is amended to read:

"Section 62-5-405. (a) After filing of the summons and the petition for appointment of a conservator or other protective order, the person

to be protected must be served personally with the summons and petition. The following persons also must be properly served: the spouse and the adult children of the person to be protected, or if none, his parents or nearest adult relatives if there are no parents, and other persons as the court may direct.

(b) Notice of hearing on a petition for appointment of a conservator or other initial protective order, and of any subsequent hearing, must be given to the person to be protected, to any person who has filed a request for notice under Section 62-5-406, to interested persons, and to other persons as the court may direct. Notice must be given in accordance with Section 62-1-401. Waiver of notice of hearing by the person to be protected is not effective unless he attends the hearing or waiver of notice is given by his attorney."

Hearing date

SECTION 33. Section 62-5-407(a) and (b) of the 1976 Code is amended to read:

"(a) Upon the filing of a summons and petition for appointment of a conservator or other protective order because of minority, and after service of the summons and the petition, the court may set a date for hearing on the matters alleged in the petition. If, at any time in the proceeding, the court determines that the interests of the minor are or may be inadequately represented, it may appoint an attorney to represent the minor, giving consideration to the choice of the minor if fourteen years of age or older. A lawyer appointed by the court to represent a minor has the powers and duties of a guardian ad litem. If the minor already has an attorney, that attorney shall act as his guardian ad litem.

(b) Upon the filing of a summons and petition for appointment of a conservator or other protective order for reasons other than minority, and after service of the summons and the petition, the court shall set a date for hearing. Unless the person to be protected has counsel of his own choice, the court must appoint a lawyer to represent him who then has the powers and duties of a guardian ad litem. If the protected person already has representation by an attorney that attorney shall act as his guardian ad litem. If the alleged disability is mental illness, mental deficiency, physical illness or disability, advanced age, chronic use of drugs, or chronic intoxication, the court shall direct that the person to be protected be examined by one or more physicians

designated by the court, preferably physicians who are not connected with any institution in which the person is a patient or is detained."

Bond required

SECTION 34. Section 62-5-411 of the 1976 Code is amended to read:

"Section 62-5-411. The court, unless for good cause stated, shall require a conservator to furnish a bond conditioned upon faithful discharge of all duties of the trust according to law and will approve all sureties. If bond is required, the person qualifying shall file a statement under oath with the court indicating his best estimate of the value of the personal estate of the protected person and of the income expected from the personal estate during the next year, and he shall execute and file a bond with the court, or give other suitable security, in an amount not less than the estimate. The court shall determine that the bond is duly executed by a corporate surety, or one or more individual sureties whose performance is secured by pledge of personal property, mortgage on real property, or other adequate security. The court may permit the amount of the bond to be reduced by the value of assets of the estate deposited with a domestic financial institution, as defined in Section 62-6-101, in a manner that prevents their unauthorized disposition. Upon application of the conservator or another interested person, or upon the court's own motion, the court may increase or reduce the amount of the bond, release sureties, dispense with security or securities, or permit the substitution of another bond with the same or different sureties. A denial of an application by the court is not an adjudication and does not preclude a formal proceeding."

Proceeding may be initiated against surety

SECTION 35. Section 62-5-412(a)(3) of the 1976 Code is amended to read:

"(3) After service of a summons and petition by a successor conservator or any interested person, or upon the court's own motion, a proceeding may be initiated against a surety for breach of the obligation of the bond of the conservator;"

Person may file a request for an order

SECTION 36. Section 62-5-416 of the 1976 Code is amended to read:

"Section 62-5-416. (a) Upon filing a petition and summons with the appointing court, a person interested in the welfare of a person for whom a conservator has been appointed may request an order (1) requiring bond or security or additional bond or security, or reducing bond, (2) requiring an accounting for the administration of the trust, (3) directing distribution, (4) removing the conservator and appointing a temporary or successor conservator, or (5) granting other appropriate relief. The petition and summons must be served upon the conservator and other persons as the court may direct.

(b) Upon application to the appointing court, a conservator may request instructions concerning his fiduciary responsibility. A denial of the application by the court is not an adjudication and does not preclude a formal proceeding.

(c) After notice and hearing as the court may direct, the court may give appropriate instructions or make any appropriate order."

Conservator shall account to the court

SECTION 37. Section 62-5-419 of the 1976 Code is amended to read:

"Section 62-5-419. Every conservator shall account to the court for his administration of the trust annually and upon his resignation or removal, and at other times as the court may direct. On termination of the protected person's minority or disability a conservator shall account to the court. Upon the filing and service of summons and petition for approval of accounting, an order, made upon notice and hearing, allowing an intermediate account of a conservator, adjudicates as to his liabilities concerning the matters shown in connection with it and an order, made upon notice and hearing, allowing a final account adjudicates as to all unsettled liabilities of the conservator to the protected person or his successors relating to the conservatorship concerning the matters shown. In connection with an account, the court may require a conservator to submit to a physical check of the estate in his control, to be made in a manner the court may specify."

Just claims to be paid

SECTION 38. Section 62-5-428 of the 1976 Code is amended to read:

"Section 62-5-428. (a)(1) A conservator must pay from the estate all just claims against the estate and against the protected person arising before or after the conservatorship upon their presentation and allowance. A claim may be presented by either of the following methods:

(i) the claimant may deliver or mail to the conservator a written statement of the claim indicating its basis, the name and address of the claimant, and the amount claimed;

(ii) the claimant may file a written statement of the claim, in the form prescribed by rule, with the clerk of court and deliver or mail a copy of the statement to the conservator.

(2) A claim is considered presented on the first to occur of receipt of the written statement of claim by the conservator or the filing of the claim with the court. Every claim which is disallowed in whole or part by the conservator is barred so far as not allowed unless the claimant files and properly serves a summons and petition for allowance in the court or commences a proceeding against the conservator not later than thirty days after the mailing of the notice of disallowance or partial disallowance if the notice warns the claimant of the impending bar. The presentation of a claim tolls any statute of limitation relating to the claim until thirty days after its disallowance.

(b) A claimant whose claim has not been paid may petition, by service of the summons and the petition, the court for determination of his claim at any time before it is barred by the applicable statute of limitation, and, upon due proof, procure an order for its allowance and payment from the estate. If a proceeding is initiated against a protected person, the moving party must give notice of the proceeding to the conservator if the outcome is to constitute a claim against the estate.

(c) If it appears that the estate in conservatorship is likely to be exhausted before all existing claims are paid, preference must be given to prior claims for the care, maintenance, and education of the protected person or his dependents and existing claims for expenses of administration."

Protected person, other persons may request to terminate conservatorship

SECTION 39. Section 62-5-430 of the 1976 Code is amended to read:

"Section 62-5-430. (A) The protected person, the conservator, or any other interested person, by service of a summons and petition, may request that the court terminate the conservatorship. A protected person seeking termination is entitled to the same rights and procedures as in an original proceeding for a protective order. The court, upon determining after notice and hearing, that the disability of the protected person has ceased, may terminate the conservatorship.

(B) The protected person, his personal representative, or the conservator may make application for the termination of the conservatorship when the protected person has attained his majority or if the protected person is deceased. Notice must be given to those persons as the court may direct."

Successor attorneys

SECTION 40. Section 62-5-501(B) of the 1976 Code is amended to read:

"(B) An instrument to which this section is applicable also may provide for successor attorneys in fact and provide conditions for their succession, which may include an authorization for the court to appoint a successor, and the succession may occur whether or not the principal then is physically disabled or mentally incompetent. The appointment of an attorney in fact under this section does not prevent a person or his representative from petitioning the court to have a guardian or conservator appointed. Unless the power of attorney provides otherwise, appointment of a guardian terminates all or part of the power of attorney that relates to matters within the scope of the guardianship, and appointment of a conservator terminates all or part of the power of attorney that relates to matters within the scope of the conservatorship."

Health care provider, etc., has duty to follow directives

SECTION 41. Section 62-5-504(H) of the 1976 Code is amended to read:

"(H) A health care provider or nursing care provider having knowledge of the principal's health care power of attorney has a duty to follow directives of the agent that are consistent with the health care power of attorney to the same extent as if they were given by the principal. If it is uncertain whether a directive is consistent with the health care power of attorney, the health care provider, nursing care provider, agent, or other interested person may apply to the probate court for an order determining the authority of the agent to give the directive."

Priority of appointment

SECTION 42. Section 62-5-604 of the 1976 Code is amended to read:

"Section 62-5-604. A summons and petition for the appointment of a guardian may be filed in any court of competent jurisdiction by or on behalf of any person who under existing law is entitled to priority of appointment. If there be no person so entitled or if the person so entitled shall neglect or refuse to file such a summons and petition within thirty days after the mailing of notice by the Veterans' Administration to the last known address of such person indicating the necessity of such filing, a summons and petition for such appointment may be filed in any court of competent jurisdiction by or on behalf of any responsible person residing in this State."

Notice of filing and service of summons and petition for appointment of guardian

SECTION 43. Section 62-5-608 of the 1976 Code is amended to read:

"Section 62-5-608. Upon the filing and service of summons and petition for the appointment of a guardian, under the provisions of this part the court shall cause such notice to be given as is provided by law."

Standards of care

SECTION 44. Section 62-3-703(a) of the 1976 Code is amended to read:

"(a) A personal representative is a fiduciary who shall observe the standards of care applicable to trustees as described by Section 62-7-804. A personal representative has a duty to settle and distribute the estate of the decedent in accordance with the terms of a probated and effective will and this code, and as expeditiously and efficiently as is consistent with the best interests of the estate. He shall use the authority conferred upon him by this code, the terms of the will, and any order in proceedings to which he is party for the best interests of successors to the estate."

Exceptions

SECTION 45. Section 62-7-105(b) of the 1976 Code is amended to read:

"(b) The terms of a trust prevail over any provision of this article except:

(1) the requirements for creating a trust;

(2) the duty of a trustee to act in good faith and in accordance with the purposes of the trust;

(3) the requirement that a trust and its terms be for the benefit of its beneficiaries, and that the trust have a purpose that is lawful and possible to achieve;

(4) the power of the court to modify or terminate a trust under Sections 62-7-410 through 62-7-416;

(5) the effect of a spendthrift provision and the rights of certain creditors and assignees to reach a trust as provided in Part 5;

(6) the limitations on the ability of a settlor's agent under a power of attorney to revoke, amend, or make distributions from a revocable trust pursuant to Section 62-7-602(e);

(7) the power of the court under Section 62-7-708(b) to adjust a trustee's compensation specified in the terms of the trust which is unreasonably low or high;

(8) the effect of an exculpatory term under Section 62-7-1008;

(9) the rights under Sections 62-7-1010 through 62-7-1013 of a person other than a trustee or beneficiary;

(10) periods of limitation for commencing a judicial proceeding;

(11) the power of the court to take such action and exercise such jurisdiction as may be necessary in the interests of justice; and

(12) the subject matter jurisdiction of the court and venue for commencing a proceeding as provided in Sections 62-7-201 and 62-7-204."

Probate court to have exclusive jurisdiction

SECTION 46. Section 62-7-201(a) of the 1976 Code is amended to read:

"(a) Subject to the provisions of Section 62-1-302(d), the probate court has exclusive jurisdiction of proceedings initiated by interested parties concerning the internal affairs of trusts. Proceedings that may be maintained pursuant to this section are those concerning the administration and distribution of trusts, the declaration of rights, and the determination of other matters involving trustees and beneficiaries of trusts. These include, but are not limited to, proceedings to:

(1) ascertain beneficiaries, determine a question arising in the administration or distribution of a trust including questions of construction of trust instruments, instruct trustees, and determine the existence or nonexistence of any immunity, power, privilege, duty, or right;

(2) review and settle interim or final accounts;

(3) review the propriety of employment of a person by a trustee including an attorney, auditor, investment advisor or other specialized agent or assistant, and the reasonableness of the compensation of a person so employed, and the reasonableness of the compensation determined by the trustee for his own services. A person who has received excessive compensation from a trust may be ordered to make appropriate refunds. The provisions of this section do not apply to the extent there is a contract providing for the compensation to be paid for the trustee's services or if the trust directs otherwise; and

(4) appoint or remove a trustee."

Person may represent if conservator or guardian has not been appointed

SECTION 47. Section 62-7-303(a)(6) of the 1976 Code is amended to read:

"(6) a person may represent and bind the person's minor or unborn issue if a conservator or guardian for the issue has not been appointed."

Court may appoint guardian ad litem to represent the interest of minor

SECTION 48. Section 62-7-305 of the 1976 Code is amended to read:

"Section 62-7-305. At any point in a judicial proceeding, a court may appoint a guardian ad litem to represent the interest of a minor, an incapacitated, unborn, or unascertained person, or a person whose identity or address is unknown, if the court determines that representation of the interest otherwise would be inadequate. If not precluded by conflict of interests, a guardian ad litem may be appointed to represent several persons or interests. The court shall set out its reasons for appointing a guardian ad litem as a part of the record of the proceeding."

Trust may be terminated, conditions

SECTION 49. Section 62-7-414(a) and (c) of the 1976 Code is amended to read:

"(a) After notice to the qualified beneficiaries, and without court approval, the trustee of a trust consisting of trust property having a total value less than one hundred thousand dollars may terminate the trust if the trustee concludes that the value of the trust property is insufficient to justify the cost of administration.

(c) Upon termination of a trust under this section, the trustee shall distribute the trust property as ordered by the court or, if the court does not specify the manner of distribution, or if no court approval is required, in a manner consistent with the purposes of the trust."

Claims

SECTION 50. Section 62-7-505(a)(3) and (b) of the 1976 Code is amended to read:

"(3) After the death of a settlor, and subject to the settlor's right to direct the source from which liabilities will be paid, and except to the extent state or federal law exempts any property of the trust from claims, costs, expenses, or allowances, the property of a trust that was revocable at the settlor's death is subject to claims of the settlor's

creditors, costs of administration of the settlor's estate, the expenses of the settlor's funeral and disposal of remains, and statutory allowances to a surviving spouse and children to the extent the settlor's probate estate is inadequate to satisfy those claims, costs, expenses, and allowances, unless barred by Section 62-3-801 et seq.

(b) For purposes of this section, a beneficiary who is a trustee of a trust, but who is not the settlor of the trust, cannot be treated in the same manner as the settlor of a revocable trust if the beneficiary-trustee's power to make distributions to the beneficiary-trustee is limited by an ascertainable standard related to the beneficiary-trustee's health, education, maintenance, or support."

Contest validity of trust time

SECTION 51. Section 62-7-604 of the 1976 Code is amended to read:

"Section 62-7-604. (a) A person must commence a judicial proceeding to contest the validity of a trust that was revocable at the settlor's death within the earlier of:

(1) one year after the settlor's death; or

(2) one hundred twenty days after the trustee sent the person a copy of the trust instrument and a notice informing the person of the trust's existence, of the trustee's name and address, and of the time allowed for commencing a proceeding.

(b) Upon the death of the settlor of a trust that was revocable at the settlor's death, the trustee may proceed to distribute the trust property in accordance with the terms of the trust. The trustee is not subject to liability for doing so unless:

(1) the trustee knows of a pending judicial proceeding contesting the validity of the trust; or

(2) a potential contestant has notified the trustee of a possible judicial proceeding to contest the trust and a judicial proceeding is commenced within one hundred twenty days after the contestant sent the notification.

(c) A beneficiary of a trust that is determined to have been invalid is liable to return any distribution received."

Reimbursement of prospective trustee

SECTION 52. Section 62-7-709 of the 1976 Code is amended by adding at the end:

"(c) A prospective trustee is entitled to be reimbursed from trust property for expenses reasonably incurred by the prospective trustee pursuant to Section 62-7-701(c) to protect or investigate the trust assets before deciding whether or not to accept the trusteeship."

Exercise of power of remaining trustees

SECTION 53. Section 62-7-814(b) of the 1976 Code is amended to read:

"(b) A power whose exercise is limited or prohibited by subsection (c) may be exercised by a majority of the remaining trustees whose exercise of the power is not so limited or prohibited. If the power of all trustees is so limited or prohibited, the court may appoint a special fiduciary with authority to exercise the power."

Definition of "person"

SECTION 54. Section 62-7-902(9) of the 1976 Code is amended to read:

"(9) 'Person' means any individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, or government, governmental subdivision, agency, or instrumentality; or public corporation, or other legal or commercial entity."

Fiduciary's responsibilities

SECTION 55. Section 62-7-903(A) of the 1976 Code is amended to read:

"(A) In allocating receipts and disbursements to or between principal and income, and with respect to any matter within the scope of Sections 62-7-905 through 62-7-909, a fiduciary:

(1) shall administer a trust or estate in accordance with the terms of the trust or the will, even if there is a different provision in this part;

(2) may administer a trust or estate by the exercise of a discretionary power of administration given to the fiduciary by the terms of the trust or the will, even if the exercise of the power produces a result different from a result required or permitted by this part;

(3) shall administer a trust or estate in accordance with this part if the terms of the trust or the will do not contain a different provision or do not give the fiduciary a discretionary power of administration; and

(4) shall add a receipt or charge a disbursement to principal to the extent that the terms of the trust and this part do not provide a rule for allocating the receipt or disbursement to or between principal and income."

Terms of the trust

SECTION 56. Section 62-7-904(B)(7) of the 1976 Code is amended to read:

"(7) terms of the trust and whether and to what extent they give the trustee the power to invade principal or accumulate income or prohibit the trustee from invading principal or accumulating income, and the extent to which the trustee has exercised a power from time to time to invade principal or accumulate income;"

Trustee shall consider when investing and managing trust assets

SECTION 57. Section 62-7-933(C)(3) of the 1976 Code is amended to read:

"(3) Among other circumstances provided in item (1) of this subsection which a trustee shall consider in investing and managing trust assets are such of the following as are relevant to the trust or its beneficiaries:

(a) general economic conditions;

(b) the possible effect of inflation or deflation;

(c) the expected tax consequences of investment decisions or strategies;

(d) the role that each investment or course of action plays within the overall trust portfolio, including financial assets, interests in closely held enterprises, tangible and intangible personal property, and real property;

(e) the expected total return from income and the appreciation of capital;

(f) other resources of the beneficiaries;

(g) needs for liquidity, regularity of income, and preservation or appreciation of capital; and

(h) an asset's special relationship or special value to the purposes of the trust or to one or more of the beneficiaries."

Authority of cotrustees

SECTION 58. Section 62-7-1013(a)(6) - (8) and (j) of the 1976 Code is amended to read:

"(6) the authority of cotrustees to sign or otherwise authenticate and whether all or less than all are required in order to exercise powers of the trustee; and

(7) the manner of taking title to trust property.

(j) In a transaction involving title to real property, the certificate of trust must be executed and acknowledged in a manner that permits its recordation in the Office of the Register of Deeds or Clerk of Court in the county in which the real property is located.

(k) The Certificate of Trust may be either in the form set forth below or in any other form that satisfies the above requirements.

Settlor: _____
Name of Trust: _____
Date of Trust: _____
Current Trustee(s): _____
Address of Trust: _____"

Provisions related to one subject

SECTION 59. The General Assembly finds that all the provisions contained in this act relate to one subject as required by Section 17, Article III of the South Carolina Constitution in that each provision relates directly to or in conjunction with other sections to the subject of probate and trust reform as stated in the title. The General Assembly further finds that a common purpose or relationship exists among the sections, representing a potential plurality but not disunity of topics, notwithstanding that reasonable minds might differ in identifying more than one topic contained in this act.

Time effective

SECTION 60. This act takes effect upon approval by the Governor.

Ratified the 1st day of June, 2010.

Approved the 7th day of June, 2010.

No. 245

(R292, H3059)

AN ACT TO AMEND SECTION 7-1-20, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO DEFINITIONS USED IN SOUTH CAROLINA ELECTION LAW, SO AS TO DELETE THE DEFINITION "CLUB DISTRICT"; TO AMEND SECTION 7-5-460, RELATING TO CUSTODY OF BOOKS AND THEIR RETURN AFTER AN ELECTION, SO AS TO DELETE A REFERENCE TO A "CLUB" AS AN ENTITY TO WHOM THE BOOKS ARE RESPONSIBLE; TO AMEND SECTION 7-9-20, RELATING TO QUALIFICATIONS FOR MEMBERSHIP IN A CERTIFIED PARTY AND FOR VOTING AT A PARTY PRIMARY ELECTION, SO AS TO DELETE REFERENCES TO PARTY CLUBS; TO AMEND SECTION 7-9-70, RELATING TO CLUBS IN PARTY ORGANIZATIONS, SO AS TO DELETE PROVISIONS REQUIRING DELEGATES AT PARTY CONVENTIONS TO BE COMPRISED OF DELEGATES ELECTED FROM THE CLUBS IN THE COUNTY; TO AMEND SECTION 7-13-170, RELATING TO THE PROCEDURE WHEN A MANAGER FAILS TO ATTEND THE PLACE WHICH HAS BEEN SCHEDULED FOR HOLDING A POLL, SO AS TO DELETE THE TERM "CLUB" FROM THE QUALIFYING MEMBER TO BECOME A MANAGER IN THE PLACE OF ABSENT MANAGERS; TO REPEAL SECTIONS 7-9-30, 7-9-40, 7-9-50, AND 7-9-60, ALL RELATING TO CLUBS IN PARTY ORGANIZATIONS; AND TO DELAY THE EFFECTIVE DATE OF ACT 138 OF 2010, RELATING TO LEXINGTON COUNTY PRECINCTS.

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

Definitions

SECTION 1. Section 7-1-20 of the 1976 Code is amended to read:

"Section 7-1-20. The following words and phrases, unless the same be plainly inconsistent with the context, shall be construed as follows:

(1) 'General election' means the election to be held for the election of officers to the regular terms of office provided by law, whether State, United States, county, municipal, or of any other political subdivision of the State, and for voting on constitutional amendments proposed by the General Assembly.

(2) 'Special election' means any other election including any referendum provided by law to be held under the provisions of law applicable to general elections.

(3) 'Primary' means a party primary election held by a political party under the provisions of this title.

(4) 'Inhabitants' means the number of inhabitants according to the federal census last taken.

(5) 'Electoral board' means the board or other authority empowered to hold a general or special election.

(6) A 'voting or polling precinct' means an area created by the legislature for convenient localization of polling places and which administers and counts votes therein as a local unit in all elections.

A 'voting place' is a place within a voting or polling precinct where ballots may be cast.

(7) 'Political party' means a political party, organization, or association certified by the State Election Commission as provided for in this title.

(8) 'State committee' means the state executive committee of a political party.

(9) 'State chairman' means the chairman of the state executive committee of a political party.

(10) 'County committee' means the county executive committee of a political party.

(11) 'County chairman' means the chairman of the county executive committee of a political party.

(12) 'Booth' includes a voting machine booth, curtain, or enclosure.

(13) 'Legal holiday' means a holiday recognized by state or federal law.

(14) 'Voter', 'registered voter', 'elector', 'registered elector', 'qualified elector', or 'qualified registered elector' means a person whose name is contained on the active roster of voters maintained by the State Election Commission and whose name has not been removed from the roster for any of the reasons named in Section 7-3-20(C)(2) and (3) and who possesses a valid registration certificate."

Duties, commissioners of elections

SECTION 2. Section 7-5-460 of the 1976 Code is amended to read:

"Section 7-5-460. The commissioners of election or the county committee, as the case may be, shall turn over registration books to the election managers of each polling precinct, who are responsible for the care and custody of these books and the return of them within three days after the election. The commissioners of election or the county committee, as the case may be, shall return the books to the board of registration before the day on which the books of registration are next required by law to be opened by the board of registration and not later than twenty days after the election."

Qualifications

SECTION 3. Section 7-9-20 of the 1976 Code is amended to read:

"Section 7-9-20. The qualifications for membership in a certified party and for voting at a party primary election include the following: the applicant for membership, or voter, must be at least eighteen years of age or become so before the succeeding general election, and must be a registered elector and a citizen of the United States and of this State. A person may not vote in a primary unless he is a registered elector. The state convention of any political party, organization, or association in this State may add by party rules to the qualifications for membership in the party, organization, or association and for voting at the primary elections if the qualifications do not conflict with the provisions of this section or with the Constitution and laws of this State or of the United States."

County conventions

SECTION 4. Section 7-9-70 of the 1976 Code is amended to read:

"Section 7-9-70. A county convention must be held during a twelve-month period ending March thirty-first of each general election year during a month determined by the state committee as provided in Section 7-9-100. The county committee shall set the date, time, and location during the month designated by the state committee for the county convention to be held. The date set by the county committee

for the county convention must be at least two weeks before the state convention. When a month in a nongeneral election year is chosen for the county convention, it must be held for the purpose of reorganization only. The date, time, and location that the county convention must be reconvened during the general election year to nominate candidates for public office to be filled in the general election must be set by county committee. Notices, both for the convention to be held for reorganization and for the reconvened convention to nominate candidates, must be published by the county committee, once a week for two consecutive weeks, not more than three nor less than two weeks, before the day in a newspaper having general circulation in the county."

Managers of election, replacement

SECTION 5. Section 7-13-170 of the 1976 Code is amended to read:

"Section 7-13-170. If all of the managers fail to attend at the same time and place appointed for holding the poll, or shall refuse or fail to act, or if no manager has been appointed for the poll, it is lawful for the voters present at the precinct voting place on that day to appoint from among the qualified voters of the precinct the managers to act as managers in the place and stead of the absent managers, and any one of the managers appointed shall administer the oath to the other managers. But if the duly appointed managers attend in a reasonable time, they shall take charge of and conduct the election."

Repeal

SECTION 6. Sections 7-9-30, 7-9-40, 7-9-50, and 7-9-60 of the 1976 Code are repealed.

Effective date changed

SECTION 7. Notwithstanding the effective date of Act 138 of 2010, the amendments to Section 7-7-380 contained in Act 138 of 2010 do not take effect until July 15, 2010.

Time effective

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

Ratified the 2nd day of June, 2010.

Approved the 2nd day of June, 2010.

No. 246

(R297, S319)

AN ACT TO AMEND TITLE 59, CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING CHAPTER 46 SO AS TO ENACT THE "INTERSTATE COMPACT ON EDUCATIONAL OPPORTUNITY FOR MILITARY CHILDREN", TO PROVIDE THAT THE GOVERNOR MAY EXECUTE THE COMPACT WITH OTHER COMPACT STATES, TO PROVIDE THAT THE STATE SUPERINTENDENT OF EDUCATION IS THE COMPACT COMMISSIONER OF THIS STATE, TO ESTABLISH A COUNCIL ON EDUCATIONAL OPPORTUNITY FOR MILITARY CHILDREN, TO PROVIDE FOR THE COUNCIL'S MEMBERSHIP, APPOINTMENTS, TERMS, QUORUM, LEADERSHIP, FILLING OF VACANCIES, AND POWERS AND DUTIES, AND TO PROVIDE THE TERMS OF THE COMPACT; BY ADDING SECTION 59-5-160 SO AS TO PROVIDE WAYS IN WHICH THE STATE BOARD OF EDUCATION MAY FACILITATE THE GRADUATION OF CERTAIN STUDENTS; TO PROVIDE THAT RULES ADOPTED PURSUANT TO THE COMPACT ARE ONLY BINDING UPON CERTAIN CONDITIONS; AND TO AMEND SECTION 59-112-50, AS AMENDED, RELATING TO TUITION RATES FOR MILITARY PERSONNEL AND THEIR DEPENDENTS, SO AS TO ALLOW THE RATES TO CONTINUE UPON TRANSFER TO ANOTHER INSTITUTION WITHIN A SPECIFIED TIME PERIOD.

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

Interstate Compact on Educational Opportunity for Military Children

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

"CHAPTER 46

Interstate Compact on Educational Opportunity
for Military Children

Section 59-46-10. This chapter may be cited as the 'Interstate Compact on Educational Opportunity for Military Children'.

Section 59-46-20. (A) The Governor of this State may execute a compact, in substantially the form set out in Section 59-46-50. The General Assembly signifies in advance its approval and ratification of the compact when the compact has been enacted into law by any ten of the compact states, including South Carolina, and the consent of the United States Congress to the interstate compact has been obtained.

(B) When the Governor has executed the compact on behalf of this State, and caused a verified copy to be filed with the Secretary of State, and when the compact has been ratified by ten or more of the compact states, including South Carolina, the compact shall become operative and effective as between this State and the states that have ratified the compact. The Governor shall take action as may be necessary to complete the exchange of official documents between this State and any other state ratifying the compact, and to otherwise carry out the provisions of this chapter.

(C) Upon the compact becoming operative and effective between this State and other states ratifying the compact, it is declared to be the policy of this State to perform and carry out the compact and to accomplish its purposes.

Section 59-46-30. The State Superintendent of Education shall serve as the Compact Commissioner of the Interstate Compact on Educational Opportunity for Military Children on behalf of this State.

Section 59-46-40. In accordance with the Interstate Compact on Educational Opportunity for Military Children, there is created the South Carolina Council on the Interstate Compact on Educational Opportunity for Military Children, referred to in this section as 'council'.

(A) The council consists of the following eleven members:

(1) the Governor or his designee;

(2) one member appointed by the Governor to represent military installations in the State;

(3) two members of the House of Representatives appointed by the Speaker of the House;

(4) two members of the Senate appointed by the President Pro Tempore of the Senate;

(5) two members appointed by the State Superintendent of Education, to include a superintendent of a school district with a high concentration of military families and a member of a military family with experience in the educational challenges that military children face;

(6) the State Board of Education chair and chair-elect; and

(7) the State Superintendent of Education or his designee, who shall serve as chair.

(B) Appointments must be made no later than September 1, 2010, at which time the chair shall call the first meeting. Elected members serve terms coterminous with their terms of office. Citizen members serve at the pleasure of the individual making the appointment. All members may be reappointed. Appointments to fill vacancies, other than by expiration of a term, must be made for the unexpired terms. Vacancies must be filled in the same manner as the original appointments.

(C) The council shall meet on the call of the chairman and, at a minimum, shall meet annually. A majority of members constitutes a quorum. The council may consider any matters related to the Interstate Compact on Educational Opportunity for Military Children or the general activities and business of the organization and has the authority to represent the State in all actions of the compact.

(D) The State Superintendent of Education, in coordination with the council, shall appoint or designate a military family education liaison as provided by Article VIII of the Interstate Compact on Educational Opportunity for Military Children.

(E) The council members serve without compensation. All members must be reimbursed for all reasonable and necessary expenses incurred in the performance of their duties. The costs of expenses of the legislative members incurred in the performance of their duties must be paid from appropriations to the representative body. The costs of expenses of nonlegislative citizen members incurred in the performance of their duties must be paid from funds as provided for this purpose in the annual appropriations act.

(F) The chairman of the council shall submit electronically to the Governor and the General Assembly an executive summary of the interim activity and work of the council no later than the first day of regular session of the General Assembly following the first full year of

the council's creation. Thereafter an executive summary must be electronically submitted biennially to the Clerk of the House of Representatives and the Clerk of the Senate and must be posted on the General Assembly's website.

Section 59-46-50. The Interstate Compact on Educational Opportunity for Military Children is enacted into law and entered into with all other jurisdictions legally joining in the compact in the form substantially as follows:

INTERSTATE COMPACT ON EDUCATIONAL OPPORTUNITY FOR MILITARY CHILDREN

ARTICLE I

PURPOSE

It is the purpose of this compact to remove barriers to educational success imposed on children of military families because of frequent moves and deployment of their parents by:

A. Facilitating the timely enrollment of children of military families and ensuring that they are not placed at a disadvantage due to difficulty in the transfer of education records from the previous school districts or variations in entrance/age requirements.

B. Facilitating the student placement process through which children of military families are not disadvantaged by variations in attendance requirements, scheduling, sequencing, grading, course content, or assessment.

C. Facilitating the qualification and eligibility for enrollment, educational programs, and participation in extracurricular academic, athletic, and social activities.

D. Facilitating the on-time graduation of children of military families.

E. Providing for the promulgation and enforcement of administrative rules implementing the provisions of this compact.

F. Providing for the uniform collection and sharing of information between and among member states, schools, and military families under this compact.

G. Promoting coordination between this compact and other compacts affecting military children.

H. Promoting flexibility and cooperation between the educational system, parents, and the student in order to achieve educational success for the student.

ARTICLE II

DEFINITIONS

As used in this compact, unless the context clearly requires a different construction:

A. 'Active duty' means: full-time duty status in the active uniformed service of the United States, including members of the National Guard and Reserve on active duty orders pursuant to U.S.C. Section 1209 and 1211.

B. 'Children of military families' means: school-aged children, enrolled in Kindergarten through Twelfth grade, in the household of an active duty member.

C. 'Compact commissioner' means: the voting representative of each compacting state appointed pursuant to Article VIII of this compact.

D. 'Deployment' means: the period one month prior to the service members' departure from their home station on military orders through six months after return to their home station.

E. 'Educational records' means: those official records, files, and data directly related to a student and maintained by the school or local education agency, including, but not limited to, records encompassing all the material kept in the student's cumulative folder, such as general identifying data, records of attendance and of academic work completed, records of achievement and results of evaluative tests, health data, disciplinary status, test protocols, and individualized education programs.

F. 'Extracurricular activities' means: a voluntary activity sponsored by the school or local education agency or an organization sanctioned by the local education agency. Extracurricular activities include, but are not limited to, preparation for and involvement in public performances, contests, athletic competitions, demonstrations, displays, and club activities.

G. 'Interstate Commission on Educational Opportunity for Military Children' means: the commission that is created under Article IX of this compact, which is generally referred to as Interstate Commission.

H. 'Local education agency' means: a public authority legally constituted by the State as an administrative agency to provide control

of and direction for Kindergarten through Twelfth grade public educational institutions.

I. 'Member state' means: a state that has enacted this compact.

J. 'Military installation' means: a base, camp, post, station, yard, center, homeport facility for any ship, or other activity under the jurisdiction of the Department of Defense, including any leased facility, which is located within any of the several states, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Northern Marianas Islands and any other U.S. Territory. Such term does not include any facility used primarily for civil works, rivers and harbors projects, or flood control projects.

K. 'Nonmember state' means: a state that has not enacted this compact.

L. 'Receiving state' means: the state to which a child of a military family is sent, brought, or caused to be sent or brought.

M. 'Rule' means: a written statement by the Interstate Commission promulgated pursuant to Article XII of this compact that is of general applicability, implements, interprets or prescribes a policy or provision of the compact, or an organizational, procedural, or practice requirement of the Interstate Commission, and has the force and effect of statutory law in a member state, and includes the amendment, repeal, or suspension of an existing rule.

N. 'Sending state' means: the state from which a child of a military family is sent, brought, or caused to be sent or brought.

O. 'State' means: a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Northern Marianas Islands and any other U.S. Territory.

P. 'Student' means: the child of a military family for whom the local education agency receives public funding and who is formally enrolled in Kindergarten through Twelfth grade.

Q. 'Transition' means:

(1) the formal and physical process of transferring from school to school; or

(2) the period of time in which a student moves from one school in the sending state to another school in the receiving state.

R. 'Uniformed services' means: the Army, Navy, Air Force, Marine Corps, Coast Guard as well as the Commissioned Corps of the National Oceanic and Atmospheric Administration, and Public Health Services.

S. 'Veteran' means: a person who served in the uniformed services and who was discharged or released there from under conditions other than dishonorable.

ARTICLE III

APPLICABILITY

(A) Except as otherwise provided in Section (B), this compact shall apply to the children of:

(1) active duty members of the uniformed services as defined in this compact, including members of the National Guard and Reserve on active duty orders pursuant to U.S.C. Section 1209 and 1211;

(2) members or veterans of the uniformed services who are severely injured and medically discharged or retired for a period of one year after medical discharge or retirement; and

(3) members of the uniformed services who die on active duty or as a result of injuries sustained on active duty for a period of one year after death.

(B) The provisions of this interstate compact shall only apply to local education agencies as defined in this compact.

(C) The provisions of this compact shall not apply to the children of:

(1) inactive members of the national guard and military reserves;

(2) members of the uniformed services now retired, except as provided in Section (A);

(3) veterans of the uniformed services, except as provided in Section (A), and other U.S. Dept. of Defense personnel and other federal agency civilian and contract employees not defined as active duty members of the uniformed services.

ARTICLE IV

EDUCATIONAL RECORDS & ENROLLMENT

A. Unofficial or 'hand-carried' education records - In the event that official education records cannot be released to the parents for the purpose of transfer, the custodian of the records in the sending state shall prepare and furnish to the parent a complete set of unofficial educational records containing uniform information as determined by the Interstate Commission. Upon receipt of the unofficial education records by a school in the receiving state, the school shall enroll and

appropriately place the student based on the information provided in the unofficial records pending validation by the official records, as quickly as possible.

B. Official education records/transcripts - Simultaneous with the enrollment and conditional placement of the student, the school in the receiving state shall request the student's official education record from the school in the sending state. Upon receipt of this request, the school in the sending state will process and furnish the official education records to the school in the receiving state within ten days or within such time as is reasonably determined under the rules promulgated by the Interstate Commission.

C. Immunizations - Compacting states shall give thirty days from the date of enrollment or within such time as is reasonably determined under the rules promulgated by the Interstate Commission, for students to obtain any immunizations required by the receiving state. For a series of immunizations, initial vaccinations must be obtained within thirty days or within such time as is reasonably determined under the rules promulgated by the Interstate Commission.

D. Kindergarten and First grade entrance age - Students shall be allowed to continue their enrollment at grade level in the receiving state commensurate with their grade level (including Kindergarten) from a local education agency in the sending state at the time of transition, regardless of age. A student that has satisfactorily completed the prerequisite grade level in the local education agency in the sending state shall be eligible for enrollment in the next highest grade level in the receiving state, regardless of age. A student transferring after the start of the school year in the receiving state shall enter the school in the receiving state on their validated level from an accredited school in the sending state.

ARTICLE V

PLACEMENT & ATTENDANCE

A. Course placement - When the student transfers before or during the school year, the receiving state school shall initially honor placement of the student in educational courses based on the student's enrollment in the sending state school and/or educational assessments conducted at the school in the sending state if the courses are offered. Course placement includes, but is not limited to, Honors, International Baccalaureate, Advanced Placement, vocational, technical and career pathways courses. Continuing the student's academic program from the

previous school and promoting placement in academically and career challenging courses should be paramount when considering placement. This does not preclude the school in the receiving state from performing subsequent evaluations to ensure appropriate placement and continued enrollment of the student in the courses.

B. Educational program placement - The receiving state school shall initially honor placement of the student in educational programs based on current educational assessments conducted at the school in the sending state or participation/placement in like programs in the sending state. Such programs include, but are not limited to: 1) gifted and talented programs; and 2) English as a second language (ESL). This does not preclude the school in the receiving state from performing subsequent evaluations to ensure appropriate placement of the student.

C. Special education services 1) In compliance with the federal requirements of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C.A. Section 1400, et seq, the receiving state shall initially provide comparable services to a student with disabilities based on his/her current Individualized Education Program (IEP); and 2) In compliance with the requirements of Section 504 of the Rehabilitation Act, 29 U.S.C.A. Section 21 794, and with Title II of the Americans with Disabilities Act, 42 U.S.C.A. Sections 12131-12165, the receiving state shall make reasonable accommodations and modifications to address the needs of incoming students with disabilities, subject to an existing 504 or Title II Plan, to provide the student with equal access to education. This does not preclude the school in the receiving state from performing subsequent evaluations to ensure appropriate placement of the students.

D. Placement flexibility local education agency administrative officials shall have flexibility in waiving course/program prerequisites, or other preconditions for placement in courses/programs offered under the jurisdiction of the local education agency.

E. Absence as related deployment activities - A student whose parent or legal guardian is an active duty member of the uniformed services, as defined by the compact, and has been called to duty for, is on leave from, or immediately returned from deployment to a combat zone or combat support posting, shall be granted additional excused absences at the discretion of the local education agency superintendent to visit with his or her parent or legal guardian relative to such leave or deployment of the parent or guardian.

ARTICLE VI

ELIGIBILITY

A. Eligibility for enrollment:

1. Special power of attorney, relative to the guardianship of a child of a military family and executed under applicable law shall be sufficient for the purposes of enrollment and all other actions requiring parental participation and consent.

2. A local education agency shall be prohibited from charging local tuition to a transitioning military child placed in the care of a noncustodial parent or other person standing in loco parentis who lives in a jurisdiction other than that of the custodial parent.

3. A transitioning military child, placed in the care of a noncustodial parent or other person standing in loco parentis who lives in a jurisdiction other than that of the custodial parent, may continue to attend the school in which he/she was enrolled while residing with the custodial parent.

B. Eligibility for extracurricular participation - State and local education agencies shall facilitate the opportunity for transitioning military children's inclusion in extracurricular activities, regardless of application deadlines, to the extent they are otherwise qualified.

ARTICLE VII

GRADUATION

In order to facilitate the on-time graduation of children of military families states and local education agencies shall incorporate the following procedures:

A. Waiver requirements. Local education agency administrative officials shall waive specific courses required for graduation if similar course work has been satisfactorily completed in another local education agency or shall provide reasonable justification for denial. Should a waiver not be granted to a student who would qualify to graduate from the sending school, the local education agency shall provide an alternative means of acquiring required coursework so that graduation may occur on time.

B. Exit exams. States shall accept: 1) exit or end-of-course exams required for graduation from the sending state; or 2) national norm referenced achievement tests; or 3) alternative testing, in lieu of

testing requirements for graduation in the receiving state. In the event the above alternatives cannot be accommodated by the receiving state for a student transferring in his or her Senior year, then the provisions of Article VII, Section C shall apply.

C. Transfers during Senior year. Should a military student transferring at the beginning or during his or her Senior year be ineligible to graduate from the receiving local education agency after all alternatives have been considered, the sending and receiving local education agencies shall ensure the receipt of a diploma from the sending local education agency, if the student meets the graduation requirements of the sending local education agency. In the event that one of the states in question is not a member of this compact, the member state shall use best efforts to facilitate the on-time graduation of the student in accordance with Sections (A) and (B) of this article.

ARTICLE VIII

STATE COORDINATION

A. Each member state shall, through the creation of a State Council or use of an existing body or board, provide for the coordination among its agencies of government, local education agencies and military installations concerning the state's participation in, and compliance with, this compact and Interstate Commission activities. While each member state may determine the membership of its own State Council, its membership must include at least: the state superintendent of education, superintendent of a school district with a high concentration of military children, representative from a military installation, one representative each from the legislative and executive branches of government, and other offices and stakeholder groups the State Council deems appropriate. A member state that does not have a school district deemed to contain a high concentration of military children may appoint a superintendent from another school district to represent local education agencies on the State Council.

B. The State Council of each member state shall appoint or designate a military family education liaison to assist military families and the state in facilitating the implementation of this compact.

C. The compact commissioner responsible for the administration and management of the state's participation in the compact shall be appointed by the Governor or as otherwise determined by each member state.

D. The compact commissioner and the military family education liaison designated herein shall be ex officio members of the State Council, unless either is already a full voting member of the State Council.

ARTICLE IX

INTERSTATE COMMISSION ON EDUCATIONAL OPPORTUNITY FOR MILITARY CHILDREN

The member states hereby create the 'Interstate Commission on Educational Opportunity for Military Children'. The activities of the Interstate Commission are the formation of public policy and are a discretionary state function. The Interstate Commission shall:

A. Be a body corporate and joint agency of the member states and shall have all the responsibilities, powers, and duties set forth herein, and such additional powers as may be conferred upon it by a subsequent concurrent action of the respective legislatures of the member states in accordance with the terms of this compact.

B. Consist of one Interstate Commission voting representative from each member state who shall be that state's compact commissioner.

1. Each member state represented at a meeting of the Interstate Commission is entitled to one vote.

2. A majority of the total member states shall constitute a quorum for the transaction of business, unless a larger quorum is required by the bylaws of the Interstate Commission.

3. A representative shall not delegate a vote to another member state. In the event the compact commissioner is unable to attend a meeting of the Interstate Commission, the Governor or State Council may delegate voting authority to another person from their state for a specified meeting.

4. The bylaws may provide for meetings of the Interstate Commission to be conducted by telecommunication or electronic communication.

C. Consist of ex officio, nonvoting representatives who are members of interested organizations. Such ex officio members, as defined in the bylaws, may include, but not be limited to, members of the representative organizations of military family advocates, local education agency officials, parent and teacher groups, the U.S. Department of Defense, the Education Commission of the States, the Interstate Agreement on the Qualification of Educational Personnel and

other interstate compacts affecting the education of children of military members.

D. Meet at least once each calendar year. The chairperson may call additional meetings and, upon the request of a simple majority of the member states, shall call additional meetings.

E. Establish an executive committee, whose members shall include the officers of the Interstate Commission and such other members of the Interstate Commission as determined by the bylaws. Members of the executive committee shall serve a one year term. Members of the executive committee shall be entitled to one vote each. The executive committee shall have the power to act on behalf of the Interstate Commission, with the exception of rulemaking, during periods when the Interstate Commission is not in session. The executive committee shall oversee the day-to-day activities of the administration of the compact including enforcement and compliance with the provisions of the compact, its bylaws and rules, and other such duties as deemed necessary. The U.S. Dept. of Defense, shall serve as an ex officio, nonvoting member of the executive committee.

F. Establish bylaws and rules that provide for conditions and procedures under which the Interstate Commission shall make its information and official records available to the public for inspection or copying. The Interstate Commission may exempt from disclosure information or official records to the extent they would adversely affect personal privacy rights or proprietary interests.

G. Give public notice of all meetings and all meetings shall be open to the public, except as set forth in the rules or as otherwise provided in the compact. The Interstate Commission and its committees may close a meeting, or portion thereof, where it determines by two-thirds vote that an open meeting would be likely to:

1. Relate solely to the Interstate Commission's internal personnel practices and procedures;

2. Disclose matters specifically exempted from disclosure by federal and state statute;

3. Disclose trade secrets or commercial or financial information which is privileged or confidential;

4. Involve accusing a person of a crime, or formally censuring a person;

5. Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

6. Disclose investigative records compiled for law enforcement purposes; or

7. Specifically relate to the Interstate Commission's participation in a civil action or other legal proceeding.

H. Shall cause its legal counsel or designee to certify that a meeting may be closed and shall reference each relevant exemptible provision for any meeting, or portion of a meeting, which is closed pursuant to this provision.

The Interstate Commission shall keep minutes which shall fully and clearly describe all matters discussed in a meeting and shall provide a full and accurate summary of actions taken, and the reasons therefor, including a description of the views expressed and the record of a roll call vote. All documents considered in connection with an action shall be identified in such minutes. All minutes and documents of a closed meeting shall remain under seal, subject to release by a majority vote of the Interstate Commission.

I. Shall collect standardized data concerning the educational transition of the children of military families under this compact as directed through its rules which shall specify the data to be collected, the means of collection and data exchange and reporting requirements. Such methods of data collection, exchange and reporting shall, insofar as is reasonably possible, conform to current technology and coordinate its information functions with the appropriate custodian of records as identified in the bylaws and rules.

J. Shall create a process that permits military officials, education officials, and parents to inform the Interstate Commission if and when there are alleged violations of the compact or its rules or when issues subject to the jurisdiction of the compact or its rules are not addressed by the state or local education agency. This section shall not be construed to create a private right of action against the Interstate Commission or any member state.

ARTICLE X

POWERS AND DUTIES OF THE INTERSTATE COMMISSION

The Interstate Commission shall have the following powers:

A. To provide for dispute resolution among member states.

B. To promulgate rules and take all necessary actions to effect the goals, purposes, and obligations as enumerated in this compact. The rules shall have the force and effect of statutory law and shall be binding in the compact states to the extent and in the manner provided in this compact.

C. To issue, upon request of a member state, advisory opinions concerning the meaning or interpretation of the interstate compact, its bylaws, rules, and actions.

D. To enforce compliance with the compact provisions, the rules promulgated by the Interstate Commission, and the bylaws, using all necessary and proper means, including, but not limited to, the use of judicial process.

E. To establish and maintain offices which shall be located within one or more of the member states.

F. To purchase and maintain insurance and bonds.

G. To borrow, accept, hire, or contract for services of personnel.

H. To establish and appoint committees including, but not limited to, an executive committee as required by Article IX, Section E, which shall have the power to act on behalf of the Interstate Commission in carrying out its powers and duties hereunder.

I. To elect or appoint such officers, attorneys, employees, agents, or consultants, and to fix their compensation, define their duties and determine their qualifications; and to establish the Interstate Commission's personnel policies and programs relating to conflicts of interest, rates of compensation, and qualifications of personnel.

J. To accept any and all donations and grants of money, equipment, supplies, materials, and services, and to receive, utilize, and dispose of it.

K. To lease, purchase, accept contributions or donations of, or otherwise to own, hold, improve or use any property, real, personal, or mixed.

L. To sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property, real, personal, or mixed.

M. To establish a budget and make expenditures.

N. To adopt a seal and bylaws governing the management and operation of the Interstate Commission.

O. To report annually to the legislatures, governors, judiciary, and state councils of the member states concerning the activities of the Interstate Commission during the preceding year. Such reports shall also include any recommendations that may have been adopted by the Interstate Commission.

P. To coordinate education, training, and public awareness regarding the compact, its implementation and operation for officials and parents involved in such activity.

Q. To establish uniform standards for the reporting, collecting, and exchanging of data.

R. To maintain corporate books and records in accordance with the bylaws.

S. To perform such functions as may be necessary or appropriate to achieve the purposes of this compact.

T. To provide for the uniform collection and sharing of information between and among member states, schools, and military families under this compact.

ARTICLE XI

ORGANIZATION AND OPERATION OF THE INTERSTATE COMMISSION

A. The Interstate Commission shall, by a majority of the members present and voting, within twelve months after the first Interstate Commission meeting, adopt bylaws to govern its conduct as may be necessary or appropriate to carry out the purposes of the compact, including, but not limited to:

1. Establishing the fiscal year of the Interstate Commission;

2. Establishing an executive committee, and such other committees as may be necessary;

3. Providing for the establishment of committees and for governing any general or specific delegation of authority or function of the Interstate Commission;

4. Providing reasonable procedures for calling and conducting meetings of the Interstate Commission, and ensuring reasonable notice of each such meeting;

5. Establishing the titles and responsibilities of the officers and staff of the Interstate Commission;

6. Providing a mechanism for concluding the operations of the Interstate Commission and the return of surplus funds that may exist upon the termination of the compact after the payment and reserving of all of its debts and obligations.

7. Providing ‘start up’ rules for initial administration of the compact.

B. The Interstate Commission shall, by a majority of the members, elect annually from among its members a chairperson, a vice-chairperson, and a treasurer, each of whom shall have such authority and duties as may be specified in the bylaws. The chairperson or, in the chairperson’s absence or disability, the vice-chairperson, shall preside at all meetings of the Interstate Commission. The officers so elected shall serve without compensation or remuneration from the

Interstate Commission; provided that, subject to the availability of budgeted funds, the officers shall be reimbursed for ordinary and necessary costs and expenses incurred by them in the performance of their responsibilities as officers of the Interstate Commission.

C. Executive Committee, Officers and Personnel

1. The executive committee shall have such authority and duties as may be set forth in the bylaws including, but not limited to:

a. Managing the affairs of the Interstate Commission in a manner consistent with the bylaws and purposes of the Interstate Commission;

b. Overseeing an organizational structure within, and appropriate procedures for the Interstate Commission to provide for the creation of rules, operating procedures, and administrative and technical support functions; and

c. Planning, implementing, and coordinating communications and activities with other state, federal, and local government organizations in order to advance the goals of the Interstate Commission.

3. The executive committee may, subject to the approval of the Interstate Commission, appoint or retain an executive director for such period, upon such terms and conditions and for such compensation, as the Interstate Commission may deem appropriate. The executive director shall serve as secretary to the Interstate Commission, but shall not be a member of the Interstate Commission. The executive director shall hire and supervise such other persons as may be authorized by the Interstate Commission.

D. The Interstate Commission's executive director and its employees shall be immune from suit and liability, either personally or in their official capacity, for a claim for damage to or loss of property or personal injury or other civil liability caused or arising out of or relating to an actual or alleged act, error, or omission that occurred, or that such person had a reasonable basis for believing occurred, within the scope of Interstate Commission employment, duties, or responsibilities; provided, that such person shall not be protected from suit or liability for damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of such person.

1. The liability of the Interstate Commission's executive director and employees or Interstate Commission representatives, acting within the scope of such person's employment or duties for acts, errors, or omissions occurring within such person's state may not exceed the limits of liability set forth under the Constitution and laws of that state for state officials, employees, and agents. The Interstate Commission is

considered to be an instrumentality of the states for the purposes of any such action. Nothing in this subsection shall be construed to protect such person from suit or liability for damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of such person.

2. The Interstate Commission shall defend the executive director and its employees and, subject to the approval of the Attorney General or other appropriate legal counsel of the member state represented by an Interstate Commission representative, shall defend such Interstate Commission representative in any civil action seeking to impose liability arising out of an actual or alleged act, error, or omission that occurred within the scope of Interstate Commission employment, duties, or responsibilities, or that the defendant had a reasonable basis for believing occurred within the scope of Interstate Commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from intentional or willful and wanton misconduct on the part of such person.

3. To the extent not covered by the state involved, member state, or the Interstate Commission, the representatives or employees of the Interstate Commission shall be held harmless in the amount of a settlement or judgment, including attorney's fees and costs, obtained against such persons arising out of an actual or alleged act, error, or omission that occurred within the scope of Interstate Commission employment, duties, or responsibilities, or that such persons had a reasonable basis for believing occurred within the scope of Interstate Commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from intentional or willful and wanton misconduct on the part of such persons.

ARTICLE XII

RULEMAKING FUNCTIONS OF THE INTERSTATE COMMISSION

A. Rulemaking Authority - The Interstate Commission shall promulgate reasonable rules in order to effectively and efficiently achieve the purposes of this compact. Notwithstanding the foregoing, in the event the Interstate Commission exercises its rulemaking authority in a manner that is beyond the scope of the purposes of this act, or the powers granted hereunder, then such an action by the Interstate Commission shall be invalid and have no force or effect.

B. Rulemaking Procedure - Rules shall be made pursuant to a rulemaking process that substantially conforms to the 'Model State Administrative Procedure Act', of 1981, Uniform Laws Annotated, Vol. 15, p.1 (2000) as amended, as may be appropriate to the operations of the Interstate Commission.

C. Not later than thirty days after a rule is promulgated, any person may file a petition for judicial review of the rule; provided, that the filing of such a petition shall not stay or otherwise prevent the rule from becoming effective unless the court finds that the petitioner has a substantial likelihood of success. The court shall give deference to the actions of the Interstate Commission consistent with applicable law and shall not find the rule to be unlawful if the rule represents a reasonable exercise of the Interstate Commission's authority.

D. If a majority of the legislatures of the compacting states rejects a rule by enactment of a statute or resolution in the same manner used to adopt the compact, then such rule shall have no further force and effect in any compacting state.

ARTICLE XIII

OVERSIGHT, ENFORCEMENT, AND DISPUTE RESOLUTION

A. Oversight

1. The executive, legislative, and judicial branches of state government in each member state shall enforce this compact and shall take all actions necessary and appropriate to effectuate the compact's purposes and intent. The provisions of this compact and the rules promulgated hereunder shall have standing as statutory law.

2. All courts shall take judicial notice of the compact and the rules in any judicial or administrative proceeding in a member state pertaining to the subject matter of this compact which may affect the powers, responsibilities, or actions of the Interstate Commission.

3. The Interstate Commission shall be entitled to receive all service of process in any such proceeding, and shall have standing to intervene in the proceeding for all purposes. Failure to provide service of process to the Interstate Commission shall render a judgment or order void as to the Interstate Commission, this compact, or promulgated rules.

B. Default, Technical Assistance, Suspension, and Termination - If the Interstate Commission determines that a member state has defaulted in the performance of its obligations or responsibilities under

this compact, or the bylaws or promulgated rules, the Interstate Commission shall:

1. Provide written notice to the defaulting state and other member states, of the nature of the default, the means of curing the default, and any action taken by the Interstate Commission. The Interstate Commission shall specify the conditions by which the defaulting state must cure its default.

2. Provide remedial training and specific technical assistance regarding the default.

3. If the defaulting state fails to cure the default, the defaulting state shall be terminated from the compact upon an affirmative vote of a majority of the member states and all rights, privileges, and benefits conferred by this compact shall be terminated from the effective date of termination. A cure of the default does not relieve the offending state of obligations or liabilities incurred during the period of the default.

4. Suspension or termination of membership in the compact shall be imposed only after all other means of securing compliance have been exhausted. Notice of intent to suspend or terminate shall be given by the Interstate Commission to the Governor, the majority and minority leaders of the defaulting state's legislature, and each of the member states.

5. The state which has been suspended or terminated is responsible for all assessments, obligations, and liabilities incurred through the effective date of suspension or termination including obligations, the performance of which extends beyond the effective date of suspension or termination.

6. The Interstate Commission shall not bear any costs relating to any state that has been found to be in default or which has been suspended or terminated from the compact, unless otherwise mutually agreed upon in writing between the Interstate Commission and the defaulting state.

7. The defaulting state may appeal the action of the Interstate Commission by petitioning the U.S. District Court for the District of Columbia or the federal district where the Interstate Commission has its principal offices. The prevailing party shall be awarded all costs of such litigation including reasonable attorney's fees.

C. Dispute Resolution

1. The Interstate Commission shall attempt, upon the request of a member state, to resolve disputes which are subject to the compact and which may arise among member states and between member and nonmember states.

2. The Interstate Commission shall promulgate a rule providing for both mediation and binding dispute resolution for disputes as appropriate.

D. Enforcement. The Interstate Commission, in the reasonable exercise of its discretion, shall enforce the provisions and rules of this compact. The Interstate Commission, may by majority vote of the members, initiate legal action in the United States District Court for the District of Columbia or, at the discretion of the Interstate Commission, in the federal district where the Interstate Commission has its principal offices, to enforce compliance with the provisions of the compact, its promulgated rules and bylaws, against a member state in default. The relief sought may include both injunctive relief and damages. In the event judicial enforcement is necessary the prevailing party shall be awarded all costs of such litigation including reasonable attorney's fees. The remedies herein shall not be the exclusive remedies of the Interstate Commission. The Interstate Commission may avail itself of any other remedies available under state law or the regulation of a profession.

ARTICLE XIV

FINANCING OF THE INTERSTATE COMMISSION

A. The Interstate Commission shall pay or provide for the payment of the reasonable expenses of its establishment, organization, and ongoing activities.

B. The Interstate Commission may levy on and collect an annual assessment from each member state to cover the cost of the operations and activities of the Interstate Commission and its staff which must be in a total amount sufficient to cover the Interstate Commission's annual budget as approved each year. The aggregate annual assessment amount shall be allocated based upon a formula to be determined by the Interstate Commission, which shall promulgate a rule binding upon all member states.

C. The Interstate Commission shall not incur obligations of any kind prior to securing the funds adequate to meet the same; nor shall the Interstate Commission pledge the credit of any of the member states, except by and with the authority of the member state.

D. The Interstate Commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Interstate Commission shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and

disbursements of funds handled by the Interstate Commission shall be audited yearly by a certified or licensed public accountant and the report of the audit shall be included in and become part of the annual report of the Interstate Commission.

ARTICLE XV

MEMBER STATES, EFFECTIVE DATE, AND AMENDMENT

A. Any state is eligible to become a member state.

B. The compact shall become effective and binding upon legislative enactment of the compact into law by no less than ten of the states. The effective date shall be no earlier than December 1, 2007. Thereafter it shall become effective and binding as to any other member state upon enactment of the compact into law by that state. The governors of nonmember states or their designees shall be invited to participate in the activities of the Interstate Commission on a nonvoting basis prior to adoption of the compact by all states.

C. The Interstate Commission may propose amendments to the compact for enactment by the member states. No amendment shall become effective and binding upon the Interstate Commission and the member states unless and until it is enacted into law by unanimous consent of the member states.

ARTICLE XVI

WITHDRAWAL AND DISSOLUTION

A. Withdrawal

1. Once effective, the compact shall continue in force and remain binding upon each and every member state; provided that a member state may withdraw from the compact by specifically repealing the statute, which enacted the compact into law.

2. Withdrawal from this compact shall be by the enactment of a statute repealing the same, but shall not take effect until one year after the effective date of such statute and until written notice of the withdrawal has been given by the withdrawing state to the governor of each other member jurisdiction.

3. The withdrawing state shall immediately notify the chairperson of the Interstate Commission in writing upon the introduction of legislation repealing this compact in the withdrawing state. The Interstate Commission shall notify the other member states of the

withdrawing state's intent to withdraw within sixty days of its receipt thereof.

4. The withdrawing state is responsible for all assessments, obligations, and liabilities incurred through the effective date of withdrawal, including obligations, the performance of which extend beyond the effective date of withdrawal.

5. Reinstatement following withdrawal of a member state shall occur upon the withdrawing state reenacting the compact or upon such later date as determined by the Interstate Commission.

B. Dissolution of Compact

1. This compact shall dissolve effective upon the date of the withdrawal or default of the member state which reduces the membership in the compact to one member state.

2. Upon the dissolution of this compact, the compact becomes null and void and shall be of no further force or effect, and the business and affairs of the Interstate Commission shall be concluded and surplus funds shall be distributed in accordance with the bylaws.

ARTICLE XVII

SEVERABILITY AND CONSTRUCTION

A. The provisions of this compact shall be severable, and if any phrase, clause, sentence, or provision is deemed unenforceable, the remaining provisions of the compact shall be enforceable.

B. The provisions of this compact shall be liberally construed to effectuate its purposes.

C. Nothing in this compact shall be construed to prohibit the applicability of other interstate compacts to which the states are members.

ARTICLE XVIII

BINDING EFFECT OF COMPACT AND OTHER LAWS

A. Other Laws:

1. Nothing herein prevents the enforcement of any other law of a member state that is not inconsistent with this compact.

2. All member states' laws conflicting with this compact are superseded to the extent of the conflict.

B. Binding Effect of the Compact:

1. All lawful actions of the Interstate Commission, including all rules and bylaws promulgated by the Interstate Commission, are binding upon the member states.

2. All agreements between the Interstate Commission and the member states are binding in accordance with their terms.

3. In the event any provision of this compact exceeds the constitutional limits imposed on the legislature of any member state, such provision shall be ineffective to the extent of the conflict with the constitutional provision in question in that member state."

Graduation of children who are new to South Carolina

SECTION 2. Chapter 5, Title 59 of the 1976 Code is amended by adding:

"Section 59-5-160. (A) In order to facilitate the on-time graduation of children of families who have moved to South Carolina during the child's twelfth grade year, the State Board of Education may:

(1) waive specific courses required for graduation if those courses were not specifically required for graduation in the student's most recent state of residence; however, the state board may not waive the number of courses required in ELA, math, and science. If a student does not have sufficient course credit to be issued a South Carolina diploma, the state board, to the extent possible, shall provide an alternative means of acquiring required coursework so that the student could receive a South Carolina high school diploma and graduation may occur on time; and

(2) may accept exit exams, end-of-course exams, or alternative testing required for graduation from the sending state in lieu of South Carolina testing requirements for graduation provided that all portions of these exams necessary for graduation from the sending state have been satisfactorily met.

(B) In the event the alternatives provided in subsection (A) cannot be accommodated after all alternatives have been considered, the State Board of Education shall work with other state boards and departments of education to help facilitate the receipt of a diploma from the sending state if the student meets the graduation requirements of that state.

(C) The State Board of Education shall develop guidelines and subsequent regulations to comply with the provisions of this section."

Compact rules binding only upon certain conditions

SECTION 3. Any rule of the Interstate Compact on Educational Opportunity for Military Children which is adopted subsequent to July 1, 2010, is binding on the State only if adopted by joint resolution by the General Assembly.

Tuition rates for armed service personnel and their dependents

SECTION 4. Section 59-112-50 of the 1976 Code, as last amended by Act 299 of 2008, is further amended to read:

"Section 59-112-50. Notwithstanding another provision of law, during the period of their assignment to duty in South Carolina, members of the Armed Services of the United States stationed in South Carolina and their dependents are eligible for in-state tuition rates. When these armed service personnel are ordered away from the State, their dependents are eligible for in-state tuition rates as long as they remain continuously enrolled at the state institution in which they are enrolled at the time the assignment ends or transfer to an eligible institution during the term or semester, excluding summer terms, immediately following their enrollment at the previous institution. In the event of a transfer, the receiving institution shall verify the decision made by the student's previous institution in order to certify the student's eligibility for in-state tuition rates. It is the responsibility of the transferring student to ensure that all documents required to verify both the previous and present residency decisions are provided to the institution. These persons and their dependents are eligible for in-state tuition rates after their discharge from the armed services even though they were not enrolled at a state institution at the time of their discharge, if they have evidenced an intent to establish domicile in South Carolina and if they have resided in South Carolina for a period of at least twelve months immediately preceding their discharge."

Time effective

SECTION 5. This act takes effect July 1, 2010, contingent upon available funding and agreement by the Interstate Commission to SECTION 3 of this act.

Ratified the 7th day of June, 2010.

Approved the 11th day of June, 2010.

No. 247

(R300, S452)

AN ACT TO AMEND CHAPTER 4, TITLE 49, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE "SOUTH CAROLINA SURFACE WATER WITHDRAWAL AND REPORTING ACT", SO AS TO CHANGE THE NAME TO THE "SOUTH CAROLINA SURFACE WATER WITHDRAWAL, PERMITTING, USE, AND REPORTING ACT"; TO REVISE AND ADD DEFINITIONS OF TERMS USED IN THIS ACT; TO PROVIDE THAT, SUBJECT TO CERTAIN EXCEPTIONS, SURFACE WATER WITHDRAWALS MUST BE MADE PURSUANT TO A PERMIT ISSUED BY THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL AND TO PROVIDE EXEMPTIONS FROM PERMITTING, REGISTERING, AND REPORTING FOR SPECIFIED USES OF SUCH WITHDRAWALS; TO REQUIRE AGRICULTURAL SURFACE WATER WITHDRAWERS TO REGISTER THEIR SURFACE WATER USE WITH THE DEPARTMENT AND TO GRANDFATHER CURRENTLY REGISTERED WITHDRAWERS AT THEIR AUTHORIZED QUANTITY; TO PROVIDE FOR NONCONSUMPTIVE SURFACE WATER WITHDRAWAL PERMITS; TO PROVIDE FOR SURFACE WATER WITHDRAWAL PERMITS FOR WITHDRAWERS THAT OWN AND OPERATE A LICENSED IMPOUNDMENT; TO REQUIRE PERMITTED AND REGISTERED SURFACE WATER WITHDRAWERS TO REPORT ANNUALLY TO THE DEPARTMENT THE QUANTITY OF WATER WITHDRAWN; TO PROVIDE THAT REGISTERED AND EXEMPT SURFACE WATER WITHDRAWERS MAY APPLY FOR A SURFACE WATER WITHDRAWAL PERMIT; TO PROVIDE THAT THE AUTHORIZED USE OF SURFACE WATER ON NONRIPARIAN LAND MUST BE GIVEN EQUAL CONSIDERATION WITH USES ON RIPARIAN LAND IN PROCEEDINGS RELATING TO WATER USES OR WATER

RIGHTS; TO FURTHER SPECIFY SURFACE WATER WITHDRAWAL PERMIT PROCEDURES AND REQUIREMENTS FOR NEW AND EXISTING SURFACE WATER WITHDRAWERS AND TO PROVIDE THAT EXISTING INTERBASIN TRANSFER PERMITS OR REGISTRATION HOLDERS ARE DEEMED TO BE SURFACE WATER WITHDRAWERS AND TO PROVIDE RENEWAL PROCEDURES FOR THESE PERMIT AND REGISTRATION HOLDERS; TO PROVIDE CRITERIA FOR DETERMINING IF A PROPOSED WATER USE IS REASONABLE; TO PROVIDE PUBLIC HEARING PROCEDURES FOR NEW SURFACE WATER WITHDRAWAL PERMIT APPLICATIONS, INCLUDING APPLICATIONS FOR INTERBASIN TRANSFERS, AND APPLICATIONS FOR SIGNIFICANT WATER QUANTITY INCREASES TO EXISTING PERMITS; TO SPECIFY THE CONTENTS AND DURATION OF AND THE RIGHTS CONFERRED BY A SURFACE WATER WITHDRAWAL PERMIT; TO PROVIDE THE CIRCUMSTANCES UNDER WHICH A PERMIT MAY BE MODIFIED, SUSPENDED, OR REVOKED; TO PROVIDE PROCEDURES AND CRITERIA FOR ISSUING RENEWAL PERMITS AND SIGNIFICANT INCREASES IN WATER WITHDRAWAL QUANTITIES; TO REQUIRE A SURFACE WATER WITHDRAWER TO NOTIFY THE DEPARTMENT OF CERTAIN SURFACE WATER INTAKE CHANGES; TO AUTHORIZE TEMPORARY SURFACE WATER WITHDRAWAL PERMITS; TO PROVIDE PROCEDURES TO MAINTAIN MINIMUM INSTREAM FLOW REQUIREMENTS; TO REQUIRE PERMITTEES TO PREPARE AND MAINTAIN OPERATIONAL AND CONTINGENCY PLANS TO PROMOTE AN ADEQUATE WATER SUPPLY WHEN THE FLOW OF THE SURFACE WATER IS LESS THAN THE MINIMUM INSTREAM FLOW FOR THAT SURFACE WATER SEGMENT; TO PROVIDE THE POWERS AND DUTIES OF THE DEPARTMENT IN ADMINISTERING THIS ACT; TO PROVIDE CIVIL AND CRIMINAL PENALTIES FOR VIOLATIONS OF THIS ACT; TO AMEND SECTION 48-2-30, RELATING TO THE ENVIRONMENTAL PROTECTION FUND, SO AS TO REQUIRE FEES COLLECTED BY THE DEPARTMENT IN THE ADMINISTRATION OF THE SURFACE WATER WITHDRAWAL, PERMITTING, USE, AND REPORTING ACT TO BE DEPOSITED INTO THIS FUND; TO

AMEND SECTION 48-2-50, RELATING TO FEES CHARGED BY THE DEPARTMENT IN ADMINISTERING PROGRAMS FROM WHICH FEES ARE DEPOSITED IN THE ENVIRONMENTAL PROTECTION FUND, SO AS TO ESTABLISH THE MAXIMUM AMOUNT FOR FEES CHARGED FOR SERVICES AND FUNCTIONS PROVIDED PURSUANT TO SURFACE WATER WITHDRAWALS, TO REQUIRE THE DEPARTMENT TO REPORT ANNUALLY TO THE GENERAL ASSEMBLY SURFACE WATER WITHDRAWAL FEES COLLECTED, TO PROVIDE THAT THESE SURFACE WATER WITHDRAWAL FEES ARE REPEALED JANUARY 1, 2013, AND TO PROVIDE THAT NO FEES MAY BY CHARGED FOR SURFACE WATER WITHDRAWAL APPLICATIONS UNTIL A FEE SCHEDULE IS ESTABLISHED BY THE GENERAL ASSEMBLY; TO REPEAL CHAPTER 21, TITLE 49 RELATING TO THE INTERBASIN TRANSFER OF WATER; TO PROVIDE THAT CHAPTER 1, TITLE 49, GENERAL PROVISIONS RELATING TO WATER, WATER RESOURCES, AND DRAINAGE, IS NOT AFFECTED BY AND SUPERSEDES CHAPTER 4, TITLE 49, THE "SOUTH CAROLINA SURFACE WATER WITHDRAWAL, PERMITTING, USE, AND REPORTING ACT", TO STATE THAT THE INTENTION OF THE GENERAL ASSEMBLY IS NOT TO AFFECT ONGOING LITIGATION BETWEEN SOUTH CAROLINA AND NORTH CAROLINA OR TO PREJUDICE ANY ARGUMENT THAT THIS STATE MAY MAKE IN SUCH LITIGATION.

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

Chapter revised

SECTION 1. Chapter 4, Title 49 of the 1976 Code is amended to read:

"CHAPTER 4

South Carolina Surface Water Withdrawal, Permitting Use, and Reporting Act

Section 49-4-10. This chapter may be cited as the "South Carolina Surface Water Withdrawal, Permitting, Use, and Reporting Act".

Section 49-4-20. As used in this chapter:

(1) 'Affected area' means that portion of a county or counties within a river basin that, under the circumstances, are determined by the department to likely be affected by a proposed surface water withdrawal.

(2) 'Agriculture facility' means any land, building, structure, pond, impoundment, appurtenance, machinery, or equipment which is used for the commercial production or processing of crops, trees, livestock, animals, poultry, honeybees, honeybee products, livestock products, poultry products, or products which are used in commercial aquaculture.

(3) 'Agricultural use' means:

(a) plowing, tilling, or preparing the soil at an agricultural facility;

(b) planting, growing, fertilizing, or harvesting crops, ornamental horticulture, floriculture, and turf grasses;

(c) application of pesticides, herbicides, or other chemicals, compounds, or substances to crops, weeds, or soil in connection with the production of crops, livestock, animals, or poultry;

(d) breeding, hatching, raising, producing, feeding, keeping, slaughtering, or processing livestock, hogs, aquatic animals, equines, chickens, turkeys, poultry, or other fowl normally raised for food, mules, cattle, sheep, goats, rabbits, or similar farm animals for commercial purposes;

(e) producing and keeping honeybees, producing honeybee products, and honeybee processing facilities;

(f) producing, processing, or packaging eggs or egg products;

(g) manufacturing feed for poultry or livestock;

(h) rotation of crops;

(i) commercial aquaculture;

(j) application of existing, changed, or new technology, practices, processes, or procedures to an agricultural use;

(k) the operation of a roadside market; and

(l) silviculture.

(4) 'Consumptive use' means any use of water which is not a nonconsumptive use.

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

(6) 'Diffuse surface water' means water on the surface of the earth not located in defined courses, streams, or water bodies.

(7) 'Drought contingency pond' means a pond or lake designated solely as a supplemental water source in a surface water withdrawer's operational and contingency plan.

(8) 'Emergency withdrawal' means the withdrawal of water, for a period not exceeding thirty days, for the purpose of firefighting, hazardous substance waste spill response, or both, or other emergency withdrawal of water as determined by the department.

(9) 'Existing surface water withdrawer' means a surface water withdrawer withdrawing surface water as of the effective date of this chapter or a proposed surface water withdrawer with its intakes under construction before the effective date of this chapter or with all necessary applications for its intake permits deemed administratively complete before January first of the year of the effective date of this act.

(10) 'Farm pond' means a pond completely situated on private property that is only used for providing water for agricultural uses.

(11) 'Impoundment' means a dam, dike, natural structure, or any combination thereof that is designed to hold an accumulation of surface water or impede the flow of surface water.

(12) 'Interbasin transfer' means the withdrawal of surface water from a river basin and the movement of that water to a river basin different from the source of the withdrawal.

(13) 'Minimal changes in water quantity' means that greater than ninety percent of the water withdrawn by a surface water withdrawer, based upon the previous twenty-four months of historical data, is returned to the waters of origin; provided, that either the amount of water not returned to the water source does not:

(a) exceed three million gallons during any one month; or

(b) significantly reduce the safe yield at the withdrawal point.

(14) 'Minimum instream flow' means the flow that provides an adequate supply of water at the surface water withdrawal point to maintain the biological, chemical, and physical integrity of the stream taking into account the needs of downstream users, recreation, and navigation and that flow is set at forty percent of the mean annual daily flow for the months of January, February, March, and April; thirty percent of the mean annual daily flow for the months of May, June, and December; and twenty percent of the mean annual daily flow for the months of July through November for surface water withdrawers as described in Section 49-4-150(A)(1). For surface water withdrawal points located on a surface water segment downstream of and influenced by a licensed or otherwise flow controlled impoundment, 'minimum instream flow' means the flow that provides an adequate

supply of water at the surface water withdrawal point to maintain the biological, chemical, and physical integrity of the stream taking into account the needs of downstream users, recreation, and navigation and that flow is set in Section 49-4-150(A)(3).

(15) 'Minimum water level' means the water level in an impoundment necessary to maintain the biological, chemical, and physical integrity of the surface water in the impoundment taking into account downstream uses, withdrawals from the impoundment, and recreational and navigational needs as established by an existing federal regulatory process or established through consultation between the department and the operator of the impoundment.

(16) 'Nonconsumptive use' means a use of surface water withdrawn in such a manner that it is returned to its waters of origin within the boundaries of contiguous property owned by the surface water withdrawer with no or minimal changes in water quantity.

(17) 'Permit' or 'surface water withdrawal permit' means a written authorization issued to a person by the department that allows the person to hold and exercise a water right to withdraw surface water pursuant to the terms of the permit and this chapter.

(18) 'Permitted surface water withdrawer' means a person withdrawing surface water pursuant to a surface water withdrawal permit.

(19) 'Permittee' means a person authorized to make withdrawals of surface water pursuant to a surface water withdrawal permit issued by the department.

(20) 'Person' means an individual, firm, partnership, trust, estate, association, public or private institution, municipality, or political subdivision, governmental agency, public water system, or a private or public corporation or other legal entity organized under the laws of this State or any other state or county.

(21) 'Proposed registered surface water withdrawer' means a proposed surface water withdrawer whose planned operations would result in his withdrawals being subject to the reporting but not the permitting requirements of this chapter.

(22) 'Public water system' means a water system as defined in Section 44-55-20 of the State Safe Drinking Water Act.

(23) 'Registered surface water withdrawer' means a person who makes surface water withdrawals for agricultural uses at an agricultural facility that is filing a report pursuant to Section 49-4-50.

(24) 'River basin' means the area drained by a river and its tributaries or through a specified point on a river, as determined in Section 49-4-80(K)(2).

(25) 'Safe yield' means the amount of water available for withdrawal from a particular surface water source in excess of the minimum instream flow or minimum water level for that surface water source. Safe yield is determined by comparing the natural and artificial replenishment of the surface water to the existing or planned consumptive and nonconsumptive uses.

(26) 'Supplemental water source' means a source of water different from the source of permitted withdrawal that will be used when an adequate amount of water is unavailable for withdrawal from the permitted source, including, but not limited to, ground water wells, aquifer storage and recovery projects, water storage facilities, drought contingency ponds, and connections to other water providers.

(27) 'Surface water' means all water that is wholly or partially within the State, including the Savannah River, or within its jurisdiction, which is open to the atmosphere and subject to surface runoff, including, but not limited to, lakes, streams, ponds, rivers, creeks, runs, springs, and reservoirs, but not including water and wastewater treatment impoundments, off-stream supplemental operations related impoundments, or water storage structures constructed by the surface water withdrawer to provide adequate supplies of surface water during low flow conditions.

(28) 'Surface water withdrawer' means a person withdrawing surface water in excess of three million gallons during any one month from a single intake or multiple intakes under common ownership within a one mile radius from any one existing or proposed intake.

(29) 'Withdrawal' means to remove surface water from its natural course or location, or exercising physical control over surface water in its natural course or location, regardless of whether the water is returned to its waters of origin, consumed, transferred to another river basin, or discharged elsewhere.

Section 49-4-25. Except as provided in Sections 49-4-30, 49-4-35, 49-4-40, and 49-4-45, all surface water withdrawals by a surface water withdrawer are unlawful unless made pursuant to a surface water withdrawal permit issued pursuant to this chapter. The department may not issue a permit to a new applicant unless the department determines that the applicant's proposed use is reasonable pursuant to this chapter.

Section 49-4-30. (A) Surface water withdrawals for the following purposes are exempt from the permitting, registering, and reporting requirements provided for in this chapter:

(1) withdrawals associated with active instream dredging or sand-mining operations or other nonconsumptive instream mining operations undertaken pursuant to the South Carolina Mining Act;

(2) emergency withdrawals;

(3) agricultural uses from farm ponds:

(a) owned or leased by the person making the withdrawal; or

(b) situated on two or more separately owned parcels of private property if each property owner agrees to the withdrawal;

(4) a person withdrawing surface water from any pond completely situated on private property and which is supplied only by diffuse surface water springs completely situated on the private property or groundwater withdrawals;

(5) naturally occurring evaporation from impoundments;

(6) a person withdrawing, using, or discharging surface water for the purpose of wildlife habitat management; and

(7) a special purpose district withdrawing surface water from any pond completely situated on property owned by a special purpose district and which is supplied only by diffuse surface water or springs completely situated on the special purpose district's property.

(B) Hydropower generation, including pumped storage, is exempt from the permitting requirements of this chapter but not the reporting requirements in Section 49-4-50.

Section 49-4-35. (A) Registered surface water withdrawers must register their surface water use with the department on forms provided by the department and are subject only to the reporting requirements of Section 49-4-50. Registered surface water withdrawers are authorized to withdraw surface water up to their registered amount.

(B) An existing registered surface water withdrawer already reporting its withdrawals to the department as of January 1, 2011, may maintain its withdrawals at its highest reported level or at the design capacity of the intake structure which will be permanent as of January 1, 2011, and is deemed to be registered with the department.

(C) Prior to constructing or installing a water intake, a proposed registered surface water withdrawer must report its anticipated withdrawal quantity to the department for determination as to whether that quantity is within the safe yield for that water source at the time of the request. Upon making a determination, the department must send a detailed description of its determination to the proposed registered surface water withdrawer by registered mail. A proposed registered surface water withdrawer may not begin his proposed withdrawals until he notifies the department of his anticipated withdrawals and the

department provides written notification to the proposed registered surface water withdrawer that authorizes him to proceed, if the anticipated withdrawals are within the safe yield at the time of the request. If the department provides a proposed registered surface water withdrawer with written notification that the anticipated withdrawals are not within the safe yield, then the proposed registered surface water withdrawer may not proceed with the construction or installation of a water intake. Proposed registered surface water withdrawers are authorized to make withdrawals up to the department approved anticipated withdrawal amounts during the first year of registration and are authorized to make withdrawals in the amounts permitted by subsection (A) during subsequent years.

(D) Registered surface water withdrawers that begin surface water withdrawal operations after the effective date of this section shall submit a registration form to the department within thirty days after completing construction of its surface water intake. An existing registered surface water withdrawer that would like to substantially increase the amount of surface water for which he is registered to withdraw must submit the anticipated amount of the increase for consideration by the department in the manner provided for in subsection (C).

(E) The department may modify the amount an existing registered surface water withdrawer may withdraw, or suspend or revoke a registered surface water withdrawer's authority to withdraw water, if the registered surface water withdrawer withdraws substantially more surface water than he is registered for or anticipates withdrawing, as the case may be, and the withdrawals result in detrimental effects to the environment or human health.

(F) Nothing in this chapter prohibits a registered surface water user from applying for and obtaining a surface water withdrawal permit.

Section 49-4-40. (A) Upon proper application, the department shall issue a permit for surface water withdrawals to nonconsumptive users. The application only must require that information necessary for the department to determine that the proposed withdrawals will result in no or minimal changes in water quantity.

(B) Permits issued pursuant to this section must identify the surface water withdrawer, the point of withdrawal, the maximum withdrawal amounts, and the point of return. A permit for a nonconsumptive use is subject only to the reporting requirements of Section 49-4-50.

Section 49-4-45. (A)(1) A new surface water withdrawer that owns and operates a licensed impoundment that utilizes water withdrawn from its licensed impoundment and the withdrawals are subject to review and approval of applicable state and federal laws and regulations, including its impoundment licensing authority, shall be issued a surface water withdrawal permit upon proper application.

(2) Any other new surface water withdrawer that utilizes water withdrawn from a licensed impoundment shall be issued a surface water withdrawal permit upon proper application in accordance with the criteria contained in this chapter. If this new surface water withdrawer has been issued a license, permit, or certification through a state or federal process that reviewed criteria substantially similar to some or all of the surface water withdrawal criteria contained in this chapter, then the application for the new surface water withdrawal is only required to address the criteria not addressed when the new surface water withdrawer was issued a license, permit, or certification through a state or federal process.

(B) Permits issued pursuant to this section will be required to identify the surface water withdrawer, the point of withdrawal, and the maximum withdrawal amounts and also will require that the applicant comply with the reporting requirements of Section 49-4-50.

(C) Nothing in this chapter shall be construed to diminish the department's authority to regulate facilities under any other applicable laws.

Section 49-4-50. (A) Each permitted or registered surface water withdrawer must file a report with the department of the quantity of water withdrawn by that surface water withdrawer annually before February first, on forms furnished by the department.

(B) The quantity of surface water withdrawn must be determined by one of the following:

(1) flow meters accurate to within ten percent of calibration;

(2) the rated capacity of the pump in conjunction with the use of an hour meter, electric meter, or log;

(3) the rated capacity of the cooling systems;

(4) any standard or method employed by the United States Geological Survey in determining these quantities;

(5) any other method found to provide reliable water withdrawal data approved by the department.

(C) Permitted and registered surface water withdrawers who are required to file a surface water withdrawal report pursuant to subsection (A) are not required to submit the report if the monthly

quantity withdrawn from each intake is being reported to the department as a result of another environmental program reporting requirement, permit condition, or consent agreement.

Section 49-4-55. (A) A registered surface water withdrawer is not prohibited from applying for a surface water withdrawal permit. The permit application must be considered using the criteria established in the section establishing the permit for which the registered surface water withdrawer is applying. A registered surface water withdrawer that obtains a surface water withdrawal permit must abide by all of the terms of this chapter related to permit holders and is entitled to all of the rights conferred by a permit.

(B) An exempt surface water withdrawer is not prohibited from applying for a surface water withdrawal permit or from registering its use. An exempt surface water withdrawer's application for a permit must be considered using the criteria established in the section establishing the permit for which the registered surface water withdrawer is applying. An exempt surface water withdrawer that obtains a permit or registers its use is entitled to all of the rights conferred upon by a permit or a registered surface water withdrawer, as the case may be.

Section 49-4-60. The use of surface water on nonriparian land authorized pursuant to this chapter is lawful and is entitled to equal consideration with uses on riparian land in any administrative or judicial proceeding relating to the allocation, withdrawal, or use of water or to the modification of a water right. Nothing in this chapter may be construed to authorize access to waters of the State by a person seeking to make a nonriparian use apart from access otherwise lawfully available to that person.

Section 49-4-70. (A) After the effective date of regulations promulgated by the department pursuant to this chapter, a new surface water withdrawer must obtain a surface water withdrawal permit from the department before making surface water withdrawal. A permitted surface water withdrawer that would like to increase its permitted withdrawal amount must apply to the department for the increased amount.

(B)(1) An existing surface water withdrawer must apply for a permit pursuant to this chapter within one hundred eighty days of the effective date of regulations promulgated by the department pursuant to this chapter. An existing surface water withdrawer that applies for a permit

must be issued an initial permit but the initial permit and subsequent renewals are not subject to the permitting criteria in Section 49-4-80 and are not subject to Section 49-4-150. The initial permit must authorize the existing surface water withdrawer to withdraw surface water in an amount equal to its documented historical water use, current permitted treatment capacity, design capacity of the intake structure as of the effective date of this chapter, design capacity of a pending intake structure permit application, an amount necessary to recover indebtedness from an outstanding bond or revenue certificate issued through the sale of surface water, or for a publicly owned water utility, the safe yield of the utility's existing or permitted water supply only reservoir, whichever is greatest. An existing surface water withdrawer that applies for an initial permit may continue to withdraw surface water at its documented levels from the effective date of this act until its initial permit is issued pursuant to this section, unless the applicant requests a lesser quantity.

(2) For an existing surface water withdrawer, the operational and contingency plan required under Section 49-4-160 will only address appropriate industry standards for water conservation.

(3) An existing surface water withdrawer may request that its initial permit allow the surface water withdrawer to withdraw a reasonable amount in excess of the amount provided for in item (1). The department must use the criteria established in Section 49-4-80 to make its determination concerning approval of the quantity requested in excess of the quantity provided for in item (1). However, any increase requested by a surface water withdrawer issued a permit pursuant to Section 49-4-40 or Section 49-4-45 shall be subject only to the requirements contained in the applicable section.

(C) The expiration date of an interbasin transfer permit or an interbasin registration, including any water withdrawal right or authority contained in the permit or registration, in existence on the effective date of this chapter remains effective. For the purposes of this chapter, existing interbasin transfer permit or interbasin registration holders are deemed to be existing surface water withdrawers. A renewal of an interbasin transfer permit or registration must be made pursuant to the criteria established in this chapter for existing surface water withdrawers, except that permits or registrations renewed within three years after the effective date of this chapter must be renewed for a quantity at least equal to the permitted quantity in the expired permit. All other renewals must be issued in accordance with the criterion applicable to existing surface water withdrawers and for a quantity equal to the permitted quantity in the expired permit, unless

the department demonstrates by a preponderance of the evidence that the quantity above maximum withdrawals during the permit term are not necessary to meet the permittee's future need.

Section 49-4-80. (A) An application for a surface water withdrawal permit must contain the following information:

(1) the name and address of the applicant;

(2) the location of the applicant's intake facilities;

(3) the place and nature of the proposed use of the surface water withdrawn;

(4) the quantity of surface water requested and for the applicant's proposed use; and

(5) the estimated ratio between water withdrawn and consumptive use of water withdrawn.

(B) To determine whether an applicant's proposed use is reasonable, the department must consider the following criteria:

(1) the minimum instream flow or minimum water level and the safe yield for the surface water source at the location of the proposed surface water withdrawal;

(2) the anticipated effect of the applicant's proposed use on existing users of the same surface water source including, but not limited to, present agricultural, municipal, industrial, electrical generation, and instream users;

(3) the reasonably foreseeable future need for the surface water including, but not limited to, reasonably foreseeable agricultural, municipal, industrial, electrical generation, and instream uses;

(4) whether it is reasonably foreseeable that the applicant's proposed withdrawals would result in a significant, detrimental impact on navigation, fish and wildlife habitat, or recreation;

(5) the applicant's reasonably foreseeable future water needs from that surface water;

(6) the beneficial impact on the State and its political subdivisions from a proposed withdrawal;

(7) the impact of applicable industry standards on the efficient use of water, if followed by the applicant;

(8) the anticipated effect of the applicant's proposed use on the following if the permit is granted:

(a) interstate and intrastate water use;

(b) public health and welfare;

(c) economic development and the economy of the State; and

(d) applicable federal laws and interstate agreements and compacts; and

(9) any other reasonable criteria that the department promulgates by regulation that it considers necessary to make a final determination.

(C) The department shall determine the safe yield of the surface water source and the volume of supplemental water supply, if needed, necessary to sustain the applicant's proposed water use. In making the safe yield determination, the department, in consultation with the Department of Natural Resources, may perform stream flow modeling.

(D) The department must determine the minimum instream flow requirement for the surface water body at the point of the proposed withdrawal.

(E) The department must consult with the Department of Natural Resources to determine which, if any, existing stream flow measuring devices should be utilized to quantify the stream flow at the point of the proposed withdrawal. If no existing measuring device is suitable, the Department of Natural Resources will recommend the location of a new measuring device.

(F) The department must consult with the Department of Natural Resources to quantify the stream flow measured at the specified measuring device that will require a reduction in the applicant's water withdrawal because of inadequate stream flow at the point of withdrawal.

(G) The department shall develop a mechanism for notifying the applicant that its withdrawal must be reduced because of inadequate stream flow at the point of the proposed withdrawal.

(H) The department must share all findings of subsections (C) through (G) with the applicant.

(I) If the department determines that a supplemental water supply is required, the applicant must demonstrate that the supplemental water supply will be comprised of sources other than the surface water source from which the surface water withdrawals are made during nonlow flow conditions. This section does not prevent a licensee from replenishing his supplemental water supply from the source of the surface water withdrawal during appropriate flows.

(J) Upon a determination by the department that, based upon its examination of the criteria in subsection (B), the applicant's use is reasonable, the department shall issue a permit to the applicant.

(K)(1) Except as provided in Section 49-4-90, upon receipt of a new surface water withdrawal permit application or an application to significantly increase the amount of water that may be withdrawn under an existing permit and the appropriate filing fee, the department must, within thirty days, provide the public with notice of the application. In addition to the department's usual public notice

procedures, the department must publish notice of the application in a newspaper of statewide circulation and in the local newspaper with the greatest general circulation in the affected area and on the department's website. The public notice must contain the location and amount of the proposed withdrawal, the use for which the water will be withdrawn, and the process for requesting a public hearing concerning the application. If within thirty days of the publication of the public notice the department receives a request to hold a public hearing from at least twenty citizens or residents of the affected area, the department must conduct a hearing. The hearing must be held within ninety days at an appropriate time and in an appropriate location near the specific site from which surface water withdrawals are proposed to be made.

(2) The department shall by regulation delineate and designate river basins to be used when determining the affected area for a particular surface water withdrawal application. In undertaking this task, the department shall initially establish fifteen river basins, including the watershed of each of the following fifteen rivers or river systems:

(a) Upper Savannah;
(b) Lower Savannah;
(c) Saluda;
(d) Broad;
(e) Congaree;
(f) Catawba-Wateree;
(g) Lynches;
(h) Pee Dee;
(i) Little Pee Dee;
(j) Black;
(k) Waccamaw;
(l) Lower Santee;
(m) Edisto;
(n) Ashley-Cooper; and
(o) Combahee-Coosawhatchie.

(L) If the department determines that a new surface water withdrawal permit application or an application to significantly increase the amount of water that may be withdrawn under an existing permit must be denied because there is not enough water in the safe yield, the department may meet with the other permitted withdrawers in the affected stream segment or basin, as appropriate, to determine whether the other permitted withdrawers can reach mutually agreed upon permit reductions to accommodate the applicant.

Section 49-4-90. (A) The department must hold a public hearing concerning new surface water withdrawal permit applications for interbasin transfers. The hearing must be held at an appropriate time and in an appropriate location near the withdrawal point of the interbasin transfer. The hearing may not be held until after at least thirty days' notice is given to the public in the manner provided in this section. The notice must:

(1) include a nontechnical description of the applicant's request;

(2) include a conspicuous statement in bold type describing the effects of the interbasin transfer on the river basin from which the water will be withdrawn and the river basin into which the withdrawn water will be transferred; and

(3) describe the procedure that a person must follow to submit a comment concerning the proposed interbasin transfer.

(B) Upon the receipt of a new surface withdrawal permit application for an interbasin transfer and the appropriate filing fee, the department must, within thirty days, provide notice as required in this section, in the following manner:

(1) by publication in the South Carolina State Register;

(2) by publication in a newspaper of general circulation in the affected area of the river basin downstream from the point of withdrawal;

(3) by publication on the department's website; and

(4) through standard United States mail to:

(a) any person holding a permit issued by the department authorizing surface water withdrawals, including interbasin transfers, from the river basin from which the water for the proposed transfer would be withdrawn;

(b) any person holding a National Pollutant Discharge Elimination System (NPDES) wastewater discharge permit authorizing wastewater discharge into the river basin where the proposed withdrawal point of the proposed interbasin transfer is located;

(c) any city or county governing body whose jurisdiction is located entirely or partially within the river basin that is the source of the proposed transfer;

(d) the governing body of a public water supply system that withdraws water from the same river basin where the proposed withdrawal point of the proposed transfer is located; and

(e) any agency from another state where an interstate water basin is the source of the proposed transfer.

Section 49-4-100. (A) Surface water withdrawal permits issued by the department must:

(1) identify the location of the permitee's intake facility used or constructed to make withdrawals pursuant to the permit;

(2) specify the amount of water that may be withdrawn;

(3) specify the amount of water to be discharged back into the surface water body and location of the discharge;

(4) specify the volume of supplemental water supply if needed;

(5) specify the minimum instream flow at the point of withdrawal;

(6) specify the minimum instream flow triggers that will determine if the permitee's withdrawal must be reduced;

(7) specify the stream flow, that will be used to notify the applicant of starting the reduction of withdrawal;

(8) specify the date upon which the permit expires; and

(9) clearly state that the terms and conditions of the permit are subject to the provisions of the South Carolina Drought Response Act.

(B) Permits issued by the department, unless revoked or suspended pursuant to this chapter, shall be valid for a period to represent the economic life of any capital investments made by the permittee necessary to carry out the permittee's use of the withdrawn water. Permits must be issued for:

(1) twenty years, or a greater period the department considers reasonable based upon its review of all the facts and circumstances relevant to a proposed withdrawal not to exceed an additional twenty years;

(2) thirty years for a permittee entitled to an initial permit pursuant to Section 49-4-70(B), or a greater period the department considers reasonable based upon its review of all the facts and circumstances relevant to the proposed withdrawal not to exceed an additional ten years; or

(3) any additional period necessary, not to exceed a total of fifty years, for a municipality or other governmental body to retire a bond it issued to finance the construction of waterworks.

Section 49-4-110. (A) A surface water withdrawal permit confers upon the permittee a right to withdraw and use surface water pursuant to the terms and conditions of the permit. The permit does not convey a property right in the water to the permittee. Nothing in this chapter shall affect any requirement under any other law or regulation, including any requirement for the owner or operator of a proposed new or expanding water withdrawal facility that will be constructed within

the boundaries of a reservoir operated by a different entity to obtain the reservoir operator's approval before constructing and operating the proposed new water withdrawal facility or expanding an existing water withdrawal facility.

(B) Surface water withdrawals made by permitted or registered surface water withdrawers shall be presumed to be reasonable. No private cause of action for damages arising directly from a surface water withdrawal by a permitted or registered surface water withdrawer may be maintained unless the plaintiff can show a violation of a valid permit or registration.

(C) Issuance of a surface water withdrawal permit under this chapter does not relieve the permittee from being required to obtain and comply with any other permits or approvals that may be required under other laws, or existing agreements, or under common law. Nothing in this chapter shall prevent an impoundment licensee from requiring persons seeking to withdraw water from a licensed reservoir to comply with any and all conditions that the licensee is empowered to require under its license and applicable laws.

Section 49-4-120. (A) The department may modify, suspend, or revoke a permit under the following conditions:

(1) the permit holder withdraws water not authorized by his permit or fails to comply with the terms and conditions of his permit;

(2) the permit holder obtains a permit by misrepresentation or fails to disclose a material fact in his application;

(3) the permit holder ceases to withdraw water for a period of at least thirty-six consecutive months; or

(4) a permanent change in natural conditions results in a permitted activity endangering human health or the environment.

(B) Surface water permits are transferable with the prior written consent of the department.

(C)(1) A permittee may apply for a renewal of his permit no sooner than six months before his permit expires. A permit shall remain valid during the department's consideration of a renewal application if the permittee files a renewal application prior to the expiration date of his permit. Renewal applications take priority over permit applications for new withdrawals. The renewed permit must be issued in accordance with the criterion applicable to the issuance of the initial permit and for a quantity at least equal to the expired permit unless the department demonstrates that the quantity above maximum withdrawals during the permit term are not necessary to meet the permittee's future needs.

(2) An application to modify an existing permit for a significant increase in the quantity of the withdrawal must be evaluated using the criteria provided in Section 49-4-80. However, any significant increase in surface water withdrawals authorized pursuant to Section 49-4-40 or Section 49-4-45 shall be subject only to the requirements set forth in that section.

Section 49-4-130. A surface water withdrawer must provide the department with prior written notice of the construction of a new surface water intake that changes the method of measuring the water the permittee is withdrawing, cessation of its surface water withdrawals, a proposed change in ownership, or the abandonment of a surface water intake.

Section 49-4-140. The department may issue a temporary surface water withdrawal permit to a new applicant while his application is pending, if the temporary permit is necessary to address an imminent hazard to public health or the applicant demonstrates that without a temporary permit he will suffer physical or financial damage. A temporary permit must contain an expiration date, which must not be more than one hundred eighty days after it was issued. The issuance of a temporary permit does not guarantee that the department will issue a permanent permit to the applicant.

Section 49-4-150. (A)(1)(a) For new surface water withdrawers located on a stream segment not influenced by a licensed or otherwise flow controlled impoundment, the surface water withdrawal permit authorizes withdrawals up to the permitted amount pursuant to this chapter's definition of minimum instream flow subject to the provisions contained in subsection (A)(1)(b).

(b) Anytime the flow at the point of the permitted withdrawal is less than or equal to the minimum instream flow and taking into consideration natural and artificial replenishment of the surface water and existing or planned consumptive and nonconsumptive uses affected by the withdrawal downstream, the permitted surface water withdrawer must implement applicable portions of his water contingency plan and will discontinue consumptive use from the surface water source. If after all reasonable contingency plans have been implemented, and the surface water withdrawer is within fifteen days of exhausting the usable water supply from his supplemental water source, he may then give notice to the department that he is exhausting his supplemental water sources and that he intends to return to the withdrawal source in

amounts up to his permitted amount. Upon receiving notice, the department must determine whether all or any portion of the withdrawal will result in a significant negative impact to an existing user or the environment if the permitted withdrawals are resumed. If the department does not make its determination within ten days of receipt of notice, the permittee may make withdrawals up to the permitted amount until the department notifies the permittee whether all or any portion of the withdrawal will result in a significant negative impact to an existing user or the environment during this low flow period.

(2)(a) The permitted surface water withdrawer may withdraw water from the permitted surface withdrawal point in order to refill his supplemental water source, or other drought contingency water supply vessels, anytime the river flow exceeds the minimum instream flow.

(b) The permitted surface water withdrawer utilizing a drought contingency pond as all or some of his supplemental water source may withdraw the entire volume of water from the pond during low flow periods requiring supplemental water source usage. Water withdrawn from drought contingency ponds are not subject to environmental and permitting restrictions.

(c) New surface water withdrawers are not required to engineer the supplemental water source identified in their contingency plan any larger than the quantity that allows for facility operations during twenty percent mean annual daily flow conditions, based upon a review of historical low flow data and projected facility consumptive water uses during low flow periods. A new surface water withdrawer may not return to the withdrawal source when his supplemental water source is exhausted unless he engineered his supplemental water source to meet the specifications of this subsection.

(3) For surface water withdrawal points located on a surface water segment downstream of and influenced by a licensed or otherwise flow controlled impoundment, the minimum instream flow shall be the flow specified in the license by the appropriate governmental agency. Surface water withdrawal points downstream of a licensed or otherwise flow controlled impoundment are considered to be influenced by the impoundment unless it can be demonstrated by the department through flow modeling and analysis of flow data that the withdrawal point is no longer materially influenced by the impoundment. The minimum instream flow set in this item does not apply to withdrawal points located downstream of an impoundment that are beyond the influence of the impoundment.

(4) When a surface water withdrawal point is located on a

licensed or otherwise flow controlled impoundment, a withdrawal permit may not authorize the withdrawal of surface water in an amount that would cause a reservoir:

(a) water level to drop below its minimum water level; or

(b) to be unable to release the lowest minimum flow specified in the license for that impoundment as issued by the appropriate government agency.

(5) When a surface water withdrawal point is located on an impoundment that serves as a water supply for a federally licensed facility that is also an existing surface water withdrawer, a withdrawal permit may not authorize any new surface water withdrawer to withdraw surface water in an amount that would negatively impact the continued operations of the federally licensed facility. The requirements contained in this item do not apply to an expansion or addition of units at a federally licensed facility.

(6) The requirements of items (1) through (4) do not apply to public water suppliers. Public water suppliers are required to implement their contingency plan measures, applicable to their service territory, commensurate with the drought level declared by the State Drought Response Committee and in accordance with any drought response plan required by the owner of a licensed impoundment.

(B) When determining the amount of water available to be withdrawn for future surface water withdrawers in a particular stream segment, the department shall determine the inflow at the beginning of the stream segment, as well as the inflow from tributaries, based on historical flow. Also, the department shall account for returns of water to the stream segment from all sources, including, but not limited to, municipalities, utilities, and industries.

Section 49-4-160. (A) Each permittee must prepare and maintain on site, available for inspection, an operational and contingency plan to promote an adequate water supply from the surface water during times when the actual flow of the surface water is less than the minimum instream flow for that particular surface water segment. The plan must identify actions to be taken, as applicable, to address low flow conditions, including water conservation, supplemental water supplies, off-stream water storage, seasonal water flow fluctuation withdrawals, and hydroelectric operations in controlled surface waters. For applicable new surface water withdrawers with an operational and contingency plan that identifies one or more supplemental sources of water to be used for continued facility operations during minimum instream flow conditions, the amount of supplemental water should be

calculated on a reasonable and responsible basis taking into account a review of historical flow records for the stream at or near the proposed withdrawal point in order to identify the years of historical record where flows at that stream point dropped below minimum instream flow, and the consumptive amount of water that is projected to be needed by the new surface water withdrawer in order to continue to operate during a period of time identified as that stream segment's historical average minimum instream flow conditions. The existence of a plan is deemed to be an enforceable part of the permit under which the permittee is withdrawing surface water and shall be deemed to control a permitted surface water withdrawal in situations where the actual flow of the surface water is less than the minimum instream flow for that particular stream segment.

(B) Nothing in this section limits or precludes any action authorized by the South Carolina Drought Response Act. In the event that an action authorized by the South Carolina Drought Response Act conflicts with this subsection or a permitted use, the action taken pursuant to the South Carolina Drought Response Act supersedes any actions taken pursuant to this subsection or the permit.

Section 49-4-170. (A) In addition to any other powers and duties, the department may:

(1) promulgate regulations necessary to implement the policies and purposes of this chapter;

(2) enter upon any land or water for the purpose of conducting investigations, examinations, or surveys necessary to carry out its duties and responsibilities provided in this chapter;

(3) receive financial and technical assistance from private entities, the federal government, or another state agency; and

(4) take any action reasonable and necessary to enforce the provisions of this chapter.

(B)(1) The department may, in consultation with the Department of Natural Resources, negotiate agreements, accords, or compacts on behalf of and in the name of the State with other states or the United States, or both, with any agency, department, or commission of either, or both, relating to transfers of water that impact waters of this State, or are connected to or flowing into waters of this State. Any agreements, accords, or compacts made by the board pursuant to this section must be approved by concurrent resolution of the General Assembly prior to being implemented. The department also may represent the State in connection with water withdrawals, diversions, or transfers occurring in other states which may affect this State. The provisions in this

section do not apply to the Office of Attorney General or any pending or future criminal or civil actions, lawsuits, or causes in which the State is a party or interested.

(2) The department must notify the Chairman of the Senate Agriculture and Natural Resources Committee and the Chairman of the House Agriculture, Natural Resources, and Environmental Affairs Committee when the department enters into negotiations or otherwise represents the State as provided in item (1). The department also must periodically report, as necessary or upon request, to the chairmen concerning the progress of the negotiations or representation.

Section 49-4-180. (A) A surface water withdrawer who commits a violation of this chapter:

(1) is subject to a civil penalty of not more than ten thousand dollars for each day that the violation occurred; or

(2) is guilty of a misdemeanor and, upon conviction, must be fined not more than ten thousand dollars for each day that the violation occurred, if the violation is wilful.

(B) All penalties and fines assessed and collected pursuant to this chapter must be deposited in the general fund of the State."

Fees to be deposited in Environmental Protection Fund

SECTION 2. Section 48-2-30(B) of the 1976 Code is amended by adding an appropriately numbered new item at the end to read:

"( ) Surface Water Withdrawal, Permitting, Use, and Reporting Act."

Surface water withdrawal fees; annual report; prospective repeal

SECTION 3. A.Section 48-2-50(H) of the 1976 Code is amended by adding an appropriately numbered item at the end to read:

"( ) Surface Water Withdrawals:

(a) Existing surface water withdrawal permit - application processing fee - $1,000;

(b) New surface water withdrawal permit - application processing fee - $7,500;

(c) Modification of surface water withdrawal permit - application processing fee - $2,000;

(d) Renewal of surface water withdrawal permit with modifications application processing fee - $1,000;

(e) Surface water withdrawal annual operating fee per permitted intake - $1,000."

B. The department must make an annual report to the General Assembly concerning the fees collected pursuant to this SECTION.

C. The new item added to Section 48-2-50(H) by this SECTION is repealed January 1, 2013. No new fees may be charged for Surface Water Withdrawal applications following that date without an act of the General Assembly setting the fee schedule.

Repeal; effect of act

SECTION 4. A. Chapter 21, Title 49 of the 1976 Code is repealed.

B. Chapter 1, Title 49 of the 1976 Code is not affected by and supersedes Chapter 4, Title 49 of the 1976 Code, as amended by SECTION 1 of this act.

Intent of General Assembly

SECTION 5. It is the intention of the General Assembly to not affect or prejudice in any way the ongoing litigation between the states of South Carolina and North Carolina in the Supreme Court of the United States or any litigation related thereto, nor is it the intent of the General Assembly to prejudice any argument that the State of South Carolina may make in such litigation.

Savings clause; transfer provisions

SECTION 6. (A) The repeal or amendment by this act of any law, whether temporary or permanent, does not affect pending actions, rights, duties, or liabilities founded on it, or alter, discharge, release, or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision expressly provides it. 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, 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. Any state agency, board, commission, or council to which are transferred the powers, duties, and functions of any state agency, board, commission, or council relating to the pending proceeding must be substituted as a party in interest.

(B) Any statute enacted and any rule or regulation made in respect to any state agency, board, commission, or council or function transferred to, or consolidated, coordinated, or combined with any other state agency, board, commission, or council or function under the provisions of this act before the effective date of the transfer, consolidation, coordination, or combination, except to the extent repealed, modified, superseded, or made inapplicable by or under the authority of law, shall have the same effect as if the transfer, consolidation, coordination, or combination had not been made. But when any such statute, rule, or regulation has vested functions in the state agency, board, commission, or council from which the transfer is made under the act, the functions, insofar as they are to be exercised after the transfer, must be considered as vested in the state agency, board, commission, or council to which the transfer is made under the act.

Severability clause

SECTION 7. 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 8. This act takes effect January 1, 2011.

Ratified the 7th day of June, 2010.

Approved the 11th day of June, 2010.

No. 248

(R304, S915)

AN ACT TO AMEND ACT 314 OF 2000, AS AMENDED, RELATING TO THE SOUTH CAROLINA COMMUNITY ECONOMIC DEVELOPMENT ACT AND COMMUNITY DEVELOPMENT TAX CREDITS, SO AS TO TERMINATE THE PROVISIONS OF THE SOUTH CAROLINA COMMUNITY ECONOMIC DEVELOPMENT ACT AND TAX CREDITS ON JUNE 30, 2015.

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

Provisions of the Community Economic Development Act and tax credits extended

SECTION 1. Section 4 of Act 314 of 2000, as last amended by Act 95 of 2003, is further amended to read:

"SECTION 4. Unless reauthorized by the General Assembly, the provisions of this act shall terminate on June 30, 2015, and this act and all other laws and regulations governing, authorizing, and otherwise dealing with community development corporations and community development financial institutions are deemed repealed on that date."

Time effective

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

Ratified the 7th day of June, 2010.

Became law without the signature of the Governor -- 6/14/2010.

No. 249

(R310, S1148)

AN ACT TO AMEND CHAPTER 28, TITLE 40, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE REGULATION OF LANDSCAPE ARCHITECTS, SO AS TO CONFORM THE CHAPTER TO THE STATUTORY ORGANIZATIONAL FRAMEWORK OF CHAPTER 1, TITLE 40 FOR PROFESSIONS AND OCCUPATIONS UNDER THE ADMINISTRATION OF THE DEPARTMENT OF LABOR, LICENSING AND REGULATION; AND, AMONG OTHER THINGS, TO TRANSFER THE OVERSIGHT AND REGULATION OF LANDSCAPE ARCHITECTS FROM THE DEPARTMENT OF NATURAL RESOURCES TO THE DEPARTMENT OF LABOR, LICENSING AND REGULATION; TO CREATE THE BOARD OF LANDSCAPE ARCHITECTURAL EXAMINERS, TO PROVIDE FOR ITS MEMBERS, POWERS, AND DUTIES, AND TO TRANSFER THE POWERS AND DUTIES OF THE DEPARTMENT OF NATURAL RESOURCES TO THE BOARD; TO PROVIDE THAT LANDSCAPE ARCHITECTS MUST BE LICENSED RATHER THAN REGISTERED, TO PROVIDE FOR AN EMERITUS LANDSCAPE ARCHITECT, AND TO FURTHER PROVIDE THAT THE DEPARTMENT OF LABOR, LICENSING AND REGULATION SHALL ADMINISTER THE PROGRAM FOR LICENSURE OF LANDSCAPE ARCHITECTS; TO REVISE CERTAIN LICENSURE REQUIREMENTS; TO FURTHER PROVIDE FOR A FIRM TO OBTAIN A CERTIFICATE OF AUTHORIZATION TO ALLOW AN INDIVIDUAL LANDSCAPE ARCHITECT TO PRACTICE THROUGH A FIRM OFFERING LANDSCAPE ARCHITECT SERVICES; AND TO AMEND CHAPTER 65, TITLE 40, RELATING TO THE REGULATION OF PROFESSIONAL SOIL CLASSIFIERS, SO AS TO CONFORM THIS CHAPTER TO THE STATUTORY ORGANIZATIONAL FRAMEWORK OF CHAPTER 1, TITLE 40 FOR PROFESSIONS AND OCCUPATIONS UNDER THE ADMINISTRATION OF THE DEPARTMENT OF LABOR, LICENSING AND REGULATION; AND, AMONG OTHER THINGS, TO PROVIDE THAT PERSONS ENGAGING IN PROFESSIONAL SOIL CLASSIFICATION MUST BE LICENSED, RATHER THAN

REGISTERED; TO REVISE QUALIFICATIONS FOR LICENSURE; TO PROVIDE GRANDFATHERING PROVISIONS FOR REGISTERED PROFESSIONAL SOIL CLASSIFIERS TO BECOME LICENSED PROFESSIONAL SOIL CLASSIFIERS UPON THE NEXT RENEWAL OF THEIR REGISTRATION; AND TO FURTHER PROVIDE FOR THE LICENSURE AND REGULATION OF PROFESSIONAL SOIL CLASSIFIERS; AND TO REQUIRE THE DEPARTMENT OF LABOR, LICENSING AND REGULATION TO PROVIDE THE GENERAL ASSEMBLY WITH CERTAIN FINANCIAL INFORMATION AND ADMINISTRATIVE COSTS ON EACH PROFESSION AND OCCUPATION UNDER THE DEPARTMENT.

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

Licensure and regulation of landscape architects

SECTION 1. Chapter 28, Title 40 of the 1976 Code is amended to read:

"CHAPTER 28

Landscape Architects

Section 40-28-5. Unless otherwise provided for in this chapter, Article 1, Chapter 1, Title 40 applies to the profession regulated under this chapter.

Section 40-28-10. (A) There is created the Board of Landscape Architectural Examiners. The Department of Labor, Licensing and Regulation shall administer the provisions of this chapter.

(B) The Governor shall appoint a board of five licensed landscape architects and two members of the general public.

(C) A professional member of the board must be a licensed landscape architect who has been actively engaged in the practice of landscape architecture for a period of at least five years and who has been responsible for landscape architecture for at least three years. The two members of the public may not be engaged in the practice of landscape architecture, have no financial interest in the profession of landscape architecture, and have no immediate family member in the profession of landscape architecture.

(D) At the end of their respective terms, successors must be selected in the same manner and appointed for terms of four years and until their successors are appointed and qualify. The Governor may replace a board member for cause. An appointment to fill a vacancy on the board is for the balance of the unexpired term in the manner of the original appointment.

Section 40-28-20. In addition to the definitions provided in Section 40-1-20, as used in this chapter, unless the context indicates otherwise:

(1) 'Board' means the Board of Landscape Architectural Examiners.

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

(3) 'Emeritus landscape architect' means a landscape architect who has been licensed for ten consecutive years or longer and who is sixty-five years of age or older and who is not engaging or offering to engage in the practice of landscape architecture as defined in this section.

(4) 'Firm' means a business entity functioning as a sole proprietorship, partnership, limited liability partnership, professional association, professional corporation, business corporation, limited liability company, joint venture, or other legally constituted organization that practices or offers to practice landscape architecture.

(5) 'Landscape architect' means a person licensed to practice landscape architecture in this State.

(6) 'Landscape architecture' means the performance of professional services, such as consultation, investigation, research, planning, design, preparation of drawings and specifications, and responsible inspection in connection with the development of land areas where, and to the extent that, the dominant purpose of the services is the preservation, enhancement, or determination of proper site design, natural land features, planting, naturalistic and aesthetic values, the settings and approaches to structures or other improvements, the setting of grades and determining drainage and providing for drainage structures, and the consideration and determining of environmental problems. This practice includes the design of tangible objects, drainage structures and systems, and features as are incidental and necessary to an overall or ongoing landscape plan and site design, and the landscape architect may certify the design of the tangible objects, drainage structures and systems, features as to structural soundness and as to compliance with all requirements and standards of a government or subdivision of it.

This practice does not include the design of structures, drainage structures and systems, and features which are not incidental and necessary to an overall landscape plan and site design and which have separate and self-contained purposes such as are ordinarily included in the practice of engineering or architecture and does not include the making of land surveys or final plats for official approval or recordation. Nothing contained in this definition precludes a duly licensed landscape architect from performing the services described in the first sentence of this definition in connection with the settings, approaches, or environment for buildings, structures, or facilities. Nothing contained in this chapter may be construed as authorizing a landscape architect to engage in the practice of architecture, engineering, or surveying as these terms are defined in Section 40-28-210 of this chapter, except that a landscape architect may prepare and certify all design, grading, drainage, and construction plans for roads and site-related projects which are incidental and necessary to an overall or ongoing landscape plan and site design.

(7) 'Related field' means architecture, civil engineering, horticulture, or other field as determined appropriate by the board.

(8) 'Responsible charge' means direct control and personal supervision of landscape architecture.

Section 40-28-30. (A) In order to safeguard public welfare, health, and property and to promote public good, a person practicing or offering to practice landscape architecture privately or in public service must submit evidence that he is qualified to practice and must become licensed as provided in this chapter. It is unlawful for a person to practice landscape architecture or to use the term or title 'Landscape Architect' unless duly licensed under the provisions of this chapter.

(B) To be licensed as a landscape architect in this State an applicant must be able to read and write the English language and:

(1) be a graduate of an accredited landscape architectural curriculum approved by the department and have had two years of varied landscape architectural experience under the supervision of a landscape architect licensed under this chapter or other qualified person, or experience approved by the board, and satisfactorily pass the written examination administered by the Council of Landscape Architectural Registration Boards or an equivalent examination;

(2) be a graduate of a nonaccredited curriculum or a four-year college with a degree in a related field, as considered appropriate by the board and have had at least five years of varied landscape architectural experience under the supervision of a landscape architect

licensed under this chapter, or other qualified person, or experience approved by the board, and satisfactorily pass the written examination administered by the Council of Landscape Architectural Registration Boards or an equivalent examination;

(3) hold a license to practice landscape architecture issued upon examination by a legally constituted board of examiners of another state or the District of Columbia, or a territory or possession of the United States and if requirements of the state, district, territory, or possession in which the applicant is licensed are substantially equivalent to those of this State; or

(4) submit certification documents from the Council of Landscape Architectural Registration Boards (CLARB) verifying his qualifications for licensure, and an individual holding such a certification may be accepted at the discretion of the department.

Section 40-28-40. The department shall prescribe and furnish an application for licensure that an applicant must use to apply for a license under this chapter.

Section 40-28-50. A landscape architect, upon licensure, shall obtain a seal of the design authorized by the board, bearing the name of the licensee, number of certificate or license, and the legend 'South Carolina Registered Landscape Architect' or 'South Carolina Licensed Landscape Architect'. The seal only may be used while the licensee's certificate or license is in full force and effect. Nothing in this chapter may be construed to authorize the use or acceptance of the seal of the landscape architect in lieu of the seal of an architect, engineer, or surveyor.

Section 40-28-60. (A) A license issued under this chapter must be renewed every two years on or before a date set by the department upon the payment of a renewal fee pursuant to Section 40-28-80 and evidence of twenty hours of continuing education as established by the board in regulation. An emeritus landscape architect is exempt from these continuing education requirements.

(B) A licensee who allows his or her license to lapse for less than one year by failing to renew the license in accordance with this section may be reinstated by the department upon satisfactory explanation by the licensee of failure to renew the license and upon payment of a reinstatement fee and the current renewal fee, as established by Section 40-28-80.

(C) If a license has lapsed for more than two years, the applicant must reapply for licensure. A person practicing as a landscape architect in this State during the time that his or her license has lapsed has engaged in unlicensed practice and is subject to penalties provided for in this chapter.

(D) An emeritus landscape architect who wishes to return to active practice shall complete continuing education requirements for an exempted renewal period, not to exceed a total of forty hours of continuing education and upon payment of a reinstatement fee and the current renewal fee, as established by Section 40-28-80.

Section 40-28-70. (A) The practice of or offer to practice landscape architecture through a firm is permitted only through entities holding a valid certificate of authorization issued by the board. For the purposes of this section, a certificate of authorization is also required for a firm practicing in this State under a fictitious name. However, when an individual is practicing landscape architecture in his name as individually licensed, that person is not required to obtain a certificate of authorization.

(B) The practice or offer to practice of landscape architecture by an individual licensed under this chapter through a firm offering landscape architecture services to the public is permitted if:

(1) one or more of the corporate officers, in the case of a corporation, or one or more of the principal owners, or a full-time employee, in the case of other firms, are designated as being responsible for the professional services regulated by the board and are licensed under this chapter;

(2) all personnel of the firm who act on behalf of the firm as landscape architects in this State are licensed under this chapter; and

(3) the firm has been issued a certificate of authorization by the board as required by this section.

(C) Before the issuance of a certificate of authorization, the board must be in receipt of the firm's appropriate documentation issued by the Secretary of State.

(D) A firm desiring a certificate of authorization shall file with the board an application on forms provided by the board accompanied by the registration fee as provided in Section 40-28-80. A certificate of authorization must be renewed biennially. A renewal form provided by the board must be completed and submitted with the biennial registration fee, the fee being an amount as provided in Section 40-28-80.

(E) A disciplinary action against a firm must be administered in the same manner and on the same grounds as disciplinary action against an individual. A firm may not be relieved of responsibility for the conduct or acts of its agents, officers, or employees by reason of its compliance with this section, and an individual practicing landscape architecture is not relieved of responsibility for professional services performed by reason of his employment or relationship with the firm.

(F) Nothing in this section may be construed to prohibit firms from joining together to offer landscape architectural services to the public, if each separate entity providing the services in this State otherwise meets the requirements of this section. For firms practicing as a professional corporation under the laws of this State, the joint practice of landscape architecture with the professions of architecture, engineering, surveying, and geology is specifically approved by the board.

(G) If the requirements of this section are met, the board shall issue a certificate of authorization to the firm, and the firm may contract for and collect fees for professional landscape architectural services. The board, however, may refuse to issue a certificate or suspend or revoke an existing certificate for due cause. A person or firm aggrieved by an adverse determination of the board may file an appeal as provided for in this chapter.

(H) Nothing in this section may be construed to mean that a firm may practice or offer to practice landscape architecture without meeting individual licensure.

Section 40-28-80. (A) The program for licensure of landscape architects must be administered by the Department of Labor, Licensing and Regulation in accordance with Section 40-1-50.

(B) The department annually shall prescribe reasonable fees, not to exceed the following prescribed limits, in an amount sufficient to pay for the costs of administering the provisions of this chapter in the following categories:

(1)	Initial license fee	$ 50.00
(2)	Annual license renewal fee	$100.00
(3)	Initial certificate of authorization fee	$200.00
(4)	Annual certificate of authorization renewal fee	$200.00
(5)	Temporary license fee	$100.00
(6)	Initial examination fee - cost of exam	$200.00
(7)	Examination retake fee - cost of section(s)	$100.00
(8)	File transfer fee	$ 50.00
(9)	Duplicate license/certificate fee	$ 25.00

(10) Late fee $ 20.00

An additional amount not to exceed one hundred dollars may be charged each out-of-state applicant in each of the above categories.

Section 40-28-90. The board may promulgate regulations necessary to carry out the provisions of this chapter.

Section 40-28-100. In addition to the powers provided in Chapter 1, Title 40, the board or department may apply in the name of the State for relief by injunction to enforce the provisions of this chapter or to restrain a violation of this section. In these proceedings, the party seeking injunctive relief need not allege or prove that no adequate remedy at law exists or that substantial or irreparable damage would result from the continued violation. A member of the board or employee of the department may not be personally liable under this proceeding.

Section 40-28-110. An investigation must be conducted in accordance with Section 40-1-80.

Section 40-28-120. Cease and desist orders and equitable relief may be obtained in accordance with Section 40-1-100.

Section 40-28-130. In addition to the grounds provided in Section 40-1-110, a person holding a license or certificate under this chapter may be subject to discipline for:

(1) practicing in violation of the provisions of this chapter;

(2) obtaining the certificate or license by fraud or misrepresentation;

(3) aiding or abetting, in the practice of landscape architecture, a person not authorized to practice landscape architecture under the provisions of this chapter;

(4) being found guilty of fraud or deceit, negligence, wilful misconduct, or gross incompetence in the practice of landscape architecture; or

(5) affixing his seal to a plan, drawing, specification, or other instrument of service that has not been prepared by him or under his immediate and responsible direction or has permitted his name to be used for the purpose of assisting a person, not a landscape architect, to evade the provisions of this chapter.

Section 40-28-140. Upon determination by the board that one or more of the grounds for discipline exists, the board may impose a sanction person pursuant to Sections 40-1-110 and 40-1-120.

Section 40-28-150. The board may deny licensure to an applicant based on:

(1) the same grounds for which it may take disciplinary action against a licensee; and

(2) his prior criminal record as provided in Section 40-1-140.

Section 40-28-160. A licensee under investigation for a violation of this chapter or a regulation promulgated under this chapter may voluntarily surrender the license to practice in accordance with and subject to the provisions of Section 40-1-150.

Section 40-28-170. A person found in violation of this chapter or a regulation promulgated under this chapter may be required to pay costs associated with the investigation and prosecution of the case pursuant to Section 40-1-170.

Section 40-28-180. A cost and fine imposed pursuant to this chapter must be paid in accordance with and are subject to the collection and enforcement provisions of Section 40-1-180. A person against whom a cost or fine is levied may not be eligible for the issuance or reinstatement of an authorization to practice until the cost or fine has been paid in full.

Section 40-28-190. An investigation and proceeding conducted under this chapter is confidential and all communications are privileged as provided in Section 40-1-190.

Section 40-28-200. The department, in addition to instituting a criminal proceeding, may institute a civil action through the Administrative Law Court, in the name of the State, for injunctive relief against a person violating this chapter or a regulation promulgated under this chapter. For a violation the administrative law judge may impose a fine of no more than ten thousand dollars.

Section 40-28-210. This chapter may not be construed to require a license under this chapter for:

(1) the practice of landscape architecture by a person who acts under the supervision of a licensed landscape architect or by an

employee of a person lawfully engaged in the practice of landscape architecture and who in either event does not assume responsible charge of design or supervision;

(2) the practice of architecture by a duly licensed professional architect and the performing of landscape architectural work by a licensed architect or by an employee under supervision of a licensed architect, when this work is incidental to their practice;

(3) the practice of engineering by a duly licensed professional engineer and the performing of landscape architectural work by a licensed engineer or by an employee under supervision of a licensed engineer, when this work is incidental to their practice;

(4) the practice of surveying by a duly licensed professional surveyor and the performing of landscape architectural work by a licensed professional surveyor or by an employee under supervision of a licensed professional surveyor, when this work is incidental to their practice;

(5) the practice of landscape architecture by an employee of the United States or South Carolina Government while engaged within this State in the practice of landscape architecture for the government or projects sanctioned by or totally sponsored by the government;

(6) planning as customarily done by regional or urban planners;

(7) an arborist, forester, gardener, home builder, or horticulturist; and

(8) a nurseryman, general or landscape contractor, such practice to include design, planning, location, and arrangements of plantings or other ornamental features.

Section 40-28-220. The functions, powers, duties, responsibilities, and authority statutorily exercised by the Department of Natural Resources concerning the registration and regulation of landscape architects are transferred to the board."

Licensure and regulation of soil classifiers

SECTION 2. A.Chapter 65, Title 40 of the 1976 Code is amended to read:

"CHAPTER 65

Soil Classifiers

Section 40-65-5. Unless otherwise provided for in this chapter, Article 1, Chapter 1, Title 40 applies to professional soil classifiers regulated pursuant to this chapter.

Section 40-65-10. (A) The department shall serve as the agency of licensure for professional soil classifiers and shall administer the provisions of this chapter.

(B) The department shall appoint an advisory council of five qualified professional soil classifiers, who must have the qualifications required in Section 40-65-30, to recommend licensure for those applicants eligible to become licensed soil classifiers and to recommend certification for those applicants eligible to become a soil-classifier-in-training. Each member of the council must be a professional soil classifier who has been actively engaged in the practice of soil classifying for a period of at least ten years and must have been in responsible charge of soil classification for at least six years.

Section 40-65-20. In addition to the definitions provided in Section 40-1-20, as used in this chapter, unless the context or subject matter indicates otherwise:

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

(2) 'Kind of soil' means a group of natural bodies that has a discrete combination landscape, morphological, chemical, and physical properties.

(3) 'Practice of soil classifying' and 'practice of professional soil classifying' means any service or work, the adequate performance of which requires education in the physical, chemical, biological, and soil sciences, training and experience in the application of the special knowledge of these sciences to soil classification, soil classification by accepted principles and methods, investigation, evaluation and consultation on the effect of measured, observed, and inferred soil properties upon various uses, the preparation of soil descriptions, maps and reports and interpretive drawings, maps and reports of soil properties and the effect of soil properties upon various uses, and the effect of various uses upon kinds of soil, any of which embraces this

service or work, either public or private, incidental to the practice of soil classifying.

A person is construed to practice or offer to practice soil classifying within the meaning and intent of this chapter if the person, by verbal claim, sign, advertisement, letterhead, card or use of some other title, represents himself to be a soil classifier; however, this does not mean or include the practice of soil classifying by persons exempt under the provisions of Section 40-65-40 or the work ordinarily performed by persons who sample and test soil for fertility status or construction materials and engineering surveys and soundings to determine soil properties influencing the design and construction of engineering and architectural projects. Notwithstanding the provisions of this paragraph, a person must not be construed to practice soil classifying unless he offers soil classifying services to or performs soil classifying for the public.

(4) 'Responsible charge' means direct control and personal supervision of soil classification.

(5) 'Soil' means all of the groups of natural bodies occupying the unconsolidated portion of the earth's surface capable of supporting plant life and having properties due to the combined effect of climate and living organisms, as modified by topography and time, upon parent materials.

(6) 'Soil classification' means plotting the boundaries and describing and evaluating the kinds of soil as to their behavior and response to management under various uses.

(7) 'Soil classifier' and 'professional soil classifier' means a person who, by reason of his special knowledge of the physical, chemical, and biological sciences applicable to soils as natural bodies and of the methods and principles of soil classification as acquired by soil education and soil classification experience in the formation, morphology, description, and mapping of soils, is qualified to practice soil classifying, who has been licensed by the Department of Labor, Licensing and Regulation, and who has passed an examination in the fundamental soil and related subjects as provided for in this chapter.

(8) 'Soil-classifier-in-training' means a person who complies with the requirements for education and character and who has passed an examination in the fundamental soil and related subjects as provided for in this chapter.

Section 40-65-30. (A) A person must not practice or offer to practice professional soil classifying in this State unless the person is licensed to practice under the provisions of this chapter.

(B) To be eligible for licensure as a professional soil classifier or to be certified as a soil-classifier-in-training, an applicant must be of good character and reputation and shall submit a written application to the department containing information the department may require.

(C) To be licensed as a professional soil classifier an applicant must have:

(1) fifteen or more semester hours of approved soil courses as recognized by the department;

(2) successfully passed an examination in the principles and practice of soil classifying as prescribed by the department;

(3) completed two or more years of training under the supervision of a registered or licensed soil classifier or someone who meets the minimum academic and experience requirements of a licensed soil classifier; and

(4) one of the following additional qualifications:

(a) a bachelor's degree or equivalent in a curriculum approved by the department and two years or more of experience of a grade and character which indicates to the department that the applicant is competent to practice soil classifying;

(b) a bachelor's degree or equivalent in one of the natural sciences and six years or more of experience in soil classifying work of a character and grade which indicates to the department that the applicant is competent to practice soil classifying;

(c) a soil-classifier-in-training certificate with two years' or more experience as a soil-classifier-in-training of a grade and character which indicates to the department that the applicant is competent to practice soil classifying; or

(d) employment as an extension specialist, researcher, or teacher of soils in a college or university and has two or more years of soil classifying experience of a character and grade which indicates to the department that the applicant is competent to practice soil classifying.

(D) To be certified as a soil-classifier-in-training, which certification is valid for two years, an applicant must have:

(1) a bachelor's degree or equivalent in a curriculum approved by the department and have passed an examination in the fundamentals of soil classification; or

(2) completed a curriculum not approved by the department, have passed an examination in the fundamentals of soil classification, and have four years of soil classification experience, of which two years must be under the supervision of a registered or licensed soil

classifier or someone who meets the minimum academic and experience requirements of a licensed soil classifier.

Section 40-65-32. Applications for licensure as a professional soil classifier and for certification as a soil-classifier-in-training must be on forms prescribed and furnished by the department.

Section 40-65-34. Examinations must be held at such times and places as the department determines.

Section 40-65-36. (A)(1) The department shall issue a license upon payment of the license fee, pursuant to subsection (C), to an applicant who in the opinion of the department has met the requirements of this chapter.

(2) The issuance of a license by the department is prima facie evidence that the person named is entitled to all rights and privileges of a professional soil classifier during the term for which the license is valid if the license has not been revoked or suspended.

(B) The department shall issue a certificate as a soil-classifier-in-training upon payment of the certificate fee, pursuant to subsection (C), to an applicant who in the opinion of the department has met the requirements of this chapter.

(C)(1) The application for a license as a professional soil classifier or for certification as a soil-classifier-in-training shall be on a form prescribed and furnished by the department, shall contain statements made under oath showing the applicant's education, a detailed summary of his experience, and references as required by this chapter, and shall be accompanied by an application fee established by the department of not less than five nor more than twenty-five dollars.

(2) Licenses shall be established by the department subject to the following limitations:

(a) The license fee for professional soil classifiers shall be in an amount not less than twenty nor more than one hundred dollars.

(b) The certification fee for soil-classifier-in-training certification or enrollment shall be established by the department in an amount not less than ten nor more than fifty dollars.

(c) Should the department deny the issuance of a license to an applicant, the fee paid shall be retained as an application fee.

(3) Examinations shall be held at such times and places as the department shall determine. Examinations required on fundamental soil subjects may be taken at any time prescribed by the department. The final examinations may not be taken until the applicant has

completed a period of soil classifying experience as provided in this chapter. The passing grade on any examination shall not be less than seventy percent. A candidate failing one examination may apply for reexamination, which may be granted upon payment of a fee established by the department of not less than ten nor more than twenty-five dollars. Any candidate for registration having an average grade of less than fifty percent may not apply for reexamination for a period of one year from the date of such examination.

(D) An applicant otherwise qualified shall be admitted to registration as a professional soil classifier without examination if he holds a certificate of registration in the practice of soil classifying awarded on the basis of comparable qualifications and issued to him by a proper authority of another state, possession, or territory of the United States and who in the opinion of the department meets the requirements of this chapter.

Section 40-65-38. (A) A licensee shall file an application for renewal every two years on or before a date designated by the department. The application for renewal must include:

(1) current contact information;

(2) renewal fee;

(3) acceptable continuing education promulgated by the department in regulation, upon consultation with the advisory council; and

(4) other information the department may request.

(B) A licensee who allows a license to lapse by failing to renew, as provided for in subsection (A), may reinstate the license within three years from the date the license lapsed by filing a reinstatement application and paying the required fees. After three years from the date the licensed lapsed, the person must apply for a new license, meeting all requirements for licensure in effect at the time of applying.

Section 40-65-40. This chapter must not be construed to prevent or affect:

(1) the work of an employee or subordinate of a person licensed pursuant to this chapter or an employee of a person practicing lawfully pursuant to this chapter, if the work does not include final soil classifying decisions and is done under the direct supervision of and verified by a person licensed pursuant to this chapter or a person practicing lawfully pursuant to this chapter;

(2) the practice of any other legally recognized profession or trade;

(3) the practice of soil classifying by a person who is regularly employed to perform soil classifying services solely for his employer or for a subsidiary or affiliated corporation of his employer, if the soil classifying is performed on the real property of his employer.

Section 40-65-45. An applicant otherwise qualified shall be admitted to registration as a professional soil classifier without examination if he holds a certificate of registration in the practice of soil classifying awarded on the basis of comparable qualifications and issued to him by a proper authority of another state, possession, or territory of the United States and who in the opinion of the department meets the requirements of this chapter.

Section 40-65-50. The department shall administer the program of soil classifiers in accordance with Section 40-1-50, this chapter, and regulations promulgated pursuant to this chapter.

Section 40-65-60. In addition to the powers provided for in Chapter 1, the department may promulgate regulations pursuant to the Administrative Procedures Act including, but not limited to, a code of ethics for licensees.

Section 40-65-70. In addition to the powers provided for in Chapter 1, the department may apply in the name of the State for relief by injunction to enforce the provisions of this chapter or to restrain any violation of this chapter. In these proceedings it is not necessary to allege or prove either that an adequate remedy at law does not exist or that substantial or irreparable damage would result from the continued violation. The director, employees, or agents of the department may not be held personally liable for bringing an action pursuant to this section.

Section 40-65-80. Investigations must be conducted in accordance with Section 40-1-80. Any person may file a complaint, which must be in writing, alleging fraud, deceit, gross negligence, incompetence, misconduct, or violation of the code of ethics against a licensee or a person holding a certification.

Section 40-65-100. Cease and desist orders and equitable relief may be obtained in accordance with Section 40-1-100.

Section 40-65-110. In addition to the grounds provided in Section 40-1-110, the advisory council may cancel, fine, suspend, revoke, or

restrict the license or certification to practice soil classifying of a person who is guilty of:

(1) the practice of fraud or deceit in obtaining a license or certification;

(2) any gross negligence, incompetence, or misconduct in the practice of soil classifying;

(3) any felony or crime involving moral turpitude or violation of the code of ethics promulgated by the department in regulation.

Section 40-65-120. A person aggrieved by a decision of the advisory council may file an appeal in accordance with the Administrative Procedures Act.

Section 40-65-130. As provided in Section 40-1-130, the department may deny licensure or certification to an applicant based on the same grounds for which the advisory council may take disciplinary action against a licensee or a holder of certification.

Section 40-65-140. A license or certification may be denied based on a person's prior criminal record only as provided in Section 40-1-140.

Section 40-65-150. A licensee or a person holding a certification under investigation for a violation of this chapter or a regulation promulgated pursuant to this chapter may voluntarily surrender the license or certification in accordance with and subject to the provisions of Section 40-1-150.

Section 40-65-170. A person found in violation of this chapter or regulations promulgated pursuant to this chapter may be required to pay costs associated with the investigation and prosecution of the case in accordance with Section 40-1-170.

Section 40-65-180. All costs and fines imposed pursuant to this chapter must be paid in accordance with and are subject to the collection and enforcement provisions of Section 40-1-180. No person against whom a cost or fine is levied is eligible for the issuance or reinstatement of a license or certification until the cost or fine has been paid in full.

Section 40-65-190. Investigations conducted pursuant to this chapter are confidential and all communications are privileged as provided in Section 40-1-190.

Section 40-65-200. A person who practices or offers to practice professional soil classifying in this State without being licensed in accordance with the provisions of this chapter or a person, firm, partnership, organization, association, corporation, or other entity using or employing the words 'soil classifier' or 'professional soil classifier', or any modification or derivative of these terms, in its name or form of business or activity, except as authorized in this chapter, or any person presenting or attempting to use the license of another, or any person who shall give any false or forged evidence of any kind to the department in obtaining or attempting to obtain a license or any person who shall falsely impersonate a licensee of like or different name, or any person who attempts to use an expired or revoked or nonexistent license, or who practices or offers to practice when not qualified, or any person who falsely claims that he is licensed under this chapter, or any person, partnership, corporation, or other entity who violates a provision of this chapter is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than three months. Each violation constitutes a separate offense. It is the duty of all constituted officers of the State and all political subdivisions of the State to enforce the provisions of this chapter and to prosecute any person violating this chapter.

Section 40-65-210. The department, in addition to instituting a criminal proceeding, may institute a civil action through the Administrative Law Court, in the name of the State, for injunctive relief against a person violating this chapter, a regulation promulgated under this chapter, or an order of the advisory council. For each violation an administrative law judge may impose a fine of no more than ten thousand dollars.

Section 40-65-220. If a provision of this chapter or the application of a provision of this chapter to a person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this statute which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable."

Grandfather clause

B. Notwithstanding another provision of law, a person who holds a certificate of registration as a soil classifier issued by this State on July 10, 2010, has all the duties, responsibilities, and rights provided to licensees pursuant to Chapter 65, Title 40 of the 1976 Code, as amended by SECTION 2 of this act, and upon the first renewal of this person's certificate after June 30, 2010, the Department of Labor, Licensing and Regulation shall issue the person a license without meeting the requirements set forth in this act.

Severability clause

SECTION 3. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this act, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

Department of Labor, Licensing and Regulation to provide information on professions and occupations

SECTION 4. The Department of Labor, Licensing and Regulation shall provide to the General Assembly, by July 15, 2010, the following information as to each profession and occupation regulated under Title 40 of the 1976 Code:

(1) A list of the total amount of penalties and fees collected from each profession or occupation in the most recent annual or biannual licensure period for that profession or occupation.

(2) A list of the total cost incurred in administering and regulating each occupation or profession in the most recent annual or biannual licensure period for that profession or occupation.

(3) A list of all occupations and professions for which, in the most recent annual or biannual licensure period, costs incurred in administering and regulating the occupation or profession exceeded the penalty and fee income generated from the profession or occupation.

Time effective

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

Ratified the 7th day of June, 2010.

Approved the 11th day of June, 2010.

No. 250

(R312, S1298)

AN ACT TO AMEND SECTION 56-5-70, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE REGULATION OF COMMERCIAL AND UTILITY VEHICLES ON THE HIGHWAYS DURING A STATE OF EMERGENCY DECLARED BY THE GOVERNOR, SO AS TO PROVIDE THAT WHEN CERTAIN FEDERAL REGULATIONS TRIGGER RELIEF FROM FEDERAL MOTOR CARRIER REGULATIONS IN NORTH CAROLINA OR GEORGIA, THE GOVERNOR MUST DECLARE THAT EMERGENCY IN THIS STATE FOR THE SAME PURPOSES, TO FURTHER PROVIDE FOR THE ENFORCEMENT AND TERMINATION OF THE STATE EMERGENCY, TO PROVIDE THAT CITATIONS FOR SPEEDING AND DISREGARDING TRAFFIC CONTROL DEVICES, EXCEPT TOLL COLLECTION ENFORCEMENT, BASED SOLELY ON PHOTOGRAPHIC EVIDENCE ONLY MAY BE ISSUED FOR VIOLATIONS THAT OCCUR WHILE RELIEF FROM THESE FEDERAL REGULATIONS ARE IN FORCE DUE TO AN EMERGENCY, AND TO REQUIRE SERVICE OF THE CITATION WITHIN ONE HOUR OF THE VIOLATION.

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

Relief from federal motor carrier regulations during an emergency; traffic citations based on photographic evidence only may be issued during emergencies

SECTION 1. Section 56-5-70 of the 1976 Code is amended to read:

"Section 56-5-70. (A) Notwithstanding any provision of this chapter or any other provision of law, during a state of emergency declared by the Governor and for thirty days thereafter, requirements relating to registration, permitting, length, width, weight, load, and time of service are suspended for commercial and utility vehicles that do not exceed a gross weight of ninety thousand pounds and a width of twelve feet responding to the state of emergency. All vehicles operated upon the public highways of this State under the authority of this section must:

(1) be operated in a safe manner;

(2) maintain required limits of insurance;

(3) be clearly identified as a utility vehicle or provide appropriate documentation indicating it is a commercial vehicle responding to the emergency.

(B) When an emergency is declared which triggers relief from regulations pursuant to 49 C.F.R. 390.23 in North Carolina or Georgia, an emergency, as referenced in the regional emergency provision of 49 C.F.R. 390.23(a)(1)(A), must be declared in this State by the Governor.

(C) A declaration of emergency in this State, as described in subsection (B), must not be terminated prior to the termination of the declarations of emergencies in North Carolina and Georgia or the thirtieth day after the initial declaration of emergency in this State, whichever is less.

(D) A declaration of emergency in this State that triggers relief from regulations pursuant to 49 C.F.R. 390.23 must be effective for no less than fourteen days prior to its termination. Unless the initial declaration of emergency contains a termination date, the order may not be terminated until the passage of seven days after notification of the date of termination is issued or the passage of thirty days after the initial declaration of the emergency, whichever is less. If termination of the declaration of emergency is to occur prior to the passage of thirty days after the initial declaration of emergency, the declaration of emergency must be terminated at 11:59 p.m. on a Friday.

(E) Citations for violating traffic laws relating to speeding or disregarding traffic control devices based solely on photographic evidence only may be issued for violations that occur while relief from regulations pursuant to 49 C.F.R. 390.23 has been granted due to an emergency. A person who receives a citation for violating traffic laws relating to speeding or disregarding traffic control devices based solely on photographic evidence must be served in person with notice of the violation within one hour of the occurrence of the violation. The

provisions of this subsection do not apply to toll collection enforcement."

Time effective

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

Ratified the 7th day of June, 2010.

Approved the 11th day of June, 2010.

No. 251

(R314, S1348)

AN ACT TO PROVIDE THAT THE PERSONAL REPRESENTATIVE, TRUSTEE, OR ANY AFFECTED BENEFICIARY OF A DECEDENT DYING IN CALENDAR YEAR 2010 MAY BRING A PROCEEDING IN PROBATE COURT TO DETERMINE THE DECEDENT'S INTENT WHEN THE WILL, TRUST, OR OTHER INSTRUMENT CONTAINS A FORMULA BASED ON FEDERAL ESTATE TAX OR GENERATION-SKIPPING TAX AND TO PROVIDE THE TIME IN WHICH THE PROCEEDING MUST BE COMMENCED.

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

Decedents' estates, trusts, proceeding to determine intent

SECTION 1. The personal representative, trustee, or any affected beneficiary under a will, trust, or other instrument of a decedent who dies or did die after December 31, 2009, and before January 1, 2011, may bring a proceeding to determine the decedent's intent when the will, trust, or other instrument contains a formula that is based on the federal estate tax or generation-skipping tax. The proceeding must be commenced within twelve months following the death of the decedent.

Time effective

SECTION 2. This act takes effect upon approval by the Governor and applies with respect to decedents dying after December 31, 2009, and before January 1, 2011.

Ratified the 7th day of June, 2010.

Approved the 11th day of June, 2010.

No. 252

(R316, H3779)

AN ACT TO AMEND SECTION 63-7-1620, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE LEGAL REPRESENTATION OF CHILDREN AND THE APPOINTMENT OF GUARDIANS AD LITEM IN ABUSE AND NEGLECT PROCEEDINGS, SO AS TO PROVIDE THAT CHILDREN MUST BE APPOINTED A GUARDIAN AD LITEM AND MAY BE APPOINTED LEGAL COUNSEL, THAT ATTORNEYS MUST BE APPOINTED FOR GUARDIANS AD LITEM IN THE SOUTH CAROLINA GUARDIANS AD LITEM PROGRAM AND IN RICHLAND COUNTY CASA, AND THAT LEGAL COUNSEL APPOINTED FOR A CHILD MUST NOT BE THE SAME COUNSEL AS COUNSEL FOR THE CHILD'S GUARDIAN AD LITEM.

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

Appointment of guardians ad litem and legal counsel in child abuse and neglect proceedings

SECTION 1. Section 63-7-1620 of the 1976 Code, as added by Act 361 of 2008, is amended to read:

"Section 63-7-1620. In all child abuse and neglect proceedings:

(1) Children must be appointed a guardian ad litem by the family court. A guardian ad litem serving on behalf of the South Carolina Guardian ad Litem Program or Richland County CASA must be

represented by legal counsel in any judicial proceeding pursuant to Section 63-11-530(C).

(2) The family court may appoint legal counsel for the child. Counsel for the child may not be the same as counsel for:

(a) the parent, legal guardian, or other person subject to the proceeding;

(b) any governmental or social agency involved in the proceeding;

(c) the child's guardian ad litem.

(3) Parents, legal guardians, or other persons subject to any judicial proceeding are entitled to legal counsel. Those persons unable to afford legal representation must be appointed counsel by the family court.

(4) The interests of the State and the Department of Social Services must be represented by the legal representatives of the Department of Social Services in any judicial proceeding."

Time effective

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

Ratified the 7th day of June, 2010.

Approved the 11th day of June, 2010.

No. 253

(R317, H3814)

AN ACT TO AMEND SECTION 57-1-740, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO VACANCIES ON THE COMMISSION OF THE DEPARTMENT OF TRANSPORTATION, SO AS TO PROVIDE THAT THE JOINT TRANSPORTATION REVIEW COMMITTEE SHALL SUBMIT TO THE CONGRESSIONAL DISTRICT DELEGATION FOR ELECTION ONLY THE NAMES AND QUALIFICATIONS OF PERSONS WHO IT CONSIDERS TO BE QUALIFIED, TO PROVIDE THAT THE DELEGATION SHALL NOT ELECT A PERSON WHO IS NOT NOMINATED BY THE REVIEW COMMITTEE, TO PROVIDE

THAT THE DELEGATION MAY REJECT ALL PERSONS NOMINATED BY THE REVIEW COMMITTEE, TO PROVIDE THAT FURTHER NOMINATIONS MUST BE MADE UNTIL THE OFFICE IS FILLED IF THE DELEGATION REJECTS THE REVIEW COMMITTEE'S NOMINEES, TO PROVIDE THAT NO CANDIDATE MAY DIRECTLY OR INDIRECTLY SEEK THE PLEDGE OF A VOTE FROM A MEMBER OF THE CANDIDATE'S CONGRESSIONAL DELEGATION OR, DIRECTLY OR INDIRECTLY, CONTACT A STATEWIDE CONSTITUTIONAL OFFICER, A MEMBER OF THE GENERAL ASSEMBLY, OR THE JOINT TRANSPORTATION REVIEW COMMITTEE REGARDING SCREENING FOR THE COMMISSION UNTIL THE REVIEW COMMITTEE HAS FORMALLY RELEASED ITS REPORT AS TO THE QUALIFICATIONS OF ALL CANDIDATES IN A PARTICULAR CONGRESSIONAL DISTRICT, AND MAKE TECHNICAL CHANGES.

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

Joint Transportation Review Committee

SECTION 1. Section 57-1-740(D)(2)(a) of the 1976 Code, as added by Act 114 of 2007, is amended to read:

"(a)(i) Upon completion of the candidate investigations, the chairman of the review committee shall schedule a public hearing concerning the qualifications of the candidates. Any person who desires to testify at the hearing, including the candidates, must furnish a written statement of his proposed testimony to the chairman of the review committee. This statement shall be furnished no later than forty-eight hours prior to the date and time set for the hearing. The review committee shall determine the persons who shall testify at the hearing. All testimony, including documents furnished to the review committee, shall be submitted under oath and persons knowingly furnishing false information either orally or in writing shall be subject to the penalties provided by law for perjury and false swearing.

(ii) During the course of the investigation, the review committee may schedule an executive session at which the candidates, and other persons who the review committee wishes to interview, may be interviewed on matters pertinent to the candidate's qualification for the office to be filled.

(iii) The review committee shall render its tentative findings as to whether the candidates are qualified to serve on the commission as a district member and its reasons for making the findings within a reasonable time after the hearing. If only one person applies to fill a vacancy or if the review committee concludes there are fewer candidates qualified for a vacancy than those who initially filed, it shall submit to the congressional district delegation for election only the names and qualifications of those who are considered to be qualified. The nominations of the review committee for any candidate for the election to the commission are binding on the congressional district delegation, and it shall not elect a person not nominated by the review committee. Nothing shall prevent the congressional district delegation from rejecting all persons nominated. In this event, the review committee shall submit another group of names and qualifications for that position. Further nominations in the manner required by this chapter must be made until the office is filled."

Joint Transportation Review Committee

SECTION 2. Section 57-1-740(D)(2)(c) of the 1976 Code, as added by Act 114 of 2007, is amended to read:

"(c)(i) The review committee must transmit to the congressional district delegation the names of all qualified candidates.

(ii) No member of the congressional district delegation may pledge his vote to elect a candidate until the review committee has released its written report concerning the qualifications of the candidate to the members of the appropriate congressional district delegation. The release of the written report of qualifications shall occur no earlier than forty-eight hours after the names of the qualified candidates have been initially released to members of the appropriate congressional district delegation.

(iii) No candidate may directly or indirectly seek the pledge of a vote from a member of the candidate's congressional delegation or, directly or indirectly, contact a statewide constitutional officer, a member of the General Assembly, or the Joint Transportation Review Committee regarding screening for the commission until the review committee has released its written report as to the qualifications of all candidates in a particular congressional district. For purposes of this section, 'indirectly seek the pledge' means the candidate, or someone acting on behalf of and at the request of the candidate, requests another person to contact a member of the General Assembly, a statewide

constitutional officer, or a member of the review committee on behalf of the candidate before the review committee's release of the written report of qualifications.

(iv) The prohibitions of this section do not extend to an announcement of candidacy by the candidate and statements by the candidate detailing the candidate's qualifications."

Time effective

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

Ratified the 7th day of June, 2010.

Approved the 11th day of June, 2010.

No. 254

(R318, H3835)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING ARTICLE 5 TO CHAPTER 9, TITLE 23 TO ENACT THE "SOUTH CAROLINA HYDROGEN PERMITTING ACT" SO AS TO CREATE THE STATE HYDROGEN PERMITTING PROGRAM AND TO STATE THE PURPOSE OF THE PROGRAM; TO PROVIDE CERTAIN DEFINITIONS; TO PROVIDE THAT ONLY THE STATE FIRE MARSHAL MAY PERMIT A HYDROGEN FACILITY IN THIS STATE, BUT MAY DELEGATE THIS AUTHORITY TO A COUNTY OR MUNICIPAL OFFICIAL IN SPECIFIC CIRCUMSTANCES; TO PROVIDE THE DUTIES AND OBLIGATIONS OF THE STATE FIRE MARSHAL UNDER THE ACT; TO PROVIDE REQUIREMENTS FOR A PARTY SEEKING TO RENOVATE OR CONSTRUCT A HYDROGEN FACILITY; TO PROVIDE THE STATE FIRE MARSHAL MAY IMPOSE CERTAIN FEES RELATED TO PERMITTING, LICENSING, AND INSPECTING UNDER THE ACT; TO PROVIDE PENALTIES FOR A PERSON WHO CONVEYS OR ATTEMPTS TO CONVEY HYDROGEN IN VIOLATION OF THE ACT; AND TO AMEND SECTION 23-9-20, RELATING TO DUTIES OF THE STATE FIRE MARSHAL, SO AS TO

PROVIDE THE STATE FIRE MARSHAL SHALL SUPERVISE ENFORCEMENT OF THE SOUTH CAROLINA HYDROGEN PERMITTING PROGRAM.

Whereas, recognizing South Carolina must encourage a vibrant, knowledge-based economy and establish a foundation for research and commercialization activities to create higher paying jobs and benefit all South Carolinians; and

Whereas, continuing to nurture a hydrogen and fuel cell cluster in South Carolina's economy, which has already begun with efforts by the state's research universities and private sector, is a public purpose that will help to further the state's goal to encourage a knowledge-based economy; and

Whereas, South Carolina considers hydrogen and fuel cell technology, which is an alternative means of electrical power, to be a "fuel of the future" due to its potential to create high paying jobs for the citizens of the State, its safe uses for stationary, portable, and automotive devices, and its positive environmental impacts; and

Whereas, the global demand for hydrogen technology is projected to be more than $2.6 trillion in 2021, and the United States market is expected to exceed one trillion dollars and one million jobs before 2020, while the economic potential for South Carolina and surrounding communities is estimated to be forty thousand jobs and a ten billion dollar capital investment in the State by 2020; and

Whereas, in order to capitalize on this economic opportunity, it is appropriate that the State create an ideal environment for all users and developers of hydrogen and fuel cell technology, including companies, businesses, and consumers, to further the state's goal to create a thriving hydrogen and fuel cell cluster in South Carolina's economy; and

Whereas, to maximize the economic opportunity afforded by hydrogen fuel, it is necessary to make hydrogen fuel easily accessible to the general public for retail purchase from multiple, convenient locations throughout the State in a manner similar to that used for dispensing gasoline and other fuels sold to power motor vehicles, most likely through the integration of safe hydrogen fuel dispensation technology in existing and new gasoline fueling stations; and

Whereas, hydrogen and fuel cell technology is advancing at a rate that has created the need for rapid revision and updating of codes and standards that will allow South Carolina to demonstrate leadership and secure a significant portion of this budding industry by efficiently adopting relevant codes and standards, and creating a uniform permitting environment that safely grows the hydrogen and fuel cell industry in the State. Now, therefore,

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

South Carolina Hydrogen Permitting Act created

SECTION 1. Chapter 9, Title 23 of the 1976 Code is amended by adding:

"Article 5

South Carolina Hydrogen Permitting Act

Section 23-9-510. This article may be cited as the 'South Carolina Hydrogen Permitting Act'.

Section 23-9-520. There is established the South Carolina Hydrogen Permitting Program within the Office of the State Fire Marshal. The purposes of this program are to:

(1) make hydrogen fuel easily accessible to the general public for retail purchase from multiple, convenient locations throughout the State in a manner similar to that used for dispensing gasoline and other fuels sold to power motor vehicles;

(2) promote and protect public health, safety, and welfare;

(3) promote a positive business environment for the hydrogen and fuel cell industry; and

(4) demonstrate leadership as a progressive alternative energy state by ensuring that hydrogen and fuel cells are permitted on a consistent basis throughout the State and meet minimum standards of quality provided in the International Code Council's 2006 codes or the latest state-adopted version.

Section 23-9-530. As used in this article:

(1) 'Container' means all vessels including, but not limited to, tanks, cylinders, or pressure vessels used for storage of hydrogen.

(2) 'Facility' means a fueling station or a fuel cell site that will store or dispense hydrogen for use as a transportation fuel and motor vehicle fuel or in a fuel cell.

(3) 'Fuel cell' means an appliance that uses fuel to produce electricity through an electro-chemical process. These fuels include, but are not limited to, hydrogen, methanol, or solid oxides.

(4) 'Fueling station' means a facility that dispenses gasoline, hydrogen, or other fuels intended to be used in motor vehicles.

(5) 'Hydrogen facility' or 'facility' means a fueling station or a fuel cell site that will store or dispense hydrogen for use as a transportation fuel and motor vehicle fuel or in a fuel cell.

Section 23-9-540. Only the State Fire Marshal may:

(1) permit a hydrogen facility in this State, although he may delegate this permitting authority to a county or municipal official if the:

(a) county or municipality served by the official has at least three hydrogen fueling stations to be renovated or constructed in its jurisdiction; and

(b) official completes prescribed training and obtains certification pursuant to Section 23-9-550(3).

(2) impose a fee related to the permitting, licensing, or inspection of a hydrogen fueling station under this article, in addition to the application filing fee provided in Section 23-9-560(B)(1). The State Fire Marshal may not delegate this authority to impose a fee.

Section 23-9-550. (A) The State Fire Marshal shall:

(1) ensure that the laws of this State governing gaseous and liquefied hydrogen at a hydrogen facility are executed faithfully;

(2) require conformance with fire prevention and protection standards based on nationally recognized standards prescribed by law or regulation for the prevention of fire and the protection of life and property;

(3) develop training and certification requirements a county or municipal official must satisfy to grant a permit to a hydrogen facility through a delegation of the State Fire Marshal's authority under Section 23-9-540, subject to the limits in subsection (B) of this section;

(4) develop minimum requirements for the design, construction, location, installation, and operation of equipment for storing, handling, and dispensing hydrogen at a facility. These requirements must:

(a) reasonably be necessary to protect the health, welfare, and safety of the public and a person using these materials; and

(b) substantially conform to the generally accepted standards of safety concerning hydrogen;

(5) impose at least semi-annual random inspections of a facility licensed under this article to determine the hydrogen's value for fueling and the facility's safety; and

(6) promulgate regulations necessary to carry out the requirements of this article.

(B) When a codes and standards organization certified by the American National Standards Institute develops a standard procedure for training and certifying a county or municipal official to permit to a hydrogen facility, the State Fire Marshal may adopt this procedure.

Section 23-9-560. (A) A party seeking to renovate or construct a facility to store or dispense hydrogen must apply to the State Fire Marshal or his certified designee by registered mail, return receipt requested, for approval before beginning the renovation construction. An application must include:

(1) a site plan;

(2) an accidental release plan;

(3) piping layout with valves and fitting details;

(4) normal and emergency ventilation designs;

(5) tank capacity and design standards;

(6) electrical plan; tank and piping support details;

(7) information concerning on-site fire protection equipment;

(8) information concerning tank location with respect to other tanks and dikes; and

(9) other information the State Fire Marshal considers relevant for evaluating the application.

(B) The State Fire Marshal:

(1) may charge an application filing fee of ten dollars that must be paid before an application may be accepted;

(2) may conduct a hearing on an application; and

(3) shall approve or deny an application within sixty calendar days or the application automatically is considered approved.

Section 23-9-570. (A) A person who conveys or offers to convey hydrogen in violation of this article may be subject to an administrative fine, stop-sale order, or both, at the discretion of the State Fire Marshal.

(B) An administrative fine must not be assessed for an amount greater than one thousand dollars unless the violation:

(1) threatens public health or safety;

(2) is committed knowingly and intentionally; or

(3) reflects a continuing and repetitive pattern of disregard for the requirements of this article.

(C) An administrative fine may not exceed ten thousand dollars for a violation."

State Fire Marshall duties; Hydrogen Permitting Program added

SECTION 2. Section 23-9-20 of the 1976 Code is amended to read:

"Section 23-9-20. The State Fire Marshal shall:

(1) supervise enforcement of the laws and regulations of the Liquefied Petroleum Gas Board and the South Carolina Hydrogen Permitting Program; and

(2) shall employ and supervise personnel necessary to carry out the duties of his office."

Severability

SECTION 3. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this act, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

Time effective

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

Ratified the 7th day of June, 2010.

Became law without the signature of the Governor -- 6/14/2010.

No. 255

(R321, H4129)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 16-11-780 SO AS TO PROVIDE IT IS UNLAWFUL FOR A PERSON TO WILFULLY, KNOWINGLY, OR MALICIOUSLY ENTER UPON THE LANDS OF ANOTHER OR THE POSTED LANDS OF THE STATE AND DISTURB OR EXCAVATE A PREHISTORIC OR HISTORIC SITE FOR THE PURPOSE OF DISCOVERING, UNCOVERING, MOVING, REMOVING, OR ATTEMPTING TO REMOVE AN ARCHEOLOGICAL RESOURCE, AND TO PROVIDE EACH SUCH ENTRY AND ACT OF DISTURBANCE OR EXCAVATION CONSTITUTES A SEPARATE AND DISTINCT VIOLATION, TO PROVIDE CERTAIN RELATED DEFINITIONS, TO PROVIDE A COURT MAY CALL UPON THE STATE ARCHEOLOGIST TO PROVIDE CERTAIN EVIDENCE RELATED TO THE VALUE OF AN ARCHAEOLOGICAL RESOURCE, TO PROVIDE MISDEMEANOR PENALTIES AND A FELONY PENALTY FOR VIOLATIONS, TO PROVIDE CERTAIN EQUIPMENT AND CONVEYANCES USED IN CONNECTION WITH A FELONY VIOLATION OF THIS SECTION ARE SUBJECT TO FORFEITURE, AND TO PROVIDE EQUIPMENT AND CONVEYANCES SUBJECT TO THIS FORFEITURE MAY BE FORFEITED BY ANY LAW ENFORCEMENT OFFICER AS PROVIDED IN THIS SECTION, SUBJECT TO CERTAIN REQUIREMENTS, TO PROVIDE A CIVIL CAUSE OF ACTION TO AN AFFECTED LANDOWNER FOR A VIOLATION, AND TO PROVIDE EXCEPTIONS; TO AMEND SECTION 16-17-600, AS AMENDED, RELATING TO THE DESTRUCTION OR DESECRATION OF HUMAN REMAINS OR REPOSITORIES OF HUMAN REMAINS, SO AS TO APPLY THE SECTION TO NATIVE AMERICAN BURIAL GROUNDS OR BURIAL MOUNDS, AND TO PROVIDE A PERSON WHO OWNS OR HAS AN INTEREST IN CARING FOR THE PROPERTY, IN THE CASE OF PRIVATE LANDS, OR THE STATE, IN THE CASE OF STATE LANDS, MAY BRING A CIVIL CAUSE OF ACTION FOR A VIOLATION OF THIS SECTION TO RECOVERY DAMAGES, THE COST OF RESTORATION AND

REPAIR OF THE PROPERTY, ATTORNEY'S FEES, AND COURT COSTS.

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

Prohibition on entering certain lands to discover, uncover, move, remove, or attempt to remove an archaeological resource; definitions, penalties, exceptions

SECTION 1. Article 7, Chapter 11, Title 16 of the 1976 Code is amended by adding:

"Section 16-11-780. (A) As used in this section:

(1) 'Archaeological resource' means all artifacts, relics, burial objects, or material remains of past human life or activities that are at least one hundred years old and possess either archaeological or commercial value, including pieces of pottery, basketry, bottles, weapons, weapon projectiles, tools, structures or portions of structures, rock paintings, rock carving, intaglios, graves, or human skeletal materials.

(2) 'Archaeological value' means the value of the data associated with the archaeological resource. This value may be appraised in terms of the costs of the retrieval of the scientific information that would have been obtainable prior to the violation. These costs may include, but need not be limited to, the cost of preparing a research design, conducting field work, carrying out laboratory analysis, and preparing reports as would be necessary to realize the information potential.

(3) 'Commercial value' means the fair market value of the archaeological resource. When a violation has resulted in damage to the archaeological resource, the fair market value may be determined using the condition of the archaeological resource prior to the violation, to the extent its prior condition can be ascertained.

(4) 'Cost of restoration and repair' means the sum of the costs incurred for emergency restoration or repairs to an archaeological resource, plus those costs projected to be necessary to complete restoration and repair, which may include, but need not be limited to, the costs of the following:

(a) reconstruction of the archaeological resource;
(b) stabilization of the archaeological resource;
(c) ground contour reconstruction and surface stabilization;

(d) physical barriers or other protective devices, necessitated by the disturbance of the archaeological resource, to protect it from further disturbance;

(e) examination and analysis of the archaeological resource, including recording remaining archaeological information, where necessitated by disturbance, in order to salvage remaining resources that cannot be otherwise conserved; or

(f) preparation of reports relating to any of the activities described in this section.

(5) 'Posted lands' means lands where the State has complied with the notice or warning requirement which must either be posted or given to an offender pursuant to Section 16-11-600.

(B) The court may call upon the Office of the State Archaeologist to provide evidence to assist in determining, calculating, or computing archaeological value, commercial value, or the cost of restoration and repair of an archaeological resource.

(C) It is unlawful for a person to wilfully, knowingly, or maliciously enter upon the lands of another or the posted lands of the State and disturb or excavate a prehistoric or historic site for the purpose of discovering, uncovering, moving, removing, or attempting to remove an archaeological resource. Each unlawful entry and act of disturbance or excavation of a prehistoric or historic site constitutes a separate and distinct offense.

(D) For a first offense, a person who violates the provisions of this section is guilty of a misdemeanor and, upon conviction, must be fined, imprisoned, or both, pursuant to the jurisdiction of magistrates as provided in Section 22-3-550.

(E) For a second offense for violating this section on the same property as the first offense or on another posted property, a person who violates the provisions of this section is guilty of a misdemeanor and, upon conviction, must be fined not less than one thousand dollars or more than three thousand dollars or imprisoned not more than three years, or both.

(F) For a third or subsequent offense for violating this section on the same property as the first offense or on another posted property, a person who violates the provisions of 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.

(G) For the purposes of subsections (E) and (F) of this section, a second, third, or subsequent offense on the same property as the first offense or on another posted property must include no offense that occurs more than ten years after conviction for the first offense.

(H) All equipment and conveyances including, but not limited to, trailers, motor vehicles, and watergoing vessels that were used in connection with felony violations of this section are subject to forfeiture to the State in the same manner as equipment and conveyances are subject to forfeiture pursuant to Section 44-53-520, if the offender either owns the equipment or conveyance or is a resident of the equipment or conveyance owner's household.

(1) All equipment and conveyances subject to confiscation and forfeiture under this section may be confiscated by any law enforcement officer as provided in this section. The confiscating officer shall deliver the confiscated property immediately to the county or municipality where the offense occurred. The county or municipality shall notify the registered owner of the confiscated property by certified mail within seventy-two hours of the confiscation. Upon notice, the registered owner has ten days to request a hearing before the court. The confiscation hearing must be held within ten days from the date of receipt of the request. The confiscated property must be returned to the registered owner if the registered owner shows by a preponderance of the evidence that he did not know the confiscated property was used in the commission of the crime, that he did not give permission for the confiscated property to be used in the commission of the crime, and that the confiscated property had not been used for a previous violation of this section on the posted land where this offense occurred or other posted land.

(2) The county or municipality in possession of the confiscated property shall provide notice by certified mail of the confiscation to all lienholders of record within ten days of the confiscation.

(3) Forfeiture of property is subordinate in priority to all valid liens and encumbrances.

(4) A person whose property is subject to forfeiture under this section is entitled to a jury trial if requested.

(I) The landowner, in the case of private lands, or the State, in the case of state lands, may bring a civil action for a violation of this section to recover the greater of the archaeological resource's archaeological value or commercial value, and the cost of restoration and repair of the site where the archaeological resource was located, plus attorney's fees and court costs.

(J) Nothing contained in this section shall limit or interfere with a landowner's lawful use of his property or with the state's ability to conduct archaeological investigations or excavations on either state lands or private lands with the consent of the landowner.

(K) Nothing contained in this section shall limit or interfere with:

(1) a landowner's lawful use of his property;

(2) the lawful acts of a landowner's employee, agent, or independent contractor acting in the scope of and in the course of his employment, agreement, or contract;

(3) the lawful acts of a utility worker acting in the scope of and in the course of his employment; or

(4) the state's ability to conduct archaeological investigations or excavations on either state lands or private lands with the consent of the landowner."

Prohibition on destruction or desecration of human remains; Native American burial grounds included; civil action for violation created

SECTION 2. Section 16-17-600 of the 1976 Code, as last amended by Act 229 of 2004, is amended to read:

"Section 16-17-600. (A) It is unlawful for a person wilfully and knowingly, and without proper legal authority to:

(1) destroy or damage the remains of a deceased human being;

(2) remove a portion of the remains of a deceased human being from a burial ground where human skeletal remains are buried, a grave, crypt, vault, mausoleum, Native American burial ground or burial mound, or other repository; or

(3) desecrate human remains.

A person violating the provisions of subsection (A) is guilty of a felony and, upon conviction, must be fined not more than five thousand dollars or imprisoned not less than one year nor more than ten years, or both.

A crematory operator is neither civilly nor criminally liable for cremating a body which (1) has been incorrectly identified by the funeral director, coroner, medical examiner, or person authorized by law to bring the deceased to the crematory; or (2) the funeral director has obtained invalid authorization to cremate. This immunity does not apply to a crematory operator who knew or should have known that the body was incorrectly identified.

(B) It is unlawful for a person wilfully and knowingly, and without proper legal authority to:

(1) obliterate, vandalize, or desecrate a burial ground where human skeletal remains are buried, a grave, graveyard, tomb, mausoleum, Native American burial ground or burial mound, or other repository of human remains;

(2) deface, vandalize, injure, or remove a gravestone or other memorial monument or marker commemorating a deceased person or group of persons, whether located within or outside of a recognized cemetery, Native American burial ground or burial mound, memorial park, or battlefield; or

(3) obliterate, vandalize, or desecrate a park, Native American burial ground or burial mound, or other area clearly designated to preserve and perpetuate the memory of a deceased person or group of persons.

A person violating the provisions of subsection (B) is guilty of a felony and, upon conviction, must be imprisoned not more than ten years or fined not more than five thousand dollars, or both.

(C)(1) It is unlawful for a person wilfully and knowingly to steal anything of value located upon or around a repository for human remains or within a human graveyard, cemetery, Native American burial ground or burial mound, or memorial park, or for a person wilfully, knowingly, and without proper legal authority to destroy, tear down, or injure any fencing, plants, trees, shrubs, or flowers located upon or around a repository for human remains, or within a human graveyard, cemetery, Native American burial ground or burial mound, or memorial park.

(2) A person violating the provisions of item (1) is guilty of:

(a) a felony and, upon conviction, if the theft of, destruction to, injury to, or loss of property is valued at two hundred dollars or more, must be fined not more than five thousand dollars or imprisoned not more than five years, or both, and must be required to perform not more than five hundred hours of community service;

(b) a misdemeanor triable in magistrates court if the theft of, destruction to, injury to, or loss of property is valued at less than two hundred dollars. Upon conviction, a person must be fined, imprisoned, or both, pursuant to the jurisdiction of magistrates as provided in Section 22-3-550, and must be required to perform not more than two hundred fifty hours of community service.

(D) A person who owns or has an interest in caring for the property, in the case of private lands, or the State, in the case of state lands, may bring a civil action for a violation of this section to recover damages, and the cost of restoration and repair of the property, plus attorney's fees and court costs."

Savings

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

Time effective

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

Ratified the 7th day of June, 2010.

Approved the 11th day of June, 2010.

No. 256

(R325, H4239)

AN ACT TO AMEND SECTION 8-21-310, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE SCHEDULE OF FEES AND COSTS COLLECTED BY COUNTY CLERKS OF COURT AND REGISTERS OF DEEDS, SO AS TO WAIVE THE RECORDING FEE OTHERWISE REQUIRED FOR A POWER OF ATTORNEY FILED BY A MEMBER OF THE ARMED FORCES OF THE UNITED STATES PREPARATORY TO DEPLOYMENT TO A COMBAT ZONE UPON PRESENTATION OF COPIES OF THE DEPLOYMENT ORDER, TO WAIVE THE RECORDING FEE FOR A REVOCATION OF A POWER OF ATTORNEY FILED BY OR ON BEHALF OF A MEMBER OF THE ARMED FORCES AND TO PROVIDE THE CIRCUMSTANCES UNDER

WHICH THE REVOCATION FEE IS WAIVED, AND TO DEFINE "COMBAT ZONE".

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

Recording and revocation filing fee for power of attorney waived, eligibility

SECTION 1. Section 8-21-310(10) of the 1976 Code, as last amended by Act 329 of 2002, is further amended to read:

"(10) for filing power of attorney, trustee qualification, or other appointment, fifteen dollars, and an additional one dollar a page for a document containing more than four pages. However, upon presentation of a copy of deployment orders to a combat zone by or on behalf of a member of the Armed Forces of the United States, the filing fee for a power of attorney for the person deployed is waived. In addition, the filing fee for a revocation of power of attorney filed by or on behalf of a member of the armed forces of the United States is waived if the revocation is filed: (i) within three years from the date of filing the power of attorney; and (ii) a copy of the deployment orders to a combat zone is presented. For purposes of this item, 'combat zone' has the meaning provided in Internal Revenue Service Publication 3 and includes service in a qualified hazardous duty area;"

Time effective

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

Ratified the 7th day of June, 2010.

Approved the 11th day of June, 2010.

No. 257

(R326, H4244)

AN ACT TO AMEND SECTION 59-130-10, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE COLLEGE OF CHARLESTON BOARD OF TRUSTEES, SO AS TO ADD AN

ADDITIONAL TRUSTEE TO BE APPOINTED BY THE GOVERNOR UPON THE RECOMMENDATION OF THE COLLEGE OF CHARLESTON ALUMNI ASSOCIATION BOARD OF DIRECTORS, TO SET HIS TERM, AND TO PROVIDE CRITERIA FOR HIS SELECTION.

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

College of Charleston Board of Trustees

SECTION 1. Section 59-130-10 of the 1976 Code is amended to read:

"Section 59-130-10. The board of trustees for the College of Charleston is composed of the Governor of the State or his designee, who is an ex officio of the board, and seventeen members, with fifteen of these members elected by the General Assembly, one member appointed from the State at large by the Governor, and one member appointed by Governor upon recommendation of the College of Charleston Alumni Association. The General Assembly shall elect and the Governor shall appoint these members based on merit regardless of race, color, creed, or gender and shall strive to assure that the membership of the board is representative of all citizens of this State.

Of the fifteen members to be elected, two members must be elected from each congressional district and the remaining three members must be elected by the General Assembly from the State at large.

The term of office of the at-large trustee appointed by the Governor is effective upon certification to the Secretary of State and is coterminous with the term of the Governor appointing him. He shall serve after his term has expired until his successor is appointed and qualifies. The member appointed by the Governor upon recommendation of the College of Charleston Alumni Association shall serve for a term of four years, beginning on July 1, 2010, until his successor is appointed and qualifies. The member must be a South Carolina resident and hold an undergraduate or graduate degree from the College of Charleston.

Each position on the board constitutes a separate office and the seats on the board are numbered consecutively as follows: for the First Congressional District, seats one and two; for the Second Congressional District, seats three and four; for the Third Congressional District, seats five and six; for the Fourth Congressional District, seats seven and eight; for the Fifth Congressional District, seats nine and ten; for the Sixth Congressional District, seats eleven

and twelve; for the at-large positions elected by the General Assembly, seats thirteen, fourteen, and fifteen. The member appointed by the Governor shall occupy seat sixteen. The member appointed by the Governor upon recommendation of alumni association shall occupy seat seventeen.

A person who, as of July 1, 1988, is serving as president of the State College Board of Trustees or is serving on the Planning Committee for the College of Charleston within the State College Board of Trustees has the option of serving as a trustee on the board of trustees for the College of Charleston for an appropriate two-year term expiring June 30, 1990. This option must be exercised on the first day of the filing period. If two such members file for the same seat, the General Assembly shall elect the board member from those filing.

Effective July 1, 1988, the even-numbered seats of those members elected by the General Assembly must be filled for four-year terms expiring June 30, 1992. The remaining elective odd-numbered seats on the board must be filled for two-year terms beginning July 1, 1988, and expiring June 30, 1990. The trustees for the odd-numbered seats must then be elected for four-year terms beginning July 1, 1990, and expiring June 30, 1994. The General Assembly shall hold elections every two years to select successors of the trustees whose four-year terms are then expiring. Except as otherwise provided in this chapter, no election may be held before April first of the year in which the successor's term is to commence. The term of office of an elective trustee commences on the first day of July of the year in which the trustee is elected.

If an elective office becomes vacant, the Governor may fill it by appointment until the next session of the General Assembly. The General Assembly shall hold an election at any time during the session to fill the vacancy for the unexpired portion of the term. A vacancy occurring in the appointed office on the board must be filled for the remainder of the unexpired term by appointment in the same manner of the original appointment."

Time effective

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

Ratified the 7th day of June, 2010.

Became law without the signature of the Governor -- 6/14/2010.

No. 258

(R327, H4448)

AN ACT TO AMEND SECTION 58-5-380, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO RESTRICTIONS ON INTERRUPTION OF ELECTRIC AND GAS SERVICES TO RESIDENTIAL CUSTOMERS FOR NONPAYMENT OF BILL, SO AS TO AUTHORIZE GAS UTILITIES TO IMPLEMENT PREPAYMENT PROGRAMS FOR RESIDENTIAL CUSTOMERS IN SUCH A MANNER THAT WILL PROMOTE ENERGY EFFICIENCY AND CONSERVATION BY FACILITATING CONSUMER AWARENESS OF ENERGY USE AND THE CONSERVATION OF ENERGY RESOURCES AND TO ALLOW THE GAS UTILITIES TO INTERRUPT SERVICE WHEN THE PREPAID ACCOUNT BALANCE IS ZERO IF CERTAIN CONDITIONS ARE MET, AND ALLOW ALTERNATIVE COMPLIANCE; BY ADDING SECTION 58-27-250 SO AS TO AUTHORIZE ELECTRIC UTILITIES TO IMPLEMENT PREPAYMENT PROGRAMS FOR RESIDENTIAL CUSTOMERS IN SUCH A MANNER THAT WILL PROMOTE ENERGY EFFICIENCY AND CONSERVATION BY FACILITATING CONSUMER AWARENESS OF ENERGY USE AND THE CONSERVATION OF ENERGY RESOURCES AND TO ALLOW THE UTILITIES TO INTERRUPT SERVICE WHEN THE PREPAID ACCOUNT BALANCE IS ZERO IF CERTAIN CONDITIONS ARE MET, AND ALLOW ALTERNATIVE COMPLIANCE; BY ADDING SECTION 58-31-460 SO AS TO AUTHORIZE THE SOUTH CAROLINA PUBLIC SERVICE AUTHORITY TO IMPLEMENT PREPAYMENT PROGRAMS FOR RESIDENTIAL CUSTOMERS IN SUCH A MANNER THAT

WILL PROMOTE ENERGY EFFICIENCY AND CONSERVATION BY FACILITATING CONSUMER AWARENESS OF ENERGY USE AND THE CONSERVATION OF ENERGY RESOURCES AND TO ALLOW THE PUBLIC SERVICE AUTHORITY TO INTERRUPT SERVICE WHEN THE PREPAID ACCOUNT BALANCE IS ZERO; BY ADDING SECTION 33-49-255 SO AS TO AUTHORIZE ELECTRIC COOPERATIVES TO IMPLEMENT PREPAYMENT PROGRAMS FOR RESIDENTIAL CUSTOMERS IN SUCH A MANNER THAT WILL PROMOTE ENERGY EFFICIENCY AND CONSERVATION BY FACILITATING CONSUMER AWARENESS OF ENERGY USE AND THE CONSERVATION OF ENERGY RESOURCES AND TO ALLOW THE ELECTRIC COOPERATIVES TO INTERRUPT SERVICE WHEN THE PREPAID ACCOUNT BALANCE IS ZERO; AND BY ADDING SECTION 5-31-690 SO AS TO AUTHORIZE MUNICIPAL ELECTRIC AND GAS SYSTEMS TO IMPLEMENT PREPAYMENT PROGRAMS FOR RESIDENTIAL CUSTOMERS IN SUCH A MANNER THAT WILL PROMOTE ENERGY EFFICIENCY AND CONSERVATION BY FACILITATING CONSUMER AWARENESS OF ENERGY USE AND THE CONSERVATION OF ENERGY RESOURCES AND TO ALLOW THE SYSTEMS TO INTERRUPT SERVICE WHEN THE PREPAID ACCOUNT BALANCE IS ZERO.

Whereas, there are various factors putting upward pressure on the price of electricity and natural gas, and those factors are likely to increase in the foreseeable future; and

Whereas, improvement of residential energy efficiency and conservation can protect South Carolina electricity and natural gas consumers from these price increases; and

Whereas, the implementation of energy efficiency and conservation measures in South Carolina residences will benefit not only the residents of the homes in which such measures are installed, but will benefit all residents of South Carolina by reducing the need for new and expensive sources of electricity generation; and

Whereas, consumer awareness of energy use is now, and has been, an impediment to increased efforts to make consumers more energy efficient; and

Whereas, South Carolina electricity providers and natural gas providers are in a position to assist their customers with the installation and financing of energy efficiency and conservation measures, provided that appropriate procedures are followed providing for the installation of such measures and the recovery of the cost of such measures. Now, therefore,

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

Interruption of gas service

SECTION 1. Section 58-5-380 of the 1976 Code is amended to read:

"Section 58-5-380. (A) Except as provided in subsections (B) and (C) of this section, a gas utility must not interrupt gas service to any residential customer for nonpayment of a bill until twenty-five days have elapsed from the date of billing.

(B) A gas utility may interrupt natural gas service to any residential customer who has voluntarily enrolled in a prepay program if the prepay program allows the customer to monitor his consumption of natural gas and his account balance on a daily basis and the balance of that customer's prepay account is zero, provided that the following conditions are met: (1) at the time the residential customer enrolls in the prepay program, the residential customer is informed and agrees that his natural gas service may be interrupted when the balance of his prepay account reaches zero; (2) natural gas service must not be interrupted before 10:00 a.m. on the next business day following an attempt by the gas utility to give the customer notice of the impending interruption by telephone or electronically; and (3) service must not be interrupted except during hours when the gas utility, or an agent, is accepting cash payments.

(C) A prepay program established by a gas utility shall be subject to approval by the commission prior to implementation. Any interruption of natural gas service under an approved prepay program shall be governed by the terms of this section and the provisions of the prepay account agreement. A prepay program approved by the commission under this subsection must allow the utility to interrupt service when the balance of the customer's prepay account is zero and the conditions set out in subsection (B) are met. Upon a showing of good cause, the commission may allow alternative compliance with the requirement of subsection (B) regarding the ability of the customer to monitor his

consumption and account balance on a daily basis, if such compliance provides consumer information and protections similar to that required in subsection (B).

(D) Nothing contained herein shall be construed so as to relieve a gas utility of the requirements of Act 313 of 2006.

(E) Any person aggrieved by a violation of this section may petition the courts of this State for redress in accordance with applicable law."

Interruption of electric service

SECTION 2. Article 1, Chapter 27, Title 58 of the 1976 Code is amended by adding:

"Section 58-27-250. (A) Except as provided in subsections (B) and (C) of this section, an electrical utility must not interrupt electric service to any residential customer for nonpayment of a bill until twenty-five days have elapsed from the date of billing.

(B) An electrical utility may interrupt electric service to any residential customer who has voluntarily enrolled in a prepay program if the prepay program allows the customer to monitor his consumption of electricity and his account balance on a daily basis and the balance of that customer's prepay account is zero, provided that the following conditions are met: (1) at the time the residential customer enrolls in the prepay program, the residential customer is informed and agrees that his electric service may be interrupted when the balance of his prepay account reaches zero; (2) electric service must not be interrupted before 10:00 a.m. on the next business day following an attempt by the electrical utility to give the customer notice of the impending interruption by telephone or electronically; and (3) electric service must not be interrupted except during hours when the electrical utility, or an agent, is accepting cash payments.

(C) A prepay program established by an electrical utility shall be subject to approval by the Public Service Commission of South Carolina prior to implementation. Any interruption of electric service under an approved prepay program shall be governed by the terms of this section and the provisions of the prepay account agreement. A prepay program approved by the Public Service Commission under this subsection must allow the utility to interrupt service when the balance of the customer's prepay account is zero and the conditions set out in subsection (B) are met. Upon a showing of good cause, the commission may allow alternative compliance with the requirement of subsection (B) regarding the ability of the customer to monitor his

consumption and account balance on a daily basis, if such compliance provides consumer information and protections similar to that required in subsection (B).

(D) Nothing contained herein shall be construed so as to relieve an electrical utility of the requirements of Act 313 of 2006.

(E) Any person aggrieved by a violation of this section may petition the courts of this State for redress in accordance with applicable law."

Interruption of electric service, Public Service Authority

SECTION 3. Article 3, Chapter 31, Title 58 of the 1976 Code is amended by adding:

"Section 58-31-460. (A) Except as provided in subsection (B) of this section, the Public Service Authority must not interrupt electric service to any residential customer for nonpayment of a bill until twenty-five days have elapsed from the date of billing.

(B) The Public Service Authority may interrupt electric service to any residential customer who has voluntarily enrolled in a prepay program if the prepay program allows the customer to monitor his consumption of electricity and his account balance on a daily basis and the balance of that customer's prepay account is zero, provided that the following conditions are met: (1) at the time the residential customer enrolls in the prepay program, the residential customer is informed and agrees that his electric service may be interrupted when the balance of his prepay account reaches zero; (2) electric service must not be interrupted before 10:00 a.m. on the next business day following an attempt by the Public Service Authority to give the customer notice of the impending interruption by telephone or electronically; and (3) service must not be interrupted except during hours when the Public Service Authority is accepting cash payments. For purposes of this subsection, a business day is any day in which the Public Service Authority, or an agent, is accepting cash payments.

(C) Nothing contained herein shall be construed so as to relieve the Public Service Authority of the requirements of Act 313 of 2006.

(D) Any person aggrieved by a violation of this section may petition the courts of this State for redress in accordance with applicable law."

Interruption of electric service, Electrical Cooperative

SECTION 4. Article 3, Chapter 49, Title 33 of the 1976 Code is amended by adding:

"Section 33-49-255. (A) Except as provided in subsection (B) of this section, an electric cooperative must not interrupt electric service to any residential customer for nonpayment of a bill until twenty-five days have elapsed from the date of billing.

(B) An electric cooperative may interrupt electric service to a residential customer who has voluntarily enrolled in a prepay program if the prepay program allows the customer to monitor his consumption of electricity and his account balance on a daily basis and the balance of that customer's prepay account is zero, provided that the following conditions are met: (1) at the time the residential customer enrolls in the prepay program, the residential customer is informed and agrees that his electric service may be interrupted when the balance of his prepay account reaches zero; (2) electric service must not be interrupted before 10:00 a.m. on the next business day following an attempt by the electric cooperative to give the customer notice of the impending interruption by telephone or electronically; and (3) service must not be interrupted except during hours when the electric cooperative is accepting cash payments. For purposes of this subsection, a business day is any day in which the electric cooperative, or an agent, is accepting cash payments.

(C) Nothing contained herein shall be construed so as to relieve an electric cooperative of the requirements of Act 313 of 2006.

(D) Any person aggrieved by a violation of this section may petition the courts of this State for redress in accordance with applicable law and notwithstanding Section 58-27-210, the Public Service Commission shall have no jurisdiction over an electric cooperative by reason of this section."

Interruption of electric or gas service, municipalities

SECTION 5. Article 7, Chapter 31, Title 5 of the 1976 Code is amended by adding:

"Section 5-31-690. (A) Except as provided in subsection (B) of this section, a municipality must not interrupt electric or gas service to any residential customer for nonpayment of a bill until twenty-five days have elapsed from the date of billing.

(B) A municipality may interrupt electric or natural gas service to any residential customer who has voluntarily enrolled in a prepay program if the prepay program allows the customer to monitor his consumption of electricity or natural gas and his account balance on a

daily basis and the balance of that customer's prepay account is zero, provided that the following conditions are met: (1) at the time the residential customer enrolls in the prepay program, the residential customer is informed and agrees that his electric or natural gas service may be interrupted when the balance of his prepay account reaches zero; (2) electric or natural gas service must not be interrupted before 10:00 a.m. on the next business day following an attempt by the municipality to give the customer notice of the impending interruption by telephone or electronically; and (3) electric or natural gas service must not be interrupted except during hours when the municipality is accepting cash payments. For purposes of this subsection, a business day is a day in which the municipality, or an agent, is accepting cash payments.

(C) Nothing contained herein shall be construed so as to relieve a municipality of the requirements of Act 313 of 2006.

(D) Any person aggrieved by a violation of this section may petition the courts of this State for redress in accordance with applicable law and notwithstanding Section 58-27-210, the Public Service Commission shall have no jurisdiction over a municipality by reason of this section."

Time effective

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

Ratified the 7th day of June, 2010.

Approved the 11th day of June, 2010.

No. 259

(R328, H4516)

AN ACT TO AMEND SECTION 61-4-550, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO SPECIAL PERMITS FOR THE SALE OF BEER AND WINE, SO AS TO ALLOW NONPROFIT ORGANIZATIONS TO ACQUIRE PERMITS FOR A LIMITED DURATION UNDER CERTAIN CIRCUMSTANCES AND LIMITATIONS; TO AMEND SECTION 61-4-240, RELATING TO TEMPORARY PERMITS

FOR THE POSSESSION, CONSUMPTION, OR SALE OF BEER OR WINE, SO AS TO REMOVE A REFERENCE TO SECTION 61-6-510; TO AMEND SECTION 61-6-2000, RELATING TO SPECIAL PERMITS FOR THE SALE OF ALCOHOLIC LIQUORS, SO AS TO ALLOW NONPROFIT ORGANIZATIONS TO ACQUIRE PERMITS FOR A LIMITED DURATION UNDER CERTAIN CIRCUMSTANCES AND LIMITATIONS; AND TO REPEAL SECTION 61-6-510 RELATING TO TEMPORARY PERMITS FOR THE SALE OF ALCOHOLIC LIQUORS FOR NONPROFIT ORGANIZATIONS.

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

Beer and wine, special permits for nonprofit organizations

SECTION 1. Section 61-4-550 of the 1976 Code is amended to read:

"Section 61-4-550. (A) The department may issue permits to nonprofit organizations running for a period not exceeding fifteen days for a fee of ten dollars per day. For purposes of this section, a 'nonprofit organization' is an entity which is organized and operated exclusively for social, benevolent, patriotic, recreational, or fraternal purposes, and which is exempt from federal income taxes pursuant to Internal Revenue Code Section 501(c)(3), 501(c)(4), 501(c)(6), 501(c)(7), 501(c)(8), 501(c)(10), or 501(c)(19). It also includes political parties and their affiliates duly certified by the Secretary of State. These special permits may be issued only for locations at fairs and special functions.

(B) The department shall require the applicant to obtain a criminal records check conducted by the State Law Enforcement Division within ninety days prior to an initial application. The department shall deny the application if the criminal records check is not submitted with the application and filing fee or if it was obtained more than ninety days before. For a subsequent application, the applicant is not required to obtain a new criminal records check unless:

(1) more than two years have elapsed since the most recent criminal records check was conducted; or

(2) the nonprofit organization has added or replaced a principal. For purposes of this section, all principals are deemed to be the applicant.

(C) The department shall require the applicant to notify in writing a minimum of fifteen days prior to the first day of a fair or special function the sheriff, or sheriff's designee, of the county in which the fair or special function is to be located. Upon request of the applicant, the sheriff may waive the fifteen day notification requirement. A timely objection within seventy-two hours of the receipt of the notice by the sheriff, or his official designee, submitted in writing to the department is sufficient grounds to deny the application.

(D) Organizations granted permits pursuant to this section are subject to penalties imposed pursuant to violations of Article 1, Chapter 4, Title 61."

Beer and wine, temporary permits, technical change

SECTION 2. Section 61-4-240 of the 1976 Code is amended to read:

"Section 61-4-240. Temporary permits for the possession, consumption, and sale of beer or wine may be issued pursuant to Section 61-4-550, 61-6-500, 61-6-2000, or 61-6-2010, as appropriate, and in accordance with these statutes."

Alcoholic liquors, special permits for nonprofit organizations

SECTION 3. Section 61-6-2000 of the 1976 Code is amended to read:

"Section 61-6-2000. (A) Notwithstanding another provision of this article, the department may issue to a nonprofit organization a temporary license to sell alcoholic liquor by the drink at a special function for a period not to exceed twenty-four hours. A qualifying nonprofit organization may sell tickets at the door. The application for this temporary license must include a statement by the applicant as to the nature and date of the special function at which alcoholic liquor by the drink is to be sold, as well as other information required by the department. The department shall charge a nonrefundable filing fee of thirty-five dollars for processing each event on the application. The department may deny the application if the completed application and filing fee are not submitted at least fifteen days before the date of the special function, but upon request by the applicant, the department may waive this requirement. The department in its discretion may specify the terms and conditions of the license, pursuant to existing statutes and regulations governing these applications.

(B) The department shall require the applicant to obtain a criminal background check conducted by the State Law Enforcement Division within ninety days prior to an initial application. The department shall deny the application if the criminal records check is not submitted with the application and filing fee or if it was obtained more than ninety days before. For a subsequent application, the applicant is not required to obtain a new criminal records check unless:

(1) more than two years have elapsed since the most recent criminal records check was conducted; or

(2) the nonprofit organization has added or replaced a principal. For purposes of this section, all principals are deemed to be the applicant.

(C) The department shall require the applicant to notify in writing within fifteen days the sheriff, or the sheriff's designee, of the county in which the special function is to be located. Upon request of the applicant, the sheriff may waive the fifteen day notification requirement. A timely objection within seventy-two hours of receipt of the notice by the sheriff, or his official designee, submitted in writing to the department is sufficient grounds to deny the application.

(D) The department may issue up to twenty-five temporary licenses on one application for special functions in a twelve-month period to the same nonprofit organization. This does not prohibit the nonprofit organization from applying for additional temporary licenses within the same twelve-month period.

(E) For purposes of this section, 'nonprofit organization' is an entity that is organized and operated exclusively for social, benevolent, patriotic, recreational, or fraternal purpose, and is exempt from federal income taxes pursuant to Internal Revenue Code Section 501(c)(3), 501(c)(4), 501(c)(6), 501(c)(7), 501(c)(8), 501(c)(10), or 501(c)(19). It also includes a political party or affiliate of a political party duly certified by the Secretary of State.

(F) Organizations granted permits pursuant to this section are subject to penalties imposed pursuant to violations of Article 13, Chapter 6, Title 61."

Repealed section

SECTION 4. Section 61-6-510 of the 1976 Code is repealed.

Time effective

SECTION 5. This act takes effect upon approval by the Governor and applies to applications for special functions beginning on January 1, 2011.

Ratified the 7th day of June, 2010.

Approved the 11th day of June, 2010.

No. 260

(R330, H4562)

AN ACT TO AMEND SECTION 39-11-30, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO REGISTRATION FEES OF WEIGHMASTERS AND DEPUTY WEIGHMASTERS, SO AS TO DELETE THE ADDITIONAL FEE FOR DEPUTY PUBLIC WEIGHMASTERS AND TO PROVIDE THAT THE CHAPTER APPLIES TO EMPLOYEES DESIGNATED BY A PUBLIC WEIGHMASTER; TO AMEND SECTION 39-11-60, RELATING TO LENGTH OF REGISTRATION AND RENEWAL, SO AS TO DELETE DEPUTY WEIGHMASTERS FROM THE PROVISION REGARDING LENGTH OF REGISTRATIONS AND RENEWALS; TO AMEND SECTION 39-11-80, RELATING TO REFUSAL OR REVOCATION OF A LICENSE, SO AS TO DELETE THE REFUSAL OR REVOCATION OF A DEPUTY PUBLIC WEIGHMASTER LICENSE BY THE COMMISSIONER OF AGRICULTURE; AND TO REPEAL SECTIONS 39-11-40 AND 39-11-50 RELATING TO EMPLOYMENT OR DESIGNATION OF DEPUTY WEIGHMASTERS AND RENEWAL OF REGISTRATION, RESPECTIVELY.

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

Deletion of additional registration fee for deputy public weighmasters; chapter applies to employees of public weighmasters

SECTION 1. Section 39-11-30 of the 1976 Code is amended to read:

"Section 39-11-30. Each public weighmaster shall pay a registration fee of five dollars to the Department of Agriculture for the privilege of operating in the locality of his principal place of business. All employees designated by a registered and approved public weighmaster also are covered under the provisions of this chapter."

Registrations and renewals for public weighmasters

SECTION 2. Section 39-11-60 of the 1976 Code is amended to read:

"Section 39-11-60. Notwithstanding the provisions of Section 39-11-50, registrations and renewals for public weighmasters shall be for three years."

Deletion of provision regarding deputy public weighmaster license revocation or issuance

SECTION 3. Section 39-11-80 of the 1976 Code is amended to read:

"Section 39-11-80. The Commissioner of Agriculture, after a hearing, may refuse to issue or may revoke a public weighmaster license issued to any person who cannot capably or reliably perform the duties of a public weighmaster, and he, after a hearing, may refuse to renew a public weighmaster license to any person who has not capably or reliably performed the duties of a public weighmaster."

Repeal

SECTION 4. Sections 39-11-40 and 39-11-50 of the 1976 Code are repealed.

Time effective

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

Ratified the 7th day of June, 2010.

Approved the 11th day of June, 2010.

No. 261

(R331, H4563)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 39-25-115 SO AS TO REQUIRE THE COMMISSIONER OF THE DEPARTMENT OF AGRICULTURE TO PROMULGATE REGULATIONS RELATING TO PRESCRIBED CONDITIONS FOR THE ISSUANCE OF PERMITS FOR THE MANUFACTURING, PROCESSING, OR PACKAGING OF FOODS UNDER CERTAIN CONDITIONS, AND TO ALLOW AN OFFICER OR EMPLOYEE OF THE COMMISSIONER TO HAVE ACCESS TO A FACTORY OR ESTABLISHMENT OWNED BY A PERMIT HOLDER TO ASCERTAIN COMPLIANCE WITH THE PERMIT CONDITIONS; BY ADDING SECTION 39-25-210 SO AS TO REQUIRE A PERSON ENGAGED IN MANUFACTURING, PROCESSING, OR PACKAGING FOODS TO FIRST REGISTER WITH THE DEPARTMENT OF AGRICULTURE AND TO PROVIDE EXCEPTIONS, TO PROVIDE FOR THE RENEWAL OF PERMITS, AND TO PROVIDE PENALTIES FOR FAILURE TO OBTAIN A PERMIT; TO AMEND SECTION 39-25-30, RELATING TO PROHIBITED ACTS, SO AS TO INCLUDE OPERATING WITHOUT REGISTERING; TO AMEND SECTION 39-25-180, RELATING TO PROMULGATION OF REGULATIONS BY THE COMMISSIONER OF THE DEPARTMENT OF AGRICULTURE, SO AS TO INCLUDE REGULATIONS RELATING TO GOOD MANUFACTURING PRACTICES, THERMALLY PROCESSED LOW-ACID FOODS PACKAGED IN HERMETICALLY SEALED CONTAINERS, ACIDIFIED FOODS, FISH AND FISHERY PRODUCTS, HAZARD ANALYSIS AND CRITICAL CONTROL POINT SYSTEMS, AND FOOD ALLERGEN AND LABELING; AND TO AMEND SECTION 39-25-190, RELATING TO AUTHORITY TO ENTER AND INSPECT A PREMISES, SO AS TO PROVIDE THAT THE

DEPARTMENT OF AGRICULTURE MAY PERFORM ANALYTICAL WORK AND LABORATORY SERVICES.

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

Promulgation of regulations relating to the manufacturing, processing, or packaging of food by the Department of Agriculture

SECTION 1. Chapter 25, Title 39 of the 1976 Code is amended by adding:

"Section 39-25-115. (A) When the commissioner finds, upon investigation, that the distribution in South Carolina of any class of food may, by reason of contamination with microorganisms during manufacturing, processing, or packaging in any locality, be injurious to human health and that the injurious nature cannot be adequately traced back after the articles have entered commerce, he shall promulgate regulations providing for the issuance to manufacturers, processors, or packagers of the class of food in the locality of permits to which must be attached the conditions governing the manufacturing, processing, or packaging of the class of food, for the temporary period of time as may be necessary to protect the public health. After the effective date of the regulations and during the temporary period, a person may not introduce or deliver for introduction into commerce any food manufactured, processed, or packaged by any manufacturer, processor, or packager unless the manufacturer, processor, or packager holds a permit issued by the commissioner as provided by the regulations.

(B) An officer or employee duly designated by the commissioner shall have access to a factory or establishment, the operator of which holds a permit from the Department of Agriculture, for the purpose of ascertaining whether or not the conditions of the permit are being complied with. Denial of access for the inspection is grounds for suspension of the permit until the access is freely given by the owner or operator."

Registration with Department of Agriculture; penalties

SECTION 2. Chapter 25, Title 39 of the 1976 Code is amended by adding:

"Section 39-25-210. (A) A person subject to inspection pursuant to this chapter may not engage in the business of manufacturing,

processing, warehousing, or packaging food in any manner without first registering with the department. This section shall not apply to facilities inspected and regulated by the United States Department of Agriculture (USDA) or the Clemson Livestock-Poultry Health Meat Inspection Division. Registration is required beginning January 1, 2011, and must be renewed annually thereafter on or before the first day of January on forms provided by the department.

(B) A person who wilfully violates the provisions of this section is subject to a civil penalty of up to one thousand dollars for each violation as determined by the department. Any person violating this section is also guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned for not more than thirty days."

Prohibited acts

SECTION 3. Section 39-25-30 of the 1976 Code is amended to read:

"Section 39-25-30. The following acts within the State of South Carolina are prohibited:

(1) the manufacture, sale, or delivery, holding, or offering for sale of any food or cosmetic that is adulterated or misbranded;

(2) the adulteration or misbranding of any food or cosmetic;

(3) the receipt in commerce of any food or cosmetic that is adulterated or misbranded, and the delivery or proffered delivery of it for pay or otherwise;

(4) the distribution in commerce of a consumer commodity, as defined in this chapter, if the commodity is contained in package, or if there is affixed to that commodity a label, that does not conform to the provisions of this chapter and of regulations promulgated under authority of this chapter; provided, however, that this prohibition does not apply to persons engaged in business as wholesale or retail distributors of consumer commodities except to the extent that persons engaged in packaging or labeling of the commodities or prescribe or specify by any means the manner in which such commodities are packaged or labeled;

(5) the dissemination of any false advertisement regarding any food or cosmetic;

(6) the refusal to permit entry or inspection, or to permit the taking of a sample, or to permit access to or copying of any record as authorized by Section 39-25-190;

(7) the giving of a guaranty or undertaking which guaranty or undertaking is false, except by a person who relied on a guaranty or undertaking to the same effect signed by, and containing the name and address of the person residing in the State from whom he received in good faith the food or cosmetic;

(8) the removal or disposal of a detained or embargoed article in violation of Section 39-25-60;

(9) the alteration, mutilation, destruction, obliteration, or removal of the whole or any part of the labeling of, or the doing of any other act with respect to a food or cosmetic if the act is done while the article is held for sale and results in the article being adulterated or misbranded;

(10) forging, counterfeiting, simulating, or falsely representing, or without proper authority using any mark, stamp, tag, label, or other identification device authorized or required by regulations promulgated pursuant to the provisions of this chapter or of the federal act;

(11) the using by any person to his own advantage, or revealing, other than to the commissioner or his authorized representative or to the courts when relevant in any judicial proceeding pursuant to this chapter of any information acquired under authority of this chapter concerning any method or process which as a trade secret is entitled to protection; and

(12) operating without registering pursuant to Section 46-3-20."

Promulgation of related regulations

SECTION 4. Section 39-25-180 of the 1976 Code is amended to read:

"Section 39-25-180. (A) The authority to promulgate regulations for the efficient enforcement of this chapter is vested in the commissioner. The commissioner is authorized to make the regulations promulgated pursuant to this chapter conform, insofar as practicable, with those promulgated under the federal act.

(B) Hearings authorized or required by this chapter must be conducted by the commissioner or the officer, agent, or employee the commissioner may designate for the purpose.

(C) Pesticide chemical regulations and their amendments now or hereafter adopted pursuant to authority of the federal Food, Drug, and Cosmetic Act are the pesticide chemical regulations in this State. However, the commissioner may adopt a regulation that prescribes tolerances for pesticides in finished foods in this State whether or not in accordance with regulations promulgated pursuant to the federal act.

(D) Food additive regulations and their amendments now or hereafter adopted pursuant to authority of the federal Food, Drug, and Cosmetic Act are the food additive regulations in this State. However, the commissioner may adopt a regulation that prescribes conditions under which a food additive may be used in this State whether or not in accordance with regulations promulgated pursuant to the federal act.

(E) Color additive regulations and their amendments now or hereafter adopted pursuant to the authority of the federal Food, Drug, and Cosmetic Act are the color additive regulations in this State. However, the commissioner may adopt a regulation that prescribes conditions under which a color additive may be used in this State whether or not in accordance with regulations promulgated pursuant to the federal act.

(F) Special dietary use regulations and their amendments now or hereafter adopted pursuant to the authority of the federal Food, Drug, and Cosmetic Act are the special dietary use regulations in this State. However, the commissioner may, if he finds it necessary to inform purchasers of the value of a food for special dietary use, prescribe special dietary use regulations whether or not in accordance with regulations promulgated pursuant to the federal act.

(G) Regulations and their amendments now or hereafter adopted pursuant to the Fair Packaging and Labeling Act are the regulations of this State. However, the commissioner may, if he finds it necessary in the interest of consumers, prescribe packaging and labeling regulations for consumer commodities, whether or not in accordance with regulations promulgated pursuant to the federal act; provided, that no regulation may be promulgated that is contrary to the labeling requirements for the net quantity of contents required pursuant to Section 4 of the Fair Packaging and Labeling Act and the regulations promulgated pursuant to it.

(H) Good manufacturing practice regulations and their amendments now or hereafter adopted pursuant to the authority of the federal Food, Drug, and Cosmetic Act are the good manufacturing regulations of this State. However, the commissioner may adopt a regulation that prescribes conditions under which good manufacturing processes may be used in this State whether or not in accordance with regulations promulgated pursuant to the federal act.

(I) Regulations and their amendments adopted referencing thermally processed low-acid foods packaged in hermetically sealed containers pursuant to the authority of the federal Food, Drug, and Cosmetic Act are the low-acid food regulations of this State. However, the commissioner may adopt a regulation that prescribes conditions

under which thermally processed low-acid foods packaged in hermetically sealed containers may be used in this State whether or not in accordance with regulations promulgated pursuant to the federal act.

(J) Regulations and their amendments adopted referencing acidified foods pursuant to the authority of the federal Food, Drug, and Cosmetic Act are the acidified food regulations of this State. However, the commissioner may adopt a regulation that prescribes conditions under which acidified foods may be used in this State whether or not in accordance with regulations promulgated pursuant to the federal act.

(K) Regulations and their amendments adopted with regard to fish and fishery products pursuant to the authority of the federal Food, Drug, and Cosmetic Act are the fish and fishery products regulations of this State. However, the commissioner may adopt a regulation that prescribes conditions under which fish and fishery products may be used in this State whether or not in accordance with regulations promulgated pursuant to the federal act.

(L) Regulations and their amendments now or hereafter adopted with regard to Hazard Analysis and Critical Control Point (HACCP) Systems pursuant to the authority of the federal Food, Drug, and Cosmetic Act as they are used to monitor various food products, including juice, for biological, chemical, and physical contaminants.

(M) Food allergen and labeling regulations and their amendments now or hereafter adopted by the Food Allergen Labeling and Consumer Protection Act pursuant to the authority of the federal Food, Drug, and Cosmetic Act are the food allergen and labeling regulations of this State.

(N) A federal regulation automatically adopted pursuant to this chapter takes effect in this State on the date it becomes effective as a federal regulation. The commissioner shall publish all other proposed regulations in the official state newspaper or publication prescribed by the commissioner. A person who may be adversely affected by a regulation may, within thirty days after a federal regulation is automatically adopted, or within thirty days after publication of any other regulation, file objections with the commissioner, in writing, and a request for a hearing. The timely filing of substantial objections to a federal regulation automatically adopted stays the effect of the regulation in the State of South Carolina.

(O) If no substantial objections are received and no hearing is requested within thirty days after publication of a proposed regulation, the regulation takes effect on a date set by the commissioner. The effective date shall be at least sixty days after the time for filing objections has expired.

(P) If timely substantial objections are made to a federal regulation within thirty days after it is automatically adopted or to a proposed regulation within thirty days after it is published, the commissioner, after notice, shall conduct a public hearing to receive evidence on the issues raised by the objections. Any interested person or his representative may be heard. The commissioner shall act upon objections by order and shall mail the order to objectors by certified mail as soon after the hearing as practicable. The order must be based on substantial evidence in the record of the hearing. If the order concerns a federal regulation, it may reinstate, rescind, or modify it. If the order concerns a proposed regulation, it may withdraw it or set an effective date for the regulation as published or as modified by the order. The effective date must be at least sixty days after publication of the order."

Laboratory services and analytical work performed by Department of Agriculture

SECTION 5. Section 39-25-190 of the 1976 Code is amended to read:

"Section 39-25-190. (A) For purposes of enforcement of this chapter, the commissioner or any of his authorized agents upon presenting appropriate credentials to the owner, operator, or agent in charge, may:

(1) enter at reasonable times any factory, warehouse, or establishment in which food or cosmetics are manufactured, processed, packaged, or held for introduction into commerce or after introduction or enter any vehicle being used to transport or hold this food or cosmetics in commerce;

(2) inspect at reasonable times and within reasonable limits and in a reasonable manner the factory, warehouse, establishment, or vehicle and all pertinent equipment, finished and unfinished materials, containers, and labeling and to obtain samples necessary for the enforcement of this chapter; and

(3) have access to and to copy all records of carriers in commerce showing the movement in commerce of any food or cosmetic, or the holding of it during or after movement, and the quantity, shipper, and consignee of it. Evidence obtained pursuant to this subsection may not be used in a criminal prosecution of the person from whom obtained. Carriers are not subject to the other provisions of this chapter by reason of their receipt, carriage, holding, or delivery of food or cosmetics in the usual course of business as carriers.

(B) Upon completion of an inspection of a factory, warehouse, or other establishment, and prior to leaving the premises, the authorized agent making the inspection shall give to the owner, operator, or agent in charge a report in writing setting forth any conditions or practices observed by him which in his judgment indicate that any food or cosmetic in the establishment consists in whole or in part of any filthy, putrid, or decomposed substance or has been prepared, packaged, or held under unsanitary conditions whereby it may have become contaminated with filth or whereby it may have been rendered injurious to health. A copy of the report must be sent promptly to the commissioner.

(C) If the authorized agent making an inspection of a factory, warehouse, or other establishment has obtained a sample in the course of the inspection, upon completion of the inspection and prior to leaving the premises, he shall give to the owner, operator, or agent in charge a receipt describing the samples obtained.

(D) When in the course of an inspection of a factory or other establishment in which food is manufactured, processed, or packaged, the officer or employee making the inspection obtains a sample of the food and analysis is made of such sample for the purpose of ascertaining whether such food consists in whole or in part of any filthy, putrid, or decomposed substance or is otherwise unfit for food, a copy of the results of the analysis must be furnished promptly to the owner, operator, or agent in charge.

(E) The analytical work necessary for the proper enforcement of this chapter and regulations adopted by the department in regard to food must be undertaken by the department or under the direction of the department.

(F) The department may perform laboratory services relating to, or having potential impact on, food safety or the compliance of food with the requirements of this chapter for any person or public agency."

Time effective

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

Ratified the 7th day of June, 2010.

Approved the 11th day of June, 2010.

No. 262

(R332, H4589)

AN ACT TO AMEND SECTION 46-7-110, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO ANIMAL FACILITY WASTE MANAGEMENT TRAINING AND CERTIFICATION PROGRAMS, SO AS TO EXEMPT CATTLE STOCKYARD OWNERS AND OPERATORS FROM THESE TRAINING AND CERTIFICATION REQUIREMENTS.

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

Training and certification requirement exemptions

SECTION 1. Section 46-7-110 of the 1976 Code, as added by Act 340 of 2002, is amended to read:

"Section 46-7-110. (A) Clemson University, in conjunction with the Department of Health and Environmental Control, shall create a training and certification program for owners or operators of an animal facility as defined in Regulation 61-43 which must include, but is not limited to, understanding relevant regulations, issues, standards, principles, and practices regarding siting and management of an animal facility and land application of animal waste; controlling vectors, testing for toxic metals, organic materials, and other elements; and implementing emergency procedures and spill prevention protocols.

(B) An operator of an animal facility and waste utilization area must be trained and certified according to South Carolina Department of Health and Environmental Control Regulations on the operation of animal waste management under the program created in subsection (A).

(C) Notwithstanding the provisions of subsection (B) or any other provision of law, cattle stockyard owners and operators are exempt from the training and certification requirements of this section."

Time effective

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

Ratified the 7th day of June, 2010.

Became law without the signature of the Governor -- 6/14/2010.

No. 263

(R333, H4837)

AN ACT TO AMEND SECTION 12-21-3940, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE BINGO LICENSE REQUIRED FOR NONPROFIT ORGANIZATIONS, SO AS TO ELIMINATE THE PROHIBITION ON ISSUING SUCH A LICENSE TO A NONPROFIT ORGANIZATION WHICH HOLDS A LICENSE TO SELL ALCOHOLIC LIQUORS BY THE DRINK; AND TO AMEND SECTION 12-21-3920, AS AMENDED, RELATING TO DEFINITIONS FOR PURPOSES OF THE BINGO TAX ACT, SO AS TO REVISE THE DEFINITION FOR "NONPROFIT ORGANIZATION".

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

Restriction on licensing lifted

SECTION 1. Section 12-21-3940 of the 1976 Code, as last amended by Act 172 of 2004, is further amended by deleting subsection (D) which reads:

"(D) A license must not be issued for conducting a game of bingo at an establishment holding a license pursuant to the provisions of Section 61-6-1820."

Definition revised

SECTION 2. Section 12-21-3920(5) of the 1976 Code is amended to read:

"(5) 'Nonprofit organization' means an entity which is organized and operated exclusively for charitable, religious, or fraternal purposes and which is exempt from federal income taxes pursuant to Internal

Revenue Code Section 501(c)(3), 501(c)(4), 501(c)(7), 501(c)(8), 501(c)(10), or 501(c)(19)."

Time effective

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

Ratified the 7th day of June, 2010.

Approved the 11th day of June, 2010.

No. 264

(R334, H4839)

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 CLARIFY THAT THE PROPERTY TAX EXEMPTION FOR RECIPIENTS OF THE MEDAL OF HONOR AND PRISONERS OF WAR IN CERTAIN CONFLICTS APPLIES TO MEDAL OF HONOR RECIPIENTS REGARDLESS OF WHEN THE MEDAL OF HONOR WAS AWARDED OR THE CONFLICT INVOLVED.

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

Exemption for Medal of Honor recipients, revised

SECTION 1. Section 12-37-220(B)(43) of the 1976 Code, as added by Act 18 of 2001, is amended to read:

"(43) The dwelling home and a lot not to exceed one acre of land owned in fee or for life or jointly with a spouse by a resident of this State who is a recipient of the Medal of Honor regardless of when it was awarded or the conflict involved, or who was a prisoner of war in World War I, World War II, the Korean Conflict, or the Vietnam Conflict. The exemption is allowed to the surviving spouse under the same terms and conditions governing the exemption for surviving spouses pursuant to item (1) of this subsection. A person applying for

this exemption must provide the evidence of eligibility the department requires."

Time effective

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

Ratified the 7th day of June, 2010.

Approved the 11th day of June, 2010.

No. 265

(R339, S107)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 16-3-755 SO AS TO DEFINE NECESSARY TERMS, CREATE LEVELS OF SEXUAL BATTERY WITH A STUDENT OFFENSES, PROVIDE PENALTIES, AND PROVIDE AN EXCEPTION FOR PERSONS LAWFULLY MARRIED.

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

Sexual battery with a student

SECTION 1. Article 7, Chapter 3, Title 16 of the 1976 Code is amended by adding:

"Section 16-3-755. (A) For purposes of this section:

(1) 'Aggravated coercion' means that the person affiliated with a public or private secondary school in an official capacity threatens to use force or violence of a high and aggravated nature to overcome the student, if the student reasonably believes that the person has the present ability to carry out the threat, or threatens to retaliate in the future by the infliction of physical harm, kidnapping, or extortion, under circumstances of aggravation, against the student.

(2) 'Aggravated force' means that the person affiliated with a public or private secondary school in an official capacity uses physical

force or physical violence of a high and aggravated nature to overcome the student or includes the threat of the use of a deadly weapon.

(3) 'Person affiliated with a public or private secondary school in an official capacity' means an administrator, teacher, substitute teacher, teacher's assistant, student teacher, law enforcement officer, school bus driver, guidance counselor, or coach who is affiliated with a public or private secondary school but is not a student enrolled in the school.

(4) 'Secondary school' means either a junior high school or a high school.

(5) 'Sexual battery' means sexual intercourse, cunnilingus, fellatio, anal intercourse, or any intrusion, however slight, of any part of a person's body or of any object into the genital or anal openings of another person's body, except when such intrusion is accomplished for medically recognized treatment or diagnostic purposes.

(6) 'Student' means a person who is enrolled in a school.

(B) If a person affiliated with a public or private secondary school in an official capacity engages in sexual battery with a student enrolled in the school who is sixteen or seventeen years of age, and aggravated coercion or aggravated force is not used to accomplish the sexual battery, the person affiliated with the public or private secondary school in an official capacity is guilty of a felony and, upon conviction, must be imprisoned for not more than five years.

(C) If a person affiliated with a public or private secondary school in an official capacity engages in sexual battery with a student enrolled in the school who is eighteen years of age or older, and aggravated coercion or aggravated force is not used to accomplish the sexual battery, the person affiliated with the public or private secondary school in an official capacity is guilty of a misdemeanor and, upon conviction, must be fined not more than five hundred dollars or imprisoned for thirty days, or both.

(D) If a person affiliated with a public or private secondary school in an official capacity has direct supervisory authority over a student enrolled in the school who is eighteen years of age or older, and the person affiliated with the public or private secondary school in an official capacity engages in sexual battery with the student, and aggravated coercion or aggravated force is not used to accomplish the sexual battery, the person affiliated with the public or private secondary school in an official capacity is guilty of a felony and, upon conviction, must be imprisoned for not more than five years.

(E) This section does not apply if the person affiliated with a public or private secondary school in an official capacity is lawfully married to the student at the time of the 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.

Severability clause

SECTION 3. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this act, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

Time effective

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

Ratified the 21st day of June, 2010.

Approved the 24th day of June, 2010.

No. 266

(R341, S382)

AN ACT TO AMEND SECTION 62-2-804, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE EFFECT OF PROVISION FOR SURVIVORSHIP ON SUCCESSION TO JOINT TENANCY, SO AS TO MAKE SUCH PROVISIONS APPLICABLE TO REAL PROPERTY HELD IN JOINT TENANCY; AND BY ADDING SECTION 62-2-805 SO AS TO PROVIDE FOR A PRESUMPTION THAT A DECEDENT AND THE DECEDENT'S SPOUSE HELD TANGIBLE PERSONAL PROPERTY IN A JOINT TENANCY WITH RIGHT OF SURVIVORSHIP, FOR EXCEPTIONS TO THE PRESUMPTION, AND FOR THE STANDARD OF PROOF TO OVERCOME THE PRESUMPTION.

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

Joint tenancy in real property severed

SECTION 1. Section 62-2-804 of the 1976 Code is amended to read:

"Section 62-2-804. When any person is seized or possessed of any real property held in joint tenancy at the time of his death, the joint tenancy is deemed to have been severed by the death of the joint tenant and the real property is distributable as a tenancy in common unless the instrument which creates the joint tenancy in real property, including any instrument in which one person conveys to himself and one or more other persons, or two or more persons convey to themselves, or to themselves and another or others, expressly provides for a right of survivorship, in which case the severance does not occur. While other methods for the creation of a joint tenancy in real property may be utilized, an express provision for a right of survivorship is conclusively considered to have occurred if the will or instrument of conveyance contains the names of the devisees or grantees followed by the words 'as joint tenants with right of survivorship and not as tenants in common'."

Joint tenancy presumed

SECTION 2. Part 8, Article 2, Title 62 of the 1976 Code is amended by adding:

"Section 62-2-805. (A) For purposes of this article, tangible personal property in the joint possession or control of the decedent and the surviving spouse at the time of the decedent's death is presumed to be owned by the decedent and the decedent's spouse in joint tenancy with right of survivorship if ownership is not evidenced otherwise by a certificate of title, bill of sale, or other writing. This presumption does not apply to property:

(1) acquired by either spouse before marriage;

(2) acquired by either spouse by gift or inheritance during the marriage;

(3) used by the decedent spouse in a trade or business in which the surviving spouse has no interest;

(4) held for another; or

(5) devised in a written statement or list disposing of tangible personal property pursuant to Section 62-2-512.

(B) The presumption created in this section may be overcome by a preponderance of the evidence demonstrating that ownership was held other than in joint tenancy with right of survivorship."

Severability

SECTION 3. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this act, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

Time effective

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

Ratified the 21st day of June, 2010.

Approved the 24th day of June, 2010.

No. 267

(R342, S981)

AN ACT TO AMEND SECTION 63-3-530, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE JURISDICTION OF THE FAMILY COURT, INCLUDING JURISDICTION TO ORDER VISITATION FOR GRANDPARENTS, SO AS TO PROVIDE THAT THE COURT MAY ORDER GRANDPARENT VISITATION IF THE COURT FINDS THAT THE CHILD'S PARENTS ARE UNREASONABLY DEPRIVING THE GRANDPARENT VISITATION WITH THE CHILD AND HAVE DENIED VISITATION FOR MORE THAN NINETY DAYS, THAT THE GRANDPARENT MAINTAINED A RELATIONSHIP WITH THE CHILD SIMILAR TO A PARENT-CHILD RELATIONSHIP, THAT AWARDING VISITATION WOULD NOT INTERFERE WITH THE PARENT-CHILD RELATIONSHIP, AND THAT THE PARENTS ARE UNFIT OR THAT THERE ARE COMPELLING CIRCUMSTANCES TO OVERCOME THE PRESUMPTION THAT THE PARENTAL DECISION IS IN THE CHILD'S BEST INTEREST; TO AUTHORIZE THE JUDGE TO AWARD ATTORNEY'S FEES TO THE PREVAILING PARTY; AND TO DEFINE "GRANDPARENT".

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

Grandparent visitation revised

SECTION 1. Section 63-3-530(A)(33) of the 1976 Code, as added by Act 361 of 2008, is amended to read:

"(33) to order visitation for the grandparent of a minor child where either or both parents of the minor child is or are deceased, or are divorced, or are living separate and apart in different habitats, if the court finds that:

(1) the child's parents or guardians are unreasonably depriving the grandparent of the opportunity to visit with the child, including denying visitation of the minor child to the grandparent for a period exceeding ninety days; and

(2) the grandparent maintained a relationship similar to a parent-child relationship with the minor child; and

(3) that awarding grandparent visitation would not interfere with the parent-child relationship; and:

(a) the court finds by clear and convincing evidence that the child's parents or guardians are unfit; or

(b) the court finds by clear and convincing evidence that there are compelling circumstances to overcome the presumption that the parental decision is in the child's best interest.

The judge presiding over this matter may award attorney's fees and costs to the prevailing party.

For purposes of this item, 'grandparent' means the natural or adoptive parent of any parent to a minor child;"

Time effective

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

Ratified the 21st day of June, 2010.

Approved the 24th day of June, 2010.

No. 268

(R345, H3245)

AN ACT TO AMEND SECTION 44-41-330, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO, AMONG OTHER THINGS, PREREQUISITES TO PERFORMING AN ABORTION, SO AS TO PROVIDE THAT NO ABORTION MAY BE PERFORMED SOONER THAN

TWENTY-FOUR HOURS AFTER A WOMAN RECEIVES AND VERIFIES SHE HAS RECEIVED CERTAIN INFORMATION THAT MUST BE PROVIDED TO HER BY LAW; TO AMEND SECTION 44-41-340, RELATING TO THE PUBLICATION OF INFORMATION THAT MUST BE PROVIDED TO A WOMAN BEFORE UNDERGOING AN ABORTION, SO AS TO PROVIDE THAT THE INFORMATION MUST INCLUDE A LIST OF HEALTH CARE PROVIDERS, FACILITIES, AND CLINICS THAT PERFORM ULTRASOUNDS FREE OF CHARGE, A PLAINLY WORDED EXPLANATION OF HOW A WOMAN MAY CALCULATE THE GESTATIONAL AGE OF HER EMBRYO OR FETUS, A SCIENTIFICALLY ACCURATE STATEMENT CONCERNING THE CONTRIBUTION THAT EACH PARENT MAKES TO THE GENETIC CONSTITUTION OF THEIR BIOLOGICAL CHILD, AND FORMS FOR NOTIFICATIONS, CERTIFICATIONS, AND VERIFICATIONS REQUIRED BY LAW; TO REQUIRE THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL TO POST THIS INFORMATION ON ITS INTERNET WEBSITE AND TO REQUIRE THE DEPARTMENT'S WEBSITE TO PROVIDE A LINK TO THE INTERNET WEBSITES MAINTAINED BY HEALTH CARE PROVIDERS, FACILITIES, AND CLINICS THAT PERFORM ULTRASOUNDS FREE OF CHARGE AND THAT HAVE REQUESTED TO BE LISTED BY THE DEPARTMENT; AND TO AMEND SECTION 44-41-380, RELATING TO SEVERABILITY PROVISIONS CONCERNING THE "WOMEN'S RIGHT TO KNOW ACT", SO AS TO MAKE A TECHNICAL CORRECTION.

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

Abortion waiting period

SECTION 1. Section 44-41-330(C) and (D) of the 1976 Code is amended to read:

"(C) No abortion may be performed sooner than twenty-four hours after the woman receives the written materials and certifies this fact to the physician or the physician's agent.

(D) If the clinic or other facility where the abortion is to be performed or induced mails the printed materials described in Section 44-41-340 to the woman upon whom the abortion is to be performed or

induced or if the woman obtains the information at the county health department and if the woman verifies in writing, before the abortion, that the printed materials were received by her more than twenty-four hours before the abortion is scheduled to be performed or induced, that the information described in item (A)(1) has been provided to her, and that she has been informed of her opportunity to review the information referred to in item (A)(2), then the waiting period required pursuant to subsection (C) does not apply."

Information to be provided

SECTION 2. Section 44-41-340(A) of the 1976 Code is amended by adding appropriately numbered new subitems to read:

"( ) a list of health care providers, facilities, and clinics that offer to perform ultrasounds free of charge. The list must be arranged geographically and shall include the name, address, hours of operation, and telephone number of each entity listed. A health care provider, facility, or clinic that would like to be included on this list may contact the department and provide the required information. The department must update this list annually before September first;

( ) a plainly worded explanation of how a woman may calculate the gestational age of her embryo or fetus;

( ) a scientifically accurate statement concerning the contribution that each parent makes to the genetic constitution of their biological child;

( ) forms for notifications, certifications, and verifications required by Section 44-41-330."

Information to be on department's website

SECTION 3. Section 44-41-340 of the 1976 Code is amended by adding:

"(D)(1) The materials required under this section must be available on the department's Internet website in a format suitable for downloading. The website must be capable of permitting the user to print a time and date stamped certification identifying when the materials are downloaded.

(2) The department's Internet website also must provide a link to the Internet website maintained by health care providers, facilities, and

clinics that offer to perform ultrasounds free of charge that have requested to be placed on the list maintained by the department."

Severability provisions

SECTION 4. Section 44-41-380 of the 1976 Code is amended to read:

"Section 44-41-380. If any provision, word, phrase, or clause of Article 3, Chapter 41, Title 44 of the 1976 Code, or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect the provisions, words, phrases, clauses, or applications of Article 3, Chapter 41, Title 44 which can be given effect without the invalid provision, word, phrase, clause, or application, and, to this end, the provisions, words, phrases, and clauses of Article 3, Chapter 41, Title 44 are declared to be severable."

Severability clause

SECTION 5. The provisions of this act are severable. If any section, subsection, paragraph, item, subitem, 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 the act, the General Assembly hereby declaring that it would have passed 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, 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 of the Governor.

Ratified the 21st day of June, 2010.

Approved the 24th day of June, 2010.

No. 269

(R347, H4215)

AN ACT TO AMEND SECTION 18-3-30, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE APPEAL OF A DECISION OF A MAGISTRATE, SO AS TO PROVIDE THAT AN APPELLANT MUST FILE A NOTICE OF APPEAL WITH THE CLERK OF THE CIRCUIT COURT AND SERVE NOTICE UPON THE DESIGNATED AGENT FOR THE PROSECUTING AGENCY OR ATTORNEY WHO PROSECUTED THE CHARGE IN ADDITION TO THE MAGISTRATE WHO TRIED THE CASE.

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

Magistrates court, notice of appeal

SECTION 1. Section 18-3-30 of the 1976 Code is amended to read:

"Section 18-3-30. (A) The appellant, within ten days after sentence, shall file notice of appeal with the clerk of circuit court and shall serve notice of appeal upon the magistrate who tried the case and upon the designated agent for the prosecuting agency or attorney who prosecuted the charge, stating the grounds upon which the appeal is founded.

(B) A person convicted in magistrates court who pays a fine assessed by the court does not waive his right of appeal and, upon proper notice, may appeal his conviction within the time allotted in this section."

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 21st day of June, 2010.

Approved the 24th day of June, 2010.

No. 270

(R348, H4256)

AN ACT TO AMEND SECTION 17-30-125, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO INCIDENCES WHEN THE SUPERVISING AGENT OF A LAW ENFORCEMENT AGENCY MAY ORDER CERTAIN PERSONS TO CUT, REROUTE, OR DIVERT TELEPHONE LINES FOR CERTAIN PURPOSES, SO AS TO DEFINE "ATTORNEY GENERAL" AND "SLED", INCLUDE THREATENING A CRITICAL INFRASTRUCTURE AS AN INCIDENT COVERED BY THIS SECTION, AND TO PROVIDE THAT CERTAIN SLED EMPLOYEES MAY ISSUE AN ADMINISTRATIVE SUBPOENA TO A TELEPHONE COMPANY, INTERNET SERVICE PROVIDER, OR ANOTHER COMMUNICATIONS ENTITY WHEN THERE IS REASONABLE CAUSE TO BELIEVE THAT AN ACTIVE EMERGENCY SITUATION EXISTS; TO AMEND SECTION 17-30-20, RELATING TO UNLAWFUL INTERCEPTION OF WIRE, ELECTRONIC, AND ORAL COMMUNICATIONS, SO AS TO PROVIDE THAT IT IS UNLAWFUL TO USE, ATTEMPT TO USE, OR PROCURE A PERSON TO USE AN ELECTRONIC, MECHANICAL, OR OTHER DEVICE OR SERVICE TO DISPLAY A MISLEADING TELEPHONE NUMBER ON A PHONE CALL RECIPIENT'S CALLER IDENTIFICATION DISPLAY UNDER CERTAIN CIRCUMSTANCES.

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

Administrative subpoena

SECTION 1. Section 17-30-125 of the 1976 Code, as added by Act 339 of 2002, is amended to read:

"Section 17-30-125. (A) For purposes of this section:

(1) 'Attorney General' means the Attorney General of the State of South Carolina or the Attorney General's designee who is employed by the Attorney General and is an officer of the court.

(2) 'SLED' means the South Carolina Law Enforcement Division.

(B) The supervising agent of SLED or the supervising law enforcement officer of a political subdivision of this State at the scene of an incident where there is reasonable cause to believe that:

(1) the incident involves immediate danger of death or serious bodily injury to a person or the danger of a prisoner's escape;

(2) a person is holding one or more hostages;

(3) the probability exists that a subject about to be arrested will resist with the use of weapons;

(4) a person has barricaded himself, is armed, and is threatening to commit suicide; or

(5) a threat has been made against a critical infrastructure in South Carolina as defined by federal law, pursuant to 42 U.S.C. 5195c(e); may order law enforcement or telephone company personnel to cut, reroute, or divert telephone lines solely for the purpose of preventing telephone communications between the suspect and any person other than a law enforcement officer or the law enforcement officer's designee, if the cutting, rerouting, or diverting of telephone lines is technically feasible and can be performed without endangering the lives of telephone company or other utility personnel.

(C) An officer of the court who is employed by SLED may issue an administrative subpoena to a telephone company, Internet service provider, or communications entity for the production of subscriber or customer information as described in subsection (F), not including the contents of any communications, if:

(1) SLED has reasonable cause to believe that the information is material to an active emergency incident involving at least one of the following situations:

(a) a threat of death or serious bodily injury to a person;

(b) the danger of a prisoner's escape;

(c) a person who is holding one or more hostages;

(d) the probability exists that a person about to be arrested will resist arrest with the use of weapons;

(e) a person who has barricaded himself, is armed, and is threatening to commit suicide; or

(f) a threat against a critical infrastructure in South Carolina as defined by federal law, pursuant to 42 U.S.C. Section 5195c(e); and

(2) SLED is not otherwise able to obtain a warrant or subpoena for the information from a court due to:

(a) the court not being able to issue a warrant or subpoena in a timely fashion and the immediate need to obtain the information; or

(b) SLED having reasonable cause to believe that obtaining a warrant or subpoena from the court could result in perpetuating an emergency incident that the warrant or subpoena is intended to prevent.

(D)(1) An administrative subpoena must be made in writing upon oath or affirmation of the officer of the court who is employed by SLED. The officer must sign the administrative subpoena affirming that SLED has reasonable cause to believe that the information is material to an active emergency incident involving at least one of the situations listed in subsection (C)(1), and that SLED is not otherwise able to obtain a warrant or subpoena for the information from a court due to one of the reasons listed in subsection (C)(2).

(2) The officer must submit the administrative subpoena to the Attorney General for review prior to issuing the administrative subpoena to a telephone company, Internet service provider, or communications entity. The officer must not issue the administrative subpoena without authorization by the Attorney General, pursuant to subsection (E). The officer may submit the administrative subpoena with signature to the Attorney General in person, by mail, by facsimile, or by other electronic means. If the officer, after a good faith effort, is not able to submit the administrative subpoena with signature to the Attorney General in person, by mail, by facsimile, or by other electronic means, the officer may orally or electronically explain and affirm the administrative subpoena to the Attorney General.

(E)(1) The Attorney General must authorize an officer of the court who is employed by SLED to issue an administrative subpoena to a telephone company, Internet service provider, or communications entity, if, after review, the Attorney General determines that SLED has reasonable cause to believe that the information is material to an active emergency incident involving at least one of the situations listed in subsection (C)(1), and that SLED is not otherwise able to obtain a

warrant or subpoena for the information from a court due to one of the reasons listed in subsection (C)(2).

(2) If the Attorney General authorizes the officer of the court who is employed by SLED to issue the administrative subpoena, the Attorney General must sign and return the administrative subpoena to SLED. The Attorney General may return the administrative subpoena with signature to SLED in person, by mail, by facsimile, or by other electronic means.

(3) If the Attorney General, after a good faith effort, is not able to return the administrative subpoena with signature to SLED in person, by mail, by facsimile, or by other electronic means, or the officer of the court employed by SLED was not able to submit the administrative subpoena with signature to the Attorney General and had to orally or electronically explain and affirm the administrative subpoena, the Attorney General may orally or electronically confirm authorization of the administrative subpoena. The Attorney General must return the administrative subpoena with signature to SLED within forty-eight hours after the Attorney General authorizes the administrative subpoena, or by the next business day if the time period falls on a weekend or holiday, whichever is later.

(4) The good faith reliance by the Attorney General as to the information affirmed by SLED to obtain an administrative subpoena constitutes a complete defense to any civil, criminal, or administrative action arising out of the administrative subpoena. The Attorney General is not responsible for any costs related to the defense of any civil, criminal, or administrative action arising out of the administrative subpoena.

(F)(1) Upon receipt of an administrative subpoena from SLED, a telephone company, Internet service provider, or communications entity shall disclose, as applicable, the subscriber's or customer's:

(a) name;

(b) address;

(c) local and long distance telephone connection or electronic communication records, or records of session times and durations;

(d) length of service, including the start date, and types of service utilized;

(e) telephone or instrument number or other customer or subscriber number of identity, including any temporarily assigned network addresses; and

(f) means and source of payment for such service, including any credit card or bank account numbers.

(2) If a telephone company, Internet service provider, or communications entity fails to obey an administrative subpoena without lawful excuse, SLED may apply to a circuit court having jurisdiction for an order compelling compliance. The telephone company, Internet service provider, or communications entity may object to the administrative subpoena on the grounds that the administrative subpoena fails to comply with this section, or upon any constitutional or other legal right or privilege. The court may issue an order modifying or setting aside the administrative subpoena or directing compliance with the original administrative subpoena.

(G) Information obtained by SLED pursuant to an administrative subpoena must not be made public and is not subject to the Freedom of Information Act.

(H)(1) SLED is authorized to promulgate permanent regulations, pursuant to the Administrative Procedures Act in Chapter 23, Title 1, to define the procedures and guidelines needed to issue an administrative subpoena as provided in this section.

(2) Pursuant to Section 1-23-130, SLED is authorized to promulgate emergency regulations to define the procedures and guidelines needed to issue an administrative subpoena as provided in this section until such time as permanent regulations are promulgated. The provisions of Section 1-23-130(A), (B), (D), and (E) are applicable to emergency regulations promulgated pursuant to this item. The provisions of Section 1-23-130(C) are not applicable to emergency regulations promulgated pursuant to this item. An emergency regulation promulgated pursuant to this item becomes effective upon issuance and continues for one year unless terminated sooner by SLED or concurrent resolution of the General Assembly.

(I) An administrative subpoena must comply with the provisions of federal law 18 U.S.C. Section 2703(c)(2).

(J) The good faith reliance by a telephone company on an oral or written order to cut, reroute, divert, or intercept telephone lines given by a supervising law enforcement officer pursuant to subsection (B), or the good faith reliance by a telephone company, Internet service provider, or communications entity to provide information to SLED pursuant to an administrative subpoena, constitutes a complete defense to any civil, criminal, or administrative action arising out of the order or administrative subpoena."

Unlawful use of a telephone

SECTION 2. Section 17-30-20 of the 1976 Code, as added by Act 339 of 2002, is amended by adding an appropriately numbered subsection to read:

"( ) intentionally uses, attempts to use, or procures any other person to use any electronic, mechanical, or other device or service that causes the telephone network to display a telephone number on a phone call recipient's caller identification display that is not the number of the originating device. This provision shall not apply to:

(a) the legitimate law enforcement use of this procedure by the South Carolina Law Enforcement Division;

(b) a person or entity that places a call and blocks or otherwise prevents the delivery of a telephone number to a call recipient's caller identification display;

(c) a person or entity that places an authorized call on behalf of another person or entity and inserts a telephone number identified with the person or entity on behalf of whom the call is being placed; or

(d) a communications service provider that delivers a call originated by another person or entity."

Severability clause

SECTION 3. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this chapter, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

Time effective

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

Ratified the 21st day of June, 2010.

Approved the 24th day of June, 2010.

No. 271

(R349, H4261)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 23-3-75 SO AS TO PROVIDE THAT AN OFFICER OF THE COURT WHO IS EMPLOYED BY THE SOUTH CAROLINA LAW ENFORCEMENT DIVISION MAY ISSUE AN ADMINISTRATIVE SUBPOENA TO A FINANCIAL INSTITUTION, PUBLIC OR PRIVATE UTILITY, OR COMMUNICATIONS PROVIDER FOR THE PRODUCTION OF RECORDS DURING THE INVESTIGATION OF CERTAIN CRIMINAL CASES THAT INVOLVE FINANCIAL CRIMES.

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

Administrative subpoenas

SECTION 1. Article 1, Chapter 3, Title 23 of the 1976 Code is amended by adding:

"Section 23-3-75. (A) For purposes of this section:

(1) 'Attorney General' means the Attorney General of the State of South Carolina or the Attorney General's designee who is employed by the Attorney General and is an officer of the court.

(2) 'SLED' means the South Carolina Law Enforcement Division.

(B) An officer of the court who is employed by SLED may issue an administrative subpoena to a financial institution, public or private utility, or communications provider for the production of subscriber or customer information as described in subsection (E), not including the contents of any communications, if:

(1) SLED has reasonable cause to believe that the information is material to an active investigation of at least one of the following financial crimes:

(a) breach of trust with fraudulent intent (Section 16-13-230);

(b) obtaining a signature or property by false pretenses (Section 16-13-240);

(c) financial identity fraud (Section 16-13-510 et seq);

(d) financial transaction card or number theft (Section 16-14-20 et seq);

(e) financial transaction card fraud (Section 16-14-60 et seq);

(f) computer crimes (Section 16-16-10 et seq); or

(g) crimes against a federally chartered or insured financial institution (Section 34-3-110); and

(2) SLED is not otherwise able to obtain a warrant or subpoena for the information from a court due to:

(a) the court not being able to issue a warrant or subpoena in a timely fashion and the immediate need to obtain the information; or

(b) SLED having reasonable cause to believe that obtaining a warrant or subpoena from the court could result in the subscriber or customer, or an agent of the subscriber or customer, destroying, erasing, transferring, or otherwise changing the information in order to knowingly conceal evidence material to an investigation.

(C)(1) An administrative subpoena must be made in writing upon oath or affirmation of the officer of the court who is employed by SLED. The officer must sign the administrative subpoena affirming that SLED has reasonable cause to believe that the information is material to an active investigation of at least one of the financial crimes listed in subsection (B)(1), and that SLED is not otherwise able to obtain a warrant or subpoena for the information from a court due to one of the reasons listed in subsection (B)(2).

(2) The officer must submit the administrative subpoena to the Attorney General for review prior to issuing the administrative subpoena to a financial institution, public or private utility, or communications provider. The officer must not issue the administrative subpoena without authorization by the Attorney General pursuant to subsection (D). The officer may submit the administrative subpoena with signature to the Attorney General in person, by mail, by facsimile, or by other electronic means. If the officer, after a good faith effort, is not able to submit the administrative subpoena with signature to the Attorney General in person, by mail, by facsimile, or by other electronic means, the officer may orally or electronically explain and affirm the administrative subpoena to the Attorney General.

(D)(1) The Attorney General must authorize an officer of the court who is employed by SLED to issue an administrative subpoena to a financial institution, public or private utility, or communications

provider if, after review, the Attorney General determines that SLED has reasonable cause to believe that the information is material to an active investigation of at least one of the financial crimes listed in subsection (B)(1), and that SLED is not otherwise able to obtain a warrant or subpoena for the information from a court due to one of the reasons listed in subsection (B)(2).

(2) If the Attorney General authorizes the officer of the court who is employed by SLED to issue the administrative subpoena, the Attorney General must sign and return the administrative subpoena to SLED. The Attorney General may return the administrative subpoena with signature to SLED in person, by mail, by facsimile, or by other electronic means.

(3) If the Attorney General, after a good faith effort, is not able to return the administrative subpoena with signature to SLED in person, by mail, by facsimile, or by other electronic means, or the officer of the court employed by SLED was not able to submit the administrative subpoena with signature to the Attorney General and had to orally or electronically explain and affirm the administrative subpoena, the Attorney General may orally or electronically confirm authorization of the administrative subpoena. The Attorney General must return the administrative subpoena with signature to SLED within forty-eight hours after the Attorney General authorizes the administrative subpoena, or by the next business day, if the time period falls on a weekend or holiday, whichever is later.

(4) The good faith reliance by the Attorney General as to the information affirmed by SLED to obtain an administrative subpoena constitutes a complete defense to any civil, criminal, or administrative action arising out of the administrative subpoena. The Attorney General is not responsible for any costs related to the defense of any civil, criminal, or administrative action arising out of the administrative subpoena.

(E)(1) Upon receipt of an administrative subpoena from SLED, a financial institution, public or private utility, or communications provider shall disclose, as applicable, the subscriber's or customer's:

(a) name;

(b) address;

(c) local and long distance telephone connection or electronic communication records, or records of session times and durations;

(d) length of service, including the start date, and types of service utilized;

(e) telephone or instrument number or other customer or subscriber number of identity, including any temporarily assigned network addresses; and

(f) means and source of payment for such service, including any credit card or bank account numbers.

(2) If a financial institution, public or private utility, or communications provider fails to obey an administrative subpoena without lawful excuse, SLED may apply to a circuit court having jurisdiction for an order compelling compliance. The financial institution, public or private utility, or communications provider may object to the administrative subpoena on the grounds that the administrative subpoena fails to comply with this section, or upon any constitutional or other legal right or privilege. The court may issue an order modifying or setting aside the administrative subpoena or directing compliance with the original administrative subpoena.

(3) The good faith reliance by a financial institution, public or private utility, or communications provider to provide information to SLED pursuant to an administrative subpoena, constitutes a complete defense to any civil, criminal, or administrative action arising out of the administrative subpoena.

(F) Information obtained by SLED pursuant to an administrative subpoena must not be made public and is not subject to the Freedom of Information Act.

(G)(1) SLED is authorized to promulgate permanent regulations, pursuant to the Administrative Procedures Act in Chapter 23, Title 1, to define the procedures and guidelines needed to issue an administrative subpoena.

(2) Pursuant to Section 1-23-130, SLED is authorized to promulgate emergency regulations to define the procedures and guidelines needed to issue an administrative subpoena until such time as permanent regulations are promulgated. The provisions of Section 1-23-130(A), (B), (D), and (E) are applicable to emergency regulations promulgated pursuant to this subitem. The provisions of Section 1-23-130(C) are not applicable to emergency regulations promulgated pursuant to this subitem. An emergency regulation promulgated pursuant to this subitem becomes effective upon issuance and continues for one year unless terminated sooner by SLED or concurrent resolution of the General Assembly.

(H) An administrative subpoena must comply with the provisions of federal law 18 U.S.C. Section 2703(c)(2)."

Time effective

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

Ratified the 21st day of June, 2010.

Approved the 24th day of June, 2010.

No. 272

(R350, H4350)

AN ACT TO AMEND SECTION 40-29-340, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO CRITERIA REQUIRED FOR A MANUFACTURED HOME, SO AS TO PROVIDE THAT FOR A SALE OF A PREVIOUSLY OWNED MANUFACTURED HOME, THE BUYER AND SELLER MUST CERTIFY THAT AT LEAST TWO FUNCTIONING SMOKE DETECTORS ARE IN THE HOME.

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

Criteria for certifying manufactured home; certification of smoke detectors in previously owned manufactured home

SECTION 1. Section 40-29-340 of the 1976 Code, as added by Act 61 of 2001, is amended to read:

"Section 40-29-340. No person may sell or offer for sale a manufactured home manufactured after June 15, 1976, unless its components, systems, and appliances meet the criteria of compliance with the Construction and Safety Standards Act and have been properly certified by the Department of Housing and Urban Development. For the sale of a previously owned manufactured home, the buyer and seller shall sign a form certifying both persons have determined at least two functioning smoke detectors are in the home."

Time effective

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

Ratified the 21st day of June, 2010.

Became law without the signature of the Governor -- 6/28/2010.

No. 273

(R262, S1154)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, SO AS TO ENACT THE "OMNIBUS CRIME REDUCTION AND SENTENCING REFORM ACT OF 2010"; TO AMEND SECTION 16-11-110, AS AMENDED, RELATING TO ARSON, SO AS TO RESTRUCTURE THE VARIOUS DEGREES OF ARSON AND THE PENALTIES; TO AMEND SECTION 16-3-210, RELATING TO LYNCHING IN THE FIRST DEGREE, SO AS TO RESTRUCTURE THE OFFENSE INTO VARYING DEGREES OF ASSAULT AND BATTERY BY MOB AND PROVIDE PENALTIES; TO REPEAL SECTIONS 16-3-220, 16-3-230, 16-3-240, 16-3-250, 16-3-260, AND 16-3-270 ALL RELATING TO LYNCHING AND MOB VIOLENCE; BY ADDING SECTION 16-3-29 SO AS TO CREATE THE OFFENSE OF ATTEMPTED MURDER AND PROVIDE A PENALTY; BY ADDING SECTION 16-3-600 SO AS TO DEFINE NECESSARY TERMS, CREATE VARIOUS LEVELS AND DEGREES OF ASSAULT AND BATTERY OFFENSES, AND TO PROVIDE PENALTIES; TO AMEND SECTION 16-3-610, RELATING TO ASSAULT WITH A CONCEALED WEAPON, SO AS TO REFERENCE THE NEW OFFENSES OF ATTEMPTED MURDER AND ASSAULT AND BATTERY AND MAKE TECHNICAL CHANGES; TO REPEAL SECTIONS 16-3-612, 16-3-620, 16-3-630, AND 16-3-635 ALL DEALING WITH VARIOUS ASSAULT AND BATTERY OFFENSES; TO REPEAL CERTAIN COMMON LAW ASSAULT AND BATTERY OFFENSES; TO AMEND SECTION 22-3-560, AS AMENDED, RELATING TO ASSAULT AND BATTERY OFFENSES IN MAGISTRATES COURT AND ASSAULT AND BATTERY AGAINST SPORTS OFFICIALS AND COACHES, SO AS TO REMOVE THE SPECIFIC REFERENCES TO ASSAULT AND BATTERY OFFENSES; TO AMEND SECTION 17-15-30, AS

AMENDED, RELATING TO MATTERS TO BE CONSIDERED IN DETERMINING CONDITIONS OF RELEASE ON BAIL, SO AS TO REQUIRE CERTAIN INFORMATION BE PROVIDED TO THE COURT BEFORE A BAIL OR BOND HEARING BY LAW ENFORCEMENT; TO AMEND SECTION 22-5-510, RELATING TO BAIL AND BOND HEARINGS IN MAGISTRATES COURT, SO AS TO REQUIRE CERTAIN INFORMATION BE PROVIDED TO THE COURT BEFORE A BAIL OR BOND HEARING BY LAW ENFORCEMENT; TO AMEND SECTION 16-11-312, RELATING TO BURGLARY IN THE SECOND DEGREE, SO AS TO CREATE TWO TIERS OF BURGLARY IN THE SECOND DEGREE AND PROVIDE A PENALTY FOR THE FIRST; TO AMEND SECTION 16-17-420, RELATING TO DISTURBING SCHOOLS, SO AS TO VEST JURISDICTION WITH THE SUMMARY COURTS UNLESS THE PERSON IS A CHILD; BY ADDING SECTION 17-25-65 SO AS TO PROVIDE FOR REDUCTION IN A DEFENDANT'S SENTENCE IF HE PROVIDES SUBSTANTIAL ASSISTANCE TO THE STATE, TO PROVIDE A TIME FRAME FOR THE ASSISTANCE TO BE RENDERED, AND PROCEDURES THAT MUST BE FOLLOWED; TO AMEND SECTION 56-1-440, RELATING TO PENALTIES FOR DRIVING WITHOUT A LICENSE, AND SECTION 56-3-1970, AS AMENDED, RELATING TO UNLAWFUL PARKING IN A HANDICAPPED SPACE, BOTH SO AS TO VEST THE SUMMARY COURTS WITH JURISDICTION OVER THE OFFENSES; BY ADDING SECTION 56-1-395 SO AS TO DIRECT THE DEPARTMENT OF MOTOR VEHICLES TO ESTABLISH A DRIVER'S LICENSE REINSTATEMENT FEE PAYMENT PROGRAM AND ESTABLISH POLICIES AND PROCEDURES FOR THE PROGRAM; BY ADDING SECTION 56-1-396 TO REQUIRE THE DEPARTMENT OF MOTOR VEHICLES TO ESTABLISH A DRIVER'S LICENSE SUSPENSION AMNESTY PERIOD EACH YEAR AND TO ESTABLISH POLICIES AND PROCEDURES FOR THE PERIOD; TO AMEND SECTION 16-11-510, RELATING TO MALICIOUS INJURY TO ANIMALS AND OTHER PERSONAL PROPERTY, SECTION 16-11-520, RELATING TO MALICIOUS INJURY TO CERTAIN REAL PROPERTY, SECTION 16-11-523, RELATING TO OBTAINING NONFERROUS METALS UNLAWFULLY, SECTION 16-13-10, RELATING TO FORGERY, SECTION 16-13-30, RELATING TO PETIT AND GRAND LARCENY, SECTION 16-13-40,

RELATING TO STEALING OF BONDS AND SIMILAR MATTERS, SECTION 16-13-50, RELATING TO STEALING OF LIVESTOCK, SECTION 16-13-66, RELATING TO PENALTIES FOR STEALING OR DAMAGING AQUACULTURE PRODUCTS OR FACILITIES, SECTION 16-13-70, RELATING TO STEALING OF VESSELS AND EQUIPMENT, SECTION 16-13-80, RELATING TO STEALING OF BICYCLES, SECTION 16-13-110, RELATING TO SHOPLIFTING, SECTION 16-13-180, RELATING TO RECEIVING STOLEN GOODS, SECTION 16-13-210, RELATING TO EMBEZZLEMENT OF PUBLIC FUNDS, SECTION 16-13-230, RELATING TO BREACH OF TRUST WITH FRAUDULENT INTENT, SECTION 16-13-240, RELATING TO OBTAINING SIGNATURE OR PROPERTY BY FALSE PRETENSES, SECTION 16-13-260, RELATING TO OBTAINING PROPERTY UNDER FALSE TOKENS OR LETTERS, SECTION 16-13-290, RELATING TO SECURING PROPERTY BY FRAUDULENT IMPERSONATION OF AN OFFICER, SECTION 16-13-331, RELATING TO UNAUTHORIZED REMOVAL OF LIBRARY PROPERTY, SECTION 16-13-420, RELATING TO FAILURE TO RETURN RENTED OBJECTS, SECTION 16-13-430, RELATING TO FRAUDULENT ACQUISITION OR USE OF FOOD STAMPS, SECTION 16-14-80, RELATING TO RECEIVING GOODS AND SERVICES FRAUDULENTLY OBTAINED, SECTION 16-14-100, RELATING TO PENALTIES FOR VIOLATION OF THE FINANCIAL TRANSACTION CARD CRIME ACT, SECTION 16-17-600, AS AMENDED, RELATING TO THE UNLAWFUL DESTRUCTION OR DESECRATION OF HUMAN REMAINS, SECTION 16-21-80, RELATING TO RECEIVING, POSSESSING, OR SELLING A STOLEN VEHICLE, SECTION 36-9-410, RELATING TO UNLAWFUL SALE OR DISPOSAL OF PERSONAL PROPERTY SUBJECT TO A SECURITY INTEREST, SECTION 38-55-170, RELATING TO PRESENTING FALSE CLAIMS FOR PAYMENT, SECTION 45-1-50, AS AMENDED, RELATING TO DEFRAUDING A KEEPER OF A HOTEL, CAMPGROUND, OR RESTAURANT, SECTION 45-2-40, RELATING TO VIOLATIONS COMMITTED ON THE PREMISES OF LODGING ESTABLISHMENTS, SECTION 46-1-20, AS AMENDED, RELATING TO STEALING CROPS, SECTION 46-1-40, AS AMENDED, RELATING TO STEALING TOBACCO PLANTS, SECTION 46-1-60, AS AMENDED, RELATING TO STEALING

PRODUCE, SECTION 46-1-70, AS AMENDED, RELATING TO FACTORS OR COMMISSION MERCHANTS FAILING TO ACCOUNT FOR PRODUCE, AND SECTION 49-1-50, RELATING TO THE UNLAWFUL PURCHASE OR SALE OF DRIFTED LUMBER OR TIMBER, ALL SO AS TO RESTRUCTURE THE FINES AND PLACE JURISDICTION OVER THE LOWEST LEVEL OFFENSES IN MAGISTRATES OR MUNICIPAL COURTS; TO REPEAL SECTION 16-13-425 RELATING TO THE UNLAWFUL FAILURE TO RETURN RENTED VIDEOS; TO AMEND SECTION 56-1-460, RELATING TO PENALTIES FOR DRIVING UNDER SUSPENSION, SO AS TO RESTRUCTURE THE PENALTIES, TO PROVIDE FOR THE POSSIBILITY OF HOME DETENTION, AND TO PROVIDE PROCEDURES FOR OBTAINING A ROUTE RESTRICTED DRIVER'S LICENSE UNDER CERTAIN CIRCUMSTANCES; BY ADDING SECTION 56-1-1105 SO AS TO CREATE A HABITUAL OFFENDER OFFENSE FOR THOSE PERSONS WHO REPEATEDLY VIOLATE THE DRIVING UNDER SUSPENSION LAWS AND TO PROVIDE PENALTIES FOR THE TWO LEVELS CREATED; TO AMEND SECTION 16-5-50, RELATING TO THE PENALTY FOR HINDERING OFFICERS OR RESCUING PRISONERS, SO AS TO REVISE THE PENALTY; TO AMEND SECTION 17-25-45, AS AMENDED, RELATING TO TWO/THREE STRIKES LAW FOR REPEAT SERIOUS AND MOST SERIOUS OFFENDERS, SO AS TO ADD OFFENSES TO BOTH DELINEATED LISTS, PROVIDE EXCEPTIONS TO THE WORK RELEASE PROHIBITIONS UNDER CERTAIN CIRCUMSTANCES, AND DELETE THE REQUIREMENT THAT THE INVOCATION OF THE TWO/THREE STRIKES PROVISIONS ARE MANDATORY; TO AMEND SECTION 16-3-20, AS AMENDED, RELATING TO MURDER, SO AS TO RESTRUCTURE THE PENALTY TO DEATH OR A MANDATORY MINIMUM OF THIRTY YEARS TO LIFE; TO REPEAL SECTIONS 16-3-30, 16-3-40, AND 16-3-430 RELATING TO KILLING BY POISON, KILLING BY STABBING OR THRUSTING, AND KILLING IN A DUEL, RESPECTIVELY; TO AMEND SECTION 14-25-65, AS AMENDED, RELATING TO MUNICIPAL COURT JURISDICTION, SO AS TO PROVIDE THE MUNICIPAL COURT HAS THE CIVIL JURISDICTION OF THE MAGISTRATES COURT; TO AMEND SECTION 22-3-550, RELATING TO MAGISTRATES

COURT JURISDICTION, SO AS TO REFERENCE THE CIVIL JURISDICTIONAL AMOUNT IN SECTION 22-3-10; BY ADDING SECTION 16-23-500 SO AS TO CREATE THE OFFENSE OF UNLAWFUL POSSESSION OF A FIREARM OR AMMUNITION BY A PERSON CONVICTED OF A VIOLENT OFFENSE, TO PROVIDE A PENALTY, AND TO PROVIDE FOR CONFISCATION OF THE FIREARM OR AMMUNITION; TO AMEND SECTION 16-1-60, AS AMENDED, RELATING TO THE DEFINITION OF VIOLENT CRIMES, SO AS TO ADD A NUMBER OF ADDITIONAL OFFENSES TO THE DELINEATED LIST; TO AMEND SECTION 16-23-490, RELATING TO ADDITIONAL PUNISHMENT FOR THE POSSESSION OF A KNIFE OR FIREARM DURING THE COMMISSION OF A VIOLENT CRIME, SECTION 24-13-125, RELATING TO ELIGIBILITY FOR WORK RELEASE, SECTION 24-13-650, RELATING TO THE PROHIBITION AGAINST RELEASE OF AN OFFENDER INTO A COMMUNITY IN WHICH HE COMMITTED A VIOLENT CRIME, AND SECTION 24-3-20, RELATING TO CUSTODY OF CONVICTED PERSONS AND PARTICIPATION IN WORK RELEASE PROGRAMS, ALL SO AS TO ALLOW PARTICIPATION IN WORK RELEASE PROGRAMS BY CERTAIN OFFENDERS UNDER CERTAIN CONDITIONS AND CIRCUMSTANCES; TO AMEND SECTIONS 24-19-10, 22-5-920, AS AMENDED, 24-19-110, AS AMENDED, AND 24-19-120, ALL RELATING TO THE TREATMENT OF YOUTHFUL OFFENDERS, SO AS TO AMEND THE DEFINITION OF THE TERM "YOUTHFUL OFFENDER", TO CLARIFY THE TERM, AND TO PROVIDE FOR THE NOTIFICATION OF VICTIMS BEFORE A YOUTHFUL OFFENDER MAY BE CONDITIONALLY RELEASED, RESPECTIVELY; TO AMEND SECTION 14-1-213, RELATING TO THE SURCHARGE ON DRUG OFFENSES, SO AS TO INCREASE THE SURCHARGE FROM ONE HUNDRED TO ONE HUNDRED FIFTY DOLLARS; TO AMEND SECTION 44-53-160, RELATING TO THE MANNER IN WHICH CHANGES TO THE SCHEDULE OF CONTROLLED SUBSTANCES ARE MADE, SO AS TO CHANGE THE METHOD OF NOTIFYING THE GENERAL ASSEMBLY WHEN A CONTROLLED SUBSTANCE IS ADDED, DELETED, OR RESCHEDULED; TO AMEND SECTIONS 44-53-370 AND 44-53-375, BOTH AS AMENDED, BOTH RELATING TO POSSESSION, MANUFACTURE, AND

TRAFFICKING IN CERTAIN DRUG OFFENSES, BOTH SO AS TO ALLOW PERSONS CONVICTED OF CERTAIN DRUG OFFENSES TO HAVE THEIR SENTENCE SUSPENDED OR PROBATION GRANTED AND ALLOW THEM TO PARTICIPATE IN CERTAIN WORK AND EARLY RELEASE PROGRAMS UNDER CERTAIN CIRCUMSTANCES; TO AMEND SECTION 44-53-445, RELATING TO DISTRIBUTION OF CONTROLLED SUBSTANCES WITHIN A CERTAIN PROXIMITY OF A SCHOOL, SO AS TO RESTRUCTURE THE OFFENSE TO REQUIRE KNOWLEDGE OF THE PROXIMITY TO A SCHOOL, AMONG OTHER THINGS; TO AMEND SECTION 44-53-450, AS AMENDED, RELATING TO CONDITIONAL DISCHARGE AND EXPUNGEMENT OF CERTAIN DRUG OFFENSES, SO AS TO INCLUDE CERTAIN DRUG OFFENSES IN SECTION 44-53-375 IN THE PURVIEW OF THE STATUTE, PROVIDE A FEE FOR EXPUNGEMENT, AND PROVIDE THAT THE FUNDS COLLECTED BE PROVIDED FOR DRUG TREATMENT COURT PROGRAMS; TO AMEND SECTION 44-53-470, AS AMENDED, RELATING TO THE DEFINITION OF "SECOND OR SUBSEQUENT OFFENSE" FOR PURPOSES OF CONTROLLED SUBSTANCE LAWS, SO AS TO PROVIDE A NEW STRUCTURE OF DETERMINING WHAT CONSTITUTES A SECOND OR SUBSEQUENT OFFENSE; TO AMEND SECTION 44-53-582, RELATING TO THE RETURN OF MONIES USED TO PURCHASE CONTROLLED SUBSTANCES, SO AS TO PROVIDE THAT THE COURT MAY ORDER THE DEFENDANT TO RETURN MONIES USED BY LAW ENFORCEMENT TO PURCHASE CONTROLLED SUBSTANCES DURING AN INVESTIGATION; TO AMEND SECTION 56-1-745, RELATING TO DRIVER'S LICENSE SUSPENSIONS FOLLOWING CONVICTION FOR CONTROLLED SUBSTANCE VIOLATIONS, SO AS TO RESTRUCTURE THE TIME PERIOD OF SUSPENSION TO PROVIDE FOR A SUSPENSION OF SIX MONTHS FOR ALL CONTROLLED SUBSTANCE VIOLATIONS; BY ADDING SECTION 24-21-5 SO AS TO DEFINE NECESSARY TERMS; TO AMEND SECTION 24-21-10, RELATING TO THE BOARD OF PROBATION, PAROLE AND PARDON SERVICES, SO AS TO PROVIDE QUALIFICATIONS FOR BOARD MEMBERS, COMPREHENSIVE TRAINING, AND REQUIRE THE DEPARTMENT TO DEVELOP A PROCESS FOR ADOPTING

AN ASSESSMENT TOOL; TO AMEND SECTION 24-21-13, RELATING TO POLICIES AND PROCEDURES THAT MUST BE FOLLOWED BY THE DEPARTMENT OF PROBATION, PAROLE AND PARDON SERVICES AND THE BOARD, SO AS TO INCLUDE THE USE OF A STRUCTURED DECISION-MAKING GUIDE AND ADD TREATMENT PROGRAMS; BY ADDING SECTION 24-21-32 SO AS TO PROVIDE FOR REENTRY SUPERVISION FOR INMATES NOT SENTENCED TO COMMUNITY SUPERVISION AND TO PROVIDE POLICIES AND PROCEDURES FOR THE NEW REENTRY SUPERVISION; TO AMEND SECTION 24-21-220, RELATING TO POWERS AND DUTIES OF THE DIRECTOR OF THE DEPARTMENT OF PROBATION, PAROLE AND PARDON SERVICES, SO AS TO INCLUDE ASSESSMENT IN THE DELINEATED LIST; TO AMEND SECTION 24-21-280, RELATING TO DUTIES AND POWERS OF PROBATION AGENTS, SO AS TO INCORPORATE THE REQUIRED USE OF EVIDENCE-BASED PRACTICES TO REDUCE RECIDIVISM, REQUIRE ACTUARIAL ASSESSMENT OF CERTAIN CRIMINAL RISK FACTORS, AND TO ALLOW CERTAIN EARNED COMPLIANCE CREDITS; TO AMEND SECTION 24-21-230, RELATING TO EMPLOYMENT AND TRAINING OF PROBATION AGENTS AND OTHER STAFF, SO AS TO REQUIRE THE EMPLOYMENT OF HEARING OFFICERS AND THEIR DUTIES; BY ADDING SECTION 24-21-100 SO AS TO CREATE ADMINISTRATIVE MONITORING WHEN FINANCIAL OBLIGATIONS HAVE NOT BEEN MET BY THE END OF THE TERM OF SUPERVISION AND TO PROVIDE PROCEDURES FOR ADMINISTRATIVE MONITORING; BY ADDING SECTION 24-21-110 SO AS TO PROVIDE FOR ADMINISTRATIVE SANCTIONS FOR VIOLATORS OF SPECIAL CONDITIONS AND TO PROVIDE FOR A PROCEDURE TO ADMINISTER THESE ADMINISTRATIVE SANCTIONS; TO AMEND SECTION 24-21-490, RELATING TO COLLECTION AND DISTRIBUTION OF RESTITUTION, SO AS TO PROVIDE FOR THE DISTRIBUTION OF FINANCIAL OBLIGATIONS COLLECTED BY THE DEPARTMENT OF PROBATION, PAROLE AND PARDON SERVICES; BY ADDING SECTION 24-21-715 SO AS TO DEFINE NECESSARY TERMS, TO PROVIDE FOR PAROLE FOR THE TERMINALLY ILL, GERIATRIC, OR PERMANENTLY DISABLED INMATE, AND

TO PROVIDE PROCEDURES FOR PAROLE ON THESE GROUNDS; BY ADDING ARTICLE 11 TO CHAPTER 22, TITLE 17 SO AS TO DEFINE NECESSARY TERMS, CREATE THE OFFICE OF PRETRIAL COORDINATOR, AND REQUIRE CERTAIN DATA AND REPORTING OF DIVERSION PROGRAMS; TO AMEND SECTION 24-13-2130, RELATING TO MEMORANDUM OF UNDERSTANDING BETWEEN VARIOUS CORRECTIONAL AND EMPLOYMENT AND JOB SKILLS AGENCIES, SO AS TO INCLUDE THE REQUIREMENT THAT LIFE SKILLS ASSESSMENTS BE BASED ON EVIDENCE-BASED PRACTICES AND CRIMINAL RISK FACTOR ANALYSIS AND TO REQUIRE THE DEPARTMENT OF MOTOR VEHICLES TO PROVIDE A PHOTO IDENTIFICATION CARD FOR INMATES WHO ARE RELEASED FROM A CORRECTIONAL FACILITY; TO AMEND SECTION 24-21-645, RELATING TO PAROLE, SO AS TO MAKE TECHNICAL CORRECTIONS; TO AMEND SECTION 16-1-130, RELATING TO PERSONS NOT ELIGIBLE FOR DIVERSION PROGRAMS, SO AS TO ALLOW PERSONS CURRENTLY ON PAROLE OR PROBATION TO PARTICIPATE AS LONG AS THEY ARE NOT ON PAROLE OR PROBATION FOR A VIOLENT OFFENSE AND TO CLARIFY THAT CONSENT OF THE VICTIM IS NOT NECESSARY IF REASONABLE ATTEMPTS TO CONTACT THE VICTIM HAVE BEEN MADE UNDER CERTAIN CIRCUMSTANCES; BY ADDING SECTION 2-7-74 SO AS TO DEFINE THE TERM "STATEMENT OF ESTIMATED FISCAL IMPACT" AND TO REQUIRE STATEMENTS OF ESTIMATED FISCAL IMPACT UNDER CERTAIN PARAMETERS FOR LEGISLATION WHICH CREATES OR AMENDS A CRIMINAL OFFENSE; AND BY ADDING CHAPTER 28 TO TITLE 24 SO AS TO CREATE THE SENTENCING REFORM OVERSIGHT COMMITTEE AND PROVIDE FOR THE MEMBERSHIP AND DUTIES OF THE COMMITTEE.

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

Act citation

SECTION 1. This bill may be cited as the "Omnibus Crime Reduction and Sentencing Reform Act of 2010". It is the intent of the General Assembly to preserve public safety, reduce crime, and use correctional

resources most effectively. Currently, the South Carolina correctional system incarcerates people whose time in prison does not result in improved behavior and who often return to South Carolina communities and commit new crimes, or are returned to prison for violations of supervision requirements. It is, therefore, the purpose of this act to reduce recidivism, provide fair and effective sentencing options, employ evidence-based practices for smarter use of correctional funding, and improve public safety.

PART I

Criminal Offenses Revisions

General Assembly's intent, Part I

SECTION 2. It is the intent of the General Assembly that the provisions in PART I of this act shall provide consistency in sentencing classifications, provide proportional punishments for the offenses committed, and reduce the risk of recidivism.

Arson

SECTION 3. Section 16-11-110 of the 1976 Code, as last amended by Act 224 of 2002, is further amended to read:

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

(B) A person who wilfully and maliciously causes an explosion, sets fire to, burns, or causes to be burned or aids, counsels, or procures a burning that results in damage to a dwelling house, building, structure, or any property whether the property of himself or another, which results, either directly or indirectly, in serious bodily injury to a person is guilty of the felony of arson in the second degree and, upon conviction, must be imprisoned not less than three nor more than twenty-five years.

(C) A person who wilfully and maliciously causes an explosion, sets fire to, burns, or causes to be burned or aids, counsels, or procures

a burning that results in damage to a dwelling house, building, structure, or any property, whether the property of himself or another, which results, either directly or indirectly, in bodily injury to a person or damage to the property is guilty of the felony of arson in the third degree and, upon conviction, must be imprisoned not more than fifteen years.

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

Lynching/assault and battery by mob

SECTION 4. Section 16-3-210 of the 1976 Code is amended to read:

"Section 16-3-210. (A) For purposes of this section, a 'mob' is defined as the assemblage of two or more persons, without color or authority of law, for the premeditated purpose and with the premeditated intent of committing an act of violence upon the person of another.

(B) Any act of violence inflicted by a mob upon the body of another person, which results in the death of the person, shall constitute the felony crime of assault and battery by mob in the first degree and, upon conviction, an offender shall be punished by imprisonment for not less than thirty years.

(C) Any act of violence inflicted by a mob upon the body of another person, which results in serious bodily injury to the person, shall constitute the felony crime of assault and battery by mob in the second degree and, upon conviction, an offender shall be punished by imprisonment for not less than three years nor more than twenty-five years.

(D) Any act of violence inflicted by a mob upon the body of another person, which results in bodily injury to the person, shall constitute the misdemeanor crime of assault and battery by mob in the third degree and, upon conviction, an offender shall be punished by imprisonment for not more than one year.

(E) When any mob commits an act of violence, the sheriff of the county where the crime occurs and the solicitor of the circuit where the county is located shall act as speedily as possible to apprehend and identify the members of the mob and bring them to trial.

(F) The solicitor of any circuit has summary power to conduct any investigation deemed necessary by him in order to apprehend the

members of a mob and may subpoena witnesses and take testimony under oath.

(G) This article shall not be construed to relieve a member of any such mob from civil liability."

Repealed sections

SECTION 5. Sections 16-3-220, 16-3-230, 16-3-240, 16-3-250, 16-3-260, and 16-3-270 of the 1976 Code are repealed.

Attempted murder, assault and battery offenses, assault with concealed weapon

SECTION 6. A. Article 1, Chapter 3, Title 16 of the 1976 Code is amended by adding:

"Section 16-3-29. A person who, with intent to kill, attempts to kill another person with malice aforethought, either expressed or implied, commits the offense of attempted murder. A person who violates this section is guilty of a felony, and, upon conviction, must be imprisoned for not more than thirty years. A sentence imposed pursuant to this section may not be suspended nor may probation be granted."

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

"Section 16-3-600.(A) For purposes of this section:

(1) 'Great bodily injury' means bodily injury which causes a substantial risk of death or which causes serious, permanent disfigurement or protracted loss or impairment of the function of a bodily member or organ.

(2) 'Moderate bodily injury' means physical injury requiring treatment to an organ system of the body other than the skin, muscles, and connective tissues of the body, except when there is penetration of the skin, muscles, and connective tissues that require surgical repair of a complex nature or when treatment of the injuries requires the use of regional or general anesthesia.

(3) 'Private parts' means the genital area or buttocks of a male or female or the breasts of a female.

(B)(1) A person commits the offense of assault and battery of a high and aggravated nature if the person unlawfully injures another person, and:

(a) great bodily injury to another person results; or

(b) the act is accomplished by means likely to produce death or great bodily injury.

(2) A person who violates this subsection is guilty of a felony, and, upon conviction, must be imprisoned for not more than twenty years.

(3) Assault and battery of a high and aggravated nature is a lesser-included offense of attempted murder, as defined in Section 16-3-29.

(C)(1) A person commits the offense of assault and battery in the first degree if the person unlawfully:

(a) injures another person, and the act:

(i) involves nonconsensual touching of the private parts of an adult, either under or above clothing, with lewd and lascivious intent; or

(ii) occurred during the commission of a robbery, burglary, kidnapping, or theft; or

(b) offers or attempts to injure another person with the present ability to do so, and the act:

(i) is accomplished by means likely to produce death or great bodily injury; or

(ii) occurred during the commission of a robbery, burglary, kidnapping, or theft.

(2) A person who violates this subsection is guilty of a felony, and, upon conviction, must be imprisoned for not more than ten years.

(3) Assault and battery in the first degree is a lesser-included offense of assault and battery of a high and aggravated nature, as defined in subsection (B)(1), and attempted murder, as defined in Section 16-3-29.

(D)(1) A person commits the offense of assault and battery in the second degree if the person unlawfully injures another person, or offers or attempts to injure another person with the present ability to do so, and:

(a) moderate bodily injury to another person results or moderate bodily injury to another person could have resulted; or

(b) the act involves the nonconsensual touching of the private parts of an adult, either under or above clothing.

(2) A person who violates this subsection is guilty of a misdemeanor, and, upon conviction, must be fined not more than two thousand five hundred dollars, or imprisoned for not more than three years, or both.

(3) Assault and battery in the second degree is a lesser-included offense of assault and battery in the first degree, as defined in subsection (C)(1), assault and battery of a high and aggravated nature, as defined in subsection (B)(1), and attempted murder, as defined in Section 16-3-29.

(E)(1) A person commits the offense of assault and battery in the third degree if the person unlawfully injures another person, or offers or attempts to injure another person with the present ability to do so.

(2) A person who violates this subsection 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.

(3) Assault and battery in the third degree is a lesser-included offense of assault and battery in the second degree, as defined in subsection (D)(1), assault and battery in the first degree, as defined in subsection (C)(1), assault and battery of a high and aggravated nature, as defined in subsection (B)(1), and attempted murder, as defined in Section 16-3-29."

C. Section 16-3-610 of the 1976 Code is amended to read:

"Section 16-3-610. If a person is convicted of an offense pursuant to Section 16-3-29, 16-3-600, or manslaughter, and the offense is committed with a deadly weapon of the character as specified in Section 16-23-460 carried or concealed upon the person of the defendant, the judge shall, in addition to the punishment provided by law for such offense, sentence the person to imprisonment for the misdemeanor offense for not less than three months nor more than twelve months, or a fine of not less than two hundred dollars, or both."

Repealed sections, common law assault and battery offenses repealed

SECTION 7. A. Sections 16-3-612, 16-3-620, 16-3-630, and 16-3-635 of the 1976 Code are repealed.

B. The common law offenses of assault and battery with intent to kill, assault with intent to kill, assault and battery of a high and aggravated nature, simple assault and battery, assault of a high and aggravated nature, aggravated assault, and simple assault are abolished for offenses occurring on or after the effective date of this act.

C. Wherever in the 1976 Code of Laws reference is made to the common law offense of assault and battery of a high and aggravated nature, it means assault and battery with intent to kill, as contained in repealed Section 16-3-620, and, except for references in Section 16-1-60 and Section 17-25-45, wherever in the 1976 Code reference is made to assault and battery with intent to kill, it means attempted murder as defined in Section 16-3-29.

Breaches of peace

SECTION 8. Section 22-3-560 of the 1976 Code, as last amended by Act 346 of 2008, is further amended to read:

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

Bail, disclosure of certain information

SECTION 9. Section 17-15-30 of the 1976 Code, as last amended by Act 280 of 2008, is further amended to read:

"Section 17-15-30. (A) In determining conditions of release that will reasonably assure appearance, or if release would constitute an unreasonable danger to the community, the court may, on the basis of available information, consider the nature and circumstances of the offense charged and the accused's:

(1) family ties;
(2) employment;
(3) financial resources;
(4) character and mental condition;
(5) length of residence in the community;
(6) record of convictions; and
(7) record of flight to avoid prosecution or failure to appear at other court proceedings.

(B) The court shall consider:

(1) the accused's criminal record;
(2) any charges pending against the accused at the time release is requested;
(3) all incident reports generated as a result of the offense charged, if available; and

(4) whether the accused is an alien unlawfully present in the United States, and poses a substantial flight risk due to this status.

(C) Prior to or at the time of the hearing, the law enforcement officer, local detention facility officer, or local jail officer, as applicable, attending the hearing shall provide the court with the following information if available:

(1) the accused's criminal record;

(2) any charges pending against the accused at the time release is requested;

(3) all incident reports generated as a result of the offense charged; and

(4) any other information that will assist the court in determining conditions of release.

(D) The law enforcement officer, local detention facility officer, or local jail officer, as applicable, shall inform the court if any of the information required in subsection (C) is not available at the time of the hearing and the reason the information is not available. Failure on the part of the law enforcement officer, local detention facility officer, or local jail officer, as applicable, to provide the court with the information required in subsection (C) does not constitute grounds for the postponement or delay of the person's hearing.

(E) A court hearing this matter has contempt powers to enforce these provisions."

Bail, disclosure of certain information

SECTION 10. Section 22-5-510 of the 1976 Code is amended to read:

"Section 22-5-510. (A) Magistrates may admit to bail a person charged with an offense, the punishment of which is not death or imprisonment for life; provided, however, with respect to violent offenses as defined by the General Assembly pursuant to Section 15, Article I of the Constitution of South Carolina, magistrates may deny bail giving due weight to the evidence and to the nature and circumstances of the event, including, but not limited to, any charges pending against the person requesting bail. 'Violent offenses' as used in this section means the offenses contained in Section 16-1-60. If a person under lawful arrest on a charge not bailable is brought before a magistrate, the magistrate shall commit the person to jail. If the offense charged is bailable, the magistrate shall take recognizance with

sufficient surety, if it is offered, in default whereof the person must be incarcerated.

(B) A person charged with a bailable offense must have a bond hearing within twenty-four hours of his arrest and must be released within a reasonable time, not to exceed four hours, after the bond is delivered to the incarcerating facility.

(C) Prior to or at the time of the bond hearing, the law enforcement officer, local detention facility officer, or local jail officer, as applicable, attending the hearing shall provide the court with the following information if available:

(1) the person's criminal record;

(2) any charges pending against the person;

(3) all incident reports generated as a result of the offense charged; and

(4) any other information that will assist the court in determining bail.

(D) The law enforcement officer, local detention facility officer, or local jail officer, as applicable, shall inform the court if any of the information required in subsection (C) is not available at the time of the bond hearing and the reason the information is not available. Failure on the part of the law enforcement officer, local detention facility officer, or local jail officer, as applicable, to provide the court with the information required in subsection (C) does not constitute grounds for the postponement or delay of the person's bond hearing.

(E) A court hearing this matter has contempt powers to enforce these provisions."

Burglary in the second degree

SECTION 11. Section 16-11-312(C) of the 1976 Code is amended to read:

"(C)(1)Burglary in the second degree pursuant to subsection (A) is a felony punishable by imprisonment for not more than ten years.

(2) Burglary in the second degree pursuant to subsection (B) is a felony punishable by imprisonment for not more than fifteen years, provided, that no person convicted of burglary in the second degree pursuant to subsection (B) shall be eligible for parole except upon service of not less than one-third of the term of the sentence."

Disturbing schools, summary court jurisdiction

SECTION 12. Section 16-17-420 of the 1976 Code is amended to read:

"Section 16-17-420. (A) It shall be unlawful:

(1) for any person wilfully or unnecessarily (a) to interfere with or to disturb in any way or in any place the students or teachers of any school or college in this State, (b) to loiter about such school or college premises or (c) to act in an obnoxious manner thereon; or

(2) for any person to (a) enter upon any such school or college premises or (b) loiter around the premises, except on business, without the permission of the principal or president in charge.

(B) Any person violating any of the provisions of this section shall be guilty of a misdemeanor and, on conviction thereof, shall pay a fine of not more than one thousand dollars or be imprisoned in the county jail for not more than ninety days.

(C) The summary courts are vested with jurisdiction to hear and dispose of cases involving a violation of this section. If the person is a child as defined by Section 63-19-20, jurisdiction must remain vested in the Family Court."

Substantial assistance to the State, reduction of defendant's sentence

SECTION 13. Article 1, Chapter 25, Title 17 of the 1976 Code is amended by adding:

"Section 17-25-65. (A) Upon the state's motion made within one year of sentencing, the court may reduce a sentence if the defendant, after sentencing, provided:

(1) substantial assistance in investigating or prosecuting another person; or

(2) aid to a Department of Corrections employee or volunteer who was in danger of being seriously injured or killed.

(B) Upon the state's motion made more than one year after sentencing, the court may reduce a sentence if the defendant's substantial assistance involved:

(1) information not known to the defendant until one year or more after sentencing;

(2) information provided by the defendant to the State within one year of sentencing, but which did not become useful to the State until more than one year after sentencing;

(3) information, the usefulness of which could not reasonably have been anticipated by the defendant until more than one year after sentencing, and which was promptly provided to the State after its usefulness was reasonably apparent to the defendant; or

(4) aid to a Department of Corrections employee or volunteer who was in danger of being seriously injured or killed.

(C) A motion made pursuant to this provision shall be filed by that circuit solicitor in the county where the defendant's case arose. The State shall send a copy to the chief judge of the circuit within five days of filing. The chief judge or a circuit court judge currently assigned to that county shall have jurisdiction to hear and resolve the motion. Jurisdiction to resolve the motion is not limited to the original sentencing judge."

Driving without a license, illegally parking in handicapped space, summary court jurisdiction

SECTION 14. A. Section 56-1-440 of the 1976 Code is amended to read:

"Section 56-1-440. (A) A person who drives a motor vehicle on a public highway of this State without a driver's license in violation of Section 56-1-20 is guilty of a misdemeanor and, upon conviction of a first offense, must be fined not less than fifty dollars nor more than one hundred dollars or imprisoned for thirty days and, upon conviction of a second offense, be fined five hundred dollars or imprisoned for forty-five days, or both, and for a third and subsequent offense must be imprisoned for not less than forty-five days nor more than six months. However, a charge of driving a motor vehicle without a driver's license must be dismissed if the person provides proof of being a licensed driver at the time of the violation to the court on or before the date this matter is set to be disposed of by the court.

(B) The summary courts are vested with jurisdiction to hear and dispose of cases involving a violation of this section."

B. Section 56-3-1970 of the 1976 Code, as last amended by Act 24 of 2009, is further 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.

(D) The summary courts are vested with jurisdiction to hear and dispose of cases involving a violation of this section."

Driver's license reinstatement fee payment program, amnesty period annually

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

"Section 56-1-395. (A) The Department of Motor Vehicles shall establish a driver's license reinstatement fee payment program. A person who is a South Carolina resident, is eighteen years of age or older, and has had his driver's license suspended may apply to the Department of Motor Vehicles to obtain a license valid for no more than six months to allow time for payment of reinstatement fees. If the person has served all of his suspensions, has met all other conditions for reinstatement, and owes three hundred dollars or more of South Carolina reinstatement fees only for suspensions that are listed in subsection (E), the Department of Motor Vehicles may issue a six-month license upon payment of a thirty-five dollar administrative fee and payment of fifteen percent of the reinstatement fees owed.

(B) During the period of the six-month license, the person must make periodic payments of the reinstatement fees owed. Monies paid shall be applied to suspensions in chronological order, with the oldest fees being paid first.

(C) When all fees are paid, and the department records demonstrate that the person has no other suspensions, the person is eligible to renew his regular driver's license.

(D) If all fees are not paid by the end of the six-month period, existing suspensions shall be reactivated.

(E) This subsection applies only to a person whose driver's license has been suspended pursuant to Sections 34-11-70, 56-1-120, 56-1-170, 56-1-185, 56-1-240, 56-1-270, 56-1-290, 56-1-460(A)(1), 56-2-2740, 56-9-351, 56-9-354, 56-9-357, 56-9-430, 56-9-490, 56-9-610, 56-9-620, 56-10-225, 56-10-240, 56-10-270, 56-10-520, 56-10-530, and 56-25-20.

(F) No person may participate in the payment program more than one time in any three-year period.

(G) The payment program administrative fee of thirty-five dollars must be placed by the Comptroller General into a special restricted account to be used by the Department of Motor Vehicles to defray its expenses."

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

"Section 56-1-396. (A) The Department of Motor Vehicles shall establish a driver's license suspension amnesty period.

(B) The amnesty period must be for one week on an annual basis at the department's discretion.

(C) During the amnesty period, a person whose driver's license is suspended prior to the amnesty period may apply to the department to have qualifying suspensions cleared.

(D) If the person has met all conditions for reinstatement other than service of the suspension period, including payment of all applicable fees, the department must reinstate the person's driver's license.

(E) If the qualifying suspensions are cleared, but nonqualifying suspensions remain to be served, the department must recalculate the remaining suspension start dates to begin as soon as feasible.

(F) Qualifying suspensions include, and are limited to, suspensions pursuant to Sections 34-11-70, 56-1-120, 56-1-170, 56-1-185, 56-1-240, 56-1-270, 56-1-290, 56-1-460(A)(1), 56-2-2740, 56-9-351, 56-9-354, 56-9-357, 56-9-430, 56-9-490, 56-9-610, 56-9-620, 56-10-225, 56-10-240, 56-10-270, 56-10-520, 56-10-530, and 56-25-20."

Various criminal offenses, penalties revised

SECTION 16. A. Section 16-11-510(B) of the 1976 Code is amended to read:

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

(1) felony and, upon conviction, must be fined in the discretion of the court or imprisoned not more than ten years, or both, if the injury to the property or the property loss is worth ten thousand dollars or more;

(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 injury to the property or the property loss is worth more than two thousand dollars but less than ten thousand dollars;

(3) misdemeanor triable in magistrates court or municipal court, notwithstanding the provisions of Sections 22-3-540, 22-3-545, 22-3-550, and 14-25-65, if the injury to the property or the property loss is worth two thousand dollars or less. Upon conviction, the person must be fined not more than one thousand dollars, or imprisoned, not more than thirty days, or both."

B. Section 16-11-520(B) of the 1976 Code is amended to read:

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

(1) felony and, upon conviction, must be fined in the discretion of the court or imprisoned not more than ten years, or both, if the injury to the property or the property loss is worth ten thousand dollars or more;

(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 injury to the property or the property loss is worth more than two thousand dollars but less than ten thousand dollars;

(3) misdemeanor triable in magistrates court or municipal court, notwithstanding the provisions of Sections 22-3-540, 22-3-545, 22-3-550, and 14-25-65, if the injury to the property or the property loss is worth two thousand dollars or less. Upon conviction, the person must be fined not more than one thousand dollars, or imprisoned not more than thirty days, or both."

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

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

(1) misdemeanor under the jurisdiction of magistrates or municipal court, notwithstanding the provisions of Sections 22-3-540, 22-3-545, 22-3-550, and 14-25-65, and, upon conviction, must be fined not more than one thousand 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 two 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 two thousand dollars but less than ten 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 ten thousand dollars or more."

D. Section 16-13-10(B) of the 1976 Code is amended to read:

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

(1) felony and, upon conviction, must be fined in the discretion of the court or imprisoned not more than ten years, or both, if the amount of the forgery is ten thousand dollars or more;

(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 amount of the forgery is less than ten thousand dollars.

(C) If the forgery does not involve a dollar amount, the person is guilty of a misdemeanor under the jurisdiction of the magistrates or municipal court, notwithstanding the provisions of Sections 22-3-540, 22-3-545, 22-3-550, and 14-25-65, and, upon conviction, must be fined in the discretion of the court or imprisoned not more than three years, or both."

E. Section 16-13-30 of the 1976 Code is amended to read:

"Section 16-13-30. (A) Simple larceny of any article of goods, choses in action, bank bills, bills receivable, chattels, or other article of personalty of which by law larceny may be committed, or of any fixture, part, or product of the soil severed from the soil by an unlawful act, or has a value of two thousand dollars or less, is petit larceny, a misdemeanor, triable in the magistrates court or municipal court, notwithstanding the provisions of Sections 22-3-540, 22-3-545, 22-3-550, and 14-25-65. Upon conviction, the person must be fined not more than one thousand dollars, or imprisoned not more than thirty days.

(B) Larceny of goods, chattels, instruments, or other personalty valued in excess of two thousand dollars is grand larceny. Upon conviction, the person is guilty of a felony and must be fined in the discretion of the court or imprisoned not more than:

(1) five years if the value of the personalty is more than two thousand dollars but less than ten thousand dollars;

(2) ten years if the value of the personalty is ten thousand dollars or more."

F. Section 16-13-40 of the 1976 Code is amended to read:

"Section 16-13-40. (A) It is unlawful for a person to steal or take by robbery a bond, warrant, bill, or promissory note for the payment or securing the payment of money belonging to another.

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

(1) misdemeanor triable in magistrates court or municipal court, notwithstanding the provisions of Sections 22-3-540, 22-3-545, 22-3-550, and 14-25-65, if the instrument stolen or taken has a value of two thousand dollars or less. Upon conviction, the person must be fined not more than one thousand dollars, or imprisoned not more than thirty days;

(2) felony and, upon conviction, must be fined in the discretion of the court or imprisoned not more than five years if the value of the instrument stolen or taken is more than two thousand dollars but less than ten thousand dollars;

(3) felony and, upon conviction, must be fined in the discretion of the court or imprisoned not more than ten years if the instrument stolen or taken has a value of ten thousand dollars or more."

G. Section 16-13-50 of the 1976 Code is amended to read:

"Section 16-13-50. (A) A person convicted of the larceny of a horse, mule, cow, hog, or any other livestock is guilty of a:

(1) felony and, upon conviction, must be imprisoned not more than ten years or fined not more than twenty-five hundred dollars, or both, if the value of the livestock is ten thousand dollars or more;

(2) felony and, upon conviction, must be imprisoned not more than five years or fined not more than five hundred dollars, or both, if the value of the livestock is more than two thousand dollars but less than ten thousand dollars;

(3) misdemeanor triable in magistrates court or municipal court, notwithstanding the provisions of Sections 22-3-540, 22-3-545, 22-3-550, and 14-25-65, if the value of the livestock is two thousand dollars or less. Upon conviction, the person must be fined not more than one thousand dollars, or imprisoned not more than thirty days, or both.

(B) A motor vehicle or other chattel used by or found in possession of a person engaged in the commission of a crime under this section is subject to confiscation and must be confiscated and sold under the provisions of Section 27-21-10."

H. Section 16-13-66 of the 1976 Code is amended to read:

"Section 16-13-66. (A) A person violating the provision of Section 16-13-65 is guilty of a misdemeanor and, upon conviction:

(1) for the first offense, must be fined an amount not to exceed one thousand dollars or imprisoned for a term not to exceed one year, or both, and shall pay restitution to the culturist an amount determined by the court. Notwithstanding the provisions of Sections 22-3-540, 22-3-545, 22-3-550, and 14-25-65, an offense punishable under this item may be tried in magistrates or municipal court.

(2) for a second offense, must be fined an amount not to exceed two thousand dollars or imprisoned for a term not less than two months and thirty days community service nor more than one year, or both, and shall pay restitution to the culturist an amount determined by the court. Furthermore, all equipment, including, but not limited to, vehicles, fishing devices, coolers, and nets must be seized and forfeited to the court.

(3) for a third or subsequent offense, must be fined an amount not to exceed five thousand dollars or imprisoned for a term not less than six months nor more than two years, or both, and shall pay restitution to the culturist an amount determined by the court. Furthermore, all equipment, including, but not limited to, vehicles,

fishing devices, coolers, and nets must be seized and forfeited to the court.

(B) If the value of such property stolen or damaged is less than two hundred dollars, the case shall be tried in magistrates court or municipal court, notwithstanding the provisions of Sections 22-3-540, 22-3-545, 22-3-550, and 14-25-65, and the punishment shall be a fine of not more than one thousand dollars or imprisonment for not more than thirty days, or both."

I. Section 16-13-70(B) of the 1976 Code is amended to read:

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

(1) felony and, upon conviction, must be fined in the discretion of the court or imprisoned not more than ten years if the value of the property is ten thousand dollars or more;

(2) felony and, upon conviction, must be fined in the discretion of the court or imprisoned not more than five years if the value of the property is more than two thousand dollars but less than ten thousand dollars;

(3) misdemeanor triable in magistrates court or municipal court, notwithstanding the provisions of Sections 22-3-540, 22-3-545, 22-3-550, and 14-25-65, if the value of the property is two thousand dollars or less. Upon conviction, the person must be fined not more than one thousand dollars or imprisoned not more than thirty days.

(C) In addition to the punishment specified in this section, the person must make good to the person injured all damages sustained and, if the matter be a trespass only, the person committing the offense shall make good to the person injured all damages that accrued."

J. Section 16-13-80 of the 1976 Code is amended to read:

"Section 16-13-80. The larceny of a bicycle is a misdemeanor and, upon conviction, the person must be punishable at the discretion of the court. When the value of the bicycle is less than two thousand dollars, the case is triable in magistrates court or municipal court, notwithstanding the provisions of Sections 22-3-540, 22-3-545, 22-3-550, and 14-25-65, and, upon conviction, the person must be fined not more than one thousand dollars or imprisoned not more than thirty days."

K. Section 16-13-110(B) of the 1976 Code is amended to read:

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

(1) misdemeanor triable in magistrates court or municipal court, notwithstanding the provisions of Sections 22-3-540, 22-3-545, 22-3-550, and 14-25-65, and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than thirty days if the value of the shoplifted merchandise is two thousand dollars or less;

(2) felony and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than five years, or both, if the value of the shoplifted merchandise is more than two thousand dollars but less than ten thousand dollars;

(3) felony and, upon conviction, must be imprisoned not more than ten years if the value of the shoplifted merchandise is ten thousand dollars or more."

L. Section 16-13-180 of the 1976 Code is amended to read:

"Section 16-13-180. (A) It is unlawful for a person to buy, receive, or possess stolen goods, chattels, or other property if the person knows or has reason to believe the goods, chattels, or property is stolen. A person is guilty of this offense whether or not anyone is convicted of the theft of the property.

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

(1) misdemeanor triable in magistrates court or municipal court, notwithstanding the provisions of Sections 22-3-540, 22-3-545, 22-3-550, and 14-25-65, if the value of the property is two thousand dollars or less. Upon conviction, the person must be fined not more than one thousand dollars, or imprisoned not more than thirty days;

(2) felony and, upon conviction, must be fined not less than one thousand dollars or imprisoned not more than five years if the value of the property is more than two thousand dollars but less than ten thousand dollars;

(3) felony and, upon conviction, must be fined not less than two thousand dollars or imprisoned not more than ten years if the value of the property is ten thousand dollars or more.

(C) For the purposes of this section, the receipt of multiple items in a single transaction or event constitutes a single offense."

M. Section 16-13-210 of the 1976 Code is amended to read:

"Section 16-13-210. (A) It is unlawful for an officer or other person charged with the safekeeping, transfer, and disbursement of public funds to embezzle these funds.

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

(1) felony and, upon conviction, must be fined in the discretion of the court to be proportioned to the amount of the embezzlement and imprisoned not more than ten years if the amount of the embezzled funds is ten thousand dollars or more;

(2) felony and, upon conviction, must be fined in the discretion of the court to be proportioned to the amount of embezzlement and imprisoned not more than five years if the amount of the embezzled funds is less than ten thousand dollars.

(C) The person convicted of a felony is disqualified from holding any office of honor or emolument in this State; but the General Assembly, by a two-thirds vote, may remove this disability upon payment in full of the principal and interest of the sum embezzled."

N. Section 16-13-230(B) of the 1976 Code is amended to read:

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

(1) misdemeanor triable in magistrates court or municipal court, notwithstanding the provisions of Sections 22-3-540, 22-3-545, 22-3-550, and 14-25-65, if the amount is two thousand dollars or less. Upon conviction, the person must be fined not more than one thousand dollars, or imprisoned not more than thirty days;

(2) felony and, upon conviction, must be fined in the discretion of the court or imprisoned not more than five years if the amount is more than two thousand dollars but less than ten thousand dollars;

(3) felony and, upon conviction, must be fined in the discretion of the court or imprisoned not more than ten years if the amount is ten thousand dollars or more."

O. Section 16-13-240 of the 1976 Code is amended to read:

"Section 16-13-240. A person who by false pretense or representation obtains the signature of a person to a written instrument or obtains from another person any chattel, money, valuable security,

or other property, real or personal, with intent to cheat and defraud a person of that property is guilty of a:

(1) felony and, upon conviction, must be fined not more than five hundred dollars and imprisoned not more than ten years if the value of the property is ten thousand dollars or more;

(2) felony and, upon conviction, must be fined in the discretion of the court or imprisoned not more than five years if the value of the property is more than two thousand dollars but less than ten thousand dollars;

(3) misdemeanor triable in magistrates court or municipal court, notwithstanding the provisions of Sections 22-3-540, 22-3-545, 22-3-550, and 14-25-65, if the value of the property is two thousand dollars or less. Upon conviction, the person must be fined not more than one thousand dollars, or imprisoned not more than thirty days."

P. Section 16-13-260 of the 1976 Code is amended to read:

"Section 16-13-260. A person who falsely and deceitfully obtains or gets into his hands or possession any money, goods, chattels, jewels, or other things of another person by color and means of any false token or counterfeit letter made in another person's name is guilty of a:

(1) felony and, upon conviction, must be fined in the discretion of the court or imprisoned not more than ten years, or both, if the value of the property is ten thousand dollars or more;

(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 value of the property is more than two thousand dollars but less than ten thousand dollars;

(3) misdemeanor triable in magistrates court or municipal court, notwithstanding the provisions of Sections 22-3-540, 22-3-545, 22-3-550, and 14-25-65, if the value of the property is two thousand dollars or less. Upon conviction, the person must be fined not more than one thousand dollars, or imprisoned not more than thirty days, or both."

Q. Section 16-13-290 of the 1976 Code is amended to read:

"Section 16-13-290. It is unlawful for a person, with intent to defraud either the State, a county, or municipal government or any person, to act as an officer and demand, obtain, or receive from a person or an officer of the State, county, or municipal government any

money, paper, document, or other valuable things. A person who violates the provisions of this section is guilty of a:

(1) felony and, upon conviction, must be fined in the discretion of the court or imprisoned not more than ten years, or both, if the property or thing obtained has a value of more than four hundred dollars.

(2) misdemeanor triable in magistrates court or municipal court, notwithstanding the provisions of Sections 22-3-540, 22-3-545, 22-3-550, and 14-25-65, and, upon conviction, must be fined not more than two hundred dollars or imprisoned not more than thirty days if the property or thing obtained has a value of four hundred dollars or less."

R. Section 16-13-331 of the 1976 Code is amended to read:

"Section 16-13-331. Whoever, without authority, with the intention of depriving the library or archive of the ownership of such property, wilfully conceals a book or other library or archive property, while still on the premises of such library or archive, or wilfully or without authority removes any book or other property from any library or archive or collection shall be deemed guilty of a misdemeanor under the jurisdiction of the magistrates or municipal court, notwithstanding the provisions of Sections 22-3-540, 22-3-545, 22-3-550, and 14-25-65, and, upon conviction, shall be punished in accordance with the following: by a fine of not more than six hundred dollars or imprisonment for not more than six months; provided, however, that if the value of the library or archive property is less than one hundred dollars, the punishment shall be a fine of not more than two hundred dollars or imprisonment for not more than thirty days. Proof of the wilful concealment of any book or other library or archive property while still on the premises of such library or archive shall be prima facie evidence of intent to commit larceny thereof."

S. Section 16-13-420 of the 1976 Code is amended to read:

"Section 16-13-420. (A) A person having any property in his possession or under his control by virtue of a lease or rental agreement is guilty of larceny if he:

(1) wilfully and fraudulently fails to return the property within seventy-two hours after the lease or rental agreement has expired;

(2) fraudulently secretes or appropriates the property to any use or purpose not within the due and lawful execution of the lease or rental agreement.

The provisions of this section do not apply to lease-purchase agreements or conditional sales type contracts.

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

(1) felony and, upon conviction, must be fined in the discretion of the court or imprisoned not more than ten years, or both, if the value of the rented or leased item is ten thousand dollars or more;

(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 value of the rented or leased item is more than two thousand dollars but less than ten thousand dollars;

(3) misdemeanor triable in magistrates court or municipal court, notwithstanding the provisions of Sections 22-3-540, 22-3-545, 22-3-550, and 14-25-65, if the value of the rented or leased item is two thousand dollars or less. Upon conviction, the person must be fined not more than one thousand dollars or imprisoned not more than thirty days, or both."

T. Section 16-13-430(C) of the 1976 Code is amended to read:

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

(1) felony if the amount of food stamps fraudulently acquired or used is of a value of ten thousand dollars or more. Upon conviction, the person must be fined not more than five thousand dollars or imprisoned not more than ten years, or both;

(2) felony if the amount of food stamps fraudulently acquired or used is of a value of more than two thousand dollars but less than ten thousand dollars. Upon conviction, the person must be fined not more than five hundred dollars or imprisoned not more than five years, or both;

(3) misdemeanor triable in magistrates court or municipal court, notwithstanding the provisions of Sections 22-3-540, 22-3-545, 22-3-550, and 14-25-65, if the amount of food stamps fraudulently acquired or used is of a value of two thousand dollars or less. Upon conviction, the person must be fined not more than one thousand dollars, or imprisoned not more than thirty days, or both."

U. Section 16-14-80(B) of the 1976 Code is amended to read:

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

(1) misdemeanor under the jurisdiction of the magistrates or municipal court, notwithstanding the provisions of Sections 22-3-540, 22-3-545, 22-3-550, and 14-25-65, and, upon conviction, must be sentenced pursuant to Section 16-14-100(a) if the value of the money, goods, services, and anything else of value, is one thousand dollars or less in any six-month period;

(2) felony and, upon conviction, must be sentenced pursuant to Section 16-14-100(b) if the value of the money, goods, services, or anything of value is more than one thousand dollars in any six-month period."

V. Section 16-14-100 of the 1976 Code is amended to read:

"Section 16-14-100. (a) A crime punishable under this subsection is a misdemeanor under the jurisdiction of the magistrates or municipal court, notwithstanding the provisions of Sections 22-3-540, 22-3-545, 22-3-550, and 14-25-65, and, upon conviction, the person must be fined not more than two thousand dollars or imprisoned not more than one year, or both.

(b) A crime punishable under this subsection is a felony and, upon conviction, the person must be fined not less than three thousand dollars nor more than five thousand dollars or imprisoned not more than five years, or both."

W. Section 16-17-600(C) of the 1976 Code, as last amended by Act 229 of 2004, is further amended to read:

"(C)(1) It is unlawful for a person wilfully and knowingly to steal anything of value located upon or around a repository for human remains or within a human graveyard, cemetery, or memorial park, or for a person wilfully, knowingly, and without proper legal authority to destroy, tear down, or injure any fencing, plants, trees, shrubs, or flowers located upon or around a repository for human remains, or within a human graveyard, cemetery, or memorial park.

(2) A person violating the provisions of item (1) is guilty of:

(a) a felony and, upon conviction, if the theft of, destruction to, injury to, or loss of property is valued at four hundred dollars or more, must be fined not more than five thousand dollars or imprisoned not more than five years, or both, and must be required to perform not more than five hundred hours of community service;

(b) a misdemeanor triable in magistrates court or municipal court, notwithstanding the provisions of Sections 22-3-540, 22-3-545,

22-3-550, and 14-25-65, if the theft of, destruction to, injury to, or loss of property is valued at less than four hundred dollars. Upon conviction, a person must be fined not more than one thousand dollars, or imprisoned not more than thirty days, or both, and must be required to perform not more than two hundred fifty hours of community service."

X. Section 16-21-80 of the 1976 Code is amended to read:

"Section 16-21-80. A person not entitled to the possession of a vehicle who receives, possesses, conceals, sells, or disposes of it, knowing it to be stolen or converted under circumstances constituting a crime, is guilty of a:

(1) misdemeanor triable in magistrates court or municipal court, notwithstanding the provisions of Sections 22-3-540, 22-3-545, 22-3-550, and 14-25-65, if the value of the vehicle is two thousand dollars or less. Upon conviction, the person must be fined not more than one thousand dollars, or imprisoned not more than thirty days, or both;

(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 value of the vehicle is more than two thousand dollars but less than ten thousand dollars;

(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 value of the vehicle is ten thousand dollars or more."

Y. Section 36-9-410(C) of the 1976 Code, as added by Act 265 of 2004, is amended to read:

"(C) If the value of the personal property subject to a perfected security interest is worth:

(1) two thousand dollars or less, a person who violates the provisions of this section is guilty of a misdemeanor triable in the magistrates court or the municipal court, notwithstanding the provisions of Sections 22-3-540, 22-3-545, 22-3-550, and 14-25-65, and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than thirty days, or both;

(2) more than two thousand dollars but less than ten thousand dollars, a person who violates the provisions of this section is guilty of a felony and, upon conviction, must be fined in the discretion of the court or imprisoned not more than five years, or both;

(3) ten thousand dollars or more, a person who violates the provisions of this section is guilty of a felony and, upon conviction, must be fined in the discretion of the court or imprisoned not more than ten years, or both."

Z. Section 38-55-170 of the 1976 Code is amended to read:

"Section 38-55-170. A person who knowingly causes to be presented a false claim for payment to an insurer transacting business in this State, to a health maintenance organization transacting business in this State, or to any person, including the State of South Carolina, providing benefits for health care in this State, whether these benefits are administered directly or through a third person, or who knowingly assists, solicits, or conspires with another to present a false claim for payment as described above, is guilty of a:

(1) felony if the amount of the claim is ten thousand dollars or more. Upon conviction, the person must be imprisoned not more than ten years or fined not more than five thousand dollars, or both;

(2) felony if the amount of the claim is more than two thousand dollars but less than ten thousand dollars. Upon conviction, the person must be fined in the discretion of the court or imprisoned not more than five years, or both;

(3) misdemeanor triable in magistrates court or municipal court, notwithstanding the provisions of Sections 22-3-540, 22-3-545, 22-3-550, and 14-25-65, if the amount of the claim is two thousand dollars or less. Upon conviction, the person must be fined not more than one thousand dollars, or imprisoned not more than thirty days, or both."

A.A. Section 45-1-50(A) of the 1976 Code, as last amended by Act 81 of 1999, is further amended to read:

"(A) A person who:

(1) obtains food, lodging or other service, or accommodation at any hotel, motel, inn, boarding or rooming house, campground, cafe, or restaurant and intentionally absconds without paying for it; or

(2) while a guest at any hotel, motel, inn, boarding or rooming house, campground, cafe, or restaurant, intentionally defrauds the keeper in a transaction arising out of the relationship as guest, is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than six months, or both. Notwithstanding the provisions of Sections 22-3-540, 22-3-545,

22-3-550, and 14-25-65, an offense punishable under this subsection may be tried in magistrates or municipal court."

B.B. Section 45-2-40 of the 1976 Code, as added by Act 446 of 1994, is amended to read:

"Section 45-2-40.(A) A person who on the premises or property of a lodging establishment:

(1) uses or possesses a controlled substance in violation of Chapter 53, Title 44;

(2) consumes or possesses beer, wine, or alcoholic liquors in violation of Section 63-19-2440 or 63-19-2450; is guilty of a misdemeanor under the jurisdiction of the magistrates or municipal court, notwithstanding the provisions of Sections 22-3-540, 22-3-545, 22-3-550, and 14-25-65, and, upon conviction, must be fined not more than five hundred dollars or imprisoned not more than thirty days.

(B) A person who on the premises or property of a lodging establishment maliciously and wilfully commits a violation of this chapter resulting in damage to a lodging establishment room or its furnishings is guilty of a:

(1) felony and, upon conviction, must be fined in the discretion of the court or imprisoned not more than ten years if the amount of injury or damage to the property is ten thousand dollars or more;

(2) felony and, upon conviction, must be fined in the discretion of the court or imprisoned not more than five years if the amount of injury or damage to the property is more than two thousand dollars but less than ten thousand dollars;

(3) misdemeanor triable in magistrates court or municipal court, notwithstanding the provisions of Sections 22-3-540, 22-3-545, 22-3-550, and 14-25-65, if the amount of injury or damage to the property is two thousand dollars or less. Upon conviction, the person must be fined not more than one thousand dollars or imprisoned not more than thirty days.

(C) A person who rents or leases a room in a lodging establishment for the purpose of allowing the room to be used by another to do any act enumerated in subsection (A) or (B) of this section is guilty of a misdemeanor under the jurisdiction of the magistrates or municipal court, notwithstanding the provisions of Sections 22-3-540, 22-3-545, 22-3-550, and 14-25-65, and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than thirty days.

(D) In a case arising under this section involving damage to a lodging establishment room or its furnishings, the court may order the

person renting or leasing the lodging establishment room or the person causing such damage, or both:

(1) to pay restitution for any damages suffered by the owner or operator of the lodging establishment, which damages may include the lodging establishment's loss of revenue resulting from the establishment's inability to rent or lease the room during the period of time the lodging establishment room is being repaired; and

(2) to pay damages or restitution to any other person who is injured in person or property.

In a case arising under this subsection triable in magistrates court or municipal court, notwithstanding the provisions of Sections 22-3-540, 22-3-545, 22-3-550, and 14-25-65, a judge may order restitution not to exceed the civil jurisdictional amount of magistrates court provided in Section 22-3-10(2).

In the case of a minor, the parents of the minor are liable for acts of the minor in violation of this section which cause damages to the lodging establishment room or furnishings or cause injury to persons or property.

(E) This section does not prohibit the prosecution of a person for the underlying violation which occurred on the premises or property of the lodging establishment."

C.C. Section 46-1-20 of the 1976 Code, as last amended by Act 184 of 1993, is further amended to read:

"Section 46-1-20. A person who steals from the field any grain, cotton, or vegetables, whether severed from the freehold or not, is guilty of a:

(1) felony and, upon conviction, must be imprisoned not more than ten years or fined not more than five hundred dollars if the value of the crop is ten thousand dollars or more;

(2) felony and, upon conviction, must be fined in the discretion of the court or imprisoned not more than five years if the value of the crop is more than two thousand dollars but less than ten thousand dollars;

(3) misdemeanor triable in magistrates court or municipal court, notwithstanding the provisions of Sections 22-3-540, 22-3-545, 22-3-550, and 14-25-65, if the value of the crop is two thousand dollars or less. Upon conviction, the person must be fined not more than one thousand dollars, or imprisoned not more than thirty days."

D.D. Section 46-1-40 of the 1976 Code, as last amended by Act 184 of 1993, is further amended to read:

"Section 46-1-40. A person who steals tobacco plants, whether severed from the freehold or not, from any tobacco plant beds is guilty of a:

(1) felony and, upon conviction, must be imprisoned not more than ten years or fined not more than five hundred dollars if the value of the tobacco plants is ten thousand dollars or more;

(2) felony and, upon conviction, must be fined in the discretion of the court or imprisoned not more than five years if the value of the tobacco plants is more than two thousand dollars but less than ten thousand dollars;

(3) misdemeanor triable in magistrates court or municipal court, notwithstanding the provisions of Sections 22-3-540, 22-3-545, 22-3-550, and 14-25-65, if the value of the tobacco plants is two thousand dollars or less. Upon conviction, the person must be fined not more than one thousand dollars, or imprisoned not more than thirty days."

E.E. Section 46-1-60(B) of the 1976 Code, as last amended by Act 184 of 1993, is further amended to read:

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

(1) felony and, upon conviction, must be fined in the discretion of the court or imprisoned not more than ten years, or both, if the sale amount of the commodities is ten thousand dollars or more;

(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 sale amount of the commodities is more than two thousand dollars but less than ten thousand dollars;

(3) misdemeanor triable in magistrates court or municipal court, notwithstanding the provisions of Sections 22-3-540, 22-3-545, 22-3-550, and 14-25-65, if the sale amount of the commodities is two thousand dollars or less. Upon conviction, the person must be fined not more than one thousand dollars, or imprisoned not more than thirty days, or both."

F.F. Section 46-1-70(B) of the 1976 Code, as last amended by Act 184 of 1993, is further amended to read:

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

(1) felony and, upon conviction, must be fined in the discretion of the court or imprisoned not more than ten years, or both, if the sale amount of the commodities is ten thousand dollars or more;

(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 sale amount of the commodities is more than two thousand dollars but less than ten thousand dollars;

(3) misdemeanor triable in magistrates court or municipal court, notwithstanding the provisions of Sections 22-3-540, 22-3-545, 22-3-550, and 14-25-65, if the sale amount of the commodities is two thousand dollars or less. Upon conviction, the person must be fined not more than one thousand dollars, or imprisoned not more than thirty days, or both."

G.G. Section 49-1-50(C) of the 1976 Code is amended to read:

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

(1) felony and, upon conviction, must be fined in the discretion of the court or imprisoned not more than ten years, or both, if the value of the lumber or timber is ten thousand dollars or more;

(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 value of the lumber or timber is more than two thousand dollars but less than ten thousand dollars;

(3) misdemeanor triable in magistrates court or municipal court, notwithstanding the provisions of Sections 22-3-540, 22-3-545, 22-3-550, and 14-25-65, if the value of the lumber or timber is two thousand dollars or less. Upon conviction, the person must be fined not more than one thousand dollars, or imprisoned not more than thirty days, or both."

Repealed section

SECTION 17. Section 16-13-425 of the 1976 Code is repealed.

Driving under suspension, habitual offenders

SECTION 18. A.Section 56-1-460(A) of the 1976 Code is amended to read:

"Section 56-1-460. (A)(1) Except as provided in item (2), a person who drives a motor vehicle on any public highway of this State when his license to drive is canceled, suspended, or revoked must, upon conviction, be punished as follows:

(a) for a first offense, fined three hundred dollars or imprisoned for up to thirty days, or both;

(b) for a second offense, fined six hundred dollars or imprisoned for up to sixty consecutive days, or both; and

(c) for a third and subsequent offense, fined one thousand dollars and imprisoned for up to ninety days or confined to a person's place of residence pursuant to the Home Detention Act for not less than ninety days nor more than six months. No portion of a term of imprisonment or confinement under home detention may be suspended by the trial judge. For purposes of this item, a person sentenced to confinement pursuant to the Home Detention Act is required to pay for the cost of such confinement.

(d) Notwithstanding the provisions of Sections 22-3-540, 22-3-545, 22-3-550, and 14-25-65, an offense punishable under this item may be tried in magistrates or municipal court.

(e)(i) A person convicted of a first or second offense of this item, as determined by the records of the department, and who is employed or enrolled in a college or university at any time while his driver's license is suspended pursuant to this item, may apply for a route restricted driver's license permitting him to drive only to and from work or his place of education and in the course of his employment or education during the period of suspension. The department may issue the route restricted driver's license only upon a showing by the person that he is employed or enrolled in a college or university and that he lives further than one mile from his place of employment or place of education.

(ii) When the department issues a route restricted driver's license, it shall designate reasonable restrictions on the times during which and routes on which the person may operate a motor vehicle. A person holding a route restricted driver's license pursuant to this item must report to the department immediately any change in his employment hours, place of employment, status as a student, or residence.

(iii) The fee for a route restricted driver's license issued pursuant to this item is one hundred dollars, but no additional fee is due when changes occur in the place and hours of employment, education, or residence. Of this fee, eighty dollars must be placed by the Comptroller General into a special restricted account to be used by the

Department of Motor Vehicles to defray its expenses. The remainder of the fees collected pursuant to this item must be credited to the Department of Transportation State Non-Federal Aid Highway Fund.

(iv) The operation of a motor vehicle outside the time limits and route imposed by a route restricted license by the person issued that license is a violation of subsection (A)(1).

(2) A person who drives a motor vehicle on any public highway of this State when his license has been suspended or revoked pursuant to the provisions of Section 56-5-2990 must, upon conviction, be punished as follows:

(a) for a first offense, fined three hundred dollars or imprisoned for not less than ten nor more than thirty days;

(b) for a second offense, fined six hundred dollars or imprisoned for not less than sixty days nor more than six months;

(c) for a third and subsequent offense, fined one thousand dollars and imprisoned for not less than six months nor more than three years;

(d) no portion of the minimum sentence imposed under this item may be suspended."

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

"Section 56-1-1105. (A) For purposes of this section:

(1) '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) 'Habitual offender' has the same meaning as in Section 56-1-1020.

(B) An habitual offender who drives a motor vehicle on any public highway of this State when the offender's license to drive has been canceled, suspended, or revoked, and when driving does any act forbidden by law or neglects any duty imposed by law in the driving of the motor vehicle, which act or neglect proximately causes great bodily injury or death to a person other than himself, is guilty of a felony, and, upon conviction, guilty plea, or nolo contendere plea must be punished:

(1) by a fine of not more than five thousand dollars and imprisonment for not more than ten years when great bodily injury results; or

(2) by a fine of not less than five thousand dollars nor more than ten thousand dollars and imprisonment for not more than twenty years when death results.

(C) The Department of Motor Vehicles must suspend the driver's license of an habitual offender who is convicted, pleads guilty, or pleads nolo contendere pursuant to this section for a period to include incarceration plus two years when great bodily injury results and three years when death results. The period of incarceration must not include any portion of a suspended sentence such as probation, parole, supervised furlough, or community supervision. For suspension purposes of this section, convictions arising out of a single incident shall run concurrently."

Hindering officers or rescuing prisoners

SECTION 19. Section 16-5-50 of the 1976 Code is amended to read:

"Section 16-5-50. Any person who shall (a) hinder, prevent, or obstruct any officer or other person charged with the execution of any warrant or other process issued under the provisions of this chapter in arresting any person for whose apprehension such warrant or other process may have been issued, (b) rescue or attempt to rescue such person from the custody of the officer or person or persons lawfully assisting him, as aforesaid, (c) aid, abet, or assist any person so arrested, as aforesaid, directly or indirectly, to escape from the custody of the officer or person or persons assisting him, as aforesaid, or (d) harbor or conceal any person for whose arrest a warrant or other process shall have been issued, so as to prevent his discovery and arrest, after notice or knowledge of the fact of the issuing of such warrant or other process, shall, on conviction for any such offense, be subject to a fine of not more than three thousand dollars or imprisonment for not more than three years, or both, at the discretion of the court having jurisdiction."

Two strikes/three strikes, new offenses added, work release, discretion

SECTION 20. Section 17-25-45 of the 1976 Code, as last amended by Act 72 of 2007, is further amended to read:

"Section 17-25-45. (A) Notwithstanding any other provision of law, except in cases in which the death penalty is imposed, upon a

conviction for a most serious offense as defined by this section, a person must be sentenced to a term of imprisonment for life without the possibility of parole if that person has either:

(1) one or more prior convictions for:

(a) a most serious offense; or

(b) a federal or out-of-state conviction for an offense that would be classified as a most serious offense under this section; or

(2) two or more prior convictions for:

(a) a serious offense; or

(b) a federal or out-of-state conviction for an offense that would be classified as a serious offense under this section.

(B) Notwithstanding any other provision of law, except in cases in which the death penalty is imposed, upon a conviction for a serious offense as defined by this section, a person must be sentenced to a term of imprisonment for life without the possibility of parole if that person has two or more prior convictions for:

(1) a serious offense;

(2) a most serious offense;

(3) a federal or out-of-state offense that would be classified as a serious offense or most serious offense under this section; or

(4) any combination of the offenses listed in items (1), (2), and (3) above.

(C) As used in this section:

(1) 'Most serious offense' means:

16-1-40	Accessory, for any offense enumerated in this item
16-1-80	Attempt, for any offense enumerated in this item
16-3-10	Murder
16-3-29	Attempted Murder
16-3-50	Voluntary manslaughter
16-3-85(A)(1)	Homicide by child abuse
16-3-85(A)(2)	Aiding and abetting homicide by child abuse
16-3-210	Lynching, First degree
16-3-210(B)	Assault and battery by mob, First degree
16-3-620	Assault and battery with intent to kill
16-3-652	Criminal sexual conduct, First degree
16-3-653	Criminal sexual conduct, Second degree
16-3-655	Criminal sexual conduct with minors, except where evidence presented at the criminal proceeding and the court, after the conviction, makes a specific finding on the record that

the conviction obtained for this offense resulted from consensual sexual conduct where the victim was younger than the actor, as contained in Section 16-3-655(3)

16-3-656 Assault with intent to commit criminal sexual conduct, First and Second degree

16-3-910 Kidnapping

16-3-920 Conspiracy to commit kidnapping

16-3-1075 Carjacking

16-11-110(A) Arson, First degree

16-11-311 Burglary, First degree

16-11-330(A) Armed robbery

16-11-330(B) Attempted armed robbery

16-11-540 Damaging or destroying building, vehicle, or other property by means of explosive incendiary, death results

24-13-450 Taking of a hostage by an inmate

25-7-30 Giving information respecting national or state defense to foreign contacts during war

25-7-40 Gathering information for an enemy

43-35-85(F) Abuse or neglect of a vulnerable adult resulting in death

55-1-30(3) Unlawful removing or damaging of airport facility or equipment when death results

56-5-1030(B)(3) Interference with traffic-control devices or railroad signs or signals prohibited when death results from violation

58-17-4090 Obstruction of railroad, death results.

(2) 'Serious offense' means:

(a) any offense which is punishable by a maximum term of imprisonment for thirty years or more which is not referenced in subsection (C)(1);

(b) those felonies enumerated as follows:

16-3-220 Lynching, Second degree

16-3-210(C) Assault and battery by mob, Second degree

16-3-600(B) Assault and battery of a high and aggravated nature

16-3-810 Engaging child for sexual performance

16-9-220 Acceptance of bribes by officers

16-9-290 Accepting bribes for purpose of procuring public office

16-11-110(B) Arson, Second degree

16-11-312(B) Burglary, Second degree

16-11-380(B) Theft of a person using an automated teller machine

16-13-210(1) Embezzlement of public funds
16-13-230(B)(3) Breach of trust with fraudulent intent
16-13-240(1) Obtaining signature or property by false pretenses
38-55-540(3) Insurance fraud
44-53-370(e) Trafficking in controlled substances
44-53-375(C) Trafficking in ice, crank, or crack cocaine
44-53-445(B)(1)&(2) Distribute, sell, manufacture, or possess with intent to distribute controlled substances within proximity of school
56-5-2945 Causing death by operating vehicle while under influence of drugs or alcohol; and

(c) the offenses enumerated below:

16-1-40 Accessory before the fact for any of the offenses listed in subitems (a) and (b)
16-1-80 Attempt to commit any of the offenses listed in subitems (a) and (b)
43-35-85(E) Abuse or neglect of a vulnerable adult resulting in great bodily injury.

(3) 'Conviction' means any conviction, guilty plea, or plea of nolo contendere.

(D) Except as provided in this subsection or subsection (E), no person sentenced pursuant to this section shall be eligible for early release or discharge in any form, whether by parole, work release, release to ameliorate prison overcrowding, or any other early release program, nor shall they be eligible for earned work credits, education credits, good conduct credits, or any similar program for early release. A person is eligible for work release if the person is sentenced for voluntary manslaughter (Section 16-3-50), kidnapping (Section 16-3-910), carjacking (Section 16-3-1075), burglary in the second degree (Section 16-11-312(B)), armed robbery (Section 16-11-330(A)), or attempted armed robbery (Section 16-11-330(B)), the crime did not involve any criminal sexual conduct or an additional violent crime as defined in Section 16-1-60, and the person is within three years of release from imprisonment.

(E) For the purpose of this section only, a person sentenced pursuant to this section may be paroled if:

(1) the Department of Corrections requests the Department of Probation, Parole and Pardon Services to consider the person for parole; and

(2) the Department of Probation, Parole and Pardon Services determines that due to the person's health or age he is no longer a threat to society; and

(a) the person has served at least thirty years of the sentence imposed pursuant to this section and has reached at least sixty-five years of age; or

(b) the person has served at least twenty years of the sentence imposed pursuant to this section and has reached at least seventy years of age; or

(c) the person is afflicted with a terminal illness where life expectancy is one year or less; or

(d) the person can produce evidence comprising the most extraordinary circumstances.

(F) For the purpose of determining a prior or previous conviction under this section and Section 17-25-50, a prior or previous conviction shall mean the defendant has been convicted of a most serious or serious offense, as may be applicable, on a separate occasion, prior to the instant adjudication. There is no requirement that the sentence for the prior or previous conviction must have been served or completed before a sentence of life without parole can be imposed under this section.

(G) The decision to invoke sentencing under this section is in the discretion of the solicitor.

(H) Where the solicitor is required to seek or determines to seek sentencing of a defendant under this section, written notice must be given by the solicitor to the defendant and defendant's counsel not less than ten days before trial."

Murder, death or mandatory minimum of thirty years to life

SECTION 21. Section 16-3-20(A), as last amended by Act 278 of 2002, and (B) of the 1976 Code, is further amended to read:

"(A) A person who is convicted of or pleads guilty to murder must be punished by death, or by a mandatory minimum term of imprisonment for thirty years to life. If the State seeks the death penalty and a statutory aggravating circumstance is found beyond a reasonable doubt pursuant to subsections (B) and (C), and a recommendation of death is not made, the trial judge must impose a sentence of life imprisonment. For purposes of this section, 'life' or 'life imprisonment' means until death of the offender without the possibility of parole, and when requested by the State or the defendant,

the judge must charge the jury in his instructions that life imprisonment means until the death of the defendant without the possibility of parole. In cases where the defendant is eligible for parole, the judge must charge the applicable parole eligibility statute. No person sentenced to life imprisonment pursuant to this section is eligible for parole, community supervision, or any early release program, nor is the person eligible to receive any work credits, education credits, good conduct credits, or any other credits that would reduce the mandatory life imprisonment required by this section. No person sentenced to a mandatory minimum term of imprisonment for thirty years to life pursuant to this section is eligible for parole or any early release program, nor is the person eligible to receive any work credits, education credits, good conduct credits, or any other credits that would reduce the mandatory minimum term of imprisonment for thirty years to life required by this section. Under no circumstances may a female who is pregnant be executed so long as she is pregnant or for a period of at least nine months after she is no longer pregnant. When the Governor commutes a sentence of death to life imprisonment under the provisions of Section 14, Article IV of the Constitution of South Carolina, 1895, the commutee is not eligible for parole, community supervision, or any early release program, nor is the person eligible to receive any work credits, good conduct credits, education credits, or any other credits that would reduce the mandatory imprisonment required by this subsection.

(B) When the State seeks the death penalty, upon conviction or adjudication of guilt of a defendant of murder, the court shall conduct a separate sentencing proceeding. In the proceeding, if a statutory aggravating circumstance is found, the defendant must be sentenced to either death or life imprisonment. If no statutory aggravating circumstance is found, the defendant must be sentenced to either life imprisonment or a mandatory minimum term of imprisonment for thirty years to life. The proceeding must be conducted by the trial judge before the trial jury as soon as practicable after the lapse of twenty-four hours unless waived by the defendant. If trial by jury has been waived by the defendant and the State, or if the defendant pleaded guilty, the sentencing proceeding must be conducted before the judge. In the sentencing proceeding, the jury or judge shall hear additional evidence in extenuation, mitigation, or aggravation of the punishment. Only such evidence in aggravation as the State has informed the defendant in writing before the trial is admissible. This section must not be construed to authorize the introduction of any evidence secured in violation of the Constitution of the United States or the State of

South Carolina or the applicable laws of either. The State, the defendant, and his counsel are permitted to present arguments for or against the sentence to be imposed. The defendant and his counsel shall have the closing argument regarding the sentence to be imposed."

Repealed sections

SECTION 22. Sections 16-3-30, 16-3-40, and 16-3-430 of the 1976 Code are repealed.

Municipal court, civil jurisdiction

SECTION 23. Section 14-25-65 of the 1976 Code, as last amended by Act 78 of 1999, is further amended to read:

"Section 14-25-65. If a municipal judge finds a party guilty of violating a municipal ordinance or a state law within the jurisdiction of the court, he may impose a fine of not more than five hundred dollars or imprisonment for thirty days, or both. In addition, a municipal judge may order restitution in an amount not to exceed the civil jurisdictional amount of magistrates court provided in Section 22-3-10(2). In determining the amount of restitution, the judge shall determine and itemize the actual amount of damage or loss in the order. In addition, the judge may set an appropriate payment schedule.

A municipal judge may hold a party in contempt for failure to pay the restitution ordered if the judge finds the party has the ability to pay."

Magistrates court, civil jurisdiction

SECTION 24. Section 22-3-550(A) of the 1976 Code is amended to read:

"(A) Magistrates have jurisdiction of all offenses which may be subject to the penalties of a fine or forfeiture not exceeding five hundred dollars, or imprisonment not exceeding thirty days, or both. In addition, a magistrate may order restitution in an amount not to exceed the civil jurisdictional amount provided in Section 22-3-10(2). In determining the amount of restitution, the judge shall determine and itemize the actual amount of damage or loss in the order. In addition, the judge may set an appropriate payment schedule.

A magistrate may hold a party in contempt for failure to pay the restitution ordered if the judge finds the party has the ability to pay."

Unlawful possession of a firearm by a person convicted of violent offense, confiscation

SECTION 25. Article 5, Chapter 23, Title 16 of the 1976 Code is amended by adding:

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

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

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

(D) The judge that hears the case involving the violent offense, as defined by Section 16-1-60, that is classified as a felony offense, shall make a specific finding on the record that the offense is a violent offense, as defined by Section 16-1-60, and is classified as a felony offense."

Violent crimes defined, crimes added

SECTION 26. Section 16-1-60 of the 1976 Code, as last amended by Act 379 of 2006, is further amended to read:

"Section 16-1-60. For purposes of definition under South Carolina law, a violent crime includes the offenses of: murder (Section 16-3-10); attempted murder (Section 16-3-29); assault and battery by mob, first degree, resulting in death (Section 16-3-210(B)); criminal sexual conduct in the first and second degree (Sections 16-3-652 and 16-3-653); criminal sexual conduct with minors, first and second degree (Section 16-3-655); assault with intent to commit criminal sexual conduct, first and second degree (Section 16-3-656); assault and battery with intent to kill (Section 16-3-620); assault and battery of a high and aggravated nature (Section 16-3-600(B)); kidnapping (Section 16-3-910); voluntary manslaughter (Section 16-3-50); armed robbery (Section 16-11-330(A)); attempted armed robbery (Section 16-11-330(B)); carjacking (Section 16-3-1075); drug trafficking as defined in Section 44-53-370(e) or trafficking cocaine base as defined in Section 44-53-375(C); manufacturing or trafficking methamphetamine as defined in Section 44-53-375; arson in the first degree (Section 16-11-110(A)); arson in the second degree (Section 16-11-110(B)); burglary in the first degree (Section 16-11-311); burglary in the second degree (Section 16-11-312(B)); engaging a child for a sexual performance (Section 16-3-810); homicide by child abuse (Section 16-3-85(A)(1)); aiding and abetting homicide by child abuse (Section 16-3-85(A)(2)); inflicting great bodily injury upon a child (Section 16-3-95(A)); allowing great bodily injury to be inflicted upon a child (Section 16-3-95(B)); criminal domestic violence of a high and aggravated nature (Section 16-25-65); abuse or neglect of a vulnerable adult resulting in death (Section 43-35-85(F)); abuse or neglect of a vulnerable adult resulting in great bodily injury (Section 43-35-85(E)); taking of a hostage by an inmate (Section 24-13-450); detonating a destructive device upon the capitol grounds resulting in death with malice (Section 10-11-325(B)(1)); spousal sexual battery (Section 16-3-615); producing, directing, or promoting sexual performance by a child (Section 16-3-820); lewd act upon a child under sixteen (Section 16-15-140); sexual exploitation of a minor first degree (Section 16-15-395); sexual exploitation of a minor second degree (Section 16-15-405); promoting prostitution of a minor (Section 16-15-415); participating in prostitution of a minor (Section 16-15-425); aggravated voyeurism (Section 16-17-470(C)); detonating a destructive device

resulting in death with malice (Section 16-23-720(A)(1)); detonating a destructive device resulting in death without malice (Section 16-23-720(A)(2)); boating under the influence resulting in death (Section 50-21-113(A)(2)); vessel operator's failure to render assistance resulting in death (Section 50-21-130(A)(3)); damaging an airport facility or removing equipment resulting in death (Section 55-1-30(3)); failure to stop when signaled by a law enforcement vehicle resulting in death (Section 56-5-750(C)(2)); interference with traffic-control devices, railroad signs, or signals resulting in death (Section 56-5-1030(B)(3)); hit and run resulting in death (Section 56-5-1210(A)(3)); felony driving under the influence or felony driving with an unlawful alcohol concentration resulting in death (Section 56-5-2945(A)(2)); putting destructive or injurious materials on a highway resulting in death (Section 57-7-20(D)); obstruction of a railroad resulting in death (Section 58-17-4090); accessory before the fact to commit any of the above offenses (Section 16-1-40); and attempt to commit any of the above offenses (Section 16-1-80). Only those offenses specifically enumerated in this section are considered violent offenses."

Additional punishment for possession of weapon during violent crime, work release eligibility

SECTION 27. Section 16-23-490(C) of the 1976 Code is amended to read:

"(C) Except as provided in this subsection, the person sentenced under this section is not eligible during this five-year period for parole, work release, or extended work release. The five years may not be suspended and the person may not complete his term of imprisonment in less than five years pursuant to good-time credits or work credits, but may earn credits during this period. The person is eligible for work release, if the person is sentenced for voluntary manslaughter (Section 16-3-50), kidnapping (Section 16-3-910), carjacking (Section 16-3-1075), burglary in the second degree (Section 16-11-312(B)), armed robbery (Section 16-11-330(A)), or attempted armed robbery (Section 16-11-330(B)), the crime did not involve any criminal sexual conduct or an additional violent crime as defined in Section 16-1-60, and the person is within three years of release from imprisonment."

No parole offenders, work release eligibility

SECTION 28. Section 24-13-125(A) of the 1976 Code is amended to read:

"(A) Notwithstanding any other provision of law, except in a case in which the death penalty or a term of life imprisonment is imposed, or as provided in this subsection, a prisoner convicted of a 'no parole offense', as defined in Section 24-13-100, and sentenced to the custody of the Department of Corrections, including a prisoner serving time in a local facility pursuant to a designated facility agreement authorized by Section 24-3-20, is not eligible for work release until the prisoner has served not less than eighty percent of the actual term of imprisonment imposed. This percentage must be calculated without the application of earned work credits, education credits, or good conduct credits, and is to be applied to the actual term of imprisonment imposed, not including any portion of the sentence which has been suspended. A person is eligible for work release if the person is sentenced for voluntary manslaughter (Section 16-3-50), kidnapping (Section 16-3-910), carjacking (Section 16-3-1075), burglary in the second degree (Section 16-11-312(B)), armed robbery (Section 16-11-330(A)), or attempted armed robbery (Section 16-11-330(B)), the crime did not involve any criminal sexual conduct or an additional violent crime as defined in Section 16-1-60, and the person is within three years of release from imprisonment. Except as provided in this subsection, nothing in this section may be construed to allow a prisoner convicted of murder or a prisoner prohibited from participating in work release by another provision of law to be eligible for work release."

Release of offender who committed violent crime into same community, work release eligibility

SECTION 29. Section 24-13-650 of the 1976 Code is amended to read:

"Section 24-13-650. (A) No offender committed to incarceration for a violent offense as defined in Section 16-1-60 or a 'no parole offense' as defined in Section 24-13-100 may be released back into the community in which the offender committed the offense under the work release program, except in those cases wherein, where applicable, the victim of the crime for which the offender is charged or the relatives of the victim who have applied for notification under Article

15, Chapter 3, Title 16 if the victim has died, the law enforcement agency which employed the arresting officer at the time of the arrest, and the circuit solicitor all agree to recommend that the offender be allowed to participate in the work release program in the community where the offense was committed. The victim or the victim's nearest living relative, the law enforcement agency, and the solicitor, as referenced above, must affirm in writing that the offender be allowed to return to the community in which the offense was committed to participate in the work release program.

(B) An offender committed to incarceration for voluntary manslaughter (Section 16-3-50), kidnapping (Section 16-3-910), carjacking (Section 16-3-1075), burglary in the second degree (Section 16-11-312(B)), armed robbery (Section 16-11-330(A)), or attempted armed robbery (Section 16-11-330(B)), may be released under the work release program back into the community in which the offender committed the offense, if the crime did not involve any criminal sexual conduct or an additional violent crime as defined in Section 16-1-60, the person is within three years of release from imprisonment, and the provisions of subsection (A) are fulfilled."

Custody and participation in work release programs, work release eligibility

SECTION 30. Section 24-3-20(B)(2) of the 1976 Code is amended to read:

"(2) the rates of pay and other conditions of employment will not be less than those paid and provided for work of similar nature in the locality in which the work is to be performed.

The department shall notify victims registered pursuant to Article 15, Chapter 3, Title 16 and the trial judge, solicitor, and sheriff of the county or the law enforcement agency of the jurisdiction where the offense occurred before releasing inmates on work release. However, the trial judge may waive his right to receive the notification contained in this section by notifying the department of this waiver in writing. The department has the authority to deny release based upon opinions received from these persons, if any, as to the suitability of the release.

A prisoner's place of confinement may not be extended as permitted by this subsection if the prisoner:

(a) is currently serving a sentence for or has a prior conviction for criminal sexual conduct in the first, second, or third degree; attempted criminal sexual conduct; assault with intent to commit

criminal sexual conduct; criminal sexual conduct when the victim is his legal spouse; criminal sexual conduct with a minor; committing or attempting to commit a lewd act on a child; engaging a child for sexual performance; spousal sexual battery; a harassment or stalking offense pursuant to Article 17, Chapter 3, Title 16, or a burglary offense pursuant to Section 16-11-311 or 16-11-312(B); or

(b) is currently serving a sentence for a violent offense as defined in Section 16-1-60, except that a prisoner serving a sentence for kidnapping, pursuant to Section 16-3-910, voluntary manslaughter, pursuant to Section 16-3-50, armed robbery, pursuant to Section 16-11-330(A), attempted armed robbery, pursuant to Section 16-11-330(B), burglary in the second degree, pursuant to Section 16-11-312(B), or carjacking, pursuant to Section 16-3-1075 may be eligible to participate in the work release programs so long as the prisoner is within three years from the date of his release from incarceration, and the prisoner is not serving a sentence involving criminal sexual conduct or other violent crime, as classified under Section 16-1-60.

(3) A prisoner who is serving a sentence for a 'no parole offense' as defined in Section 24-13-100 and who is otherwise eligible for work release shall not have his place of confinement extended until he has served the minimum period of incarceration as set forth in Section 24-13-125."

Youthful offenders, definition

SECTION 31. Section 24-19-10 of the 1976 Code is amended to read:

"Section 24-19-10. As used herein:
(a) 'Department' means the Department of Corrections.
(b) 'Division' means the Youthful Offender Division.
(c) 'Director' means the Director of the Department of Corrections.
(d) 'Youthful offender' means an offender who is:

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

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

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

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

(v) under seventeen years of age and has been bound over for proper criminal proceedings to the court of general sessions pursuant to Section 63-19-1210 for allegedly committing a lewd act upon a child pursuant to Section 16-15-140, and the alleged offense involved consensual sexual conduct with a person who was at least fourteen years of age at the time of the act; or

(vi) seventeen but less than twenty-five years of age at the time of conviction for committing a lewd act upon a child pursuant to Section 16-15-140, and the conviction resulted from consensual sexual conduct, provided the offender was eighteen years of age or less at the time of the act and the other person involved was at least fourteen years of age at the time of the act.

(e) 'Treatment' means corrective and preventive guidance and training designed to protect the public by correcting the antisocial tendencies of youthful offenders; this may also include vocational and other training considered appropriate and necessary by the division.

(f) 'Conviction' means a judgment in a verdict or finding of guilty, plea of guilty, or plea of nolo contendere to a criminal charge where the imprisonment is at least one year, but excluding all offenses in which the maximum punishment provided by law is death or life imprisonment."

Youthful offenders, expungement

SECTION 32. Section 22-5-920(B) of the 1976 Code, as last amended by Act 36 of 2009, is further amended to read:

"(B) Following a first offense conviction as a youthful offender for which a defendant is sentenced pursuant to the provisions of Chapter 19, Title 24, Youthful Offender Act, the defendant, after five years from the date of completion of 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 for which the defendant was sentenced pursuant to the provisions of Chapter 19, Title 24, Youthful Offender Act, the circuit court may issue an order expunging the records. No person may have 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. A person eligible for a sentence pursuant to the provisions of Chapter 19, Title 24, Youthful Offender Act, and who is not sentenced pursuant to those provisions, is not eligible to have his record expunged pursuant to the provisions of this section."

Youthful offenders, victim notification

SECTION 33. Section 24-19-110 of the 1976 Code, as last amended by Act 151 of 2010, is further amended by adding an appropriately lettered subsection to read:

"( ) The division must notify a victim registered pursuant to Article 15, Chapter 3, Title 16 before conditionally releasing or unconditionally discharging a youthful offender. The division has the authority to deny conditional release and unconditional discharge based

upon information received from the victim as to the suitability of the release."

Youthful offenders, victim notification

SECTION 34. Section 24-19-120 of the 1976 Code is amended to read:

"Section 24-19-120. (A) A youthful offender shall be released conditionally under supervision on or before the expiration of four years from the date of his conviction and shall be discharged unconditionally on or before six years from the date of his conviction.

(B) The division must notify a victim registered pursuant to Article 15, Chapter 3, Title 16 before conditionally releasing or unconditionally discharging a youthful offender."

Surcharge on drug offenses increased

SECTION 35. Section 14-1-213(A) of the 1976 Code, as added by Act 353 of 2008, is amended to read:

"(A) In addition to all other assessments and surcharges required to be imposed by law, a one hundred fifty dollar surcharge is also levied on all fines, forfeitures, escheatments, or other monetary penalties imposed in general sessions court or in magistrates or municipal court for misdemeanor or felony drug offenses. No portion of the surcharge may be waived, reduced, or suspended."

Method of scheduling drugs

SECTION 36. Section 44-53-160(4) of the 1976 Code is amended to read:

"(4) If any substance is added, deleted, or rescheduled as a controlled substance under federal law or regulation, the department shall by rule, at its first regular or special meeting after publication in the federal register of the final order designating the substance as a controlled substance or rescheduling or deleting the substance, reschedule the substance into the appropriate schedule, such rule having force of law unless overturned by the General Assembly. This rule issued by the department shall be in substance identical with the order published in the federal register effecting the change in federal

status of the substance. The department shall notify the General Assembly in writing of the change in federal law or regulation and of the corresponding change in South Carolina law."

Controlled substances, suspension of sentence and probation, work release eligibility

SECTION 37. Section 44-53-370 of the 1976 Code, as last amended by Act 127 of 2005, is further amended to read:

"Section 44-53-370. (a) Except as authorized by this article it shall be unlawful for any person:

(1) to manufacture, distribute, dispense, deliver, purchase, aid, abet, attempt, or conspire to manufacture, distribute, dispense, deliver, or purchase, or possess with the intent to manufacture, distribute, dispense, deliver, or purchase a controlled substance or a controlled substance analogue;

(2) to create, distribute, dispense, deliver, or purchase, or aid, abet, attempt, or conspire to create, distribute, dispense, deliver, or purchase, or possess with intent to distribute, dispense, deliver, or purchase a counterfeit substance.

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

(1) a controlled substance classified in Schedule I (b) and (c) which is a narcotic drug or lysergic acid diethylamide (LSD) and in Schedule II which is a narcotic drug is guilty of a felony and, upon conviction, for a first offense must be imprisoned not more than fifteen years or fined not more than twenty-five thousand dollars, or both. For a second offense, or if, in the case of a first conviction of violation of any provision of this subsection, the offender previously has been convicted of a violation of the laws of the United States or of any state, territory, or district relating to narcotic drugs, marijuana, depressant, stimulant, or hallucinogenic drugs, the offender must be imprisoned not less than five years nor more than thirty years, or fined not more than fifty thousand dollars, or both. For a third or subsequent offense, or if the offender previously has been convicted two or more times in the aggregate of a violation of the laws of the United States or of any state, territory, or district relating to narcotic drugs, marijuana, depressant, stimulant, or hallucinogenic drugs, the offender must be imprisoned not less than ten years nor more than thirty years, or fined not more than fifty thousand dollars, or both. Notwithstanding any other provision of law, a person convicted and sentenced pursuant to this item for a first offense or second offense may have the sentence suspended and

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

(2) any other controlled substance classified in Schedule I, II, or III, flunitrazepam or a controlled substance analogue, is guilty of a felony and, upon conviction, for a first offense must be imprisoned not more than five years or fined not more than five thousand dollars, or both. For a second offense, or, if, in the case of a first conviction of violation of any provision of this subsection, the offender previously has been convicted of a violation of the laws of the United States or of any state, territory, or district relating to narcotic drugs, marijuana, depressant, stimulant, or hallucinogenic drugs, the offender is guilty of a felony and, upon conviction, must be imprisoned not more than ten years or fined not more than ten thousand dollars, or both. For a third or subsequent offense, or, if the offender previously has been convicted two or more times in the aggregate of a violation of the laws of the United States or of any state, territory, or district relating to narcotic drugs, marijuana, depressant, stimulant, or hallucinogenic drugs, the offender is guilty of a felony and, upon conviction, must be imprisoned not less than five years nor more than twenty years, or fined not more than twenty thousand dollars, or both. Notwithstanding any other provision of law, a person convicted and sentenced pursuant to this item for a first offense or second offense may have the sentence suspended and probation granted, and is eligible for parole, supervised furlough, community supervision, work release, work credits, education credits, and good conduct credits. Notwithstanding any other provision of law, a person convicted and sentenced pursuant to this item for a third or subsequent offense in which all prior offenses were for possession of a controlled substance pursuant to subsections (c) and (d), may have the sentence suspended and probation granted, and is eligible for parole, supervised furlough, community supervision, work release, work credits, education credits, and good conduct credits. In all other cases, the sentence must not be suspended nor probation granted;

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

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

(c) It shall be unlawful for any person knowingly or intentionally to possess a controlled substance unless the substance was obtained directly from, or pursuant to a valid prescription or order of, a

practitioner while acting in the course of his professional practice, or except as otherwise authorized by this article.

(d) A person who violates subsection (c) with respect to:

(1) a controlled substance classified in Schedule I (b) and (c) which is a narcotic drug or lysergic acid diethylamide (LSD) and in Schedule II which is a narcotic drug is guilty of a misdemeanor and, upon conviction, must be imprisoned not more than two years or fined not more than five thousand dollars, or both. For a second offense, the offender is guilty of a felony and, upon conviction, must be imprisoned not more than five years or fined not more than five thousand dollars, or both. For a third or subsequent offense, the offender is guilty of a felony and, upon conviction, must be imprisoned not more than five years or fined not more than ten thousand dollars, or both. Notwithstanding any other provision of law, a person convicted and sentenced pursuant to this item may have the sentence suspended and probation granted and is eligible for parole, supervised furlough, community supervision, work release, work credits, education credits, and good conduct credits;

(2) any other controlled substance classified in Schedules I through V is guilty of a misdemeanor and, upon conviction, must be imprisoned not more than six months or fined not more than one thousand dollars, or both. For a second or subsequent offense, the offender is guilty of a misdemeanor and, upon conviction, must be imprisoned not more than one year or fined not more than two thousand dollars, or both, except as provided in subsection (d)(4). Notwithstanding any other provision of law, a person convicted and sentenced pursuant to this item may have the sentence suspended and probation granted and is eligible for parole, supervised furlough, community supervision, work release, work credits, education credits, and good conduct credits;

(3) cocaine is guilty of a misdemeanor and, upon conviction, must be imprisoned not more than three years or fined not more than five thousand dollars, or both. For a first offense, the court, upon approval of the solicitor, may require as part of a sentence, that the offender enter and successfully complete a drug treatment and rehabilitation program. For a second offense, the offender is guilty of a felony and, upon conviction, must be imprisoned not more than five years or fined not more than seven thousand five hundred dollars, or both. For a third or subsequent offense, the offender is guilty of a felony and, upon conviction, must be imprisoned not more than ten years or fined not more than twelve thousand five hundred dollars, or both. Notwithstanding any other provision of law, a person convicted

and sentenced pursuant to this item may have the sentence suspended and probation granted and is eligible for parole, supervised furlough, community supervision, work release, work credits, education credits, and good conduct credits;

(4) possession of more than: one gram of cocaine, one hundred milligrams of alpha- or beta-eucaine, four grains of opium, four grains of morphine, two grains of heroin, one hundred milligrams of isonipecaine, twenty-eight grams or one ounce of marijuana, ten grams of hashish, fifty micrograms of lysergic acid diethylamide (LSD) or its compounds, fifteen tablets, capsules, dosage units, or the equivalent quantity of 3, 4-methylenedioxymethamphetamine (MDMA), or twenty milliliters or milligrams of gamma hydroxybutyric acid or a controlled substance analogue of gamma hydroxybutyric acid, is prima facie guilty of violation of subsection (a) of this section. A person who violates this subsection with respect to twenty-eight grams or one ounce or less of marijuana or ten grams or less of hashish is guilty of a misdemeanor and, upon conviction, must be imprisoned not more than thirty days or fined not less than one hundred dollars nor more than two hundred dollars. Conditional discharge may be granted in accordance with the provisions of Section 44-53-450 upon approval by the circuit solicitor to the magistrate or municipal judge. As a part of a sentence, a magistrate or municipal judge may require attendance at an approved drug abuse program. Persons charged with the offense of possession of marijuana or hashish under this item may be permitted to enter the pretrial intervention program under the provisions of Sections 17-22-10 through 17-22-160. For a second or subsequent offense, the offender is guilty of a misdemeanor and, upon conviction, must be imprisoned not more than one year or fined not less than two hundred dollars nor more than one thousand dollars, or both. Notwithstanding any other provision of law, a person convicted and sentenced pursuant to this item may have the sentence suspended and probation granted and is eligible for parole, supervised furlough, community supervision, work release, work credits, education credits, and good conduct credits.

When a person is charged under this subsection for possession of controlled substances, bail shall not exceed the amount of the fine and the assessment provided pursuant to Section 14-1-206, 14-1-207, or 14-1-208, whichever is applicable. A person charged under this item for a first offense for possession of controlled substances may forfeit bail by nonappearance. Upon forfeiture in general sessions court, the fine portion of the bail must be distributed as provided in Section 14-1-205. The assessment portion of the bail must be distributed as

provided in Section 14-1-206, 14-1-207, or 14-1-208, whichever is applicable.

(e) Any person who knowingly sells, manufactures, cultivates, delivers, purchases, or brings into this State, or who provides financial assistance or otherwise aids, abets, attempts, or conspires to sell, manufacture, cultivate, deliver, purchase, or bring into this State, or who is knowingly in actual or constructive possession or who knowingly attempts to become in actual or constructive possession of:

(1) ten pounds or more of marijuana is guilty of a felony which is known as 'trafficking in marijuana' and, upon conviction, must be punished as follows if the quantity involved is:

(a) ten pounds or more, but less than one hundred pounds:

1. for a first offense, a term of imprisonment of not less than one year nor more than ten years, no part of which may be suspended nor probation granted, and a fine of ten thousand dollars;

2. for a second offense, a term of imprisonment of not less than five years nor more than twenty years, no part of which may be suspended nor probation granted, and a fine of fifteen thousand dollars;

3. for a third or subsequent offense, a mandatory term of imprisonment of twenty-five years, no part of which may be suspended nor probation granted, and a fine of twenty-five thousand dollars;

(b) one hundred pounds or more, but less than two thousand pounds, or one hundred to one thousand marijuana plants regardless of weight, a mandatory term of imprisonment of twenty-five years, no part of which may be suspended nor probation granted, and a fine of twenty-five thousand dollars;

(c) two thousand pounds or more, but less than ten thousand pounds, or more than one thousand marijuana plants, but less than ten thousand marijuana plants regardless of weight, a mandatory term of imprisonment of twenty-five years, no part of which may be suspended nor probation granted, and a fine of fifty thousand dollars;

(d) ten thousand pounds or more, or ten thousand marijuana plants, or more than ten thousand marijuana plants regardless of weight, a term of imprisonment of not less than twenty-five years nor more than thirty years with a mandatory minimum term of imprisonment of twenty-five years, no part of which may be suspended nor probation granted, and a fine of two hundred thousand dollars;

(2) ten grams or more of cocaine or any mixtures containing cocaine, as provided in Section 44-53-210(b)(4), is guilty of a felony which is known as 'trafficking in cocaine' and, upon conviction, must be punished as follows if the quantity involved is:

(a) ten grams or more, but less than twenty-eight grams:

1. for a first offense, a term of imprisonment of not less than three years nor more than ten years, no part of which may be suspended nor probation granted, and a fine of twenty-five thousand dollars;

2. for a second offense, a term of imprisonment of not less than five years nor more than thirty years, no part of which may be suspended nor probation granted, and a fine of fifty thousand dollars;

3. for a third or subsequent offense, a mandatory minimum term of imprisonment of not less than twenty-five years nor more than thirty years, no part of which may be suspended nor probation granted, and a fine of fifty thousand dollars;

(b) twenty-eight grams or more, but less than one hundred grams:

1. for a first offense, a term of imprisonment of not less than seven years nor more than twenty-five years, no part of which may be suspended nor probation granted, and a fine of fifty thousand dollars;

2. for a second offense, a term of imprisonment of not less than seven years nor more than thirty years, no part of which may be suspended nor probation granted, and a fine of fifty thousand dollars;

3. for a third or subsequent offense, a mandatory minimum term of imprisonment of not less than twenty-five years and not more than thirty years, no part of which may be suspended nor probation granted, and a fine of fifty thousand dollars;

(c) one hundred grams or more, but less than two hundred grams, a mandatory term of imprisonment of twenty-five years, no part of which may be suspended nor probation granted, and a fine of fifty thousand dollars;

(d) two hundred grams or more, but less than four hundred grams, a mandatory term of imprisonment of twenty-five years, no part of which may be suspended nor probation granted, and a fine of one hundred thousand dollars;

(e) four hundred grams or more, a term of imprisonment of not less than twenty-five years nor more than thirty years with a mandatory minimum term of imprisonment of twenty-five years, no part of which may be suspended nor probation granted, and a fine of two hundred thousand dollars;

(3) four grams or more of any morphine, opium, salt, isomer, or salt of an isomer thereof, including heroin, as described in Section 44-53-190 or 44-53-210, or four grams or more of any mixture containing any of these substances, is guilty of a felony which is known as 'trafficking in illegal drugs' and, upon conviction, must be punished as follows if the quantity involved is:

(a) four grams or more, but less than fourteen grams:

1. for a first offense, a term of imprisonment of not less than seven years nor more than twenty-five years, no part of which may be suspended nor probation granted, and a fine of fifty thousand dollars;

2. for a second or subsequent offense, a mandatory minimum term of imprisonment of twenty-five years, no part of which may be suspended nor probation granted, and a fine of one hundred thousand dollars;

(b) fourteen grams or more but less than twenty-eight grams, a mandatory term of imprisonment of twenty-five years, no part of which may be suspended nor probation granted, and a fine of two hundred thousand dollars;

(c) twenty-eight grams or more, a mandatory term of imprisonment of not less than twenty-five years nor more than forty years, no part of which may be suspended nor probation granted, and a fine of two hundred thousand dollars;

(4) fifteen grams or more of methaqualone is guilty of a felony which is known as 'trafficking in methaqualone' and, upon conviction, must be punished as follows if the quantity involved is:

(a) fifteen grams but less than one hundred fifty grams:

1. for a first offense, a term of imprisonment of not less than one year nor more than ten years, no part of which may be suspended nor probation granted, and a fine of ten thousand dollars;

2. for a second or subsequent offense, a mandatory term of imprisonment of twenty-five years, no part of which may be suspended nor probation granted, and a fine of twenty-five thousand dollars;

(b) one hundred fifty grams but less than fifteen hundred grams, a mandatory term of imprisonment of twenty-five years, no part of which may be suspended nor probation granted, and a fine of twenty-five thousand dollars;

(c) fifteen hundred grams but less than fifteen kilograms, a mandatory term of imprisonment of twenty-five years, no part of which may be suspended nor probation granted, and a fine of fifty thousand dollars;

(d) fifteen kilograms or more, a term of imprisonment of not less than twenty-five years nor more than thirty years with a mandatory minimum term of imprisonment of twenty-five years, no part of which may be suspended nor probation granted, and a fine of two hundred thousand dollars;

(5) one hundred tablets, capsules, dosage units, or the equivalent quantity, or more of lysergic acid diethylamide (LSD) is guilty of a felony which is known as 'trafficking in LSD' and, upon conviction, must be punished as follows if the quantity involved is:

(a) one hundred dosage units or the equivalent quantity, or more, but less than five hundred dosage units or the equivalent quantity:

1. for a first offense, a term of imprisonment of not less than three years nor more than ten years, no part of which may be suspended nor probation granted, and a fine of twenty thousand dollars;

2. for a second offense, a term of imprisonment of not less than five years nor more than thirty years, no part of which may be suspended or probation granted, and a fine of forty thousand dollars;

3. for a third or subsequent offense, a mandatory minimum term of imprisonment of not less than twenty-five years nor more than thirty years, no part of which may be suspended nor probation granted, and a fine of fifty thousand dollars;

(b) five hundred dosage units or the equivalent quantity, or more, but less than one thousand dosage units or the equivalent quantity:

1. for a first offense, a term of imprisonment of not less than seven years nor more than twenty-five years, no part of which may be suspended nor probation granted, and a fine of fifty thousand dollars;

2. for a second offense, a term of imprisonment of not less than seven years nor more than thirty years, no part of which may be suspended nor probation granted, and a fine of fifty thousand dollars;

3. for a third or subsequent offense, a mandatory minimum term of imprisonment of not less than twenty-five years and not more than thirty years, no part of which may be suspended nor probation granted, and a fine of fifty thousand dollars;

(c) one thousand dosage units or the equivalent quantity, or more, a mandatory term of imprisonment of twenty-five years, no part of which may be suspended nor probation granted, and a fine of one hundred thousand dollars;

(6) one gram or more of flunitrazepam is guilty of a felony which is known as 'trafficking in flunitrazepam' and, upon conviction, must be punished as follows if the quantity involved is:

(a) one gram but less than one hundred grams:

1. for a first offense a term of imprisonment of not less than one year nor more than ten years, no part of which may be suspended nor probation granted, and a fine of ten thousand dollars;

2. for a second or subsequent offense, a mandatory term of imprisonment of twenty-five years, no part of which may be suspended nor probation granted, and a fine of twenty-five thousand dollars;

(b) one hundred grams but less than one thousand grams, a mandatory term of imprisonment of twenty years, no part of which may

be suspended nor probation granted, and a fine of twenty-five thousand dollars;

(c) one thousand grams but less than five kilograms, a mandatory term of imprisonment of twenty-five years, no part of which may be suspended nor probation granted, and a fine of fifty thousand dollars;

(d) five kilograms or more, a term of imprisonment of not less than twenty-five years, nor more than thirty years, with a mandatory minimum term of imprisonment of twenty-five years, no part of which may be suspended nor probation granted, and a fine of two hundred thousand dollars;

(7) fifty milliliters or milligrams or more of gamma hydroxybutyric acid or a controlled substance analogue of gamma hydroxybutyric acid is guilty of a felony which is known as 'trafficking in gamma hydroxybutyric acid' and, upon conviction, must be punished as follows:

(a) for a first offense, a term of imprisonment of not less than one year nor more than ten years, no part of which may be suspended nor probation granted, and a fine of ten thousand dollars;

(b) for a second or subsequent offense, a mandatory term of imprisonment of twenty-five years, no part of which may be suspended nor probation granted, and a fine of twenty-five thousand dollars.

A person convicted and sentenced under this subsection to a mandatory term of imprisonment of twenty-five years, a mandatory minimum term of imprisonment of twenty-five years, or a mandatory minimum term of imprisonment of not less than twenty-five years nor more than thirty years is not eligible for parole, extended work release, as provided in Section 24-13-610, or supervised furlough, as provided in Section 24-13-710. Notwithstanding Section 44-53-420, a person convicted of conspiracy pursuant to this subsection must be sentenced as provided in this section with a full sentence or punishment and not one-half of the sentence or punishment prescribed for the offense.

The weight of any controlled substance in this subsection includes the substance in pure form or any compound or mixture of the substance.

The offense of possession with intent to distribute described in Section 44-53-370(a) is a lesser included offense to the offenses of trafficking based upon possession described in this subsection.

(8) one hundred tablets, capsules, dosage units, or the equivalent quantity, or more of 3, 4-methalenedioxymethamphetamine (MDMA) is guilty of a felony which is known as 'trafficking in MDMA or

ecstasy' and, upon conviction, must be punished as follows if the quantity involved is:

(a) one hundred dosage units or the equivalent quantity, or more, but less than five hundred dosage units or the equivalent quantity:

(i) for a first offense, a term of imprisonment of not less than three years nor more than ten years, no part of which may be suspended nor probation granted, and a fine of twenty thousand dollars;

(ii) for a second offense, a term of imprisonment of not less than five years nor more than thirty years, no part of which may be suspended nor probation granted, and a fine of forty thousand dollars;

(iii) for a third or subsequent offense, a mandatory minimum term of imprisonment of not less than twenty-five years nor more than thirty years, no part of which may be suspended nor probation granted, and a fine of fifty thousand dollars;

(b) five hundred dosage units or the equivalent quantity, or more, but less than one thousand dosage units or the equivalent quantity:

(i) for a first offense, a term of imprisonment of not less than seven years nor more than twenty-five years, no part of which may be suspended nor probation granted, and a fine of fifty thousand dollars;

(ii) for a second offense, a term of imprisonment of not less than seven years nor more than thirty years, no part of which may be suspended nor probation granted, and a fine of fifty thousand dollars;

(iii) for a third or subsequent offense, a mandatory minimum term of imprisonment of not less than twenty-five years and not more than thirty years, no part of which may be suspended nor probation granted, and a fine of fifty thousand dollars;

(c) one thousand dosage units or the equivalent quantity, or more, a mandatory term of imprisonment of twenty-five years, no part of which may be suspended nor probation granted, and a fine of one hundred thousand dollars.

(f) It shall be unlawful for a person to administer, distribute, dispense, deliver, or aid, abet, attempt, or conspire to administer, distribute, dispense, or deliver a controlled substance or gamma hydroxybutyrate to an individual with the intent to commit one of the following crimes against that individual:

(1) kidnapping, Section 16-3-910;

(2) criminal sexual conduct in the first, second, or third degree, Sections 16-3-652, 16-3-653, and 16-3-654;

(3) criminal sexual conduct with a minor in the first or second degree, Section 16-3-655;

(4) criminal sexual conduct where victim is legal spouse (separated), Section 16-3-658;

(5) spousal sexual battery, Section 16-3-615;

(6) engaging a child for a sexual performance, Section 16-3-810;

(7) committing lewd act upon child under sixteen, Section 16-15-140;

(8) petit larceny, Section 16-13-30 (A); or

(9) grand larceny, Section 16-13-30 (B).

(g) A person who violates subsection (f) with respect to:

(1) a controlled substance classified in Schedule I (b) or (c) which is a narcotic drug or lysergic acid diethylamide (LSD), or in Schedule II which is a narcotic drug is guilty of a felony and, upon conviction, must be:

(a) for a first offense, imprisoned not more than twenty years or fined not more than thirty thousand dollars, or both;

(b) for a second offense, or if in the case of a first conviction of a violation of any provision of this subsection, the offender previously has been convicted of a violation of the laws of the United States or of any state, territory, or district relating to narcotic drugs, marijuana, depressant, stimulant, or hallucinogenic drugs, imprisoned not less than five years nor more than thirty years, or fined not more than fifty thousand dollars, or both;

(c) for a third or subsequent offense, or if the offender previously has been convicted two or more times in the aggregate of a violation of the laws of the United States or of any state, territory, or district relating to narcotic drugs, marijuana, depressant, stimulant, or hallucinogenic drugs, imprisoned not less than fifteen years nor more than thirty years, or fined not more than fifty thousand dollars, or both.

Except in the case of conviction for a first offense, the sentence in this item must not be suspended and probation must not be granted;

(2) any other controlled substance or gamma hydroxybutyrate is guilty of a felony and, upon conviction, must be:

(a) for a first offense, imprisoned not more than fifteen years or fined not more than twenty-five thousand dollars, or both;

(b) for a second offense, or if in the case of a first conviction of a violation of any provision of this subsection, the offender previously has been convicted of a violation of the laws of the United States or of any state, territory, or district relating to narcotic drugs, marijuana, depressant, stimulant, or hallucinogenic drugs, imprisoned

not more than twenty years or fined not more than thirty thousand dollars, or both;

(c) for a third or subsequent offense, or if the offender previously has been convicted two or more times in the aggregate of a violation of the laws of the United States or of any state, territory, or district relating to narcotic drugs, marijuana, depressant, stimulant, or hallucinogenic drugs, imprisoned not less than five years nor more than twenty-five years, or fined not more than forty thousand dollars, or both.

Except in the case of conviction for a first offense, the sentence in this item must not be suspended and probation must not be granted."

Controlled substances, suspension of sentence and probation, work release eligibility

SECTION 38. Section 44-53-375 of the 1976 Code, as last amended by Act 127 of 2005, is further amended to read:

"Section 44-53-375. (A) A person possessing less than one gram of methamphetamine or cocaine base, as defined in Section 44-53-110, is guilty of a misdemeanor and, upon conviction for a first offense, must be imprisoned not more than three years or fined not more than five thousand dollars, or both. For a first offense the court, upon approval of the solicitor, may require as part of a sentence, that the offender enter and successfully complete a drug treatment and rehabilitation program. For a second offense, the offender is guilty of a felony and, upon conviction, must be imprisoned not more than five years or fined not more than seven thousand five hundred dollars, or both. For a third or subsequent offense, the offender is guilty of a felony and, upon conviction, must be imprisoned not more than ten years or fined not more than twelve thousand five hundred dollars, or both. Notwithstanding any other provision of law, a person convicted and sentenced pursuant to this subsection may have the sentence suspended and probation granted and is eligible for parole, supervised furlough, community supervision, work release, work credits, education credits, and good conduct credits.

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

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

(2) for a second offense or if, in the case of a first conviction of a violation of this section, the offender has been convicted of any of the laws of the United States or of any state, territory, or district relating to narcotic drugs, marijuana, depressant, stimulant, or hallucinogenic drugs, the offender must be imprisoned for not less than five years nor more than thirty years, or fined not more than fifty thousand dollars, or both;

(3) for a third or subsequent offense or if the offender has been convicted two or more times in the aggregate of any violation of the laws of the United States or of any state, territory, or district relating to narcotic drugs, marijuana, depressant, stimulant, or hallucinogenic drugs, the offender must be imprisoned for not less than ten years nor more than thirty years, or fined not more than fifty thousand dollars, or both.

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

(C) A person who knowingly sells, manufactures, delivers, purchases, or brings into this State, or who provides financial assistance or otherwise aids, abets, attempts, or conspires to sell, manufacture, deliver, purchase, or bring into this State, or who is knowingly in actual or constructive possession or who knowingly attempts to become in actual or constructive possession of ten grams or more of methamphetamine or cocaine base, as defined and otherwise limited in Section 44-53-110, 44-53-210(d)(1), or 44-53-210(d)(2), is guilty of a felony which is known as ‘trafficking in methamphetamine

or cocaine base' and, upon conviction, must be punished as follows if the quantity involved is:

(1) ten grams or more, but less than twenty-eight grams:

(a) for a first offense, a term of imprisonment of not less than three years nor more than ten years, no part of which may be suspended nor probation granted, and a fine of twenty-five thousand dollars;

(b) for a second offense, a term of imprisonment of not less than five years nor more than thirty years, no part of which may be suspended nor probation granted, and a fine of fifty thousand dollars;

(c) for a third or subsequent offense, a mandatory minimum term of imprisonment of not less than twenty-five years nor more than thirty years, no part of which may be suspended nor probation granted, and a fine of fifty thousand dollars;

(2) twenty-eight grams or more, but less than one hundred grams:

(a) for a first offense, a term of imprisonment of not less than seven years nor more than twenty-five years, no part of which may be suspended nor probation granted, and a fine of fifty thousand dollars;

(b) for a second offense, a term of imprisonment of not less than seven years nor more than thirty years, no part of which may be suspended nor probation granted, and a fine of fifty thousand dollars;

(c) for a third or subsequent offense, a mandatory minimum term of imprisonment of not less than twenty-five years and not more than thirty years, no part of which may be suspended nor probation granted, and a fine of fifty thousand dollars;

(3) one hundred grams or more, but less than two hundred grams, a mandatory term of imprisonment of twenty-five years, no part of which may be suspended nor probation granted, and a fine of fifty thousand dollars;

(4) two hundred grams or more, but less than four hundred grams, a mandatory term of imprisonment of twenty-five years, no part of which may be suspended nor probation granted, and a fine of one hundred thousand dollars;

(5) four hundred grams or more, a term of imprisonment of not less than twenty-five years nor more than thirty years with a mandatory minimum term of imprisonment of twenty-five years, no part of which may be suspended nor probation granted, and a fine of two hundred thousand dollars.

(D) Possession of equipment or paraphernalia used in the manufacture of cocaine, cocaine base, or methamphetamine is prima facie evidence of intent to manufacture.

(E)(1) It is unlawful for any person, other than a manufacturer, practitioner, dispenser, distributor, or retailer to knowingly possess any product that contains nine grams or more of ephedrine, pseudoephedrine, or phenylpropanolamine, their salts, isomers, or salts of isomers, or a combination of any of these substances. A person who violates this subsection is guilty of a felony known as 'trafficking in ephedrine, pseudoephedrine, or phenylpropanolamine, their salts, isomers, or salts of isomers, or a combination of any of these substances' and, upon conviction, must be punished as follows if the quantity involved is:

(a) nine grams or more, but less than twenty-eight grams:

(i) for a first offense, a term of imprisonment of not more than ten years, no part of which may be suspended nor probation granted, and a fine of twenty-five thousand dollars;

(ii) for a second offense, a term of imprisonment of not less than five years nor more than thirty years, no part of which may be suspended nor probation granted, and a fine of fifty thousand dollars;

(iii) for a third or subsequent offense, a mandatory minimum term of imprisonment of not less than twenty-five years nor more than thirty years, no part of which may be suspended nor probation granted, and a fine of fifty thousand dollars;

(b) twenty-eight grams or more, but less than one hundred grams:

(i) for a first offense, a term of imprisonment of not less than seven years nor more than twenty-five years, no part of which may be suspended nor probation granted, and a fine of fifty thousand dollars;

(ii) for a second offense, a term of imprisonment of not less than seven years nor more than thirty years, no part of which may be suspended nor probation granted, and a fine of fifty thousand dollars;

(iii) for a third or subsequent offense, a mandatory minimum term of imprisonment of not less than twenty-five years and not more than thirty years, no part of which may be suspended nor probation granted, and a fine of fifty thousand dollars;

(c) one hundred grams or more, but less than two hundred grams, a mandatory term of imprisonment of twenty-five years, no part of which may be suspended nor probation granted, and a fine of fifty thousand dollars;

(d) two hundred grams or more, but less than four hundred grams, a mandatory term of imprisonment of twenty-five years, no part of which may be suspended nor probation granted, and a fine of one hundred thousand dollars;

(e) four hundred grams or more, a term of imprisonment of not less than twenty-five years nor more than thirty years with a mandatory minimum term of imprisonment of twenty-five years, no part of which may be suspended nor probation granted, and a fine of two hundred thousand dollars.

(2) This subsection does not apply to:

(a) a consumer who possesses products:

(i) containing ephedrine, pseudoephedrine, or phenylpropanolamine in a manner consistent with typical medicinal or household use, as indicated by storage location, and possession of the products in a variety of strengths, brands, types, purposes, and expiration dates; or

(ii) for agricultural use containing anhydrous ammonia if the consumer has reformulated the anhydrous ammonia by means of additive so as effectively to prevent the conversion of the active ingredient into methamphetamine, its salts, isomers, salts of isomers, or its precursors, or the precursors' salts, isomers, or salts of isomers, or a combination of any of these substances; or

(b) products labeled for pediatric use pursuant to federal regulations and according to label instructions primarily intended for administration to children under twelve years of age; or

(c) products that the Drug Enforcement Administration and the Department of Health and Environmental Control, upon application of a manufacturer, exempts because the product is formulated in such a way as to effectively prevent the conversion of the active ingredient into methamphetamine, its salts, isomers, salts of isomers, or its precursors, or the precursors' salts, isomers, or salts of isomers, or a combination of any of these substances.

(3) This subsection preempts all local ordinances or regulations governing the possession of any product that contains ephedrine, pseudoephedrine, or phenylpropanolamine.

(F) Sentences for violation of the provisions of subsections (C) or (E) may not be suspended and probation may not be granted. A person convicted and sentenced under subsection (C) or (E) to a mandatory term of imprisonment of twenty-five years, a mandatory minimum term of imprisonment of twenty-five years, or a mandatory minimum term of imprisonment of not less than twenty-five years nor more than thirty years is not eligible for parole, extended work release as provided in Section 24-13-610, or supervised furlough as provided in Section 24-13-710.

(G) A person eighteen years of age or older may be charged with unlawful conduct toward a child pursuant to Section 63-5-70, if a child

was present at any time during the unlawful manufacturing of methamphetamine."

Distribution of drugs within proximity of school, knowledge required

SECTION 39. Section 44-53-445 of the 1976 Code is amended to read:

"Section 44-53-445. (A) It is a separate criminal offense for a person to distribute, sell, purchase, manufacture, or to unlawfully possess with intent to distribute, a controlled substance while in, on, or within a one-half mile radius of the grounds of a public or private elementary, middle, or secondary school; a public playground or park; a public vocational or trade school or technical educational center; or a public or private college or university.

(B) For a person to be convicted of an offense pursuant to subsection (A), the person must:

(1) have knowledge that he is in, on, or within a one-half mile radius of the grounds of a public or private elementary, middle, or secondary school; a public playground or park; a public vocational or trade school or technical educational center; or a public or private college or university; and

(2) actually distribute, sell, purchase, manufacture, or unlawfully possess with intent to distribute, the controlled substance within a one-half mile radius of the grounds of a public or private elementary, middle, or secondary school; a public playground or park; a public vocational or trade school or technical educational center; or a public or private college or university.

(C) A person must not be convicted of an offense pursuant to subsection (A) if the person is stopped by a law enforcement officer for the controlled substance offense within a one-half mile radius of the grounds of a public or private elementary, middle, or secondary school; a public playground or park; a public vocational or trade school or technical educational center; or a public or private college or university, but did not actually commit the controlled substance offense within a one-half mile radius of the grounds of a public or private elementary, middle, or secondary school; a public playground or park; a public vocational or trade school or technical educational center; or a public or private college or university.

(D)(1) A person who violates the provisions of this section is guilty of a felony and, upon conviction, must be fined not more than ten thousand dollars, or imprisoned not more than ten years, or both.

(2) When a violation involves only the purchase of a controlled substance, the person is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

(E) For the purpose of creating inferences of intent to distribute, the inferences set out in Sections 44-53-370 and 44-53-375 apply to criminal prosecutions under this section."

Conditional discharge and expungement of certain drug offenses

SECTION 40. Section 44-53-450 of the 1976 Code, as last amended by Act 36 of 2009, is further amended to read:

"Section 44-53-450. (A) Whenever any person who has not previously been convicted of any offense under this article or any offense under any state or federal statute relating to marijuana, or stimulant, depressant, or hallucinogenic drugs, pleads guilty to or is found guilty of possession of a controlled substance under Section 44-53-370(c) and (d), or Section 44-53-375(A), the court, without entering a judgment of guilt and with the consent of the accused, may defer further proceedings and place him on probation upon terms and conditions as it requires, including the requirement that such person cooperate in a treatment and rehabilitation program of a state-supported facility or a facility approved by the commission, if available. Upon violation of a term or condition, the court may enter an adjudication of guilt and proceed as otherwise provided. Upon fulfillment of the terms and conditions, the court shall discharge the person and dismiss the proceedings against him. Discharge and dismissal under this section shall be without court adjudication of guilt and is not a conviction for purposes of this section or for purposes of disqualifications or disabilities imposed by law upon conviction of a crime, including the additional penalties imposed for second or subsequent convictions. However, a nonpublic record shall be forwarded to and retained by the Department of Narcotic and Dangerous Drugs under the South Carolina Law Enforcement Division solely for the purpose of use by the courts in determining whether or not a person has committed a subsequent offense under this article. Discharge and dismissal under this section may occur only once with respect to any person.

(B) Upon the dismissal of the person and discharge of the proceedings against him pursuant to subsection (A), 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.

(C) Before a person may be discharged and the proceedings dismissed pursuant to this section, the person must pay a fee of three hundred fifty dollars if the person is in a general sessions court and one hundred fifty dollars if the person is in a summary court. No portion of the fee may be waived, reduced, or suspended, except in cases of indigency. If the court determines that a person is indigent, the court may partially or totally waive, reduce, or suspend the fee. The revenue collected pursuant to this subsection must be retained by the jurisdiction that heard or processed the case and paid to the State Treasurer within thirty days of receipt. The State Treasurer shall transmit these funds to the Prosecution Coordination Commission which shall then apportion these funds among the sixteen judicial circuits on a per capita basis equal to the population in that circuit compared to the population of the State as a whole based on the most recent official United States census. The funds must be used for drug treatment court programs only. The amounts generated by this subsection are in addition to any amounts presently being provided for drug treatment court programs and may not be used to supplant funding already allocated for these services. The State Treasurer may request the State Auditor to examine the financial records of a jurisdiction which he believes is not timely transmitting the funds required to be paid to the State Treasurer pursuant to this subsection. The State Auditor is further authorized to conduct these examinations and the local jurisdiction is required to participate in and cooperate fully with the examination."

Second and subsequent offenses for purposes of drug offenses, defined

SECTION 41. Section 44-53-470 of the 1976 Code, as last amended by Act 127 of 2005, is further amended to read:

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

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

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

(3) for an offense involving a controlled substance other than marijuana pursuant to this article, the offender has been convicted within the previous ten years of a first violation of a controlled substance offense provision, other than a marijuana offense provision, of this article or of another state or federal statute relating to narcotic drugs, depressants, stimulants, or hallucinogenic drugs; and

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

(B) If a person is sentenced to confinement as the result of a conviction pursuant to this article, the time period specified in this section begins on the date of the conviction or on the date the person is released from confinement imposed for the conviction, whichever is later."

Controlled substances, return of monies used in an investigation

SECTION 42. Section 44-53-582 of the 1976 Code is amended to read:

"Section 44-53-582. All monies used by law enforcement officers or agents, in the line of duty, to purchase controlled substances during a criminal investigation must be returned to the state or local agency or unit of government furnishing the monies upon a determination by the court that the monies were used by law enforcement officers or agents, in the line of duty, to purchase controlled substances during a criminal investigation. The court may order a defendant to return the monies to the state or local agency or unit of government at the time of sentencing."

Driver's license suspension for drug offenses

SECTION 43. Section 56-1-745(A) of the 1976 Code is amended to read:

"(A) The driver's license of a person convicted of a controlled substance violation must be suspended for a period of six months. If the person does not have a driver's license, the court shall order the Department of Motor Vehicles not to issue a driver's license for six months after the person legally is eligible for the issuance of a driver's license. For each subsequent conviction under this section, the court shall order the driver's license to be suspended for an additional six months. The additional period of suspension for a subsequent offense runs consecutively and does not commence until the expiration of the suspension for the prior offense."

PART II

Release and Supervision Revisions

General Assembly's intent, Part II

SECTION 44. It is the intent of the General Assembly that the provisions in PART II of this Act shall provide cost-effective prison release and community supervision mechanisms and cost-effective and incentive-based strategies for alternatives to incarceration in order to reduce recidivism and improve public safety.

Definitions

SECTION 45. Article 1, Chapter 21, Title 24 of the 1976 Code is amended by adding:

"Section 24-21-5. As used in this chapter:

(1) 'Administrative monitoring' means a form of monitoring by the department beyond the end of the term of supervision in which the only remaining condition of supervision not completed is the payment of financial obligations. Under administrative monitoring, the only condition of the monitoring shall be the requirement that reasonable progress be made toward the payment of financial obligations. The payment of monitoring mandated fees shall continue. When an offender is placed on administrative monitoring, he shall register with the department's representative in his county, notify the department of his current address each quarter, and make payments on financial obligations owed, until the financial obligations are paid in full or a consent order of judgment is filed.

(2) 'Criminal risk factors' mean characteristics and behaviors that, when addressed or changed, affect a person's risk for committing crimes. The characteristics may include, but not be limited to, the following risk and criminogenic need factors: antisocial behavior patterns; criminal personality; antisocial attitudes, values, and beliefs; poor impulse control; criminal thinking; substance abuse; criminal associates; dysfunctional family or marital relationships; or low levels of employment or education.

(3) 'Department' means the Department of Probation, Parole and Pardon Services.

(4) 'Evidence-based practices' mean supervision policies, procedures, and practices that scientific research demonstrates reduce recidivism among individuals on probation, parole, or post-correctional supervision.

(5) 'Financial obligations' mean fines, fees, and restitution either ordered by the court or statutorily imposed.

(6) 'Hearing officer' means an employee of the department who conducts preliminary hearings to determine probable cause on alleged violations committed by an individual under the supervision of the department and as otherwise provided by law. This includes, but is not limited to, violations concerning probation, parole, and community supervision. The hearing officer also conducts preliminary hearings and final revocation hearings for supervised furlough, youthful

offender conditional release cases, and such other hearings as required by law."

Board of Probation, Parole and Pardon Services, qualifications, training, assessment tool

SECTION 46. Section 24-21-10 of the 1976 Code is amended to read:

"Section 24-21-10.(A) The department is governed by its director. The director must be appointed by the Governor with the advice and consent of the Senate. To qualify for appointment, the director must have a baccalaureate or more advanced degree from an institution of higher learning that has been accredited by a regional or national accrediting body, which is recognized by the Council for Higher Education Accreditation and must have at least ten years of training and experience in one or more of the following fields: parole, probation, corrections, criminal justice, law, law enforcement, psychology, psychiatry, sociology, or social work.

(B) The Board of Probation, Parole and Pardon Services is composed of seven members. The terms of office of the members are for six years. Six of the seven members must be appointed from each of the congressional districts and one member must be appointed at large. The at-large appointee shall have at least five years of work or volunteer experience in one or more of the following fields: parole, probation, corrections, criminal justice, law, law enforcement, psychology, psychiatry, sociology, or social work. Vacancies must be filled by gubernatorial appointment with the advice and consent of the Senate for the unexpired term. If a vacancy occurs during a recess of the Senate, the Governor may fill the vacancy by appointment for the unexpired term pending the consent of the Senate, provided the appointment is received for confirmation on the first day of the Senate's next meeting following the vacancy. A chairman must be elected annually by a majority of the membership of the board. The chairman may serve consecutive terms.

(C) The Governor shall deliver an appointment within sixty days of the expiration of a term, if an individual is being reappointed, or within ninety days of the expiration of a term, if an individual is an initial appointee. If a board member who is being reappointed is not confirmed within sixty days of receipt of the appointment by the Senate, the appointment is considered rejected. For an initial appointee, if confirmation is not made within ninety days of receipt of

the appointment by the Senate, the appointment is deemed rejected. The Senate may by resolution extend the period after which an appointment is considered rejected. If the failure of the Senate to confirm an appointee would result in the lack of a quorum of board membership, the seat for which confirmation is denied or rejected shall not be considered when determining if a quorum of board membership exists.

(D) Within ninety days of a parole board member's appointment by the Governor and confirmation by the Senate, the board member must complete a comprehensive training course developed by the department using training components consistent with those offered by the National Institute of Corrections or the American Probation and Parole Association. This training course must include classes regarding the following:

(1) the elements of the decision making process, through the use of evidence-based practices for determining offender risk, needs and motivations to change, including the actuarial assessment tool that is used by the parole agent;

(2) security classifications as established by the Department of Corrections;

(3) programming and disciplinary processes and the department's supervision, case planning, and violation process;

(4) the dynamics of criminal victimization; and

(5) collaboration with corrections related stakeholders, both public and private, to increase offender success and public safety.

The department must promulgate regulations setting forth the minimum number of hours of training required for the board members and the specific requirements of the course that the members must complete.

(E)(1) Each parole board member is also required to complete a minimum of eight hours of training annually, which shall be provided for in the department's annual budget. This annual training course must be developed using the training components consistent with those offered by the National Institute of Corrections or American Probation and Parole Association and must offer classes regarding:

(a) a review and analysis of the effectiveness of the assessment tool used by the parole agents;

(b) a review of the department's progress toward public safety goals;

(c) the use of data in decision making; and

(d) any information regarding promising and evidence-based practices offered in the corrections related and crime victim dynamics field.

The department must promulgate regulations setting forth the specific criteria for the course that the members must complete.

(2) If a parole board member does not fulfill the training as provided in this section, the Governor, upon notification, must remove that member from the board unless the Governor grants the parole board member an extension to complete the training, based upon exceptional circumstances.

(F) The department must develop a plan that includes the following:

(1) establishment of a process for adopting a validated actuarial risk and needs assessment tool consistent with evidence-based practices and factors that contribute to criminal behavior, which the parole board shall use in making parole decisions, including additional objective criteria that may be used in parole decisions;

(2) establishment of procedures for the department on the use of the validated assessment tool to guide the department, parole board, and agents of the department in determining supervision management and strategies for all offenders under the department's supervision, including offender risk classification, and case planning and treatment decisions to address criminal risk factors and reduce offender risk of recidivism; and

(3) establishment of goals for the department, which include training requirements, mechanisms to ensure quality implementation of the validated assessment tool, and safety performance indicators.

(G) The director shall submit the plan in writing to the Sentencing Reform Oversight Committee no later than July 1, 2011. Thereafter, the department must submit an annual report to the Sentencing Reform Oversight Committee on its performance for the previous fiscal year and plans for the upcoming year. The department must collect and report all relevant data in a uniform format of both board decisions and field services and must annually compile a summary of past practices and outcomes."

Board of Probation, Parole and Pardon Services, structured decision-making guide

SECTION 47. Section 24-21-13 of the 1976 Code is amended to read:

"Section 24-21-13. (A) It is the duty of the director to oversee, manage, and control the department. The director shall develop written policies and procedures for the following:

(1) the supervising of offenders on probation, parole, community supervision, and other offenders released from incarceration prior to the expiration of their sentence, which supervising shall be based on a structured decision-making guide designed to enhance public safety, which uses evidence-based practices and focuses on considerations of offenders' criminal risk factors;

(2) the consideration of paroles and pardons and the supervision of offenders in the community supervision program and other offenders released from incarceration prior to the expiration of their sentence. The requirements for an offender's participation in the community supervision program and an offender's progress toward completing the program are to be decided administratively by the Department of Probation, Parole and Pardon Services. No inmate or future inmate shall have a 'liberty interest' or an 'expectancy of release' while in a community supervision program administered by the department;

(3) the operation of community-based correctional services and treatment programs; and

(4) the operation of public work sentence programs for offenders as provided in item (1) of this subsection. This program also may be utilized as an alternative to technical revocations. The director shall establish priority programs for litter control along state and county highways. This must be included in the 'public service work' program.

(B) It is the duty of the board to consider cases for parole, pardon, and any other form of clemency provided for under law."

Probation, Parole and Pardon Services, reentry supervision

SECTION 48. Article 1, Chapter 21, Title 24 of the 1976 Code is amended by adding:

"Section 24-21-32. (A) For purposes of this section, 'release date' means the date determined by the South Carolina Department of Corrections on which an inmate is released from prison, based on the inmate's sentence and all earned credits allowed by law.

(B) Notwithstanding the provisions of this chapter, an inmate, who is not required to participate in a community supervision program pursuant to Article 6, Chapter 21, Title 24, shall be placed on reentry supervision with the department before the expiration of the inmate's release date. Inmates who have been incarcerated for a minimum of

two years shall be released to reentry supervision one hundred eighty days before their release date. For an inmate whose sentence includes probation, the period of reentry supervision is reduced by the term of probation.

(C) The individual terms and conditions of reentry supervision shall be developed by the department using an evidence-based assessment of the inmate's needs and risks. An inmate placed on reentry supervision must be supervised by a probation agent of the department. The department shall promulgate regulations for the terms and conditions of reentry supervision. Until such time as regulations are promulgated, the terms and conditions shall be based on guidelines developed by the director.

(D) If the department determines that an inmate has violated a term or condition of reentry supervision sufficient to revoke the reentry supervision, a probation agent must initiate a proceeding before a department administrative hearing officer. The proceeding must be initiated pursuant to a warrant or a citation describing the violations of the reentry supervision. No inmate arrested for violation of a term or condition of reentry supervision may be released on bond; however, he shall be credited with time served as set forth in Section 24-13-40 toward his release date. If the administrative hearing officer determines the inmate has violated a term or condition of reentry supervision, the hearing officer may impose other terms or conditions set forth in the regulations or department guidelines, and may continue the inmate on reentry supervision, or the hearing officer may revoke the inmate's reentry supervision and the inmate shall be incarcerated up to one hundred eighty days, but the maximum aggregate time that the inmate shall serve on reentry supervision or for revocation of the reentry supervision shall not exceed an amount of time equal to the length of incarceration imposed by the court for the offense that the inmate was serving at the time of his initial reentry supervision. The decision of the administrative hearing officer on the reentry supervision shall be final and there shall be no appeal of his decision."

Director of Probation, Parole and Pardon Services, assessment

SECTION 49. Section 24-21-220 of the 1976 Code is amended to read:

"Section 24-21-220. The director is vested with the exclusive management and control of the department and is responsible for the management of the department and for the proper care, assessment,

treatment, supervision, and management of offenders under its control. The director shall manage and control the department and it is the duty of the director to carry out the policies of the department. The director is responsible for scheduling board meetings, assuring that the proper cases and investigations are prepared for the board, maintaining the board's official records, and performing other administrative duties relating to the board's activities. The director must employ within his office such personnel as may be necessary to carry out his duties and responsibilities including the functions of probation, parole, and community supervision, community-based programs, financial management, research and planning, staff development and training, and internal audit. The director shall make annual written reports to the board, the Governor, and the General Assembly providing statistical and other information pertinent to the department's activities."

Probation agents, powers and duties, evidence-based practices to reduce recidivism, assessment of criminal risk factors

SECTION 50. Section 24-21-280 of the 1976 Code is amended to read:

"Section 24-21-280. (A) A probation agent must investigate all cases referred to him for investigation by the judges or director and report in writing. He must furnish to each person released on probation, parole, or community supervision under his supervision a written statement of the conditions of probation, parole, or community supervision and must instruct him regarding them. He must keep informed concerning the conduct and condition of each person on probation, parole, or community supervision under his supervision by visiting, requiring reports, and in other ways, and must report in writing as often as the court or director may require. He must use practicable and suitable methods that are consistent with evidence-based practices to aid and encourage persons on probation, parole, or community supervision to bring about improvement in their conduct and condition and to reduce the risk of recidivism for the offenders under his supervision. A probation agent must keep detailed records of his work, make reports in writing, and perform other duties as the director may require.

(B) A probation agent has, in the execution of his duties, the power to issue an arrest warrant or a citation charging a violation of conditions of supervision, the powers of arrest, and, to the extent

necessary, the same right to execute process given by law to sheriffs. A probation agent has the power and authority to enforce the criminal laws of the State. In the performance of his duties of probation, parole, community supervision, and investigation, he is regarded as the official representative of the court, the department, and the board.

(C) A probation agent must conduct an actuarial assessment of offender risks and needs, including criminal risk factors and specific needs of each individual, under the supervision of the department, which shall be used to make objectively based decisions that are consistent with evidence-based practices on the type of supervision and services necessary. The actuarial assessment tool shall include screening and comprehensive versions. The screening version shall be used as a triage tool to determine offenders who require the comprehensive version. The director also shall require each agent to receive annual training on evidence-based practices and criminal risks factors and how to target these factors to reduce recidivism.

(D) A probation agent, in consultation with his supervisor, shall identify each individual under the supervision of the department, with a term of supervision of more than one year, and shall calculate and award compliance credits as provided in this section. Credits may be earned from the first day of supervision on a thirty-day basis, but shall not be applied until after each thirty-day period of supervision has been completed. Compliance credits may be denied for noncompliance on a thirty-day basis as determined by the department. The denial of nonearned compliance credits is a final decision of the department and is not subject to appeal. An individual may earn up to twenty days of compliance credits for each thirty-day period in which he has fulfilled all of the conditions of his supervision, has no new arrests, and has made all scheduled payments of his financial obligations.

(E) Any portion of the earned compliance credits are subject to be revoked by the department if an individual violates a condition of supervision during a subsequent thirty-day period.

(F) The department shall provide annually to the Sentencing Reform Oversight Committee the number of offenders who qualify for compliance credits and the amount of credits each has earned within a fiscal year."

Probation agents and other staff, employment and duties of hearing officers

SECTION 51. Section 24-21-230 of the 1976 Code is amended to read:

"Section 24-21-230. (A) The director must employ probation agents required for service in the State and clerical assistants as necessary. The probation agents must take and pass psychological and qualifying examinations as directed by the director. The director must ensure that each probation agent receives adequate training. Until the initial employment requirements are met, no person may take the oath of a probation agent nor exercise the authority granted to them.

(B) The director must employ hearing officers who conduct preliminary hearings to determine probable cause on violations committed by individuals under the supervision of the department and as otherwise provided by law. This includes, but is not limited to, violations concerning probation, parole, and community supervision. The hearing officer also conducts preliminary hearings and final revocation hearings for supervised furlough, youthful offender conditional release cases, and such other hearings as required by law. The department shall promulgate regulations for the qualifications of the hearing officers and the procedures for the preliminary hearings. Until regulations are adopted, the qualifications and procedures shall be based on guidelines developed by the director."

Department of Probation, Parole and Pardon Services, administrative monitoring when fines outstanding

SECTION 52. Article 1, Chapter 21, Title 24 is amended by adding:

"Section 24-21-100. (A) Notwithstanding the provisions of Section 24-19-120, 24-21-440, 24-21-560(B), or 24-21-670, when an individual has not fulfilled his obligations for payment of financial obligations by the end of his term of supervision, then the individual shall be placed under quarterly administrative monitoring, as defined in Section 24-21-5, by the department until such time as those financial obligations are paid in full or a consent order of judgment is filed. If the individual under administrative monitoring fails to make reasonable progress toward the payment of such financial obligations, as determined by the department, the department may petition the court to hold an individual in civil contempt for failure to pay the financial obligations. If the court finds the individual has the ability to pay but has not made reasonable progress toward payment, the court may hold the individual in civil contempt of court and may impose a term of confinement in the local detention center until payment of the financial obligations, but in no case to exceed ninety days of confinement.

Following any term of confinement, the individual shall be returned to quarterly administrative monitoring by the department. If the individual under administrative monitoring does not have the ability to pay the financial obligations and has no reasonable likelihood of being able to pay in the future, the department may submit a consent order of judgment to the court, which shall relieve the individual of any further administrative monitoring.

(B) An individual placed on administrative monitoring shall pay a regular monitoring fee toward offsetting the cost of his administrative monitoring for the period of time that he remains under monitoring. The regular monitoring fee must be determined by the department based upon the ability of the person to pay. The fee must not be more than ten dollars a month. All regular monitoring fees must be retained by the department, carried forward, and applied to the department's operation."

Department of Probation, Parole and Pardon Services, administrative sanctions

SECTION 53. Article 1, Chapter 21, Title 24 of the 1976 Code is amended by adding:

"Section 24-21-110. (A) In response to a violation of the terms and conditions of any supervision program operated by the department, whether pursuant to statute or contract with another state agency, the probation agent may, with the concurrence of his supervisor and, as an alternative to issuing a warrant or citation, serve on the offender a notice of administrative sanctions. The agent must not serve a notice of administrative sanctions on an offender for violations of special conditions if a sentencing court provided that those violations would be heard by the court. The administrative sanctions must be equal to or less restrictive than the sanctions available to the revoking authority, with the exception of revocation.

(B) If the offender agrees in writing to the additional conditions set forth in the notice or order of administrative sanctions, the conditions must be implemented with swiftness and certainty. If the offender does not agree, or if after agreeing the offender fails to fulfill the additional conditions to the satisfaction of the probation agent and his supervisor, then the probation agent may commence revocation proceedings.

(C) In addition to the notice of administrative sanctions, a hearing officer with the department may, as an alternative to sending a case forward to the revoking authority, impose on the offender an order of

administrative sanctions. The order may be made only after the hearing officer has made a finding of probable cause at a preliminary hearing that an offender has violated the terms and conditions of any supervision program operated by the department, whether pursuant to statute or a contract with another state agency. The administrative sanctions must be equal to or less restrictive than the sanctions available to the revoking authority, with the exception of revocation. The sanctions must be implemented with swiftness and certainty.

(D) The administrative sanctions shall be established by regulations of the department, as set forth by established administrative procedures. The department shall delineate in the regulations a listing of administrative sanctions for the most common types of supervision violations including, but not limited to: failure to report; failure to pay fines, fees, and restitution; failure to participate in a required program or service; failure to complete community service; and failure to refrain from the use of alcohol or controlled substances. The sanctions shall consider the severity of the current violation, the offender's previous criminal record, the number and severity of previous supervision violations, the offender's assessment, and the extent to which administrative sanctions were imposed for previous violations. The department, in determining the list of administrative sanctions to be served on an offender, shall ascertain the availability of community-based programs and treatment options including, but not limited to: inpatient and outpatient substance abuse treatment facilities; day reporting centers; restitution centers; intensive supervision; electronic monitoring; community service; programs to reduce criminal risk factors; and other community-based options consistent with evidence-based practices.

(E) The department shall provide annually to the Sentencing Reform Oversight Committee:

(1) the number of offenders who were placed on administrative sanctions during the prior fiscal year and who were not returned to incarceration within that fiscal year;

(2) the number and percentage of offenders whose supervision programs were revoked for violations of the conditions of supervision and ordered to serve a term of imprisonment. This calculation shall be based on the fiscal year prior to the fiscal year in which the report is required. The baseline revocation rate shall be the revocation rate in Fiscal Year 2010; and

(3) the number and percentage of offenders who were convicted of a new offense and sentenced to a term of imprisonment. This calculation shall be based on the fiscal year prior to the fiscal year in

which the report is required. The baseline revocation rate shall be the revocation rate in Fiscal Year 2010."

Department of Probation, Parole and Pardon Services, restitution

SECTION 54. Section 24-21-490 of the 1976 Code is amended to read:

"Section 24-21-490. (A) The Department of Probation, Parole and Pardon Services shall collect and distribute restitution on a monthly basis from all offenders under probationary and intensive probationary supervision.

(B) Notwithstanding Section 14-17-725, the department shall assess a collection fee of twenty percent of each restitution program and deposit this collection fee into a separate account. The department shall maintain individual restitution accounts that reflect each transaction and the amount paid, the collection fee, and the unpaid balance of the account. A summary of these accounts must be reported to the Governor's Office, the President of the Senate, the Speaker of the House, the Chairman of the House Judiciary Committee, and the Chairman of the Senate Corrections and Penology Committee every six months following the enactment of this section.

(C) The department may retain the collection fees described in subsection (B) and expend the fees for the purpose of collecting and distributing restitution. Unexpended funds at the end of each fiscal year may be retained by the department and carried forward for use for the same purpose by the department.

(D) For financial obligations collected by the department pursuant to administrative monitoring requirements, payments shall be distributed by the department proportionately to pay restitution and fees based on the ratio of each category to the total financial obligation owed. Fines shall continue to be paid and collected pursuant to the provisions of Chapter 17, Title 14."

Parole for terminally ill, geriatric, or permanently disabled inmates

SECTION 55. Article 7, Chapter 21, Title 24 of the 1976 Code is amended by adding:

"Section 24-21-715. (A) As contained in this section:

(1) 'Terminally ill' means an inmate who, as determined by a licensed physician, has an incurable condition caused by illness or disease that was unknown at the time of sentencing or, since the time of sentencing, has progressed to render the inmate terminally ill, and that will likely produce death within two years, and that is so debilitating that the inmate does not pose a public safety risk.

(2) 'Geriatric' means an inmate who is seventy years of age or older and suffers from chronic infirmity, illness, or disease related to aging, which has progressed so the inmate is incapacitated as determined by a licensed physician to the extent that the inmate does not pose a public safety risk.

(3) 'Permanently incapacitated' means an inmate who no longer poses a public safety risk because of a medical condition that is not terminal but that renders him permanently and irreversibly incapacitated as determined by a licensed physician and which requires immediate and long term residential care.

(B) Notwithstanding another provision of law, only the full parole board, upon a petition filed by the Director of the Department of Corrections, may order the release of an inmate who is terminally ill, geriatric, permanently incapacitated, or any combination of these conditions.

(C) The parole order issued by the parole board pursuant to this section must include findings of fact that substantiate a legal and medical conclusion that the inmate is terminally ill, geriatric, permanently incapacitated, or a combination of these conditions, and does not pose a threat to society or himself. It also must contain the requirements for the inmate's supervision and conditions for his participation and removal.

(D) An inmate granted a parole pursuant to this section is under the supervision of the Department of Probation, Parole and Pardon Services. The inmate must reside in an approved residence and abide by all conditions ordered by the parole board. The department is responsible for supervising an inmate's compliance with the conditions of the parole board's order as well as monitoring the inmate in accordance with the department's policies.

(E) The department shall retain jurisdiction for all matters relating to the parole granted pursuant to this section and conduct an annual review of the inmate's status to ensure that he remains eligible for parole pursuant to this section. If the department determines that the inmate is no longer eligible to participate in the parole set forth in this section, a probation agent must issue a warrant or citation charging a

violation of parole and the board shall proceed pursuant to the provisions of Section 24-21-680."

Office of Pretrial Intervention Coordinator, diversion program data and reporting

SECTION 56. Chapter 22, Title 17 of the 1976 Code is amended by adding:

"Article 11

Office of Pretrial Intervention Coordinator
Diversion Program Data and Reporting

Section 17-22-1110. As used in this chapter:

(1) 'Criminal risk factors' mean characteristics and behaviors that, when addressed or changed, affect a person's risk for committing crimes. The characteristics may include, but not be limited to, the following risk and criminogenic need factors: antisocial behavior patterns; criminal personality; antisocial attitudes, values, and beliefs; poor impulse control; criminal thinking; substance abuse; criminal associates; dysfunctional family or marital relationships; or low levels of employment or education.

(2) 'Evidence-based practices' mean supervision policies, procedures, and practices that scientific research demonstrates reduce recidivism among individuals on probation, parole, or post-correctional supervision.

Section 17-22-1120. (A) In addition to the information collected and processed by the Office of Pretrial Intervention Coordinator within the Commission on Prosecution Coordination pursuant to Articles 1, 3, 5, and 7, Chapter 22, Title 17, the Office of Pretrial Intervention Coordinator shall be responsible for collecting data on all programs administered by a circuit solicitor, the Commission on Prosecution Coordination, or a court, which divert offenders from prosecution to an alternative program or treatment.

(B) This shall include programs administered by circuit solicitors, which are either statutorily mandated or established by judicial order, and shall include, but are not limited to: alcohol education programs; drug courts for adults or juveniles; traffic education programs; worthless checks units; pretrial intervention; mental health courts; or juvenile arbitration.

(C) Notwithstanding the provisions of Section 17-22-130, 17-22-360, 17-22-370, or 17-22-560, the Office of Pretrial Intervention Coordinator shall collect and make available for public inspection an annual report on the numbers of individuals who apply for a diversion program, the number of individuals who begin a diversion program or treatment, the number of individuals who successfully complete a program or treatment within a twelve-month period, the number of individuals who do not successfully complete a program or treatment within the same twelve-month period, but who are still participating in the program or treatment, the number of individuals who did not complete the program within the twelve-month period and who have been prosecuted for the offense committed, and the number of individuals with fees fully or partially waived for indigence. The data collected and made available for public inspection shall be listed by each county, by each program or treatment, and the offense originally committed, but shall not contain any identifying information of the participant.

(D) A copy of the report shall be sent to the Sentencing Reform Oversight Committee for evaluation of the diversion programs and treatments being administered in the State by the circuit solicitors or a court, the effectiveness of each program, and to ascertain the need for additional programs, program modifications, or repeal of existing programs. In evaluating the programs and treatments, the Sentencing Reform Oversight Committee may request information on the evidence-based practices used in each program or treatment to identify offender risks and needs, and the specific interventions employed in each program or treatment to identify criminal risk factors and reduce recidivism."

Law enforcement agency coordination of employment and job services, assessments, Department of Motor Vehicles to provide photo identification cards for inmates released

SECTION 57. Section 24-13-2130 of the 1976 Code is amended to read:

"Section 24-13-2130. (A) The memorandum of understanding between the South Carolina Department of Corrections, Probation, Parole and Pardon Services, the Department of Vocational Rehabilitation, Employment Security Commission, Alston Wilkes Society, and other private sector entities shall establish the role of each agency in:

(1) ascertaining an inmate's opportunities for employment after release from confinement and providing him with vocational and academic education and life skills assessments based on evidence-based practices and criminal risk factors analysis as may be appropriate;

(2) developing skills enhancement programs for inmates, as appropriate;

(3) coordinating job referrals and related services to inmates prior to release from incarceration;

(4) encouraging participation by inmates in the services offered;

(5) developing and maintaining a statewide network of employment referrals for inmates at the time of their release from incarceration and aiding inmates in the securing of employment;

(6) identifying and facilitating other transitional services within both governmental and private sectors;

(7) surveying employment trends within the State and making proposals to the Department of Corrections regarding potential vocational training activities.

(B) Further, the Department of Corrections and the Department of Probation, Parole and Pardon Services are directed to work with the Department of Motor Vehicles to develop and implement a plan for providing inmates who are being released from a correctional facility with a valid photo identification card. To the extent that funds are available from an individual inmate's account, the Department of Corrections shall transfer five dollars to the Department of Motor Vehicles to cover the cost of issuing the photo identification card. The Department of Motor Vehicles shall use existing resources and technology to produce the photo identification card."

Board of Probation, Parole and Pardon Services, parole, technical correction

SECTION 58. Section 24-21-645 of the 1976 Code, as last amended by Act 151 of 2010, is further amended to read:

"Section 24-21-645. (A) The board may issue an order authorizing the parole which must be signed either by a majority of its members or by all three members meeting as a parole panel on the case ninety days prior to the effective date of the parole; however, at least two-thirds of the members of the board must authorize and sign orders authorizing parole for persons convicted of a violent crime as defined in Section 16-1-60. A provisional parole order shall include the terms and

conditions, if any, to be met by the prisoner during the provisional period and terms and conditions, if any, to be met upon parole.

(B) The conditions of parole must include the requirement that the parolee must permit the search or seizure, without a search warrant, with or without cause, of the parolee's person, any vehicle the parolee owns or is driving, and any of the parolee's possessions by:

(1) any probation agent employed by the Department of Probation, Parole and Pardon Services; or

(2) any other law enforcement officer.

However, the conditions of parole for a parolee who was convicted of or pled guilty or nolo contendere to a Class C misdemeanor or an unclassified misdemeanor that carries a term of imprisonment of not more than one year may not include the requirement that the parolee agree to be subject to search or seizure, without a search warrant, with or without cause, of the parolee's person, any vehicle the parolee owns or is driving, or any of the parolee's possessions.

(C) By enacting this provision, the General Assembly intends to provide law enforcement with a means of reducing recidivism and does not authorize law enforcement officers to conduct searches for the sole purpose of harassment. Immediately before each search or seizure pursuant to this section, the law enforcement officer seeking to conduct the search or seizure must verify with the Department of Probation, Parole and Pardon Services or by any other means available to the officer that the individual upon whom the search or seizure will be conducted is currently on parole. A law enforcement officer conducting a search or seizure without a warrant pursuant to this section shall report to the law enforcement agency that employs him all of these searches or seizures, which shall include the name, address, age, gender, and race or ethnicity of the person that is the subject of the search or seizure. The law enforcement agency shall submit this information at the end of each month to the Department of Probation, Parole and Pardon Services for review of abuse. A finding of abuse of the use of searches or seizures without a search warrant must be reported by the Department of Probation, Parole and Pardon Services to the State Law Enforcement Division for investigation. If the law enforcement officer fails to report each search or seizure pursuant to this section, he is subject to discipline pursuant to the employing agency's policies and procedures.

(D) Upon satisfactory completion of the provisional period, the director or one lawfully acting for him must issue an order which, if accepted by the prisoner, shall provide for his release from custody. However, upon a negative determination of parole, prisoners in

confinement for a violent crime as defined in Section 16-1-60 must have their cases reviewed every two years for the purpose of a determination of parole, except that prisoners who are eligible for parole pursuant to Section 16-25-90, and who are subsequently denied parole must have their cases reviewed every twelve months for the purpose of a determination of parole. This subsection applies retroactively to a prisoner who has had a parole hearing pursuant to Section 16-25-90 prior to the effective date of this act."

Eligibility for diversion programs, persons on parole or probation, excluding violent offenders

SECTION 59. Section 16-1-130 of the 1976 Code, as added by Act 106 of 2005, is amended to read:

"Section 16-1-130. (A) A person may not be considered for a diversion program, including, but not limited to, a drug court program or a mental health court, if the:

(1) person's current charge is for a violent offense as defined in Section 16-1-60 or a stalking offense pursuant to Article 17, Chapter 3, Title 16;

(2) person has a prior conviction for a violent crime, as defined in Section 16-1-60, or a harassment or stalking offense pursuant to Article 17, Chapter 3, Title 16;

(3) person is subject to a restraining order pursuant to the provisions of Article 17, Chapter 3, Title 16 or a valid order of protection pursuant to the provisions of Chapter 4, Title 20;

(4) person is currently on parole or probation for a violent crime as defined in Section 16-1-60; or

(5) consent of the victim has not been obtained unless reasonable attempts have been made to contact the victim and the victim is either nonresponsive or cannot be located after a reasonable search.

(B) The provisions of this section do not apply to a diversion program administered by the South Carolina Prosecution Coordination Commission or by a circuit solicitor."

PART III

Oversight Established

General Assembly's intent, Part III

SECTION 60. It is the intent of the General Assembly that the provisions in PART III provide oversight revisions to fiscal impact statements and also a committee to continue oversight of the implementations of the Sentencing Reform Commission recommendations.

Statement of Estimated Fiscal Impact on criminal offense changes

SECTION 61. Article 1, Chapter 7, Title 2 of the 1976 Code is amended by adding:

"Section 2-7-74. (A) As used in this section, 'statement of estimated fiscal impact' means the opinion of the person executing the statement as to the dollar cost to the State for the first year and the annual cost thereafter.

(B) The principal author of legislation that would establish a new criminal offense or that would amend the sentencing provisions of an existing criminal offense may affix a statement of estimated fiscal impact of the proposed legislation. Upon request from the principal author of the legislation, the Office of State Budget shall assist in preparing the fiscal impact statement.

(C) If a fiscal impact statement is not affixed to legislation at the time of introduction, the committee to which the legislation is referred shall request a fiscal impact statement from the Office of State Budget. The Office of State Budget shall have at least fifteen calendar days from the date of the request to deliver the fiscal impact statement to the Senate or House of Representatives committee to which the legislation is referred, unless the Office of State Budget requests an extension of time. The Office of State Budget shall not unreasonably delay the delivery of a fiscal impact statement.

(D) The committee shall not take action on the legislation until the committee has received the fiscal impact statement.

(E) If the legislation is reported out of the committee, the committee shall attach the fiscal impact statement to the legislation. If the legislation has been amended, the committee shall request a revised

fiscal impact statement from the Office of State Budget and shall attach the revised fiscal impact statement to the legislation.

(F) State agencies and political subdivisions shall cooperate with the Office of State Budget in preparing fiscal impact statements. Such agencies and political subdivisions shall submit requested information to the Office of State Budget in a timely fashion.

(G) In preparing fiscal impact statements, the Office of State Budget shall consider and evaluate information as submitted by state agencies and political subdivisions. The Office of State Budget shall provide to the requesting Senate or House of Representatives committee any estimates provided by a state agency or political subdivision, which are substantially different from the fiscal impact as issued by the Office of State Budget.

(H) The Office of State Budget may request information from nongovernmental agencies and organizations to assist in preparing the fiscal impact statement."

Sentencing Reform Oversight Committee

SECTION 62. Title 24 of the 1976 Code is amended by adding:

"CHAPTER 28

Sentencing Reform Oversight Committee

Section 24-28-10. There is hereby established a committee to be known as the Sentencing Reform Oversight Committee, hereinafter called the oversight committee, which must exercise the powers and fulfill the duties described in this chapter.

Section 24-28-20. (A) The oversight committee shall be composed of seven members, two of whom shall be members of the Senate, both appointed by the Chair of the Senate Judiciary Committee, and one being the Chair of the Judiciary Committee or his designee; two of whom shall be members of the House of Representatives, both appointed by the Chair of the House Judiciary Committee, and one being the Chair of the House Judiciary Committee or his designee; one of whom shall be appointed by the Chair of the Senate Judiciary Committee from the general public at large; one of whom shall be appointed by the Chair of the House Judiciary Committee from the general public at large; and one of whom shall be appointed by the Governor. Provided, however, that in making appointments to the

oversight committee, race, gender, and other demographic factors should be considered to assure nondiscrimination, inclusion, and representation to the greatest extent of all segments of the population of the State. The members of the general public appointed by the chairs of the Judiciary Committees must be representative of all citizens of this State and must not be members of the General Assembly.

(B) The oversight committee must meet as soon as practicable after appointment and organize itself by electing one of its members as chair and such other officers as the oversight committee may consider necessary. Thereafter, the oversight committee must meet at least annually and at the call of the chair or by a majority of the members. A quorum consists of four members.

(C) The oversight committee terminates five years after its first meeting, unless the General Assembly, by joint resolution, continues the oversight committee for a specified period of time.

Section 24-28-30. The oversight committee has the following powers and duties:

(1) to review the implementation of the recommendations made in the Sentencing Reform Commission report of February 2010 including, but not limited to:

(a) the plan required from the Department of Probation, Parole and Pardon Services on the parole board training and other goals identified in Section 24-21-10;

(b) the report from the Department of Probation, Parole and Pardon Services on its goals and development of assessment tools consistent with evidence-based practices;

(c) the report from the Office of Pretrial Intervention Coordinator in the Commission on Prosecution Coordination on diversion programs required by the provisions of Article 11, Chapter 22, Title 17; and

(d) the report from the Department of Probation, Parole and Pardon Services on:

(i) the number and percentage of individuals placed on administrative sanctions and the number and percentage of individuals who have earned compliance credits; and

(ii) the number and percentage of probationers and parolees whose supervision has been revoked for violations of conditions or for convictions of new offenses;

(2) to request data similar to the information contained in the report required by Section 17-22-1120 from private organizations whose programs are operated through a court and that divert individuals from

prosecution, incarceration, or confinement, such as diversion from incarceration for failure to pay child support, and whose programs are sanctioned by, coordinated with, or funded by federal, state, or local governmental agencies;

(3)(a) to annually calculate:

(i) any state expenditures that have been avoided by reductions in the revocation rate as calculated by the Department of Probation, Parole and Pardon Services and reported under Sections 24-21-450 and 24-21-680; and

(ii) any state expenditures that have been avoided by reductions in the new felony offense conviction rate as calculated by the Department of Probation, Parole and Pardon Services and reported under Sections 24-21-450 and 24-21-680;

(b) to develop rules and regulations for calculating the savings in item (3)(a), which shall account at a minimum for the variable costs averted, such as food and medical expenses, and also consider fixed expenditures that are avoided if larger numbers of potential inmates are avoided;

(c) on or before December first of each year, beginning in 2011, to report the calculations made pursuant to item (3)(a) to the President of the Senate, the Speaker of the House of Representatives, the Chief Justice of the South Carolina Supreme Court, and the Governor. The report also shall recommend whether to appropriate up to thirty-five percent of any state expenditures that are avoided as calculated in item (3)(a) to the Department of Probation, Parole and Pardon Services;

(d) with respect to the recommended appropriations in item (c), none of the calculated savings shall be recommended for appropriation for that fiscal year if there is an increase in the percentage of individuals supervised by the Department of Probation, Parole and Pardon Services who are convicted of a new felony offense as calculated in subitem (3)(a)(ii);

(e) any funds appropriated pursuant to the recommendations in item (c) shall be used to supplement, not replace, any other state appropriations to the Department of Probation, Parole and Pardon Services;

(f) funds received through appropriations pursuant to this item shall be used by the Department of Probation, Parole and Pardon Services for the following purposes:

(i) implementation of evidence-based practices;

(ii) increasing the availability of risk reduction programs and interventions, including substance abuse treatment programs, for supervised individuals; or

(iii) grants to nonprofit victim services organizations to partner with the Department of Probation, Parole and Pardon Services and courts to assist victims and increase the amount of restitution collected from offenders;

(4) to submit to the General Assembly, on an annual basis, the oversight committee's evaluation of the implementation of the recommendations of the Sentencing Reform Commission report of February 2010;

(5) to make reports and recommendations to the General Assembly on matters relating to the powers and duties set forth in this section, including recommendations on transfers of funding based on the success or failure of implementation of the recommendations; and

(6) to undertake such additional studies or evaluations as the oversight committee considers necessary to provide sentencing reform information and analysis.

Section 24-28-40. (A) The oversight committee 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 from the general fund of the State on warrants duly signed by the chair of the oversight committee and payable by the authorities from which a member is appointed.

(B) The oversight committee is encouraged to apply for and may expend grants, gifts, or federal funds it receives from other sources to carry out its duties and responsibilities.

Section 24-28-50. (A) The oversight committee must use clerical and professional employees of the General Assembly for its staff, who must be made available to the oversight committee.

(B) The oversight committee may employ or retain other professional staff, upon the determination of the necessity for other staff by the oversight committee.

(C) The oversight committee may employ consultants to assist in the evaluations and, when necessary, the implementation of the recommendations of the Sentencing Reform Commission report of February 2010."

PART IV

General Assembly's findings, one subject declaration

SECTION 63. The General Assembly finds that all the provisions contained in this act relate to one subject as required by Section 17, Article III of the South Carolina Constitution in that each provision relates directly to or in conjunction with other sections to the subject of sentencing reform as stated in the title. The General Assembly further finds that a common purpose or relationship exists among the sections, representing a potential plurality but not disunity of topics, notwithstanding that reasonable minds might differ in identifying more than one topic contained in this act.

Severability clause

SECTION 64. The provisions of this act are severable. If any section, subsection, paragraph, item, subitem, 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 the act, the General Assembly hereby declaring that it would have passed 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, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

Savings clause

SECTION 65. The repeal or amendment by the provisions of this act or any law, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release, or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties,

forfeitures, and liabilities as they stood under the repealed or amended laws.

Time effective

SECTION 66. The provisions of Section 15 for implementation of a driver's license reinstatement payment plan and the provisions of Section 18 for implementation of route restricted licenses shall become effective January 1, 2011, or six months after the signature of the Governor, whichever event occurs later in time. The remaining provisions of Part I become effective upon signature of the Governor. The provisions of Part II take effect on January 1, 2011, for offenses occurring on or after that date. Regulations required pursuant to this act shall be submitted to the General Assembly no later than January 11, 2011, or six months after enactment, whichever event occurs later in time. All other provisions become effective upon signature of the Governor. Cases and appeals arising or pending under the law as it existed prior to the effective date of this act are saved.

Ratified the 1st day of June, 2010.

Approved the 2nd day of June, 2010.

No. 274

(R254, S850)

AN ACT TO AMEND SECTION 12-6-5060, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE DESIGNATION ON A STATE INDIVIDUAL INCOME TAX RETURN OF A VOLUNTARY CONTRIBUTION BY THE TAXPAYER TO CERTAIN FUNDS, SO AS TO PROVIDE THAT A TAXPAYER MAY CONTRIBUTE TO THE SOUTH CAROLINA FORESTRY COMMISSION FOR USE IN THE STATE FOREST SYSTEM AND TO THE SOUTH CAROLINA DEPARTMENT OF NATURAL RESOURCES FOR USE IN ITS PROGRAMS AND OPERATIONS; AND TO AMEND SECTION 12-54-250, AS AMENDED, RELATING TO THE AUTHORITY OF THE DEPARTMENT OF REVENUE TO REQUIRE PAYMENT WITH IMMEDIATELY AVAILABLE FUNDS, SO

AS TO DELETE PROVISIONS RELATING TO SIMULTANEOUS ACTS FOR PURPOSES OF INTEREST AND PENALTIES.

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

Additional designations for contributions

SECTION 1. Section 12-6-5060(A) of the 1976 Code, as last amended by Act 382 of 2006, is further amended to read:

"Section 12-6-5060. (A) Each taxpayer required to file a state individual income tax return may contribute to the War Between the States Heritage Trust Fund established pursuant to Section 51-18-115, the Nongame Wildlife and Natural Areas Program Fund established pursuant to Section 50-1-280, the Children's Trust Fund of South Carolina established pursuant to Section 63-11-910, the Eldercare Trust Fund of South Carolina established pursuant to Section 43-21-160, or the First Steps to School Readiness Fund established pursuant to Section 63-11-1750, the South Carolina Military Family Relief Fund established pursuant to Article 3, Chapter 11, Title 25, the Donate Life South Carolina established pursuant to Section 44-43-1310, the Veterans' Trust Fund of South Carolina established pursuant to Chapter 21 of Title 25, the South Carolina Litter Control Enforcement Program (SCLCEP) and used by the Governor's Task Force on Litter only for the SCLCEP Program, the South Carolina Law Enforcement Assistance Program (SCLEAP) and used as provided in Section 23-3-65, the South Carolina Department of Parks, Recreation and Tourism for use in the South Carolina State Park Service in the manner the General Assembly provides, the South Carolina Forestry Commission for use in the state forest system, the South Carolina Department of Natural Resources for use in its programs and operations, K-12 public education for use in the manner the General Assembly provides by law, South Carolina Conservation Bank Trust Fund established pursuant to Section 48-59-60, or the Financial Literacy Trust Fund as established pursuant to Section 59-29-510, by designating the contribution on the return. The contribution may be made by reducing the income tax refund or by remitting additional payment by the amount designated."

Interest and Penalties

SECTION 2. Section 12-54-250(E) of the 1976 Code is amended to read:

"(E) RESERVED"

Time effective

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

Ratified the 1st day of June, 2010.

Vetoed by the Governor -- 6/7/2010.
Veto overridden by Senate -- 6/16/2010.
Veto overridden by House -- 6/16/2010.

No. 275

(R276, H4174)

AN ACT TO AMEND SECTION 12-37-3150, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO DETERMINING WHEN A PARCEL OF REAL PROPERTY MUST BE APPRAISED AS A RESULT OF AN ASSESSABLE TRANSFER OF INTEREST AND RELATING TO THOSE TRANSFERS THAT DO NOT CONSTITUTE AN ASSESSABLE TRANSFER OF INTEREST, SO AS TO FURTHER PROVIDE FOR THOSE TRANSFERS, CONVEYANCES, AND DISTRIBUTIONS THAT DO NOT CONSTITUTE AN ASSESSABLE TRANSFER OF INTEREST IN REAL PROPERTY, AND FOR THE TERMS, CONDITIONS, AND REQUIREMENTS OF SUCH TRANSACTIONS; AND TO AMEND SECTION 12-37-3140, AS AMENDED, RELATING TO THE DETERMINATION OF FAIR MARKET VALUE OF REAL PROPERTY FOR PROPERTY TAX PURPOSES, SO AS TO PROVIDE THAT THE FIFTEEN PERCENT LIMITATION ON THE INCREASE IN THE FAIR MARKET VALUE OF REAL PROPERTY AS A RESULT OF A COUNTYWIDE APPRAISAL

AND EQUALIZATION PROGRAM MUST BE CALCULATED ON THE LAND AND IMPROVEMENTS AS A WHOLE.

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

Assessable transfer of interest revisions

SECTION 1. A. Section 12-37-3150(A)(3) of the 1976 Code is amended to read:

"(3) a conveyance to a trust, except if:

(a) the settlor or the settlor's spouse, or both, conveys the property to the trust and the sole present beneficiary or beneficiaries are the settlor or the settlor's spouse, or both; or

(b) the settlor or the settlor's spouse, or both, conveys property subject to the special four percent assessment ratio pursuant to Section 12-43-220(c) and the sole present beneficiary or beneficiaries is the child or children of the settlor or the settlor's spouse, but a subsequent conveyance of this real property by the beneficiary child or children is not exempt from the provisions of this section;"

B. Section 12-37-3150(A)(6) of the 1976 Code is amended to read:

"(6) a conveyance by distribution under a will or by intestate succession, except if:

(a) the distributee is the decedent's spouse; or

(b) the distributee is the child or children of the decedent, the decedent did not have a spouse at the time of the decedent's death, and the property is subject to the special four percent assessment ratio pursuant to Section 12-43-220(c), but a subsequent conveyance of this real property by the distributee child or children is not exempt from the provisions of this section;"

C. Section 12-37-3150(A)(8) of the 1976 Code is amended to read:

"(8) a transfer of an ownership interest in a single transaction or as a part of a series of related transactions within a twenty-five year period in a corporation, partnership, sole proprietorship, limited liability company, limited liability partnership, or other legal entity if the ownership interest conveyed is more than fifty percent of the corporation, partnership, sole proprietorship, limited liability company, limited liability partnership, or other legal entity. This provision does

not apply to transfers that are not subject to federal income tax, as provided in subsection (B)(1), including, but not limited to, transfers of interests to spouses. The corporation, partnership, sole proprietorship, limited liability company, limited liability partnership, or other legal entity shall notify the applicable property tax assessor on a form provided by the Department of Revenue not more than forty-five days after a conveyance of an ownership interest that constitutes an assessable transfer of interest or transfer of ownership under this item. Failure to provide this notice or failure to provide accurate information of a transaction required to be reported by this subitem subjects the property to a civil penalty of not less than one hundred nor more than one thousand dollars as determined by the assessor. This penalty is enforceable and collectible as property tax and is in addition to any other penalties that may apply. Failure to provide this notice is a separate offense for each year after the notice was required;"

D. Sections 12-37-3150(B)(8) and (9) of the 1976 Code, as last amended by Act 57 of 2007, is further amended to read:

"(8) a transfer of real property or other ownership interests among corporations, partnerships, limited liability companies, limited liability partnerships, or other legal entities if the entities involved are commonly controlled. Upon request by the applicable property tax assessor, a corporation, partnership, limited liability company, limited liability partnership, or other legal entity shall furnish proof within forty-five days that a transfer meets the requirements of this item. A corporation, partnership, limited liability company, limited liability partnership, or other legal entity that fails to comply with this request is subject to a civil penalty as provided in Section 12-37-3160(B);

(9) a transfer of an interest in a timeshare unit by deed or lease;

(10) a transfer of an undivided, fractional ownership interest in real estate in a single transaction or as a part of a series of related transactions, if the ownership interest or interests conveyed, or otherwise transferred, in the single transaction or series of related transactions within a twenty-five year period, is not more than fifty percent of the entire fee simple title to the real estate;

(11) a transfer to a single member limited liability company, not taxed separately as a corporation, by its single member or a transfer from a single member limited liability company, not taxed separately as a corporation, to its single member, as provided in Section 12-2-25(B)(1);

(12) a conveyance, assignment, release, or modification of an easement, including, but not limited to:

(a) a conservation easement, as defined in Chapter 8, Title 27;

(b) a utility easement; or

(c) an easement for ingress, egress, or regress;

(13) a transfer or renunciation by deed, release, or agreement of a claim of interest in real property for the purpose of quieting and confirming title to real property in the name of one or more of the existing owners of the real property or for the purpose of confirming or establishing the location of an uncertain or disputed boundary line; or

(14) the execution or recording of a deed to real property for the purpose of creating or terminating a joint tenancy with rights of survivorship, provided the grantors and grantees are the same."

Calculation of fair market value

SECTION 2. Section 12-37-3140(B) of the 1976 Code is amended to read:

"(B) Any increase in the fair market value of real property attributable to the periodic countywide appraisal and equalization program implemented pursuant to Section 12-43-217 is limited to fifteen percent within a five-year period to the otherwise applicable fair market value. This limit must be calculated on the land and improvements as a whole. However, this limit does not apply to the fair market value of additions or improvements to real property in the year those additions or improvements are first subject to property tax, nor do they apply to the fair market value of real property when an assessable transfer of interest occurred in the year that the transfer value is first subject to tax."

Time effective; refund not allowed

SECTION 3. This act takes effect upon approval by the Governor, and shall apply to real property transfers after 2009. No refund is allowed on account of values adjusted by the changes to the provisions of Section 12-37-3150.

Ratified the 1st day of June, 2010.

Vetoed by the Governor -- 6/7/2010.
Veto overridden by House -- 6/15/2010.
Veto overridden by Senate -- 6/16/2010.

No. 276

(R278, H4250)

AN ACT TO AMEND SECTION 59-53-2410, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO TECHNICAL COLLEGE ENTERPRISE CAMPUS AUTHORITIES, SO AS TO CREATE THE TECHNICAL COLLEGE OF THE LOWCOUNTRY ENTERPRISE CAMPUS AUTHORITY AND THE HORRY-GEORGETOWN TECHNICAL COLLEGE ENTERPRISE CAMPUS AUTHORITY.

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

Technical College of the Lowcountry Enterprise Campus Authority and Horry-Georgetown Technical College Enterprise Campus Authority created

SECTION 1. Section 59-53-2410(A) of the 1976 Code, as last amended by Act 148 of 2010, is further amended to read:

"(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, the Technical College of the Lowcountry Enterprise Campus Authority, the Horry-Georgetown Technical 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."

Time effective

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

Ratified the 1st day of June, 2010.

Vetoed by the Governor -- 6/7/2010.
Veto overridden by House -- 6/15/2010.
Veto overridden by Senate -- 6/16/2010.

No. 277

(R296, S288)

AN ACT TO AMEND ARTICLE 1, CHAPTER 1, TITLE 56, CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 56-1-146 SO AS TO REQUIRE A CLERK OF COURT TO NOTIFY THE DEPARTMENT OF MOTOR VEHICLES OF A PERSON WHO IS CONVICTED OF A VIOLENT CRIME; TO REQUIRE THE DEPARTMENT OF MOTOR VEHICLES TO NOTIFY THE CONVICTED PERSON THAT HE SHALL SURRENDER HIS DRIVER'S LICENSE OR SPECIAL IDENTIFICATION CARD TO THE DEPARTMENT; BY ADDING SECTION 56-1-148 SO AS TO PROVIDE THAT A PERSON CONVICTED OF A VIOLENT CRIME SHALL HAVE A SPECIAL CODE AFFIXED TO THE REVERSE SIDE OF HIS DRIVER'S LICENSE OR SPECIAL IDENTIFICATION CARD THAT IDENTIFIES THE PERSON AS HAVING BEEN CONVICTED OF A VIOLENT CRIME, TO PROVIDE A FEE TO BE CHARGED FOR AFFIXING THE CODE AND FOR ITS DISTRIBUTION, AND TO PROVIDE A PROCESS FOR REMOVING THE CODE; TO AMEND SECTION 56-1-80, AS AMENDED, RELATING TO THE CONTENTS OF A DRIVER'S LICENSE APPLICATION, SO AS TO MAKE TECHNICAL CHANGES; TO AMEND SECTION 56-1-3350, AS AMENDED,

RELATING TO THE ISSUANCE OF A SPECIAL IDENTIFICATION CARD BY THE DEPARTMENT OF MOTOR VEHICLES, SO AS TO MAKE TECHNICAL CHANGES; AND TO PROVIDE THAT THE PROVISIONS OF SECTION 56-1-80 MUST BE MET UPON THE RENEWAL OF AN EXISTING DRIVER'S LICENSE OR SPECIAL IDENTIFICATION CARD.

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

Surrender of driver's license by person convicted of certain crimes

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

"Section 56-1-146. When a person is convicted of or pleads guilty or nolo contendere to a crime of violence as defined in Section 16-23-10(3) on or after July 1, 2011, in this State, the clerk of court must notify by mail, electronic mail, or facsimile the Department of Motor Vehicles within thirty days of the conviction of guilt or nolo contendere plea. The Department of Motor Vehicles must then notify the person who was convicted of the crime of violence as defined in Section 16-23-10(3) that he must surrender his driver's license or special identification card to the Department of Motor Vehicles by mail or in person, and the Department of Motor Vehicles shall issue to the person by mail or in person a driver's license or special identification card with the identifying code as referenced in Section 56-1-148. If the person convicted of a crime of violence as defined in Section 16-23-10(3) fails to surrender his driver's license or special identification card to the Department of Motor Vehicles, the driver's license or special identification card is considered canceled."

Identifying code affixed on driver's license of person convicted of certain crimes

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

"Section 56-1-148. (A) As used in this chapter 'identifying code' means a symbol, number, or letter of the alphabet developed by the department to identify a person convicted of or pleading guilty or nolo contendere to a crime of violence as defined in Section 16-23-10(3) on

or after July 1, 2011. The symbol, number, or letter of the alphabet shall not be defined on the driver's license or special identification card.

(B) In addition to the contents of a driver's license provided for in Section 56-1-140 or a special identification card provided for in Section 56-1-3350, a person who has been convicted of or pled guilty or nolo contendere to a crime of violence as defined in Section 16-23-10(3) on or after July 1, 2011, must have an identifying code determined by the department affixed to the reverse side of his driver's license or special identification card. The code must identify the person as having been convicted of a violent crime. The code must be developed by the department and made known to the appropriate law enforcement officers and judicial officials of this State.

(C) The presence of a special identifying code on a person's driver's license or special identification card may not be used as a grounds to extend the detention of the person by a law enforcement officer or grounds for a search of the person or his vehicle.

(D) The department shall charge a fee of fifty dollars for affixing the identifying code provided in subsection (B). This fee is in addition to the fee provided for in Section 56-1-140. This fee must be placed by the Comptroller General into a special restricted account to be used by the department to defray expenses associated with this section.

(E) A person whose driver's license or special identification card has been canceled pursuant to Section 56-1-146 may apply for a new license or special identification card in a manner prescribed by the department. The department must issue by mail or in person a new license or special identification card with the identifying code required by this section after payment of the fifty-dollar fee provided in subsection (C). The department must not issue a new driver's license to a person during any period of suspension or revocation for any reason other than Section 56-1-146 and a driver's license may only be issued after the period of suspension or revocation has ended and the person is otherwise eligible to be issued a license.

(F) The intent of placing an identifying code on a driver's license or special identification card that identifies a person who has been convicted of a crime of violence as defined in Section 16-23-10(3) is to promote the state's fundamental right to provide for the public health, welfare, and safety of its citizens and law enforcement officers. Notwithstanding this legitimate stated purpose, this provision is not intended to violate the guaranteed constitutional rights of persons who have violated our state's laws.

(G) If a person's conviction or guilty plea for a crime of violence as defined in Section 16-23-10(3) is reversed on appeal, or if the person is subsequently pardoned, then the person may apply for a driver's license or special identification card that does not have the identifying code affixed.

(H) A person who is not convicted of a subsequent crime of violence as defined in Section 16-23-10(3) for five years after he has completely satisfied the terms of his sentence or during the term of the person's probation or parole, whichever the sentencing judge determines is appropriate, may file an application with the department to have the identifying code affixed to his driver's license or special identification card removed.

(I) A person must provide appropriate supporting documentation prescribed by the department to verify his eligibility to have the identifying code removed pursuant to subsection (F) or (G). Upon verification and payment of the fee provided in Section 56-1-140, the person must be issued a new driver's license or special identification card."

Application for driver's license or permit

SECTION 3. Section 56-1-80 of the 1976 Code, as last amended by Act 92 of 2007, is further amended to read:

"Section 56-1-80. (A) An application for a driver's license or permit must:

(1) be made upon the form furnished by the department;

(2) be accompanied by the proper fee and acceptable proof of date and place of birth;

(3) contain the full name, date of birth, sex, race, and residence address of the applicant and briefly describe the applicant;

(4) state whether the applicant has been licensed as an operator or chauffeur and, if so, when and by what state or country;

(5) state whether a license or permit has been suspended or revoked or whether an application has been refused and, if so, the date of and reason for the suspension, revocation, or refusal;

(6) allow an applicant voluntarily to disclose a permanent medical condition, which must be indicated by a symbol designated by the department on the driver's license and contained in the driver's record; and

(7) allow an applicant voluntarily to disclose that he is an organ and tissue donor which must be indicated by a symbol designated by

the department on the driver's license and contained in the driver's record.

(B) The information contained on a driver's license and in the driver's department records pertaining to a person's permanent medical condition, as provided for in item (A)(6), must be made available, upon request, to law enforcement and emergency medical services and hospital personnel; and the information and records pertaining to a person's organ and tissue donor status, as provided for in item (A)(7), must be made available, upon request, to law enforcement, emergency medical services and hospital personnel, and the South Carolina Donor Referral Network, as provided for in Section 44-43-910.

(C) Whenever an application is received from a person previously licensed or permitted in another state, the Department of Motor Vehicles may request a copy of the applicant's record from the other state. When received, the record becomes a part of the driver's record in this State with the same effect as though entered on the operator's record in this State in the original instance. Every person who obtains a driver's license or permit for the first time in South Carolina and every person who renews his driver's license or permit in South Carolina must be furnished a written request form for completion and verification of liability insurance coverage.

The completed and verified form or an affidavit prepared by the department showing that neither he, nor a resident relative, owns a motor vehicle subject to the provisions of this chapter, must be delivered to the department at the time the license or permit is issued or renewed."

Application for special identification card

SECTION 4. The first paragraph of Section 56-1-3350 of the 1976 Code is amended to read:

"Section 56-1-3350. Upon application by a person ten years of age or older who is a resident of South Carolina, the department shall issue a special identification card as long as:

(1) the application is made on a form approved and furnished by the department; and

(2) the applicant presents to the person issuing the identification card a birth certificate or other evidence acceptable to the department of his name and date of birth."

Requirements of Section 56-1-80 must be met

SECTION 5. The requirements of Section 56-1-80 of the 1976 Code, as amended by Section 3 of this act, must be met upon the renewal of an existing driver's license or special identification card of a person convicted of a crime of violence as defined in Section 16-23-10(3) in this State on or after July 1, 2011.

Savings clause

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

Time effective

SECTION 7. This act takes effect July 1, 2011, and applies to all persons convicted of a crime of violence as defined in Section 16-23-10(3).

Ratified the 7th day of June, 2010.

Vetoed by the Governor -- 6/11/2010.
Veto overridden by Senate -- 6/16/2010.
Veto overridden by House -- 6/29/2010.

No. 278

(R298, S337)

AN ACT TO AMEND SECTION 44-1-60, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO APPEALS FROM DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL DECISIONS GIVING RISE TO CONTESTED CASES, SO AS TO REVISE AND CLARIFY PROCEDURES FOR REVIEW OF CERTIFICATE OF NEED DECISIONS AND CONTESTED CASE HEARINGS, INCLUDING NOTICE REQUIREMENTS, FILING FEES FOR REQUESTING A FINAL REVIEW, AND TIMES WITHIN WHICH A CONTESTED CASE HEARING MUST BE REQUESTED; TO AMEND SECTION 44-7-130, RELATING TO THE DEFINITION OF TERMS USED IN THE STATE CERTIFICATE OF NEED AND HEALTH FACILITY LICENSURE ACT, SO AS TO REVISE THE DEFINITIONS OF "HEALTH CARE FACILITY", "PERSON", "RESIDENTIAL TREATMENT FACILITY FOR CHILDREN AND ADOLESCENTS", AND "LIKE EQUIPMENT WITH SIMILAR CAPABILITIES", TO DELETE THE DEFINITION OF "CHIROPRACTIC INPATIENT FACILITY", AND TO DEFINE "BIRTHING CENTER" AND "FREESTANDING EMERGENCY SERVICE"; TO AMEND SECTION 44-7-150, RELATING TO DUTIES OF THE DEPARTMENT IN CARRYING OUT THE PURPOSES OF THE CERTIFICATE OF NEED PROGRAM, SO AS TO FURTHER SPECIFY THE ESTABLISHMENT AND COLLECTION OF FEES FOR THIS PROGRAM IN REGULATION, INCLUDING THE DEPARTMENT RETAINING FEES IN EXCESS OF SEVEN HUNDRED FIFTY THOUSAND DOLLARS FOR THE ADMINISTRATIVE COSTS OF THIS PROGRAM; TO AMEND SECTION 44-7-160, RELATING TO ACTIVITIES AND SERVICES REQUIRED TO OBTAIN A CERTIFICATE OF NEED, SO AS TO DELETE OBSOLETE PROVISIONS AND TO DELETE PROVISIONS RELATING TO ACQUISITION OR CHANGE IN OWNERSHIP OF A HEALTH CARE FACILITY, ACQUISITION OF A HEALTH CARE FACILITY BEFORE AN AGREEMENT TO ACQUIRE THE FACILITY IS REACHED, AND EXPENDITURES FOR PREPARING TO DEVELOP A PROJECT REQUIRING A CERTIFICATE OF NEED; TO AMEND SECTION 44-7-170, AS AMENDED, RELATING TO

EXEMPTIONS FROM CERTIFICATE OF NEED, SO AS TO FURTHER SPECIFY EXEMPTION REQUIREMENTS FOR RESEARCH PURPOSES, TO PROVIDE THAT REPLACEMENT OF LIKE EQUIPMENT IS EXEMPT IF CERTAIN CONDITIONS ARE MET AND TO DELETE FROM EXEMPTION PURCHASES OF REAL ESTATE FOR DEVELOPMENT REQUIRING A CERTIFICATE OF NEED; TO AMEND SECTION 44-7-180, RELATING TO THE COMPOSITION OF THE HEALTH PLANNING COMMITTEE, SO AS TO INCLUDE AN ADMINISTRATOR OF A FOR-PROFIT NURSING HOME AMONG GROUPS THAT MUST BE REPRESENTED ON THE COMMITTEE AND TO PROVIDE FOR A CHAIRMAN AND VICE CHAIRMAN OF THE COMMITTEE; TO AMEND SECTION 44-7-190, RELATING TO PROJECT REVIEW CRITERIA USED IN THE CERTIFICATE OF NEED PROCESS, SO AS TO PRESCRIBE THE USE OF WEIGHTED CRITERIA; TO AMEND SECTION 44-7-200, RELATING TO THE APPLICATION PROCESS FOR A CERTIFICATE OF NEED, SO AS TO DELETE FEE PROVISIONS THAT ARE OTHERWISE PROVIDED FOR IN THIS ACT, TO CLARIFY CERTIFICATE OF NEED APPLICATION PROCEDURES AND COMMUNICATIONS, TO PROHIBIT STATE AND FEDERAL OFFICIALS FROM COMMUNICATING WITH THE DEPARTMENT ONCE A CERTIFICATE OF NEED APPLICATION HAS BEEN FILED AND TO PROVIDE AN EXCEPTION; TO AMEND SECTION 44-7-210, RELATING TO CERTIFICATE OF NEED REVIEW PROCEDURES, SO AS TO FURTHER SPECIFY THESE PROCEDURES, INCLUDING INITIATION OF THE REVIEW PERIOD, DURATION OF THE REVIEW PROCESS, AND TIME FRAMES FOR ISSUING DECISIONS AND RENDERING FINAL AGENCY DECISIONS, AND TO FURTHER SPECIFY REVIEW AND CONTESTED CASE PROCEDURES FOR CERTIFICATE OF NEED CASES, INCLUDING LIMITATIONS ON THE NUMBER OF WITNESSES THAT MAY BE CALLED AND THE NUMBER OF INTERROGATORIES AND REQUESTS FOR ADMISSIONS THAT MAY BE SERVED AND WHO MAY BE DEPOSED; TO AMEND SECTION 44-7-220, RELATING TO JUDICIAL REVIEW OF THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL BOARD DECISIONS, SO AS TO CORRECT THAT CERTIFICATE OF NEED APPEALS ARE HEARD BY THE ADMINISTRATIVE

LAW COURT RATHER THAN THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL BOARD AND TO FURTHER PROVIDE FOR JUDICIAL REVIEW OF ADMINISTRATIVE LAW COURT CERTIFICATE OF NEED DECISIONS; TO AMEND SECTION 44-7-230, RELATING TO VARIOUS REQUIREMENTS FOR AND LIMITATIONS OF A CERTIFICATE OF NEED, SO AS TO PROVIDE THAT A CERTIFICATE OF NEED IS VALID FOR ONE YEAR FROM ISSUANCE, RATHER THAN FOR SIX MONTHS, AND TO PROVIDE THAT EXTENSIONS MAY BE GRANTED FOR NINE MONTHS, RATHER THAN FOR SIX MONTHS; TO AMEND SECTION 44-7-260, AS AMENDED, RELATING TO CERTAIN FACILITIES AND SERVICES REQUIRED TO BE LICENSED BY THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL, SO AS TO DELETE CHIROPRACTIC INPATIENT FACILITIES AND TO ADD BIRTHING CENTERS; TO AMEND SECTION 44-7-270, RELATING TO ANNUAL HEALTH FACILITY LICENSURE PROCEDURES, SO AS TO AUTHORIZE THE DEPARTMENT TO PRESCRIBE IN REGULATION PERIODS FOR LICENSURE AND RENEWAL AND TO AUTHORIZE IMPOSING A FEE FOR INSPECTIONS; TO AMEND SECTION 44-7-280, RELATING TO THE ISSUANCE OF HEALTH FACILITY LICENSES, SO AS TO AUTHORIZE THE DEPARTMENT TO PROVIDE IN REGULATION FOR PERIODS OF LICENSURE; TO AMEND SECTION 44-7-315, AS AMENDED, RELATING TO THE DISCLOSURE OF INFORMATION OBTAINED BY THE DEPARTMENT THROUGH HEALTH LICENSING, SO AS TO INCLUDE LICENSING OF ACTIVITIES AND TO DELETE OBSOLETE LANGUAGE; TO AMEND SECTION 44-7-320, RELATING TO GROUNDS FOR THE DENIAL, SUSPENSION, OR REVOCATION OF LICENSES AND THE IMPOSITION OF FINES, SO AS TO ALLOW BOTH SANCTIONS AGAINST A LICENSE AND THE IMPOSITION OF A FINE; BY ADDING SECTION 44-7-225 SO AS TO PROVIDE THAT THE ADMINISTRATIVE LAW COURT SHALL CONSIDER THE SOUTH CAROLINA HEALTH PLAN IN EFFECT WHEN A CERTIFICATE OF NEED APPLICATION WAS FILED AND MAY CONSIDER THE PLAN IN EFFECT WHEN MAKING A DECISION ON THE CERTIFICATE OF NEED; BY ADDING SECTION 44-7-285 SO AS TO REQUIRE HEALTH CARE

FACILITIES TO NOTIFY THE DEPARTMENT OF A CHANGE IN FACILITY OWNERSHIP OR CONTROLLING INTEREST; BY ADDING SECTION 44-7-295 SO AS TO AUTHORIZE THE DEPARTMENT TO ENTER ALL LICENSED AND UNLICENSED HEALTH CARE FACILITIES TO INSPECT FOR COMPLIANCE WITH HEALTH LICENSURE AND CERTIFICATE OF NEED REQUIREMENTS; TO AMEND SECTION 1-23-600, AS AMENDED, RELATING TO ADMINISTRATIVE LAW COURT HEARINGS AND PROCEEDINGS, SO AS TO PROVIDE THAT IF AN ATTORNEY IS CALLED TO APPEAR IN ANOTHER COURT IN THIS STATE, THE ACTION IN THE ADMINISTRATIVE LAW COURT HAS PRIORITY AS APPROPRIATE; AND TO REPEAL SECTION 44-7-185 RELATING TO A TASK FORCE UNDER THE HEALTH CARE PLANNING AND OVERSIGHT COMMITTEE, TO STUDY HEART SURGERY AND THERAPEUTIC HEART CATHETERIZATIONS.

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

Certificate of Need review procedures

SECTION 1. Section 44-1-60(E) through (I) of the 1976 Code, as added by Act 387 of 2006, is amended to read:

"(E)(1)Notice of a department decision must be sent by certified mail, returned receipt requested to the applicant, permittee, licensee, and affected persons who have requested in writing to be notified. Affected persons may request in writing to be notified by regular mail or electronic mail in lieu of certified mail. Notice of staff decisions for which a department decision is not required pursuant to subsection (D) must be provided by mail, delivery, or other appropriate means to the applicant, permittee, licensee, and affected persons who have requested in writing to be notified.

(2) The staff decision becomes the final agency decision fifteen calendar days after notice of the staff decision has been mailed to the applicant, unless a written request for final review accompanied by a filing fee is filed with the department by the applicant, permittee, licensee, or affected person.

(3) The filing fee must be in the amount of one hundred dollars unless the department establishes a fee schedule by regulation after complying with the requirements of Article 1, Chapter 23, Title 1. This

fee must be retained by the department in order to help defray the costs of the proceedings and legal expenses.

(F) No later than sixty calendar days after the date of receipt of a request for final review, a final review conference must be conducted by the board, its designee, or a committee of three members of the board appointed by the chair. If the board declines in writing to schedule a final review conference or if a final review conference is not conducted within sixty calendar days, the staff decision becomes the final agency decision, and an applicant, permittee, licensee, or affected person requests pursuant to subsection (G) a contested case hearing before the Administrative Law Court. The department shall set the place, date, and time for the conference; give the applicant and affected persons at least ten calendar days' written notice of the conference; and advise the applicant that evidence may be presented at the conference. The final review conference must be held as follows:

(1) Final review conferences are open to the public; however, the officers conducting the conference may meet in closed session to deliberate on the evidence presented at the conference. The burden of proof in a conference is upon the moving party. During the course of the final review conference, the staff must explain the staff decision and the materials relied upon in the administrative record to support the staff decision. The applicant or affected party shall state the reasons for protesting the staff decision and may provide evidence to support amending, modifying, or rescinding the staff decision. The staff may rebut information and arguments presented by the applicant or affected party and the applicant or affected party may rebut information and arguments presented by the staff. Any final review conference officer may request additional information and may question the applicant or affected party, the staff, and anyone else providing information at the conference.

(2) After the final review conference, the board, its designee, or a committee of three members of the board appointed by the chair shall issue a written final agency decision based upon the evidence presented. The decision may be announced orally at the conclusion of the final review conference or it may be reserved for consideration. The written decision must explain the basis for the decision and inform the parties of their right to request a contested case hearing before the Administrative Law Court. In either event, the written decision must be mailed to the parties no later than thirty calendar days after the date of the final review conference. Within thirty calendar days after the receipt of the decision an applicant, permittee, licensee, or affected person desiring to contest the final agency decision may request a

contested case hearing before the Administrative Law Court, in accordance with the Administrative Procedures Act. The court shall give consideration to the provisions of Section 1-23-330 regarding the department's specialized knowledge.

(3) Prior to the initiation of the final review conference, an applicant, permittee, licensee, or affected person must be notified of their right to request a transcript of the proceedings of the final review conference. If a transcript is requested, the applicant, permittee, licensee, or affected person making the request is responsible for all costs.

(G) An applicant, permittee, licensee, or affected person may file a request with the Administrative Law Court for a contested case hearing within thirty calendar days after:

(1) notice is mailed to the applicant, permittee, licensee, and affected persons that the board declined to hold a final review conference; or

(2) the sixty calendar day deadline to hold the final review conference lapses and no conference has been held; or

(3) the final agency decision resulting from the final review conference is received by the parties.

(H) Applicants, permittees, licensees, and affected persons are encouraged to engage in mediation during the final review process.

(I) The department may promulgate regulations providing for procedures for final reviews.

(J) Any statutory deadlines applicable to permitting and licensing programs administered by the department must be extended to all for this final review process. If any deadline provided for in this section falls on a Saturday, Sunday, or state holiday, the deadline must be extended until the next calendar day that is not a Saturday, Sunday, or state holiday."

Definitions revised

SECTION 2. Section 44-7-130(4), (10), (15), (16), and (21) of the 1976 Code is amended to read:

"(4) Reserved.

(10) 'Health care facility' means acute care hospitals, psychiatric hospitals, alcohol and substance abuse hospitals, nursing homes, ambulatory surgical facilities, hospice facilities, radiation therapy facilities, rehabilitation facilities, residential treatment facilities for

children and adolescents, intermediate care facilities for the mentally retarded, and any other facility for which Certificate of Need review is required by federal law.

(15) 'Person' means an individual, a trust or estate, a partnership, a corporation including an association, joint stock company, insurance company, and a health maintenance organization, a health care facility, a state, a political subdivision, or an instrumentality including a municipal corporation of a state, or any legal entity recognized by the State.

(16) 'Residential treatment facility for children and adolescents' means a facility operated for the assessment, diagnosis, treatment, and care of two or more 'children and adolescents in need of mental health treatment' which provides:

(a) a special education program with a minimum program defined by the South Carolina Department of Education;

(b) recreational facilities with an organized youth development program; and

(c) residential treatment for a child or adolescent in need of mental health treatment.

(21) 'Like equipment with similar capabilities' means medical equipment in which functional and technological capabilities are identical to the equipment to be replaced; and the replacement equipment is to be used for the same or similar diagnostic, therapeutic, or treatment purposes as currently in use; and does not constitute a material change in service or a new service."

Definitions added

SECTION 3. Section 44-7-130 of the 1976 Code is amended by adding at the end:

"(24) 'Birthing center' means a facility or other place where human births are planned to occur. This does not include the usual residence of the mother or any facility that is licensed as a hospital or the private practice of a physician who attends the birth.

(25) 'Freestanding emergency service' also referred to as an off-campus emergency service, means an extension of an existing hospital emergency department that is an off-campus emergency service and that is intended to provide comprehensive emergency service. The hospital shall have a valid license and be in operation to

support the off-campus emergency service. A service that does not provide twenty-four hour, seven day per week operation or that is not capable of providing basic services as defined for hospital emergency departments must not be classified as a freestanding emergency service and must not advertise or display or exhibit any signs or symbols that would identify the service as a freestanding emergency service."

Certificate of Need fees; fees department is authorized to retain

SECTION 4. Section 44-7-150(5) of the 1976 Code is amended to read:

"(5) The department may charge and collect fees to cover the cost of operating the Certificate of Need program, including application fees, filing fees, issuance fees, and nonapplicability/exemption determination fees. The department shall develop regulations which set fees as authorized by this article. The level of these fees must be determined after careful consideration of the direct and indirect costs incurred by the department in performing its various functions and services in the Certificate of Need program. All fees and procedures for collecting fees must be adopted pursuant to procedures set forth in the Administrative Procedures Act. Any fee collected pursuant to this section in excess of seven hundred fifty thousand dollars must be retained by the department and designated for the administrative costs of the Certificate of Need program. The first seven hundred fifty thousand dollars collected pursuant to this section must be deposited into the general fund of the State. Until fees are promulgated through regulation, all fees established as of January 1, 2009, remain in effect."

Activities and services required to obtain a Certificate of Need

SECTION 5. Section 44-7-160 of the 1976 Code is amended to read:

"Section 44-7-160. A person or health care facility as defined in this article is required to obtain a Certificate of Need from the department before undertaking any of the following:

(1) the construction or other establishment of a new health care facility;

(2) a change in the existing bed complement of a health care facility through the addition of one or more beds or change in the classification of licensure of one or more beds;

(3) an expenditure by or on behalf of a health care facility in excess of an amount to be prescribed by regulation which, under generally acceptable accounting principles consistently applied, is considered a capital expenditure except those expenditures exempted in Section 44-7-170(B)(1). The cost of any studies, surveys, designs, plans, working drawings, specifications, and other activities essential to the development, acquisition, improvement, expansion, or replacement of any plant or equipment must be included in determining if the expenditure exceeds the prescribed amount;

(4) a capital expenditure by or on behalf of a health care facility which is associated with the addition or substantial expansion of a health service for which specific standards or criteria are prescribed in the South Carolina Health Plan;

(5) the offering of a health service by or on behalf of a health care facility which has not been offered by the facility in the preceding twelve months and for which specific standards or criteria are prescribed in the South Carolina Health Plan;

(6) the acquisition of medical equipment which is to be used for diagnosis or treatment if the total project cost is in excess of that prescribed by regulation."

Exemptions from obtaining Certificate of Need

SECTION 6. Section 44-7-170 of the 1976 Code, as last amended by Act 27 of 2003, is further amended to read:

"Section 44-7-170. (A) The following are exempt from Certificate of Need review:

(1) the acquisition by a person of medical equipment to be used solely for research, the offering of an institutional health service by a person solely for research, or the obligation of a capital expenditure by a person to be made solely for research if it does not:

(a) affect the charges imposed by the person for the provision of medical or other patient care services other than the services that are included in the research;

(b) change the bed capacity of a health care facility; or

(c) substantially change the medical or other patient care services provided by the person.

A written description of the proposed research project must be submitted to the department in order for the department to determine if these conditions are met. A Certificate of Need is required in order to

continue use of the equipment or service after the equipment or service is no longer being used solely for research;

(2) the offices of a licensed private practitioner whether for individual or group practice except as provided for in Section 44-7-160(1) and (6);

(3) the replacement of like equipment for which a Certificate of Need has been issued which does not constitute a material change in service or a new service.

(B) This article does not apply to:

(1) an expenditure by or on behalf of a health care facility for nonmedical projects for services such as refinancing existing debt, parking garages, laundries, roof replacements, computer systems, telephone systems, heating and air conditioning systems, upgrading facilities which do not involve additional square feet or additional health services, replacement of like equipment with similar capabilities, or similar projects as described in regulations;

(2) facilities owned and operated by the South Carolina Department of Mental Health and the South Carolina Department of Disabilities and Special Needs, except an addition of one or more beds to the total number of beds of the departments' health care facilities existing on July 1, 1988;

(3) educational and penal institutions maintaining infirmaries for the exclusive use of student bodies and inmate populations;

(4) any federal health care facility sponsored and operated by this State;

(5) community-based housing designed to promote independent living for persons with mental or physical disabilities. This does not include a facility defined in this article as a 'health care facility';

(6) kidney disease treatment centers including, but not limited to, free standing hemodialysis centers and renal dialysis centers;

(7) health care facilities owned and operated by the federal government.

(C) Before undertaking a project enumerated in subsection (A), a person shall obtain a written exemption from the department as may be more fully described in regulation."

Health Planning Committee

SECTION 7. Section 44-7-180 of the 1976 Code is amended to read:

"Section 44-7-180. (A) There is created a health planning committee comprised of fourteen members. The Governor shall

appoint twelve members, which must include at least one member from each congressional district. In addition, each of the following groups must be represented among the Governor's appointees: health care consumers, health care financiers, including business and insurance, and health care providers, including an administrator of a licensed for-profit nursing home. The chairman of the board shall appoint one member. The South Carolina Consumer Advocate or the Consumer Advocate's designee is an ex officio nonvoting member. Members appointed by the Governor are appointed for four-year terms, and may serve only two consecutive terms. Members of the health planning committee are allowed the usual mileage and subsistence as provided for members of boards, committees, and commissions. The committee shall elect from among its members a chairman, vice chairman, and such other officers as the committee considers necessary to serve a two-year term in that office.

(B) With the advice of the health planning committee, the department shall prepare a South Carolina Health Plan for use in the administration of the Certificate of Need program provided in this article. The plan at a minimum must include:

(1) an inventory of existing health care facilities, beds, specified health services, and equipment;

(2) projections of need for additional health care facilities, beds, health services, and equipment;

(3) standards for distribution of health care facilities, beds, specified health services, and equipment including scope of services to be provided, utilization, and occupancy rates, travel time, regionalization, other factors relating to proper placement of services, and proper planning of health care facilities; and

(4) a general statement as to the project review criteria considered most important in evaluating Certificate of Need applications for each type of facility, service, and equipment, including a finding as to whether the benefits of improved accessibility to each such type of facility, service, and equipment may outweigh the adverse affects caused by the duplication of any existing facility, service, or equipment.

The South Carolina Health Plan must address and include projections and standards for specified health services and equipment which have a potential to substantially impact health care cost and accessibility. Nothing in this provision shall be construed as requiring the department to approve any project which is inconsistent with the South Carolina Health Plan.

(C) Upon approval by the health planning committee, the South Carolina Health Plan must be submitted at least once every two years to the board for final revision and adoption. Once adopted by the board, the plan may later be revised through the same planning and approval process. The department shall adopt by regulation a procedure to allow public review and comment, including regional public hearings, before adoption or revision of the plan."

Project review criteria

SECTION 8. Section 44-7-190 of the 1976 Code is amended to read:

"Section 44-7-190. (A) The department shall adopt, upon approval of the board, Project Review Criteria which, at a minimum, must provide for the determination of need for health care facilities, beds, services and equipment, including demographic needs, appropriate distribution, and utilization; accessibility to underserved groups; availability of facilities and services without regard to ability to pay; absence of less costly and more effective alternatives; appropriate financial considerations, including method of financing, financial feasibility, and cost containment; consideration of impact on health systems resources; site and building suitability; consideration of quality of care; and relevant special considerations as may be appropriate. The Project Review Criteria must be adopted as a regulation pursuant to the Administrative Procedures Act.

(B) The project review criteria promulgated in regulation must be used in reviewing all projects under the Certificate of Need process. When the criteria are weighted to determine the relative importance for the specific project, the department may reorder the relative importance of the criteria no more than one time after the project review meeting. When an application has been appealed, the department may not change the weighted formula."

Certificate of Need application process

SECTION 9. Section 44-7-200(A) and (C) of the 1976 Code is amended to read:

"(A) An application for a Certificate of Need must be submitted to the department in a form established by regulation. The application must address all applicable standards and requirements set forth in

departmental regulations, Project Review Criteria of the department, and the South Carolina Health Plan.

(C) Upon publication of this notice and until a contested case hearing is requested pursuant to Section 44-1-60(G):

(1) members of the board and persons appointed by the board to hold a final review conference on staff decisions may not communicate directly or indirectly with any person in connection with the application; and

(2) no person shall communicate, or cause another to communicate, as to the merits of the application with members of the board and persons appointed by the board to hold a final review conference on staff decisions.

A person who violates this subsection is subject to the penalties provided in Section 1-23-360."

Communications prohibited during Certificate of Need process

SECTION 10. Section 44-7-200 of the 1976 Code is amended by adding at the end:

"(E) After a Certificate of Need application has been filed with the department, state and federal elected officials are prohibited from communicating with the department with regard to the Certificate of Need application at any time. This prohibition does not include written communication of support or opposition to an application. Such written communication must be included in the administrative record."

Certificate of Need review procedures

SECTION 11. Section 44-7-210 of the 1976 Code is amended to read:

"Section 44-7-210. (A) After the department has determined that an application is complete, affected persons must be notified in accordance with departmental regulations. The notification to affected persons that the application is complete begins the review period; however, in the case of competing applications, the review period begins on the date of notice to affected persons that the last of the competing applications is complete and notice is published in the State Register. The staff shall issue its decision to approve or deny the application no earlier than thirty calendar days, but no later than one

hundred twenty calendar days, from the date affected persons are notified that the application is complete, unless a public hearing is timely requested as may be provided for by department regulation. If a public hearing is properly requested, the staff's decision must not be made until after the public hearing, but in no event shall the decision be issued more than one hundred fifty calendar days from the date affected persons are notified that the application is complete. The staff may reorder the relative importance of the project review criteria no more than one time during the review period. The staff's reordering of the relative importance of the project review criteria does not extend the review period provided for in this section.

(B) The department may not issue a Certificate of Need unless an application complies with the South Carolina Health Plan, Project Review Criteria, and other regulations. Based on project review criteria and other regulations, which must be identified by the department, the department may refuse to issue a Certificate of Need even if an application complies with the South Carolina Health Plan. In the case of competing applications, the department shall award a Certificate of Need, if appropriate, on the basis of which, if any, most fully complies with the requirements, goals, and purposes of this article and the State Health Plan, Project Review Criteria, and the regulations adopted by the department.

(C) On the basis of staff review of the application, the staff shall make a staff decision to grant or deny the Certificate of Need and the staff shall issue a decision in accordance with Section 44-1-60(D). Notice of the decision must be sent to the applicant and affected persons who have asked to be notified. The decision becomes the final agency decision unless a timely written request for a final review is filed with the department as provided for in Section 44-1-60(E).

However, a person may not file a request for final review in opposition to the staff decision on a Certificate of Need unless the person provided written notice to the department during the staff review that he is an affected person and specifically states his opposition to the application under review.

(D) The staff's decision is not the final agency decision until the completion of the final review process provided for in Section 44-1-60(F).

(E) A contested case hearing of the final agency decision must be requested in accordance with Section 44-1-60(G). The issues considered at the contested case hearing considering a Certificate of Need are limited to those presented or considered during the staff review.

(F) Notwithstanding any other provision of law, including Section 1-23-650(C), in a contested case arising from the department's decision to grant or deny a Certificate of Need application, grant or deny a request for exemption under Section 44-7-170, or the issuance of a determination regarding the applicability of Section 44-7-160, the following apply:

(1) each party may name no more than ten witnesses who may testify at the contested case hearing;

(2) each party is permitted to take only the deposition of a person listed as a witness who may testify at the contested case hearing, unless otherwise provided for by the Administrative Law Court;

(3) each party is permitted to serve only ten interrogatories pursuant to Rule 33 of the South Carolina Rules of Civil Procedure;

(4) each party is permitted to serve only ten requests for admission, including subparts; and

(5) each party is permitted to serve only thirty requests for production, including subparts.

The limitations provided for in this subsection are intended to make the contested case process more efficient, less burdensome, and less costly to the parties in Certificate of Need cases. Therefore, the Administrative Law Court may, by court order, lift these limitations beyond the parameters set forth in this subsection only in exceptional circumstances when failure to do so would cause substantial prejudice to the party seeking additional discovery.

(G) Notwithstanding any other provision of law, in a contested case arising from the department's decision to grant or deny a Certificate of Need application, grant or deny a request for exemption under Section 44-7-170, or the issuance of a determination regarding the applicability of Section 44-7-160, the Administrative Law Court shall file a final decision no later than eighteen months after the contested case is filed with the Clerk of the Administrative Law Court, unless all parties to the contested case consent to an extension or the court finds substantial cause otherwise."

Administrative Law Court review of Certificate of Need decisions

SECTION 12. Section 44-7-220 of the 1976 Code is amended to read:

"Section 44-7-220. (A) A party who is aggrieved by the Administrative Law Court's final decision may seek judicial review of the final decision in accordance with Section 1-23-380.

(B) If the relief requested in the appeal is the reversal of the Administrative Law Court's decision to approve the Certificate of Need application or approve the request for exemption under Section 44-7-170 or approve the determination that Section 44-7-160 is not applicable, the party filing the appeal shall deposit a bond with the Clerk of the Court of Appeals within five calendar days after filing the petition to appeal. The bond must be secured by cash or a surety authorized to do business in this State in an amount equal to five percent of the total cost of the project or one hundred thousand dollars, whichever is greater, up to a maximum of one million five hundred thousand dollars. If the Court of Appeals affirms the Administrative Law Court's decision or dismisses the appeal, the Court of Appeals shall award to the party whose project is the subject of the appeal all of the bond and also may award reasonable attorney's fees and costs incurred in the appeal. If a party appeals the denial of its own Certificate of Need application or of an exemption request under Section 44-7-170 or appeals the determination that Section 44-7-160 is applicable and there is no competing application involved in the appeal, the party filing the appeal is not required to deposit a bond with the Court of Appeals.

(C)(1) Furthermore, if at the conclusion of the contested case or judicial review the Administrative Law Court or the Court of Appeals finds that the contested case or a subsequent appeal was frivolous, the Administrative Law Court or the Court of Appeals may award damages incurred as a result of the delay, as well as reasonable attorney's fees and costs, to the party whose project is the subject of the contested case or judicial review.

(2) As used in this subsection, 'frivolous appeal' means any one of the following:

(a) taken solely for purposes of delay or harassment;

(b) where no question of law is involved;

(c) where the contested case or judicial review is without merit."

Duration of Certificate of Need

SECTION 13. Section 44-7-230(D) of the 1976 Code is amended to read:

"(D) A Certificate of Need is valid for one year from the date of issuance. A Certificate of Need must be issued with a timetable submitted by the applicant and approved by the department to be

followed for completion of the project. The holder of the Certificate of Need shall submit periodic progress reports on meeting the timetable as may be required by the department. Failure to meet the timetable results in the revocation of the Certificate of Need by the department unless the department determines that extenuating circumstances beyond the control of the holder of the Certificate of Need are the cause of the delay. The department may grant two extensions of up to nine months each upon evidence that substantial progress has been made in accordance with procedures set forth in regulations. The board may grant further extensions of up to nine months each only if it determines that substantial progress has been made in accordance with the procedures set forth in regulations."

Facilities and services required to be licensed

SECTION 14. Section 44-7-260(A)(5) and (11) of the 1976 Code is amended to read:

"(5) Reserved;

(11) intermediate care facilities for the mentally retarded;"

Licensure required

SECTION 15. Section 44-7-260(A) is amended by adding at the end:

"(14) birthing centers."

Licensure application requirements

SECTION 16. Section 44-7-270 of the 1976 Code is amended to read:

"Section 44-7-270. Applicants for a license shall file annually, or as may be provided for in regulation, applications under oath with the department upon prescribed forms. An application must be signed by the owner, if an individual or a partnership, or in the case of a corporation by two of its officers, or in the case of a government unit by the head of the governmental department having jurisdiction over it. The application must set forth the full name and address of the facility for which the license is sought, as applicable, and the full name and address of the owner, the names of the persons in control, and

additional information as the department may require, including affirmative evidence of ability to comply with standards and regulations adopted by the department. Each applicant shall pay a license fee prior to issuance of a license as established by regulation. The department may charge an inspection fee."

Duration of licensure

SECTION 17. Section 44-7-280 of the 1976 Code is amended to read:

"Section 44-7-280. Licenses issued pursuant to this article expire one year after date of issuance or annually upon uniform dates, or as otherwise prescribed by regulation. Licenses must be issued only for the premises and persons named in the application and are not transferable or assignable. Licenses must be posted in a conspicuous place on the licensed premises."

Confidentiality of information

SECTION 18. Section 44-7-315 of the 1976 Code, as last amended by Act 372 of 2006, is further amended to read:

"Section 44-7-315. (A) Information received by the Division of Health Licensing of the department, through inspection or otherwise, in regard to a facility or activity licensed by the department pursuant to this article or subject to inspection by the department including a nursing home, a community residential care facility, or an intermediate care facility for the mentally retarded must be disclosed publicly upon written request to the department. The request must be specific as to the facility or activity, dates, documents, and particular information requested. The department may not disclose the identity of individuals present in a facility licensed by the department pursuant to this article or subject to inspection by the department including a nursing home, a community residential care facility, or an intermediate care facility for the mentally retarded. When a report of deficiencies or violations regarding a facility licensed by the department pursuant to this article or subject to inspection by the department including a nursing home, a community residential care facility, or an intermediate care facility for the mentally retarded is present in the department's files when a request for information is received, the department shall inform the applicant that it has stipulated corrective action and the time it

determines for completion of the action. The department also shall inform the applicant that information on the resolution of the corrective action order is expected to be available upon written request within fifteen calendar days or less of the termination of time it determines for completion of the action. However, if information on the resolution is present in the files, it must be furnished to the applicant.

(B) Subsection (A) does not apply to information considered confidential pursuant to Section 40-71-20 and Section 44-30-60."

Grounds for sanctioning licenses

SECTION 19. Section 44-7-320(A) of the 1976 Code is amended to read:

"(A)(1) The department may deny, suspend, or revoke licenses or assess a monetary penalty, or both, against a person or facility for:

(a) violating a provision of this article or departmental regulations;

(b) permitting, aiding, or abetting the commission of an unlawful act relating to the securing of a Certificate of Need or the establishment, maintenance, or operation of a facility requiring certification of need or licensure under this article;

(c) engaging in conduct or practices detrimental to the health or safety of patients, residents, clients, or employees of a facility or service. This provision does not refer to health practices authorized by law;

(d) refusing to admit and treat alcoholic and substance abusers, the mentally ill, or the mentally retarded, whose admission or treatment has been prescribed by a physician who is a member of the facility's medical staff; or discriminating against alcoholics, the mentally ill, or the mentally retarded solely because of the alcoholism, mental illness, or mental retardation;

(e) failing to allow a team advocacy inspection of a community residential care facility by the South Carolina Protection and Advocacy System for the Handicapped, Inc., as allowed by law.

(2) Consideration to deny, suspend, or revoke licenses or assess monetary penalties, or both, is not limited to information relating to the current licensing period but includes consideration of all pertinent information regarding the facility and the applicant.

(3) If in the department's judgment conditions or practices exist in a facility that pose an immediate threat to the health, safety, and welfare of the residents, the department immediately may suspend the

facility's license and shall contact the appropriate agencies for placement of the residents. Within five calendar days of the suspension a preliminary hearing must be held to determine if the immediate threatening conditions or practices continue to exist. If they do not, the license must be immediately reinstated. Whether the license is reinstated or suspension remains due to the immediate threatening conditions or practices, the department may proceed with the process for permanent revocation pursuant to this section."

State Health Plan in effect at application and at decision

SECTION 20. Article 3, Chapter 7, Title 44 of the 1976 Code is amended by adding:

"Section 44-7-225. The department, the Administrative Law Court, and the Court of Appeals shall consider the South Carolina Health Plan in place at the time the application was filed and may consider the current South Carolina Health Plan when making its decision."

Change of ownership and control

SECTION 21. Article 3, Chapter 7, Title 44 of the 1976 Code is amended by adding:

"Section 44-7-285. A health care facility, as defined in this article, shall notify the department within thirty calendar days of a change in ownership or in controlling interest of the health care facility or entity owning a health care facility, directly or indirectly, by purchase, lease, gift, donation, sale of stock, or comparable arrangement. Failure to notify the department of such change within the thirty-day period may result in an administrative action under Section 44-7-320."

Authorization to entering facilities for inspection and investigation

SECTION 22. Article 3, Chapter 7, Title 44 of the 1976 Code is amended by adding:

"Section 44-7-295. The department is authorized to enter at all times in or on the property of any facility or service, whether public or private, licensed by the department or unlicensed, for the purpose of inspecting and investigating conditions relating to a violation of this

article or regulations of the department. The department's authorized agents may examine and copy any records or memoranda pertaining to the operation of a licensed or unlicensed facility or service to determine compliance with this article. However, if such entry or inspection is denied or not consented to and no emergency exists, the department is empowered to obtain a warrant to enter and inspect the property and its records from the magistrate in the jurisdiction in which the property is located. The magistrate may issue these warrants upon a showing of probable cause for the need for entry and inspection. The department shall furnish a written copy of the results of the inspection or investigation to the owner or operator of the property."

Priority of actions in different courts

SECTION 23. Section 1-23-600 of the 1976 Code, as last amended by Act 334 of 2008, is amended by adding an appropriately lettered subsection at the end to read:

"( ) If an attorney of record is called to appear in actions pending in other tribunals in this State, the action in the Administrative Law Court has priority as is appropriate. Courts and counsel have the obligation to adjust schedules to accord with the spirit of comity between the Administrative Law Court and other state courts."

Repeal

SECTION 24. Section 44-7-185 of the 1976 Code is repealed.

Severability clause

SECTION 25. 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 26. This act takes effect July 1, 2010; provided, the provisions of this act do not apply to any matter pending before a court of this State prior to June 1, 2010.

Ratified the 7th day of June, 2010.

Vetoed by the Governor -- 6/11/2010.
Veto overridden by Senate -- 6/16/2010.
Veto overridden by House -- 6/16/2010.

No. 279

(R299, S405)

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 CLARIFY THAT A WATERCRAFT AND ITS MOTOR MAY NOT RECEIVE A FORTY-TWO AND 75/100 PERCENT EXEMPTION IF THE BOAT OR WATERCRAFT IS CLASSIFIED FOR PROPERTY TAX PURPOSES AS A PRIMARY OR SECONDARY RESIDENCE; TO AMEND SECTION 12-37-714, AS AMENDED, RELATING TO BOATS WITH A SITUS IN THIS STATE FOR PURPOSES OF PROPERTY TAX, SO AS TO ALLOW A COUNTY, BY ORDINANCE TO REVISE WITHIN SPECIFIED LIMITS SITUS REQUIREMENTS BASED ON PRESENCE; TO AMEND SECTION 12-37-224, AS AMENDED, RELATING TO WATERCRAFT, CAMPER TRAILERS, AND RECREATIONAL VEHICLES ELIGIBLE TO BE A PRIMARY OR SECONDARY RESIDENCE FOR PURPOSES OF PROPERTY TAX, SO AS TO PROVIDE THAT A BOAT OR WATERCRAFT THAT CONTAINS A COOKING AREA WITH AN ONBOARD POWER SOURCE, A TOILET WITH EXTERIOR EVACUATION, AND A SLEEPING QUARTER, IS CONSIDERED A PRIMARY OR SECONDARY RESIDENCE FOR PURPOSES OF PROPERTY TAX, TO PROVIDE THOSE ELIGIBLE TO APPLY FOR THIS CLASSIFICATION AND THE NUMBER OF SUCH

APPLICATIONS ALLOWED; AND TO AMEND SECTION 50-23-295, AS AMENDED, RELATING TO RESTRICTIONS ON THE TRANSFER OF A CERTIFICATE OF TITLE TO A WATERCRAFT OR OUTBOARD MOTOR SUBJECT TO DELINQUENT PROPERTY TAXES AND ENFORCEMENT OF THESE RESTRICTIONS, SO AS TO MAKE IT UNLAWFUL KNOWINGLY TO SELL A WATERCRAFT SUBJECT TO DELINQUENT PROPERTY TAXES, PROVIDE A PENALTY FOR VIOLATIONS, AND PROVIDE A CIVIL REMEDY WITH TREBLE DAMAGES TO A WATERCRAFT BUYER AGAINST A SELLER WHO FALSELY SIGNED THE REQUIRED CERTIFICATE THAT PROPERTY TAXES ON THE WATERCRAFT ARE CURRENT.

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

Watercraft property tax exemption, eligibility

SECTION 1. Section 12-37-220(B)(38)(b) of the 1976 Code, as last amended by Act 116 of 2007, is further amended to read:

"(b) By ordinance, a governing body of a county may exempt from the property tax, forty-two and 75/100 percent of the fair market value of a watercraft and its motor. This exemption for a watercraft motor applies whether the motor is located in, attached to, or detached from the watercraft. This exemption does not apply to a boat or watercraft classified for property tax purposes as a primary or secondary residence pursuant to Section 12-37-224."

Situs of watercraft for property tax

SECTION 2. Section 12-37-714(2) of the 1976 Code, as last amended by Act 313 of 2008, is further amended to read:

"(2) A boat, including its motor if the motor is separately taxed, which is not currently taxed in this State and is not used exclusively in interstate commerce, is subject to property tax in this State if it is present within this State for sixty consecutive days or for ninety days in the aggregate in a property tax year. Upon an ordinance passed by the local governing body, a county may subject a boat, including its motor if the motor is separately taxed, to property tax if it is within this State for ninety days in the aggregate, regardless of the number of

consecutive days. Also, upon an ordinance passed by the local governing body, a county may increase the number of days in the aggregate a boat, including its motor if the motor is taxed separately, must be in this State to be subject to property tax to one hundred eighty days in a property tax year, regardless of the number of consecutive days. Upon written request by a tax official, the owner must provide documentation or logs relating to the whereabouts of the boat in question. Failure to produce requested documents creates a rebuttable presumption that the boat in question is taxable within this State."

Boats and watercraft, classification as primary or secondary residence for property tax

SECTION 3. Section 12-37-224 of the 1976 Code, as last amended by Act 66 of 2007, is further amended to read:

"Section 12-37-224. (A) A motor home or trailer used for camping and recreational travel that is pulled by a motor vehicle on which the interest portion of indebtedness is deductible pursuant to the Internal Revenue Code as an interest expense on a qualified primary or secondary residence also is a primary or secondary residence for purposes of ad valorem property taxation in this State. The fair market value of a motor home or trailer used for camping and recreational travel that is pulled by a motor vehicle classified for property tax purposes as a primary or secondary residence pursuant to this section must be determined in the manner that motor vehicles are valued for property tax purposes.

(B)(1) A person who owns a boat or watercraft that contains a cooking area with an onboard power source, a toilet with exterior evacuation, and a sleeping quarter, may claim one boat or watercraft as a primary residence and one boat or watercraft as a secondary residence for purposes of ad valorem property taxation in this State. The fair market value of the boat or watercraft classified for property tax purposes as a primary or secondary residence pursuant to this section must be determined in the manner that motor vehicles are valued for property tax purposes. A boat or watercraft classified for property tax purposes as a primary or secondary residence pursuant to this section is not a watercraft or motor for purposes of Section 12-37-220(B)(38).

(2) Only an individual may claim a qualifying boat or watercraft as his primary residence for purposes of ad valorem property taxation. The individual or his agent must certify the qualifying boat or watercraft as his primary residence pursuant to Section

12-43-220(c)(2)(ii). Additionally, the individual or his agent must provide any proof the assessor requires pursuant to Section 12-43-220(c)(2)(iv). One other qualifying boat or watercraft owned by an individual that cannot be considered a primary residence, or one other qualifying boat or watercraft owned by another person shall be considered a secondary residence for purposes of ad valorem property taxation.

(3) For purposes of this subsection a person includes an individual, a sole proprietorship, partnership, and an 'S' corporation, including a limited liability company taxed as sole proprietorship, partnership, or 'S' corporation."

Transfer of title to watercraft subject to delinquent property tax, criminal penalty, civil remedy

SECTION 4. Section 50-23-295 of the 1976 Code, as last amended by Act 91 of 2007, is further amended to read:

"Section 50-23-295. (A) A certificate of title to watercraft or an outboard motor may not be transferred if the department has notice that property taxes for property tax years beginning after 1999, are owed on the watercraft or outboard motor. If transfer of title has been denied pursuant to this section, a tax receipt on the watercraft or outboard motor from the person officially charged with the collection of ad valorem taxes in the county where the taxes are due must be accepted as proof that the taxes have been paid. The bill of sale or title to watercraft or an outboard motor must require certification that property taxes that are due and payable for property tax years beginning after 1999, have been paid and are current as of the date of sale.

(B) A person who knowingly sells a watercraft for which he owes unpaid and outstanding property taxes, or on which he knows there is a property tax lien, is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than thirty days. In addition to all applicable criminal penalties, a seller who falsely signs the certification required by subsection (A), that property taxes are current and paid on a watercraft transferred to the buyer, is liable to the buyer for three times the amount of damages directly associated with the false certification, as well as applicable costs and reasonable attorney's fees.

(C) The county treasurer or other appropriate official annually, or more frequently as the county considers appropriate, shall transmit a list of delinquent taxes due on watercraft and outboard motors to the

department. The list may be transmitted in any electronic format considered acceptable by the department."

Time effective

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

Ratified the 7th day of June, 2010.

Vetoed by the Governor -- 6/11/2010.
Veto overridden by Senate -- 6/16/2010.
Veto overridden by House -- 6/16/2010.

No. 280

(R302, S717)

AN ACT TO AMEND SECTION 12-36-2120, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO SALES TAX EXEMPTIONS, SO AS TO EXEMPT MACHINERY, EQUIPMENT, BUILDING AND OTHER RAW MATERIALS, AND ELECTRICITY USED BY A FACILITY OWNED BY A TAX EXEMPT ORGANIZATION INVESTING AT LEAST TWENTY MILLION DOLLARS OVER THREE YEARS IN THE FACILITY WHEN THAT FACILITY IS USED PRINCIPALLY FOR RESEARCHING AND TESTING THE IMPACT OF NATURAL HAZARDS SUCH AS WIND, FIRE, EARTHQUAKE, AND HAIL ON BUILDING MATERIALS USED IN RESIDENTIAL, COMMERCIAL, AND AGRICULTURAL BUILDINGS.

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

Sales tax exemption, certain research and testing equipment

SECTION 1. Section 12-36-2120 of the 1976 Code, as last amended by Act 124 of 2009, is further amended by adding a new item at the end appropriately numbered to read:

"( ) machinery and equipment, building and other raw materials, and electricity used in the operation of a facility owned by an organization which qualifies as a tax exempt organization pursuant to the Internal Revenue Code Section 501(c)(3) when the facility is principally used for researching and testing the impact of such natural hazards as wind, fire, water, earthquake, and hail on building materials used in residential, commercial, and agricultural buildings. To qualify for this exemption, the taxpayer shall notify the department of its intent to qualify and shall invest at least twenty million dollars in real or personal property at a single site in this State over the three-year period beginning on the date provided by the taxpayer to the department in its notices. After the taxpayer notifies the department of its intent to qualify and use the exemption, the department shall issue an appropriate exemption certificate to the taxpayer to be used for qualifying purposes. Within six months of the third anniversary of the taxpayer's first use of the exemption, the taxpayer shall notify the department in writing that it has met the twenty million dollar investment requirement or, that it has not met the twenty million dollar investment requirement. The department may assess any tax due on the machinery and equipment purchased tax free pursuant to this item but due the State as a result of the taxpayer's failure to meet the twenty million dollar investment requirement. The running of the periods of limitations for assessment of taxes provided in Section 12-54-85 is suspended for the time period beginning with notice to the department before the taxpayer uses the exemption and ending with notice to the department that the taxpayer either has met or has not met the twenty million dollar investment requirement."

Time effective

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

Ratified the 7th day of June, 2010.

Vetoed by the Governor -- 6/11/2010.
Veto overridden by Senate -- 6/16/2010.
Veto overridden by House -- 6/16/2010.

No. 281

(R303, S783)

AN ACT TO AMEND SECTION 51-13-720, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO MEMBERS OF THE GOVERNING BOARD OF THE PATRIOTS POINT DEVELOPMENT AUTHORITY, SO AS TO PROVIDE FOR THREE ADDITIONAL MEMBERS OF THE BOARD AND THE MANNER OF THEIR TERMS AND APPOINTMENT.

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

Additional board members

SECTION 1. Section 51-13-720 of the 1976 Code, as last amended by Act 2 of 1993, is further amended to read:

"Section 51-13-720. (A) Members of the authority must be appointed by the Governor as follows: one upon the joint recommendation of the Chairman of the House Ways and Means Committee and the Speaker of the House, one upon the joint recommendation of the Chairman of the Senate Finance Committee and the President Pro Tempore of the Senate, and three to be appointed by the Governor. The Governor shall appoint the chairman. The terms of the members are for four years and until their successors are appointed and qualify. Members may succeed themselves. Vacancies must be filled in the same manner of the original appointment for the remainder of the unexpired term.

(B) In addition to the members of the board provided in subsection (A), there shall be three additional members of the board appointed by the Governor, one appointed upon recommendation of the President Pro Tempore of the Senate, one appointed upon recommendation of the Speaker of the House of Representatives, and one appointed upon recommendation of the State Adjutant General. These three members shall serve for four years and until their successors are appointed and qualify, and vacancies must be filled in the manner of original appointment for the remainder of the unexpired term."

Time effective

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

Ratified the 7th day of June, 2010.

Vetoed by the Governor -- 6/11/2010.
Veto overridden by Senate -- 6/16/2010.
Veto overridden by House -- 6/16/2010.

No. 282

(R305, S950)

AN ACT TO AMEND SECTIONS 5-37-20, 5-37-35, 5-37-40, AS AMENDED, 5-37-50, AS AMENDED, AND 5-37-100, CODE OF LAWS OF SOUTH CAROLINA, 1976, ALL RELATING TO THE MUNICIPAL IMPROVEMENT DISTRICT ACT, SO AS TO CLARIFY THAT AN EASEMENT FOR MAINTENANCE IN CHANNELS, CANALS, OR WATERWAYS IS SUFFICIENT PROPERTY INTEREST TO PROCEED WITH AN ASSESSED DISTRICT; TO AUTHORIZE SOME PORTION OF THE BONDS ISSUED TO FUND ASSESSMENTS MAY BE BACKED BY THE TAXING POWER OF A MUNICIPALITY; AND TO PROVIDE AN EXCEPTION OF AN OWNER OF RESIDENTIAL PROPERTY TO BE REQUIRED TO CONSENT TO INCLUSION IN AN IMPROVEMENT DISTRICT WHEN THE SOLE IMPROVEMENTS ARE THE WIDENING AND DREDGING OF CANALS.

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

Definition of "improvements"

SECTION 1. Section 5-37-20(2) of the 1976 Code is amended to read:

"(2) 'Improvements' include open or covered malls, parkways, parks and playgrounds, recreation facilities, athletic facilities, pedestrian facilities, parking facilities, parking garages, and underground parking

facilities, and facade redevelopment, the widening and dredging of existing channels, canals, and waterways used specifically for recreational or other purposes provided that the municipality, the State, or other public entity owns fee simple title or an easement for maintenance in these channels, canals, or waterways, the relocation, construction, widening, and paving of streets, roads, and bridges, including demolition of them, underground utilities, all activities authorized by Chapter 1, Title 31 (State Housing Law), a building or other facilities for public use, a public works eligible for financing pursuant to the provisions of Section 6-21-50, services or functions which a municipality in accordance with state law may by law provide, and all things incidental to the improvements, including planning, engineering, administration, managing, promotion, marketing, and acquisition of necessary easements and land, and may include facilities for lease or use by a private person, firm, or corporation. However, improvements as defined in this chapter must comply with all applicable state and federal laws and regulations governing these activities. These improvements may be designated by the governing body as public works eligible for revenue bond financing pursuant to Section 6-21-50, and these improvements, taken in the aggregate, may be designated by the governing body as a 'system' of related projects within the meaning of Section 6-21-40. The governing body of a municipality, after due investigation and study, may determine that improvements located outside the boundaries of an improvement district confer a benefit upon property inside an improvement district or are necessary to make improvements within the improvement district effective for the benefit of property inside the improvement district."

Bonds may be secured by taxing power of municipality

SECTION 2. Section 5-37-35 of the 1976 Code is amended to read:

"Section 5-37-35. (A) Notwithstanding the provisions of Section 5-37-30, assessments, revenues, or debt service on bonds which may be used under this chapter to fund municipal improvements must not impose or be derived from, in whole or in part, a tax or assessment on property not located in the improvement district. Bonds issued pursuant to Section 5-37-30, however, may be made payable from assessments imposed on property located in the improvement district, and may be additionally secured, in whole or in part, by the full faith, credit, and taxing power of the municipality, if the governing body of the municipality certifies on the date of issuance of the bonds that the

assessments as imposed are sufficient as to both amount and duration to pay all debt service on these bonds as they become due.

(B) The provisions of this section do not apply to projects or undertakings designated by a municipal governing body as a 'system' pursuant to Section 6-21-40."

Improvement district, widening and dredging canals

SECTION 3. Sections 5-37-40(A)(5) and (B) of the 1976 Code, as last amended by Act 109 of 2005, is further amended to read:

"(5) it would be fair and equitable to finance all or part of the cost of the improvements by an assessment upon the real property within the district, the governing body may establish the area as an improvement district and implement and finance, in whole or in part, an improvement plan in the district in accordance with the provisions of this chapter. However, except in the case of an improvement district in which the sole improvements are the widening and dredging of canals, owner-occupied residential property which is taxed or will be taxed pursuant to Section 12-43-220(c) must not be included within an improvement district unless the owner at the time the improvement district is created gives the governing body written permission to include the property within the improvement district.

(B) If an improvement district is located in a redevelopment project area created pursuant to Chapter 6, Title 31, the improvement district being created under the provisions of this chapter must be considered to satisfy items (1) through (5) of subsection (A). The ordinance creating an improvement district may be adopted by a majority of council after a public hearing at which the plan is presented, including the proposed basis and amount of assessment, or upon written petition signed by a majority in number of the owners of real property within the district which is not exempt from ad valorem taxation as provided by law. However, except in the case of an improvement district in which the sole improvements are the widening and dredging of canals, owner-occupied residential property which is taxed or will be taxed pursuant to Section 12-43-220(c) must not be included within an improvement district unless the owner at the time the improvement district is created gives the governing body written permission to include the property within the improvement district."

Description of improvement district

SECTION 4. Section 5-37-50 of the 1976 Code, as last amended by Act 109 of 2009, is further amended to read:

"Section 5-37-50. The governing body, by resolution adopted, shall describe the improvement district and the improvement plan to be effected, including a property within the improvement district to be acquired and improved, the projected time schedule for the accomplishment of the improvement plan, the estimated cost and the amount of the cost to be derived from assessments, bonds, or other general funds, together with the proposed basis and rates of assessments to be imposed within the improvement district. However, except in the case of an improvement district in which the sole improvements are the widening and dredging of canals, owner-occupied residential property which is taxed or will be taxed pursuant to Section 12-43-220(c) must not be included within an improvement district unless the owner at the time the improvement district is created gives the governing body written permission to include the property within the improvement district. The resolution also shall establish the time and place of a public hearing to be held within the municipality not sooner than twenty days nor more than forty days following the adoption of the resolution at which an interested person may attend and be heard either in person or by attorney on a matter in connection with the improvement district."

Creation of improvement district

SECTION 5. Section 5-37-100 of the 1976 Code is amended to read:

"Section 5-37-100. Not sooner than ten days nor more than one hundred twenty days following the conclusion of the public hearing provided in Section 5-37-50, the governing body, by ordinance, may provide for the creation of the improvement district as originally proposed or with the changes and modifications in it as the governing body may determine, and provide for the financing by assessment, bonds, or other revenues as provided in this chapter. However, except in the case of an improvement district in which the sole improvements are the widening and dredging of canals, owner-occupied residential property which is taxed pursuant to Section 12-43-220(c) must not be included within an improvement district unless the owner gives the governing body written permission to include the property within the

improvement district. The ordinance may not become effective until at least seven days after it has been published in a newspaper of general circulation in the municipality. The ordinance may incorporate by reference plats and engineering reports and other data on file in the offices of the municipality. The place of filing and reasonable hours for inspection must be made available to all interested persons."

Time effective

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

Ratified the 7th day of June, 2010.

Vetoed by the Governor -- 6/11/2010.
Veto overridden by Senate -- 6/16/2010.
Veto overridden by House -- 6/16/2010.

No. 283

(R322, H4172)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 4-1-180 SO AS TO PROVIDE FOR THE MANNER IN WHICH A COUNTY GOVERNING BODY MAY INSTITUTE AN EMPLOYEE FURLOUGH PROGRAM, AND TO PROVIDE THAT THE PROVISIONS OF THIS SECTION DO NOT PRECLUDE A COUNTY FROM IMPLEMENTING OTHER FURLOUGH PROGRAMS NOT IN CONFORMITY WITH THE REQUIREMENTS OF THIS SECTION.

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

Employee furlough program

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

"Section 4-1-180. (A) In a fiscal year in which the governing body of a county determines that an employee furlough is necessary, the

governing body may institute employee furlough programs of not more than ten working days in the fiscal year pursuant to this section. The furlough must be inclusive of all employees of the county or within a designated department, agency or program of the county regardless of source of funds or place of work, including all employees in the designated area. If the county will incur costs for overtime under the federal Fair Labor Standards Act, law enforcement employees and correctional employees may be exempted from a mandatory furlough. Employees who provide direct patient or client care and front-line employees who deliver direct customer services also may be exempted from the mandatory furlough. During this furlough, affected employees shall be entitled to participate in the same benefits as otherwise available to them except for receiving their salaries. As to those benefits that require employer and employee contributions, including, but not limited to, contributions to the South Carolina retirement systems or the optional retirement program, the county is responsible for making both employer and employee contributions if coverage would otherwise be interrupted; and as to those benefits which require only employee contributions, the employee remains solely responsible for making those contributions.

(B) A governing body of a county may implement an employee furlough in any other manner authorized by law without participating in the mandatory furlough program authorized by this section and without being subject to the provisions set forth in this section including the provisions related to the South Carolina retirement systems.

(C) A county governing body which implemented a furlough program on or after January 1, 2009, the terms of which were consistent with the requirements of the mandatory furlough program established pursuant to this section, may, during the fiscal year in which the provisions of this section take effect, make any employee and employer contributions necessary to ensure that a furloughed employee's benefits were not interrupted as a result of the furlough."

Time effective

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

Ratified the 7th day of June, 2010.

Vetoed by the Governor -- 6/11/2010.
Veto overridden by House -- 6/15/2010.
Veto overridden by Senate -- 6/16/2010.

No. 284

(R340, S304)

AN ACT TO AMEND SECTION 6-1-760, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO MUNICIPAL OR COUNTY ORDINANCES IMPOSING AN ACCOMMODATIONS FEE AND THE USE OF THE REVENUE FROM THE FEES INCLUDING THE ISSUANCE OF CERTAIN BONDS SO AS TO PROVIDE THAT THE PROCEEDS OF LOCAL ACCOMMODATIONS FEES, HOSPITALITY FEES, AND STATE ACCOMMODATIONS FEES MAY BE PLEDGED AS SECURITY FOR THE PAYMENT OF BONDS FOR CAPITAL PROJECTS USED TO ATTRACT AND SUPPORT TOURISTS; AND TO AMEND SECTION 6-4-10, RELATING TO STATE ACCOMMODATIONS TAXES, SO AS TO PROVIDE THAT REVENUES ALLOCATED FOR TOURISM ADVERTISING AND PROMOTION MAY NOT BE PLEDGED AS SECURITY FOR CERTAIN BONDS OR TO RETIRE SUCH BONDS.

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

"Tourist" defined, pledge of revenue of fees

SECTION 1. Section 6-1-760 of the 1976 Code is amended to read:

"Section 6-1-760. (A) With respect to capital projects and as used in this section, 'tourist' means a person who does not reside in but rather enters temporarily, for reasons of recreation or leisure, the jurisdictional boundaries of a municipality for a municipal project or the immediate area of the project for a county project.

(B) Notwithstanding any provision of this article, any ordinance enacted by county or municipality prior to March 15, 1997, imposing an accommodations fee which does not exceed the three percent maximum cumulative rate prescribed in Section 6-1-540, is calculated

upon a base consistent with Section 6-1-510(1), and the revenue from which is used for the purposes enumerated in Section 6-1-530, remains authorized and effective after the effective date of this section. Any county or municipality is authorized to issue bonds, pursuant to Section 14(10), Article X of the Constitution of this State, utilizing the procedures of Section 4-29-68, Section 6-17-10 and related sections, or Section 6-21-10 and related sections, for the purposes enumerated in Section 6-1-530, to pledge as security for such bonds and to retire such bonds with the proceeds of accommodations fees imposed under Article 5 of this chapter, hospitality fees imposed under this chapter, state accommodations fees allocated pursuant to Section 6-4-10(1), (2), and (4), or any combination thereof, and the pledge of such other nontax revenues as may be available for those purposes for capital projects used to attract and support tourists."

State accommodations tax, use of revenues

SECTION 2. Section 6-4-10(3) of the 1976 Code is amended to read:

"(3) Thirty percent of the balance must be allocated to a special fund and used only for advertising and promotion of tourism to develop and increase tourist attendance through the generation of publicity. To manage and direct the expenditure of these tourism promotion funds, the municipality or county shall select one or more organizations, such as a chamber of commerce, visitor and convention bureau, or regional tourism commission, which has an existing, ongoing tourist promotion program. If no organization exists, the municipality or county shall create an organization with the same membership standard in Section 6-4-25. To be eligible for selection the organization must be organized as a nonprofit organization and shall demonstrate to the municipality or county that it has an existing, ongoing tourism promotion program or that it can develop an effective tourism promotion program. Immediately upon an allocation to the special fund, a municipality or county shall distribute the tourism promotion funds to the organizations selected or created to receive them. Before the beginning of each fiscal year, an organization receiving funds from the accommodations tax from a municipality or county shall submit for approval a budget of planned expenditures. At the end of each fiscal year, an organization receiving funds shall render an accounting of the expenditure to the municipality or county which distributed them. Fees allocated pursuant to this subsection must not be used to pledge as security for bonds and to retire bonds. Also, fees allocated pursuant to this subsection must be

allocated to a special fund and used only for advertising and promotion of tourism to develop and increase tourist attendance through the generation of publicity, and not used to pledge as security for bonds and to retire bonds."

Time effective

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

Ratified the 21st day of June, 2010.

Became law without the signature of the Governor -- 6/28/2010.

No. 285

(R343, S1051)

AN ACT TO AMEND SECTION 48-39-290, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO RESTRICTIONS, EXCEPTIONS, AND SPECIAL PERMITS CONCERNING CONSTRUCTION AND RECONSTRUCTION SEAWARD OF THE BASELINE OR BETWEEN THE BASELINE AND THE SETBACK LINE, SO AS TO REVISE THE DESCRIPTION OF A PRIVATE ISLAND WITH AN ATLANTIC SHORELINE, WHICH IS EXEMPT FROM THE PROVISIONS THAT DO NOT ALLOW NEW EROSION CONTROL STRUCTURES SEAWARD OF THE SETBACK LINE AND TO PROVIDE THAT THE BASELINE OF THIS ISLAND IS AT THE LANDWARD EDGE OF THE EROSION CONTROL DEVICE AND THAT THE SETBACK LINE IS TWENTY FEET LANDWARD OF THE BASELINE; AND BY ADDING SECTION 48-39-45 SO AS TO CREATE THE COASTAL ZONE MANAGEMENT ADVISORY COUNCIL TO THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL'S OFFICE OF OCEAN AND COASTAL RESOURCES MANAGEMENT AND TO PROVIDE FOR ITS MEMBERS, POWERS, AND DUTIES IN IMPLEMENTING THE SOUTH CAROLINA COASTAL ZONE MANAGEMENT ACT.

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

Baseline and setback lines established

SECTION 1. Section 48-39-290(B)(2)(e) of the 1976 Code is amended to read:

"(e) Subitem (a) does not apply to a private island with an Atlantic Ocean shoreline of twenty thousand, two hundred ten feet which is entirely revetted with existing erosion control devices. Nothing contained in this subitem makes this island eligible for beach renourishment funds. For a private island with an Atlantic Ocean shoreline of twenty thousand, two hundred ten feet which is entirely revetted with existing erosion control devices, the baseline is established for this private island at the landward edge of the erosion control device and the setback line is established twenty feet landward of the baseline."

Advisory council created

SECTION 2. Chapter 39, Title 48 of the 1976 Code is amended by adding:

"Section 48-39-45. (A)(1) On July 1, 2010, there is created the Coastal Zone Management Advisory Council that consists of fourteen members, which shall act as an advisory council to the department's Office of Ocean and Coastal Resources Management.

(2) The members of the council must be constituted as follows:

(a) eight members, one from each coastal zone county, to be elected by a majority vote of the members of the House of Representatives and a majority vote of the Senate members representing the county from three nominees submitted by the governing body of each coastal zone county, each House or Senate member to have one vote; and

(b) six members, one from each of the congressional districts of the State, to be elected by a majority vote of the members of the House of Representatives and the Senate representing the counties in that district, each House or Senate member to have one vote.

(3) The council shall elect a chairman, vice chairman, and other officers it considers necessary.

(B) Terms of all members are for four years and until successors are appointed and qualified. A vacancy must be filled in the original manner of selection for the remainder of the unexpired term.

(C) Members of the council may not be compensated for their services and are not entitled to mileage, subsistence, or per diem as provided by law for members of state boards, committees, and commissions and are not entitled to reimbursement for actual and necessary expenses incurred in connection with and as a result of their service on the council.

(D)(1) The council shall provide advice and counsel to the staff of the Office of Ocean and Coastal Resources Management in implementing the provisions of the South Carolina Coastal Zone Management Act. The department and the public may bring a matter concerning implementation of the provisions of this act by operation of its permitting and certification process, including the promulgation of regulations, to the council's attention.

(2) The council shall meet at the call of the chairman.

(3) Advice and counsel of the council is not binding on the department."

Time effective

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

Ratified the 21st day of June, 2010.

Became law without the signature of the Governor -- 6/28/2010.

No. 286

(R346, H3541)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 50-9-665 SO AS TO PROVIDE THAT A HUNTER MUST OBTAIN A BEAR TAG IN ORDER TO TAKE A BEAR AND TO PROVIDE THE PROCEDURES AND FEES FOR OBTAINING THESE TAGS; BY ADDING SECTION 50-11-435 SO AS TO PROHIBIT TAKING OR ATTEMPTING TO TAKE A BEAR WEIGHING LESS THAN ONE HUNDRED POUNDS AND PROVIDE

CRIMINAL PENALTIES; TO AMEND SECTION 50-9-920, AS AMENDED, RELATING TO REVENUE FROM THE SALE OF LIFETIME LICENSES, SO AS TO DESIGNATE THE USES FOR REVENUE GENERATED FROM THE SALE OF BEAR TAGS; TO AMEND SECTION 50-11-310, AS AMENDED, RELATING TO THE OPEN SEASON FOR ANTLERED DEER, SO AS TO DESIGNATE WHEN ARCHERY AND FIREARMS MAY BE USED IN GAME ZONE 1; TO AMEND SECTION 50-11-430, RELATING TO THE OPEN SEASON FOR TAKING BEAR IN GAME ZONE 1 AND PENALTIES FOR VIOLATIONS, SO AS TO REVISE THE DATES OF THIS SEASON AND PROVIDE REQUIREMENTS FOR PARTY HUNTS; TO AUTHORIZE THE DEPARTMENT OF NATURAL RESOURCES TO ESTABLISH REQUIREMENTS FOR THE TAKING AND HUNTING OF BEAR IN ALL OTHER GAME ZONES; TO REQUIRE BEAR TAGS; AND TO REVISE VARIOUS BEAR TAKING REQUIREMENTS AND PROHIBITIONS; AND TO REPEAL SECTION 50-11-380 RELATING TO THE TAKING OF ANTLERLESS DEER.

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

Bear tags

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

"Section 50-9-665. (A) For the privilege of taking bear, in addition to the required hunting license and big game permit a hunter must obtain a bear tag issued in his name, and the fee:

(1) for a resident is twenty-five dollars per tag, one dollar of which may be retained by the license sales vendor;

(2) for a nonresident is one hundred dollars per tag, two dollars of which may be retained by the license sales vendor.

(B) In game zones other than Game Zone 1, applicants for bear tags must be chosen by a random drawing. The application fee is ten dollars per applicant and is nonrefundable. Tags are only valid for the specified game zone.

(C) Youth under the age of sixteen are required to obtain youth tags for bear from the department at its designated licensing locations at no cost."

Weight restriction on bear taken; penalties

SECTION 2. Article 3, Chapter 11, Title 50 of the 1976 Code is amended by adding:

"Section 50-11-435. It is unlawful to take or attempt to take a bear of less than one hundred pounds. A person violating 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, or both. In addition, each person convicted of a violation of this section may be required to pay restitution to the department of not more than one thousand five hundred dollars for each bear that is taken in violation of this section."

Use of bear tag revenue

SECTION 3. Section 50-9-920 of the 1976 Code, as last amended by Act 183 of 2010, is further amended by adding at the end:

"( ) Revenue generated from the sale of bear tags and application fees must be used to administer the tag program, protect bear habitat, and support bear research and management."

Open season for hunting antlered deer

SECTION 4. Section 50-11-310(A) of the 1976 Code, as last amended by Act 286 of 2008, is further amended to read:

"(A) The open season for hunting and taking antlered deer is:

(1) In Game Zone 1: October 1 through October 10, with primitive weapons only; October 11 through October 16, with archery equipment and firearms; October 17 through October 30, with archery equipment only; and October 31 through January 1, with archery equipment and firearms.

(2) In Game Zone 2: September 15 through September 30, with archery equipment only; October 1 through October 10, with primitive weapons only; October 11 through January 1, with archery equipment and firearms.

(3) In Game Zone 3: August 15 through January 1, with archery equipment and firearms.

(4) In Game Zone 4: September 1 through September 14, with archery equipment; and September 15 through January 1, with archery equipment and firearms.

(5) In Game Zone 5: August 15 through August 31, with archery equipment; and September 1 through January 1, with archery equipment and firearms.

(6) In Game Zone 6: August 15 through January 1, with archery equipment and firearms."

Open season for hunting bear

SECTION 5. Section 50-11-430 of the 1976 Code is amended to read:

"Section 50-11-430. (A)(1) The open season for hunting and taking bear in Game Zone 1 for still gun hunts is October 17 through October 23; for party dog hunts is October 24 through October 30. A party dog hunt in Game Zone 1 may not exceed twenty-five participants per party and shall register with the department by September first. Party participants, except those not required to have licenses shall submit their hunting license number in order to register.

(2) In all other game zones, the General Assembly finds it in the best interest of the State to allow the taking of black bear under strictly controlled conditions and circumstances. The department may establish a bear management program that allows for hunting and selective removal of bear in order to provide for the sound management of the animals and to ensure the continued viability of the species. The department must set the conditions for taking, including methods of take, areas, times, and seasons, and other conditions to properly control the harvest of bear. The department may issue bear permits to allow hunting and taking of bear in any game zone where bear occur. In Game Zones 2, 3, 4, 5, and 6, a person desiring to hunt and take bear must apply to the department. The application fee is ten dollars and is nonrefundable. Successful applicants must be randomly selected for the permit, and must pay a twenty-five dollar fee for residents and one-hundred dollar fee for nonresidents.

(B) In Game Zones 2, 3, 4, 5, and 6 where the department declares an open season, the department shall promulgate regulations necessary to properly control the harvest of bear.

(C) Any bear taken must be tagged with a valid bear tag and reported to the department. The tag must be attached to the bear as prescribed by the department before being moved from the point of kill.

(D) It is unlawful to:

(1) hunt, take, or attempt to take a bear except during the open season;

(2) possess an untagged bear;

(3) take more than one bear per person during all seasons. In Game Zone 1 a registered party dog hunt may take up to five bear per season per party; a person who has taken a bear during the season may participate in a registered party hunt as long as the hunting license shows the bear tag endorsement, but the person may not take another bear;

(4) take or attempt to take a sow bear with cubs;

(5) possess or transport a freshly killed bear or bear part except during the open season for hunting and taking bear. This prohibition does not apply to bear lawfully taken in other jurisdictions. The department may issue a special permit for possession or transportation of a freshly killed bear or bear part outside of the season;

(6) possess a captive bear except pursuant to a permit issued by the department. A violation of the terms of the permit may result in revocation or a civil penalty of up to five thousand dollars, or both. An appeal must be made in accordance with the Administrative Procedures Act;

(7) pursue bear with dogs; except during the open season for hunting and taking bear with dogs;

(8) hunt or take bear by the use or aid of bait; or attempt to hunt or take bear by use or aid of bait; hunt or take bear on or over a baited area. As used in this item:

(a) 'Bait' means salt or shelled, shucked, or unshucked corn, wheat or other grain, or other foodstuffs that could constitute a lure, attraction, or enticement for bear.

(b) 'Baiting' or 'to bait' means placing, depositing, exposing, distributing, or scattering bait.

(c) 'Baited area' means an area where bait is directly or indirectly placed, exposed, deposited, distributed, or scattered, and the area remains a baited area for ten days following complete removal of all bait. Nothing in this section prohibits the hunting and taking of bear on or over lands or areas that are not otherwise baited and where:

(i) there are standing crops on the field where grown, including crops grown for wildlife management purposes; or

(ii) 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;

(9) buy, sell, barter, or exchange or attempt to buy, sell, barter, or exchange a bear or bear part;

(10) take or attempt to take a bear from a watercraft or other water conveyance or molest, take, or attempt to take a bear while the bear is swimming in a lake or river.

(E)(1) Each of the acts provided for in subsection (D) is a violation of this section and is a separate offense.

(2) A person violating the provisions of this section is guilty of a misdemeanor and, upon conviction, must be fined not more than two thousand five hundred dollars or imprisoned not more than two years, or both. Hunting and fishing privileges of a person convicted under the provisions of this section must be suspended for three years. In addition, each person convicted of a violation of this section shall pay restitution to the department of not less than one thousand five hundred dollars for each bear or bear part that is the subject of a violation of this section."

Section repealed

SECTION 6. Section 50-11-380 of the 1976 Code is repealed.

Time effective

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

Ratified the 21st day of June, 2010.

Vetoed by the Governor -- 6/25/2010.
Veto overridden by House -- 6/29/2010.
Veto overridden by Senate -- 6/29/2010.

No. 287

(R272, H3790)

AN ACT TO AMEND SECTION 40-58-20, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO CERTAIN DEFINITIONS PERTAINING TO THE LICENSURE OF MORTGAGE BROKERS, SO AS TO DEFINE A "QUALIFIED LOAN ORIGINATOR"; TO AMEND SECTION

40-58-50, AS AMENDED, RELATING TO QUALIFIED LOAN ORIGINATORS, SO AS TO REQUIRE LICENSURE FOR A QUALIFIED LOAN ORIGINATOR, TO PROVIDE APPLICATIONS PROCEDURES AND QUALIFICATION REQUIREMENTS; TO AMEND SECTION 37-3-501, AS AMENDED, RELATING TO THE DEFINITION OF A SUPERVISED LOAN, SO AS TO PROVIDE EXCEPTIONS TO THIS DEFINITION; AND TO AMEND SECTION 37-3-503, RELATING TO A LICENSE TO MAKE A SUPERVISED LOAN, SO AS TO PROHIBIT A PERSON LICENSED TO MAKE A SUPERVISED LOAN FROM ENGAGING IN CERTAIN CLOSED-END CREDIT TRANSACTIONS, AND TO PROVIDE GRADUATED PENALTIES FOR VIOLATIONS.

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

Definitions pertaining to the licensing of mortgage brokers; "Qualified Loan Originator" defined

SECTION 1. Section 40-58-20 of the 1976 Code, as last amended by Act 67 of 2009, is further amended by adding at the end:

"(40) 'Qualified loan originator' means a natural person who acts as a loan originator exclusively for a mortgage broker licensee and who is not an employee of the mortgage broker. Unless otherwise indicated, a qualified loan originator is subject to the requirements of a loan originator under this chapter."

Licensure required for qualified loan originator; application procedures, requirements

SECTION 2. Section 40-58-50 of the 1976 Code, as last amended by Act 67 of 2009, is further amended by adding at the end:

"(E)(1) A person may not act as a qualified loan originator in this State without first being licensed with the administrator. It is unlawful for a person to employ, to compensate, or to appoint as its agent a qualified loan originator unless the qualified loan originator is licensed pursuant to this chapter. The license of a qualified loan originator is not effective during any period when that person is not supervised pursuant to an exclusive written contract by a mortgage broker licensed pursuant to this chapter. When a qualified loan originator ceases to be

supervised by a licensed mortgage broker, the qualified loan originator and the mortgage broker 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 qualified loan originator's exclusive written contract. The reason for termination is confidential information and may not be released to the public.

(2) An application to become licensed as a qualified loan originator must be in writing, under oath, and in a form prescribed by the administrator. The application must contain any and all information in Sections 40-58-50(A) and (C) and be accompanied by a nonrefundable annual licensing fee of one hundred dollars. Additionally, the applicant must:

(a) meet the requirements of Section 40-58-50(C);

(b) meet the surety bond requirement of a mortgage broker pursuant to Section 40-58-40. Principal on the surety is the qualified loan originator;

(c) act as an agent for a single mortgage broker licensee, who:

(i) is responsible for supervising the qualified loan originator as required by this chapter and in accordance with a plan of supervision approved by the administrator in the administrator's sole discretion;

(ii) signs the license application of the applicant; and

(iii) is jointly and severally liable with the qualified loan originator for any claims arising from the qualified loan originator's mortgage origination activities.

(3) Pursuant to Section 40-58-110, a qualified loan originator license expires on December thirty-first and must be renewed pursuant to that section and accompanied by a nonrefundable annual licensing fee of one hundred dollars.

(4) Each office location of a qualified loan originator is a branch office of the supervising mortgage broker licensee, and must be operated as any other branch office pursuant to this chapter.

(5) In addition to the activities prohibited by other provisions of state or federal law, it is unlawful for a qualified loan originator to:

(a) be compensated on a basis that is dependent upon the interest rate, fees, or other terms of the loan originated, provided that this section does not prohibit compensation based on the principal balance of the loan;

(b) offer loans other than fixed-term, fixed-rate, fully amortizing mortgage loans originated for a single mortgage lender with substantially equal monthly mortgage payments and without a prepayment penalty;

(c) handle borrower or other third-party funds in connection with the origination of mortgage loans.

(6) Unless otherwise indicated, a qualified loan originator is subject to the requirements of a loan originator under this chapter."

Interpretation, application, and amendment of provisions of act conflicting with SAFE Act

SECTION 3. 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. If any provision of this act cannot be interpreted, applied, or amended in such a way so as to comply with the SAFE Act, that provision must be severed from the act and shall not affect the remainder of the act's compliance with 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.

Definition of a supervised loan; exceptions added

SECTION 4.A. Section 37-3-501(1) of the 1976 Code, as last amended by Act 67 of 2009, is further 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) a mortgage loan as defined in Section 37-22-110(30); or

(b) a closed-end credit transaction, with an original repayment term of less than one hundred twenty days, unsecured by any interest in the consumer's personal property or secured by personal property, excluding motor vehicles that are free of any other liens or encumbrances, that does not have a market value that reasonably secures the amount of the loan, and the consumer:

(i) receives funds from and incurs interest or a fee payable to a creditor, and contemporaneously with, or any time after, the receipt of funds, provides a check or other payment instrument to the creditor

who agrees with the consumer not to deposit or present the check or payment instrument; or

(ii) receives funds from and incurs interest or a fee payable to a creditor, and contemporaneously with, or any time after, the receipt of funds, authorizes the creditor to initiate a debit or debits to the consumer's deposit account by electronic fund transfer or a remotely created check or remotely created consumer item as defined in Section 36-3-103(16).

The provisions of subitem (b) do not apply to credit unions, bank holding companies, banks, or financial institutions insured by the Federal Deposit Insurance Corporation."

License to make supervised loan; additional requirements imposed, penalties for violations added

B. Section 37-3-503(7) of the 1976 Code is amended to read:

"(7)(a) A licensee may conduct the business of making supervised loans only at or from any place of business for which he holds a license and not under any other name than that in the license. Sales or leases made pursuant to a lender credit card do not violate this subsection.

(b)(1) A person licensed to make supervised loans may not make or enter into a closed-end credit transaction, with an original repayment term of less than one hundred twenty days, unsecured by any interest in the consumer's personal property or secured by personal property, excluding motor vehicles that are free of any other liens or encumbrances, that does not have a market value that reasonably secures the amount of the loan, and the consumer:

(i) receives funds from and incurs interest or a fee payable to a creditor, and contemporaneously with, or any time after, the receipt of funds, provides a check or other payment instrument to the creditor who agrees with the consumer not to deposit or present the check or payment instrument; or

(ii) receives funds from and incurs interest or a fee payable to a creditor, and contemporaneously with, or any time after, the receipt of funds, authorizes the creditor to initiate a debit or debits to the consumer's deposit account by electronic fund transfer or a remotely created check or remotely created consumer item as defined in Section 36-3-103(16).

(2) The board shall impose the following penalties for violation of this item:

(a) a fine of five hundred dollars for the first violation;

(b) a fine of one thousand dollars for the second violation;

(c) permanent revocation of license for the third violation.

The board may not revoke a license issued pursuant to this chapter unless the licensee has been given notice and opportunity for hearing in accordance with the Administrative Procedures Act.

(3) In addition to the penalties required in item (2), the board or the court may order and impose civil penalties upon a person subject to the provisions of this article for violations of this article or its regulations in an amount not to exceed one thousand dollars for each violation. The board also may order repayment of unlawful or excessive fees charged to customers.

(c) The provisions of subsection (b)(1) do not apply to credit unions, bank holding companies, banks, or financial institutions insured by the Federal Deposit Insurance Corporation.

(d) A person licensed to make supervised loans that makes supervised loans secured by a motor vehicle that have an original repayment term of less than one hundred twenty days must comply with the provisions contained in Section 37-3-413."

Time effective

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

Ratified the 1st day of June, 2010.

Vetoed by the Governor -- 6/7/2010.
Veto overridden by House -- 6/15/2010.
Veto overridden by Senate -- 6/29/2010.

No. 288

(R323, H4187)

AN ACT TO AMEND SECTION 55-9-190, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE POWERS THAT AN ENTITY HAS TO ESTABLISH AN AIRPORT OR LANDING FIELD OR TO ACQUIRE, LEASE, OR SET APART PROPERTY FOR THAT PURPOSE, SO AS TO DELETE A PROVISION THAT LIMITS THE TERM OF A LEASE OF AIRPORTS OR LANDING FIELDS TO

PRIVATE PARTIES FOR OPERATION AND A PROVISION THAT LIMITS THE TERM THAT AN ENTITY MAY ASSIGN TO PRIVATE PARTIES FOR THE OPERATION SPACE, AREA, IMPROVEMENTS AND EQUIPMENT ON AN AIRPORT OR LANDING FIELD.

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

Lease and assignment of airports and landing fields to private parties

SECTION 1. Section 55-9-190(3) of the 1976 Code is amended to read:

"(3) Lease for a term such airports or landing fields to private parties for operation or lease or assign for a term to private parties for operation space, area, improvements and equipment on such airports or landing fields, provided in each case that in so doing the public is not deprived of its rightful, equal, and uniform use thereof."

Time effective

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

Ratified the 7th day of June, 2010.

Vetoed by the Governor -- 6/11/2010.
Veto overridden by House -- 6/15/2010.
Veto overridden by Senate -- 6/29/2010.

No. 289

(R324, H4202)

AN ACT TO AMEND SECTION 16-1-60, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO VIOLENT CRIMES, SO AS TO ADD CERTAIN OFFENSES TO THE LIST OF VIOLENT CRIMES INCLUDING TRAFFICKING IN PERSONS; TO AMEND SECTION 16-1-90, RELATING TO CRIME CLASSIFICATION, SO AS TO ADD

TRAFFICKING IN PERSONS TO THE LIST OF CLASS A FELONIES AND TO DELETE SECTION 16-3-930 FROM THE LIST OF CLASS D FELONIES; TO AMEND SECTION 16-3-20, AS AMENDED, RELATING TO MURDER, SO AS TO ADD TRAFFICKING IN PERSONS TO THE LIST OF STATUTORY AGGRAVATING CIRCUMSTANCES FOR WHICH A PERSON MAY RECEIVE THE DEATH PENALTY; TO AMEND SECTION 16-3-652 AND SECTION 16-3-655, AS AMENDED, RELATING TO CRIMINAL SEXUAL CONDUCT IN THE FIRST DEGREE AND CRIMINAL SEXUAL CONDUCT WITH A MINOR, RESPECTIVELY, BOTH SO AS TO ADD TRAFFICKING IN PERSONS TO THE PURVIEW OF THE STATUTE; TO AMEND SECTION 17-25-45, AS AMENDED, RELATING TO TWO STRIKES/THREE STRIKES FOR REPEAT OFFENDERS OF MOST SERIOUS AND SERIOUS OFFENSES, SO AS TO ADD CERTAIN CRIMES TO THE DELINEATED LIST OF MOST SERIOUS OFFENSES INCLUDING TRAFFICKING IN PERSONS; TO AMEND SECTION 23-3-430, AS AMENDED, AND SECTION 23-3-490, RELATING TO THE SEX OFFENDER REGISTRY AND PUBLIC INSPECTION OF THE SEX OFFENDER REGISTRY, RESPECTIVELY, BOTH SO AS TO ADD TRAFFICKING IN PERSONS TO THE DELINEATED LIST OF OFFENSES UNDER CERTAIN CIRCUMSTANCES; TO AMEND SECTION 23-3-535 AND SECTION 23-3-540, BOTH AS AMENDED, RELATING TO LIMITATIONS ON SEX OFFENDERS AND ELECTRONIC MONITORING OF SEX OFFENDERS, RESPECTIVELY, BOTH SO AS TO ADD TRAFFICKING IN PERSONS TO THE DELINEATED LIST OF OFFENSES UNDER CERTAIN CIRCUMSTANCES; AND TO AMEND SECTION 44-53-370, AS AMENDED, RELATING TO DISTRIBUTION AND TRAFFICKING IN CERTAIN DRUGS, SO AS TO ADD TRAFFICKING IN PERSONS TO THE DELINEATED LIST OF OFFENSES.

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

Violent crimes, additional crimes added, trafficking in persons

SECTION 1. Section 16-1-60 of the 1976 Code is amended to read:

"Section 16-1-60. For purposes of definition under South Carolina law, a violent crime includes the offenses of: murder (Section 16-3-10); attempted murder (Section 16-3-29); assault and battery by mob, first degree, resulting in death (Section 16-3-210(B)), criminal sexual conduct in the first and second degree (Sections 16-3-652 and 16-3-653); criminal sexual conduct with minors, first and second degree (Section 16-3-655); assault with intent to commit criminal sexual conduct, first and second degree (Section 16-3-656); assault and battery with intent to kill (Section 16-3-620); assault and battery of a high and aggravated nature (Section 16-3-600(B)); kidnapping (Section 16-3-910); trafficking in persons (Section 16-3-930); voluntary manslaughter (Section 16-3-50); armed robbery (Section 16-11-330(A)); attempted armed robbery (Section 16-11-330(B)); carjacking (Section 16-3-1075); drug trafficking as defined in Section 44-53-370(e) or trafficking cocaine base as defined in Section 44-53-375(C); manufacturing or trafficking methamphetamine as defined in Section 44-53-375; arson in the first degree (Section 16-11-110(A)); arson in the second degree (Section 16-11-110(B)); burglary in the first degree (Section 16-11-311); burglary in the second degree (Section 16-11-312(B)); engaging a child for a sexual performance (Section 16-3-810); homicide by child abuse (Section 16-3-85(A)(1)); aiding and abetting homicide by child abuse (Section 16-3-85(A)(2)); inflicting great bodily injury upon a child (Section 16-3-95(A)); allowing great bodily injury to be inflicted upon a child (Section 16-3-95(B)); criminal domestic violence of a high and aggravated nature (Section 16-25-65); abuse or neglect of a vulnerable adult resulting in death (Section 43-35-85(F)); abuse or neglect of a vulnerable adult resulting in great bodily injury (Section 43-35-85(E)); taking of a hostage by an inmate (Section 24-13-450); detonating a destructive device upon the capitol grounds resulting in death with malice (Section 10-33-325(B)(1)); spousal sexual battery (Section 16-3-615); producing, directing, or promoting sexual performance by a child (Section 16-3-820); lewd act upon a child under sixteen (Section 16-15-140); sexual exploitation of a minor first degree (Section 16-15-395); sexual exploitation of a minor second degree (Section 16-15-405); promoting prostitution of a minor (Section 16-15-415); participating in prostitution of a minor (Section 16-15-425); aggravated voyeurism (Section 16-17-470(C)); detonating a destructive device resulting in death with malice (Section 16-23-720(A)(1)); detonating a destructive device resulting in death without malice (Section 16-23-720(A)(2)); boating under the influence resulting in death (Section 50-21-113(A)(2)); vessel operator's failure to render

assistance resulting in death (Section 50-21-130(A)(3)); damaging an airport facility or removing equipment resulting in death (Section 55-1-30(3)); failure to stop when signaled by a law enforcement vehicle resulting in death (Section 56-5-750(C)(2)); interference with traffic-control devices, railroad signs, or signals resulting in death (Section 56-5-1030(B)(3)); hit and run resulting in death (Section 56-5-1210(A)(3)); felony driving under the influence or felony driving with an unlawful alcohol concentration resulting in death (Section 56-5-2945(A)(2)); putting destructive or injurious materials on a highway resulting in death (Section 57-7-20(D)); obstruction of a railroad resulting in death (Section 58-17-4090); accessory before the fact to commit any of the above offenses (Section 16-1-40); and attempt to commit any of the above offenses (Section 16-1-80). Only those offenses specifically enumerated in this section are considered violent offenses."

Crime classification, Class A felonies, trafficking in persons added

SECTION 2. Section 16-1-90(A) of the 1976 Code is amended to read:

"(A) The following offenses are Class A felonies and the maximum terms established for a Class A felony, as set forth in Section 16-1-20(A), apply:

10-11-325(B)(2)	Detonating an explosive or destructive device or igniting an incendiary device upon the capitol grounds or within the capitol building resulting in death to a person where there was not malice aforethought
16-3-50	Manslaughter--voluntary
16-3-652	Criminal sexual conduct First degree
16-3-655(C)(2)	Criminal sexual conduct, 1st degree, with minor less than sixteen Second offense
16-3-656	Assault with intent to commit criminal sexual conduct First degree
16-3-658	Criminal sexual conduct where victim is legal spouse (separated) First degree
16-3-910	Kidnapping

16-3-920	Conspiracy to commit kidnapping
16-3-930	Trafficking in persons
16-3-1075(B)(2)	Carjacking (great bodily injury)
16-11-110(A)	Arson in the first degree
16-11-330(A)	Robbery while armed with a deadly weapon
16-11-380(A)	Entering bank with intent to steal money, securities for money, or property, by force, intimidation, or threats
16-11-390	Safecracking
16-11-532(D)(2)	Injuring real property when illegally obtaining nonferrous metals and the act results in the death of a person
16-23-720(A)(2)	Detonating a destructive device or causing an explosion, or intentionally aiding, counseling, or procuring an explosion by means of detonation of a destructive device which results in the death of a person where there was not malice aforethought
24-13-450	Taking of a hostage by an inmate
43-35-85(F), 16-3-1050(F)	Abuse or neglect of a vulnerable adult resulting in death
44-53-370	Prohibited Acts A, penalties (b)(1) (narcotic drugs in Schedule I(b) and (c), LSD, and Schedule II) Second, Third, or subsequent offense
44-53-370(e)(2)(a)2	Prohibited Acts A, penalties (trafficking in cocaine, 10 grams or more but less than 28 grams) Second offense
44-53-370(e)(2)(b)2	Prohibited Acts, penalties (trafficking in cocaine, 28 grams or more but less than 100 grams) Second offense
44-53-370(e)(5)(a)2	Prohibited Acts, penalties (trafficking in LSD, 100 dosage units or more but less than 500 dosage units) Second offense
44-53-370(e)(5)(b)2	Prohibited Acts, penalties (trafficking in LSD, 500 dosage units or more but less than 1,000 dosage units) Second offense
44-53-370(e)(5)(a)3	Prohibited Acts, penalties (trafficking in

LSD, 100 dosage units or more, but less than 500 dosage units)
Third or subsequent offense
44-53-370(e)(5)(b)3 Prohibited Acts, penalties (trafficking in LSD, 500 dosage units or more, but less than 1,000 dosage units)
Third or subsequent offense
44-53-370(e)(6)(d) Prohibited Acts, penalties (trafficking in flunitrazepam, 5 kilograms or more)
44-53-370(e)(8)(a)(ii) Trafficking in MDMA or ecstasy, 100 dosage units but less than 500
Second offense
44-53-370(e)(8)(a)(iii) Trafficking in MDMA or ecstasy, 100 dosage units but less than 500
Third or subsequent offense
44-53-370(e)(8)(b)(ii) Trafficking in MDMA or ecstasy, 100 dosage units but less than 1000
Third or subsequent offense
44-53-370(e)(8)(b)(iii) Trafficking in MDMA or ecstasy, 100 dosage units but less than 1000
Third or subsequent offense
44-53-370(g)(1)(b) Prohibited Acts A, penalties (distribution of narcotic drugs in Schedule I (b) and (c), LSD, and Schedule II with intent to commit a crime)
Second offense
44-53-370(g)(1)(c) Prohibited Acts A, penalties (distribution of narcotic drugs in Schedule I (b) and (c), LSD, and Schedule II with intent to commit a crime)
Third or subsequent offense
44-53-375(B)(2) Manufacture, distribution of methamphetamine or cocaine base Second offense
44-53-375(B)(3) Manufacture, distribution, etc., methamphetamine, or cocaine base
Third or subsequent offense
44-53-375(C)(1)(b) Trafficking in ice, crank, or crack cocaine (10 grams or more but less than 28 grams)
Second offense
44-53-375(C)(2)(b) Trafficking in ice, crank, or crack cocaine (28 grams or more but less than 100 grams)
Second offense

55-1-30(3)	Unlawful removing or damaging of airport facility or equipment when death results
56-5-1030(B)(3)	Interference with traffic-control devices or railroad signs or signals prohibited when death results from violation
58-17-4090	Penalty for obstruction of railroad"

Crime classification, Class D felonies, Section 16-3-930 deleted

SECTION 3. Section 16-1-90(D) of the 1976 Code is amended to read:

"(D) The following offenses are Class D felonies and the maximum terms established for a Class D felony, as set forth in Section 16-1-20(A), apply:

10-11-325(A)	Possessing, having readily accessible, or transporting onto the capitol grounds or within he capitol building an explosive, destructive, or incendiary device
16-1-55	Accessory after the fact of a Class A, B, or C Felony
16-3-1090(B)	Assist another person in committing suicide
16-3-1730(C)	Stalking within ten years of a conviction of harassment or stalking
16-11-312	Burglary--second degree
16-11-325	Common law robbery
16-11-525(D)(1)	Injuring real property when illegally obtaining nonferrous metals and the act results in great bodily injury to person
16-15-140	Committing or attempting lewd act upon child under sixteen
16-15-355	Disseminating obscene material to a minor twelve years or younger
16-23-720(C)	Possessing, manufacturing, transporting, distributing, possessing with the intent to distribute any explosive device, substance, or material configured to damage, injure, or kill a person, or possessing materials which when assembled constitute a destructive device
16-23-720(D)	Threaten by means of a destructive weapon
16-23-720(E)	Harboring one known to have violated provisions relating to bombs, weapons of

	mass destruction, and destructive devises
16-23-730	Communicating or transmitting to a person that a hoax device or replica is a destructive device or detonator with intent to intimidate or threaten injury, obtain property, or interfere with the ability of a person or government to conduct its affairs
16-23-750	Communicating or aiding and abetting the communication of a threat or conveying false information concerning an attempt to kill, injure, or intimidate a person or damage property or destroy by means of an explosive, incendiary, or destructive device Second or subsequent offense
24-3-210	Furloughs for qualified inmates of state prison system--Failure to return (See Section 24-13-410)
24-13-410(B)	Escaping or attempting to escape from prison or possessing tools or weapons used to escape
24-13-470	Inmate throwing bodily fluids on a correctional facility employee
43-35-85(B)	Abusing or neglecting a vulnerable adult that results in great bodily injury
43-35-85(D), 16-3-1050(E)	Abuse or neglect of a vulnerable adult resulting in great bodily injury
44-53-370(b)(1)	Prohibited Acts A, penalties (narcotic drugs in Schedule I (b) and (c), LSD, and Schedule II) First offense
44-53-370	Prohibited Acts A, penalties (g)(2)(a) (distribution of controlled substances with intent to commit a crime) First offense
44-53-375(B)(1)	Manufacture, distribution, etc., methamphetamine or cocaine First offense
44-53-445(B)(2)	Distribution, manufacture, sale, or possession of crack cocaine within proximity of a school
44-53-577	Unlawful to hire, solicit, direct a person under seventeen years of age to transport, conceal, or conduct financial transaction relating to unlawful drug activity
50-21-113(A)(1)	Operating a moving water device while under

	the influence of alcohol or drugs where great bodily injury results
56-5-2945(A)(1)	Causing great bodily injury by operating vehicle while under influence of drugs or alcohol"

Murder, aggravating circumstances, trafficking in persons added

SECTION 4. Section 16-3-20(C)(a)(1) of the 1976 Code, as last amended by Act 101 of 2007, is further amended to read:

"(C) The judge shall consider, or he shall include in his instructions to the jury for it to consider, mitigating circumstances otherwise authorized or allowed by law and the following statutory aggravating and mitigating circumstances which may be supported by the evidence:

(a) Statutory aggravating circumstances:

(1) The murder was committed while in the commission of the following crimes or acts:

(a) criminal sexual conduct in any degree;

(b) kidnapping;

(c) trafficking in persons;

(d) burglary in any degree;

(e) robbery while armed with a deadly weapon;

(f) larceny with use of a deadly weapon;

(g) killing by poison;

(h) drug trafficking as defined in Section 44-53-370(e), 44-53-375(B), 44-53-440, or 44-53-445;

(i) physical torture;

(j) dismemberment of a person; or

(k) arson in the first degree as defined in Section 16-11-110(A)."

Criminal sexual conduct in the first degree, trafficking in persons added

SECTION 5. Section 16-3-652(1)(b) of the 1976 Code is amended to read:

"(1) A person is guilty of criminal sexual conduct in the first degree if the actor engages in sexual battery with the victim and if any one or more of the following circumstances are proven:

(a) The actor uses aggravated force to accomplish sexual battery.

(b) The victim submits to sexual battery by the actor under circumstances where the victim is also the victim of forcible confinement, kidnapping, trafficking in persons, robbery, extortion, burglary, housebreaking, or any other similar offense or act."

Criminal sexual conduct with a minor, aggravating circumstances, trafficking in persons added

SECTION 6. Section 16-3-655(D)(2)(a) of the 1976 Code, as last amended by Act 346 of 2006, is further amended to read:

"(2) In sentencing a person, upon conviction or adjudication of guilt of a defendant pursuant to this section, the judge shall consider, or he shall include in his instructions to the jury for it to consider, mitigating circumstances otherwise authorized or allowed by law and the following statutory aggravating and mitigating circumstances which may be supported by the evidence:

(a) Statutory aggravating circumstances:

(i) The victim's resistance was overcome by force.

(ii) The victim was prevented from resisting the act because the actor was armed with a dangerous weapon.

(iii) The victim was prevented from resisting the act by threats of great and immediate bodily harm, accompanied by an apparent power to inflict bodily harm.

(iv) The victim is prevented from resisting the act because the victim suffers from a physical or mental infirmity preventing his resistance.

(v) The crime was committed by a person with a prior conviction for murder.

(vi) The offender committed the crime for himself or another for the purpose of receiving money or a thing of monetary value.

(vii) The offender caused or directed another to commit the crime or committed the crime as an agent or employee of another person.

(viii) The crime was committed against two or more persons by the defendant by one act, or pursuant to one scheme, or course of conduct.

(ix) The crime was committed during the commission of burglary in any degree, kidnapping, or trafficking in persons."

Two strikes/three strikes for certain offenses, trafficking in persons added to the most serious offense list

SECTION 7. Section 17-25-45(C) of the 1976 Code is amended to read:

"(C) As used in this section:

(1) 'Most serious offense' means:

16-1-40 Accessory, for any offense enumerated in this item

16-1-80 Attempt, for any offense enumerated in this item

16-3-10 Murder

16-3-29 Attempted Murder

16-3-50 Voluntary manslaughter

16-3-85(A)(1) Homicide by child abuse

16-3-85(A)(2) Aiding and abetting homicide by child abuse

16-3-210 Lynching, First degree

16-3-210(B) Assault and battery by mob, First degree

16-3-620 Assault and battery with intent to kill

16-3-652 Criminal sexual conduct, First degree

16-3-653 Criminal sexual conduct, Second degree

16-3-655 Criminal sexual conduct with minors, except where evidence presented at the criminal proceeding and the court, after the conviction, makes a specific finding on the record that the conviction obtained for this offense resulted from consensual sexual conduct where the victim was younger than the actor, as contained in Section 16-3-655(3)

16-3-656 Assault with intent to commit criminal sexual conduct, First and Second degree

16-3-910 Kidnapping

16-3-920 Conspiracy to commit kidnapping

16-3-930 Trafficking in persons

16-3-1075 Carjacking

16-11-110(A) Arson, First degree

16-11-311 Burglary, First degree

16-11-330(A) Armed robbery

16-11-330(B) Attempted armed robbery

16-11-540 Damaging or destroying building, vehicle, or other property by means of explosive incendiary, death results

24-13-450 Taking of a hostage by an inmate

25-7-30 Giving information respecting national or state defense to foreign contacts during war

25-7-40 Gathering information for an enemy

43-35-85(F) Abuse or neglect of a vulnerable adult resulting in death

55-1-30(3) Unlawful removing or damaging of airport facility or equipment when death results

56-5-1030(B)(3) Interference with traffic-control devices or railroad signs or signals prohibited when death results from violation

58-17-4090 Obstruction of railroad, death results.

(2) 'Serious offense' means:

(a) any offense which is punishable by a maximum term of imprisonment for thirty years or more which is not referenced in subsection (C)(1);

(b) those felonies enumerated as follows:

16-3-220 Lynching, Second degree

16-3-210(C) Assault and battery by mob, Second degree

16-3-600(B) Assault and battery of a high and aggravated nature

16-3-810 Engaging child for sexual performance

16-9-220 Acceptance of bribes by officers

16-9-290 Accepting bribes for purpose of procuring public office

16-11-110(B) Arson, Second degree

16-11-312(B) Burglary, Second degree

16-11-380(B) Theft of a person using an automated teller machine

16-13-210(1) Embezzlement of public funds

16-13-230(B)(3) Breach of trust with fraudulent intent

16-13-240(1) Obtaining signature or property by false pretenses

38-55-540(3) Insurance fraud

44-53-370(e) Trafficking in controlled substances

44-53-375(C) Trafficking in ice, crank, or crack cocaine

44-53-445(B)(1)&(2) Distribute, sell, manufacture, or possess with intent to distribute controlled substances within proximity of school

56-5-2945 Causing death by operating vehicle while under influence of drugs or alcohol; and

(c) the offenses enumerated below:

16-1-40 Accessory before the fact for any of the offenses listed in subitems (a) and (b)

16-1-80 Attempt to commit any of the offenses listed in subitems (a) and (b)

43-35-85(E) Abuse or neglect of a vulnerable adult resulting in great bodily injury.

(3) 'Conviction' means any conviction, guilty plea, or plea of nolo contendere."

Sex offender registry, trafficking in persons added

SECTION 8. Section 23-3-430(C) of the 1976 Code is amended to read:

"(C) For purposes of this article, a person who has been convicted of, pled guilty or nolo contendere to, or been adjudicated delinquent for any of the following offenses shall be referred to as an offender:

(1) criminal sexual conduct in the first degree (Section 16-3-652);

(2) criminal sexual conduct in the second degree (Section 16-3-653);

(3) criminal sexual conduct in the third degree (Section 16-3-654);

(4) criminal sexual conduct with minors, first degree (Section 16-3-655(1));

(5) criminal sexual conduct with minors, second degree. If evidence is presented at the criminal proceeding and the court makes a specific finding on the record that the conviction obtained for this offense resulted from consensual sexual conduct, as contained in Section 16-3-655(3) provided the offender is eighteen years of age or less, or consensual sexual conduct between persons under sixteen years of age, the convicted person is not an offender and is not required to register pursuant to the provisions of this article;

(6) engaging a child for sexual performance (Section 16-3-810);

(7) producing, directing, or promoting sexual performance by a child (Section 16-3-820);

(8) criminal sexual conduct: assaults with intent to commit (Section 16-3-656);

(9) incest (Section 16-15-20);

(10) buggery (Section 16-15-120);

(11) committing or attempting lewd act upon child under sixteen (Section 16-15-140);

(12) peeping, voyeurism, or aggravated voyeurism (Section 16-17-470);

(13) violations of Article 3, Chapter 15 of Title 16 involving a minor;

(14) a person, regardless of age, who has been convicted, adjudicated delinquent, pled guilty or nolo contendere in this State, or who has been convicted, adjudicated delinquent, pled guilty or nolo contendere in a comparable court in the United States, or who has been convicted, adjudicated delinquent, pled guilty or nolo contendere in the United States federal courts of indecent exposure or of a similar offense in other jurisdictions is required to register pursuant to the provisions of this article if the court makes a specific finding on the record that based on the circumstances of the case the convicted person should register as a sex offender;

(15) kidnapping (Section 16-3-910) of a person eighteen years of age or older except when the court makes a finding on the record that the offense did not include a criminal sexual offense or an attempted criminal sexual offense;

(16) kidnapping (Section 16-3-910) of a person under eighteen years of age except when the offense is committed by a parent;

(17) trafficking in persons (Section 16-3-930) except when the court makes a finding on the record that the offense did not include a criminal sexual offense or an attempted criminal sexual offense;

(18) criminal sexual conduct when the victim is a spouse (Section 16-3-658);

(19) sexual battery of a spouse (Section 16-3-615);

(20) sexual intercourse with a patient or trainee (Section 44-23-1150);

(21) criminal solicitation of a minor if the purpose or intent of the solicitation or attempted solicitation was to:

(a) persuade, induce, entice, or coerce the person solicited to engage or participate in sexual activity as defined in Section 16-15-375(5);

(b) perform a sexual activity in the presence of the person solicited (Section 16-15-342); or

(22) administering, distributing, dispensing, delivering, or aiding, abetting, attempting, or conspiring to administer, distribute, dispense, or deliver a controlled substance or gamma hydroxy butyrate to an individual with the intent to commit a crime listed in Section 44-53-370(f), except petit larceny or grand larceny."

Sex offender registry, trafficking in persons added

SECTION 9. Section 23-3-490(D)(1) of the 1976 Code is amended to read:

"(D) For purposes of this article, information on a person adjudicated delinquent in family court for an offense listed in Section 23-3-430 must be made available to the public in accordance with the following provisions:

(1) If a person has been adjudicated delinquent for committing any of the following offenses, information must be made available to the public pursuant to subsections (A) and (B):

(a) criminal sexual conduct in the first degree (Section 16-3-652);

(b) criminal sexual conduct in the second degree (Section 16-3-653);

(c) criminal sexual conduct with minors, first degree (Section 16-3-655(1));

(d) criminal sexual conduct with minors, second degree (Section 16-3-655(2) and (3));

(e) engaging a child for sexual performance (Section 16-3-810);

(f) producing, directing, or promoting sexual performance by a child (Section 16-3-820);

(g) kidnapping (Section 16-3-910); or

(h) trafficking in persons (Section 16-3-930) except when the court makes a finding on the record that the offense did not include a criminal sexual offense or an attempted criminal sexual offense."

Sex offender limitations, trafficking in persons added

SECTION 10. Section 23-3-535(B) of the 1976 Code, as added by Act 333 of 2008, is amended to read:

"(B) It is unlawful for a sex offender who has been convicted of any of the following offenses to reside within one thousand feet of a school, daycare center, children's recreational facility, park, or public playground:

(1) criminal sexual conduct with a minor, first degree;

(2) criminal sexual conduct with a minor, second degree;

(3) assault with intent to commit criminal sexual conduct with a minor;

(4) kidnapping a person under eighteen years of age; or

(5) trafficking in persons of a person under eighteen years of age except when the court makes a finding on the record that the offense did not include a criminal sexual offense or an attempted criminal sexual offense."

Sex offender electronic monitoring, trafficking in persons added

SECTION 11. Section 23-3-540(G)(1) of the 1976 Code, as last amended by Act 346 of 2006, is further amended to read:

"(G) This section applies to a person who has been:

(1) convicted of, pled guilty or nolo contendere to, or been adjudicated delinquent for any of the following offenses:

(a) criminal sexual conduct with a minor in the first degree (Section 16-3-655(A));

(b) criminal sexual conduct with a minor in the second degree (Section 16-3-655(B)). If evidence is presented at the criminal proceeding and the court makes a specific finding on the record that the conviction obtained for this offense resulted from illicit consensual sexual conduct, as contained in Section 16-3-655(B)(2), provided the offender is eighteen years of age or less, or consensual sexual conduct between persons under sixteen years of age, then the convicted person is not required to be electronically monitored pursuant to the provisions of this section;

(c) engaging a child for sexual performance (Section 16-3-810);

(d) producing, directing, or promoting sexual performance by a child (Section 16-3-820);

(e) criminal sexual conduct: assaults with intent to commit (Section 16-3-656) involving a minor;

(f) committing or attempting lewd act upon child under sixteen (Section 16-15-140);

(g) violations of Article 3, Chapter 15 of Title 16 involving a minor;

(h) kidnapping (Section 16-3-910) of a person under eighteen years of age except when the offense is committed by a parent;

(i) trafficking in persons (Section 16-3-930) of a person under eighteen years of age except when the court makes a finding on the record that the offense did not include a criminal sexual offense or an attempted criminal sexual offense; or"

Distribution and trafficking in certain drugs, trafficking in persons added

SECTION 12. Section 44-53-370(f) of the 1976 Code is amended to read:

"(f) It shall be unlawful for a person to administer, distribute, dispense, deliver, or aid, abet, attempt, or conspire to administer, distribute, dispense, or deliver a controlled substance or gamma hydroxy butyrate to an individual with the intent to commit one of the following crimes against that individual:

(1) kidnapping, Section 16-3-910;

(2) trafficking in persons, Section 16-3-930;

(3) criminal sexual conduct in the first, second, or third degree, Sections 16-3-652, 16-3-653, and 16-3-654;

(4) criminal sexual conduct with a minor in the first or second degree, Section 16-3-655;

(5) criminal sexual conduct where victim is legal spouse (separated), Section 16-3-658;

(6) spousal sexual battery, Section 16-3-615;

(7) engaging a child for a sexual performance, Section 16-3-810;

(8) committing lewd act upon child under sixteen, Section 16-15-140;

(9) petit larceny, Section 16-13-30 (A); or

(10) grand larceny, Section 16-13-30 (B)."

Savings clause

SECTION 13. The repeal or amendment by the provisions of this act or any law, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release, or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

Time effective

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

Ratified the 7th day of June, 2010.

Approved the 11th day of June, 2010.

No. 290

(R351, H4478)

AN ACT TO ENACT THE "SOUTH CAROLINA ECONOMIC DEVELOPMENT COMPETITIVENESS ACT OF 2010", INCLUDING PROVISIONS; TO AMEND SECTION 4-12-30, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO FEES IN LIEU OF TAXES, SO AS TO INCREASE THE NUMBER OF YEARS A FEE IS AVAILABLE, TO REVISE CERTAIN REQUIREMENTS FOR THE FEE IN LIEU AGREEMENT, AND FOR THE MANNER THE FAIR MARKET VALUE MUST BE REPORTED DURING THE TERM OF THE FEE AGREEMENT, TO PROVIDE FOR ADDITIONAL PROPERTY WHICH IS AN EXCEPTION TO PROVISIONS LIMITING PROPERTY NOT QUALIFIED TO BE ECONOMIC DEVELOPMENT PROPERTY; TO AMEND SECTION 4-29-67, AS AMENDED, RELATING TO INDUSTRIAL DEVELOPMENT PROJECTS REQUIRING A FEE IN LIEU OF PROPERTY TAXES AGREEMENT, SO AS TO ADD CERTAIN DEFINITIONS, TO FURTHER PROVIDE FOR THE MINIMUM LEVEL OF INVESTMENT FOR A QUALIFIED NUCLEAR PLANT FACILITY, TO PROVIDE FOR THE TIMELINE WHEN THE SPONSOR MUST ENTER INTO AN INITIAL LEASE AGREEMENT WITH THE COUNTY IN REGARD TO A QUALIFIED NUCLEAR PLANT FACILITY, AND THE TIMELINES WHEN THE SPONSOR MUST MEET MINIMUM INVESTMENT REQUIREMENTS IN THE CASE OF A QUALIFIED NUCLEAR PLANT FACILITY AND PLACE THE PROJECT INTO SERVICE, TO REVISE THE MANNER IN WHICH THE FAIR MARKET VALUE OF THE PROPERTY MUST BE REPORTED DURING THE TERM OF THE FEE

AGREEMENT, TO PROVIDE FOR ADDITIONAL PROPERTY WHICH IS AN EXCEPTION TO PROVISIONS LIMITING PROPERTY NOT QUALIFIED TO BE ECONOMIC DEVELOPMENT PROPERTY; TO AMEND SECTION 4-29-68, AS AMENDED, RELATING TO SPECIAL SOURCE REVENUE BONDS WHICH MAY BE ISSUED BASED ON THE RECEIPT OF CERTAIN REVENUES, SO AS TO FURTHER PROVIDE FOR WHEN AND UNDER WHAT CIRCUMSTANCES THE AMOUNT OF THE FEE IN LIEU OF TAXES DUE ON THE PERSONAL PROPERTY MUST BE DUE WHEN PERSONAL PROPERTY IS REMOVED FROM THE PROJECT; TO AMEND SECTION 12-44-30, AS AMENDED, RELATING TO DEFINITIONS IN REGARD TO THE FEE IN LIEU OF TAX SIMPLIFICATION ACT, SO AS TO REVISE CERTAIN DEFINITIONS AND ADD CERTAIN DEFINITIONS; TO AMEND SECTION 12-44-40, AS AMENDED, RELATING TO THE REQUIRED FEE AGREEMENT BETWEEN THE SPONSOR AND THE COUNTY UNDER THE FEE IN LIEU OF TAX SIMPLIFICATION ACT, SO AS TO PROVIDE THE TIME WITHIN WHICH A SPONSOR HAS TO ENTER INTO A FEE AGREEMENT IN REGARD TO A QUALIFIED NUCLEAR PLANT FACILITY; TO AMEND SECTION 12-44-50, AS AMENDED, RELATING TO THE REQUIREMENT OF A FEE AGREEMENT UNDER THE FEE IN LIEU OF TAX SIMPLIFICATION ACT, SO AS TO FURTHER PROVIDE FOR THE MANNER IN WHICH THE FAIR MARKET VALUE OF THE PROPERTY MUST BE REPORTED DURING THE TERM OF THE FEE AGREEMENT; TO AMEND SECTION 12-44-110, AS AMENDED, RELATING TO PROPERTY PREVIOUSLY SUBJECT TO PROPERTY TAXES NOT QUALIFIED TO BE ECONOMIC DEVELOPMENT PROPERTY AND EXCEPTIONS TO THIS PROVISION, SO AS TO PROVIDE FOR ADDITIONAL PROPERTY WHICH IS AN EXCEPTION TO PROVISIONS LIMITING PROPERTY NOT QUALIFIED TO BE ECONOMIC DEVELOPMENT PROPERTY; TO AMEND SECTION 12-44-130, AS AMENDED, RELATING TO MINIMUM INVESTMENTS TO QUALIFY FOR A FEE AND OTHER REQUIREMENTS, SO AS TO CORRECT A REFERENCE; TO AMEND SECTION 12-43-220, AS AMENDED, RELATING TO CLASSIFICATION OF REAL PROPERTY FOR AD VALOREM TAX PURPOSES, SO AS TO PROVIDE THAT REAL PROPERTY OWNED BY OR LEASED

TO A MANUFACTURER AND USED PRIMARILY RATHER THAN EXCLUSIVELY FOR WAREHOUSING AND WHOLESALE DISTRIBUTION IS NOT CONSIDERED USED BY THE MANUFACTURER IN THE CONDUCT OF ITS BUSINESS FOR PROPERTY TAX CLASSIFICATION PURPOSES UNDER CERTAIN CONDITIONS; TO AMEND SECTION 12-10-85, AS AMENDED, RELATING TO THE PURPOSE AND USE OF STATE RURAL INFRASTRUCTURE FUNDS, SO AS TO REVISE THE PURPOSES FOR WHICH THESE FUNDS MAY BE USED AND THEIR AVAILABILITY; BY ADDING CHAPTER 18 TO TITLE 11 SO AS TO ESTABLISH MECHANISMS AND PROCEDURES FOR THE ALLOCATION, REALLOCATION, AND ISSUANCE OF FEDERAL RECOVERY ZONE BONDS; TO AMEND SECTION 4-29-10, AS AMENDED, RELATING TO DEFINITIONS IN REGARD TO INDUSTRIAL DEVELOPMENT PROJECTS, SO AS TO REVISE THE DEFINITION OF "PROJECT" TO INCLUDE RECOVERY ZONE PROPERTY AS DEFINED BY FEDERAL LAW; TO AMEND SECTION 12-6-3360, AS AMENDED, RELATING TO JOB TAX CREDITS, SO AS TO REVISE THE DESIGNATION TERMINOLOGY FOR COUNTIES COMING WITHIN SPECIFIC CLASSIFICATIONS, TO FURTHER PROVIDE FOR THE CRITERIA FOR DETERMINING HOW COUNTIES FALL WITHIN CERTAIN TIERS, AND TO REVISE SPECIFIC TERMS OR DEFINITIONS USED FOR PURPOSES OF THIS SECTION; TO AMEND SECTION 12-6-3375, AS AMENDED, RELATING TO TAX CREDITS FOR PORT CARGO VOLUME INCREASES, SO AS TO PROVIDE THAT THE TAX CREDIT MAY BE AN INCOME TAX CREDIT ON A CREDIT AGAINST EMPLOYEE WITHHOLDING, TO PROVIDE FOR THE AMOUNTS OF EACH TYPE OF CREDIT AND THE TYPES OF FACILITIES TO WHICH THEY MAY BE AWARDED, TO REVISE THE MANNER IN WHICH TAX CREDIT ALLOCATIONS ARE DETERMINED AND THE AMOUNT OF CREDITS WHICH MAY BE ALLOCATED TO A QUALIFYING TAXPAYER; TO AMEND SECTION 12-20-105, AS AMENDED, RELATING TO CREDITS AGAINST ITS CORPORATE LICENSE TAX LIABILITY FOR A COMPANY WHO PAYS CASH FOR INFRASTRUCTURE FOR AN ELIGIBLE PROJECT, SO AS TO FURTHER PROVIDE FOR THE ELIGIBILITY FOR THE CREDIT UNDER CERTAIN CIRCUMSTANCES OR THE

CONTINUATION OF THE CREDIT, AND TO REQUIRE A REPORT CONCERNING THE CREDIT; TO AMEND SECTION 12-10-80, AS AMENDED, RELATING TO JOB DEVELOPMENT CREDITS UNDER THE ENTERPRISE ZONE ACT OF 1995, SO AS TO EXPAND ELIGIBLE EXPENDITURES WHICH QUALIFY FOR THE CREDIT, TO CAP THE AMOUNT OF CREDITS PER JOB PER YEAR, TO REVISE CERTAIN TERMINOLOGY TO CONFORM TO EARLIER CHANGES HEREIN, TO FURTHER PROVIDE FOR THE CIRCUMSTANCES WHEN THESE CREDITS MAY BE CLAIMED AND THE MANNER OF THE DETERMINATION OF CERTAIN FACTORS NECESSARY TO QUALIFY FOR THE CREDITS, AND TO PROVIDE FOR THE SUSPENSION OF THE CREDITS UNDER CERTAIN CONDITIONS AND FOR WHEN THE CREDITS MAY BE CLAIMED; TO AMEND SECTION 12-14-20, RELATING TO THE PURPOSES OF THE ECONOMIC IMPACT ZONE COMMUNITY DEVELOPMENT ACT OF 1995, SO AS TO REVISE THESE PURPOSES; TO AMEND SECTION 12-14-60, AS AMENDED, RELATING TO INVESTMENT TAX CREDITS UNDER THE ECONOMIC IMPACT ZONE COMMUNITY DEVELOPMENT ACT OF 1995, SO AS TO REVISE THE AMOUNT OF THE CREDITS, THE QUALIFYING CRITERIA FOR THE CREDITS, AND FOR THE APPLICABILITY OF CERTAIN PROVISIONS TO THESE CREDITS; TO AMEND SECTION 12-6-3631, RELATING TO SPECIFIED BIODIESEL EXPENDITURES, SO AS TO FURTHER PROVIDE FOR THOSE EXPENDITURES WHICH QUALIFY FOR CREDIT AND TO STIPULATE THE AMOUNT OF CREDIT FOR EXPENDITURES RELATED TO WASTE GREASE-DERIVED BIODIESEL; BY ADDING SECTION 12-6-3588 SO AS TO ESTABLISH THE SOUTH CAROLINA RENEWABLE ENERGY TAX INCENTIVE PROGRAM UNDER WHICH CERTAIN TAX CREDITS ARE ALLOWED FOR BUSINESS INVESTMENTS PERTAINING TO THE PRODUCTION AND USE OF RENEWABLE ENERGY PRODUCTS; TO AMEND SECTION 12-15-10, RELATING TO THE CITATION OF THE SOUTH CAROLINA LIFE SCIENCES ACT, SO AS TO CHANGE THE CITATION; TO AMEND SECTION 12-15-20, RELATING TO DEFINITIONS UNDER THE RENAMED LIFE SCIENCES AND RENEWABLE ENERGY MANUFACTURING ACT, SO AS TO DEFINE THE TERM "RENEWABLE ENERGY MANUFACTURING

FACILITY"; TO AMEND SECTION 12-15-30, RELATING TO QUALIFICATIONS OF CERTAIN EXPENSES UNDER THE ENTERPRISE ZONE ACT, PROCEDURES FOR WAIVERS, AND THE DURATION OF THESE PROVISIONS, SO AS TO EXPAND THE TYPES OF FACILITIES THAT QUALIFY AND THE DURATION OF THESE PROVISIONS; TO AMEND SECTION 12-15-40, RELATING TO INCOME TAX ALLOCATION AND APPORTIONMENT AGREEMENTS BETWEEN THE DEPARTMENT OF REVENUE AND TAXPAYERS ESTABLISHING A LIFE SCIENCES FACILITY, SO AS TO EXPAND THE TYPES OF FACILITIES TO WHICH THIS PROVISION APPLIES; TO AMEND SECTION 12-37-930, RELATING TO VALUATION OF PROPERTY FOR PROPERTY TAX PURPOSES AND DEPRECIATION ALLOWANCES FOR MANUFACTURERS, MACHINERY, AND EQUIPMENT, SO AS TO INCLUDE MACHINERY AND EQUIPMENT OF A RENEWABLE ENERGY MANUFACTURING FACILITY WITHIN THE DEPRECIATION ALLOWANCES ALLOWED FOR MACHINERY AND EQUIPMENT OF A LIFE SCIENCES FACILITY, AND TO DEFINE WHAT IS A QUALIFYING FACILITY; TO AMEND SECTION 12-28-2910, AS AMENDED, RELATING TO THE SOUTH CAROLINA COORDINATING COUNCIL FOR ECONOMIC DEVELOPMENT, SO AS TO AUTHORIZE THE COUNCIL TO EXPEND CERTAIN FUNDS FOR SPECIFIED PURPOSES UNDER SPECIFIED CONDITIONS; TO AMEND SECTION 2-75-30, AS AMENDED, RELATING TO RESEARCH CENTERS OF EXCELLENCE MATCHING ENDOWMENTS, SO AS TO FURTHER PROVIDE FOR THE PROCESS AND PROCEDURES FOR AWARDING ENDOWMENTS FOR QUALIFIED PROJECTS, AND FOR THE APPLICABILITY OF MATCHING REQUIREMENTS; TO AMEND SECTION 2-75-10, AS AMENDED, RELATING TO THE RESEARCH CENTERS OF EXCELLENCE REVIEW BOARD, SO AS TO REVISE THE DATE WHEN ITS ANNUAL REPORT IS DUE; TO AMEND SECTION 13-1-1710, AS AMENDED, RELATING TO THE COORDINATING COUNCIL FOR ECONOMIC DEVELOPMENT, SO AS TO REVISE CERTAIN MEMBERS OF THE COUNCIL; TO AMEND SECTIONS 5-37-20, 5-37-35, 5-37-40, AS AMENDED, 5-37-50, AS AMENDED, AND 5-37-100, ALL RELATING TO THE MUNICIPAL IMPROVEMENTS ACT, SO AS TO AUTHORIZE

A MUNICIPAL IMPROVEMENT DISTRICT TO WIDEN AND DREDGE CERTAIN CANALS AND WATERWAYS BY ISSUING BONDS PAYABLE FROM ASSESSMENTS ON PROPERTY LOCATED IN THE IMPROVEMENT DISTRICT; TO AMEND SECTION 12-10-88, AS AMENDED, RELATING TO REDEVELOPMENT FEES UNDER THE ENTERPRISE ZONE ACT OF 1995 BEING REMITTED TO THE APPLICABLE REDEVELOPMENT AUTHORITY FOR A SPECIFIED PERIOD OF TIME, SO AS TO REVISE THIS PERIOD OF TIME; TO AMEND SECTIONS 6-1-530 AND 6-1-730, BOTH AS AMENDED, RELATING TO USES ALLOWED FOR THE REVENUE OF THE LOCAL ACCOMMODATIONS AND LOCAL HOSPITALITY TAXES, SO AS TO INCREASE FROM TWENTY TO FIFTY PERCENT, IN COUNTIES IN WHICH LESS THAN NINE HUNDRED THOUSAND DOLLARS IN STATE ACCOMMODATIONS TAX IS COLLECTED ANNUALLY, THE AMOUNT OF THE REVENUE OF THE LOCAL TAXES THAT MAY BE USED FOR OPERATIONS AND MAINTENANCE; TO REPEAL SECTION 12-6-3450 RELATING TO AN INCOME TAX CREDIT FOR PERSONS TERMINATED FROM EMPLOYMENT AS A RESULT OF THE CLOSING OR REALIGNMENT OF A FEDERAL MILITARY INSTALLATION; TO REPEAL SECTIONS 12-14-30, 12-14-40, 12-14-50, AND 12-14-70 RELATING TO ECONOMIC IMPACT ZONES AND ALLOWABLE DEDUCTIONS AGAINST SOUTH CAROLINA TAXABLE INCOME IN REGARD TO THESE ECONOMIC IMPACT ZONES; AND TO REPEAL ACT 150 OF 2010 CONTAINING A REVISION OF SECTION 12-44-30(20) RELATING TO THE DEFINITION OF TERMINATION DATE UNDER THE FEE IN LIEU OF TAX SIMPLIFICATION ACT, AND ADDING SECTION 12-6-590(C) RELATING TO RETENTION AND USE OF CERTAIN INCOME TAXES PAID BY RESIDENT AND NONRESIDENT SHAREHOLDERS OF AN "S" CORPORATION.

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

Citation

SECTION 1. This act is known and may be cited as the "South Carolina Economic Development Competitiveness Act of 2010".

Investment requirements, revised

SECTION 2. A. Section 4-12-30(B)(4)(b) of the 1976 Code, as last amended by Act 399 of 2000, is further amended to read:

"(b) If the project consists of a manufacturing, research and development, corporate office, or distribution facility, as those terms are defined in Section 12-6-3360(M), each sponsor or sponsor affiliate is not required to invest the minimum investment required by subsection (B)(3), if the total investment in the project exceeds five million dollars."

B. This provision takes effect for fee-in-lieu agreements executed after January 1, 2011, provided that a county may amend existing fee-in-lieu agreements at any time prior to the expiration of the fee to incorporate the amendment to Section 4-12-30(B)(4)(b) as contained in subsection A.

Fee period

SECTION 3. A. Section 4-12-30(C)(4) of the 1976 Code, as last amended by Act 116 of 2007, is further amended to read:

"(4) The annual fee provided by subsection (D)(2) is available for no more than thirty years for an applicable piece of property. The sponsor may apply to the county prior to the end of the thirty-year period for an extension of the fee period for up to ten years. The county council of the county shall approve an extension by resolution upon a finding of substantial public benefit. A copy of the resolution shall be delivered to the department within thirty days of the date the resolution was adopted. For projects completed and placed in service during more than one year, each year's investment may be subject to the fee in subsection (D)(2) for thirty years or, if extended as provided in this subsection up to forty years, for an aggregate fee period of up to fifty years. For those sponsors qualifying under subsection (D)(4), the annual fee is available for no more than forty years for an applicable piece of property and for those projects placed in service in more than one year the annual fee is available for an aggregate fee period of up to fifty-three years, or for those sponsors qualifying pursuant to subsection (C)(3), fifty-five years."

B. This provision takes effect for fee-in-lieu agreements executed after January 1, 2011, provided that a county may amend existing fee-in-lieu agreements at any time prior to the expiration of the fee to incorporate the amendment to Section 4-12-30(C)(4) as contained in subsection A.

Reporting of property value

SECTION 4. A. Section 4-12-30(D)(2)(a)(i) of the 1976 Code, as last amended by Act 69 of 2003, is further amended to read:

"(i) for real property, using the original income tax basis for South Carolina income tax purposes without regard to depreciation, if real property is constructed for the fee or is purchased in an arm's length transaction; otherwise, the property must be reported at its fair market value for ad valorem property tax purposes as determined by appraisal. The fair market value estimate established for the first year of the fee remains the fair market value of the real property for the life of the fee. The county and the sponsor or sponsor affiliate may instead provide in the fee agreement or any amendment thereto that any real property subject to the fee shall be reported at its fair market value for ad valorem property taxes as determined by the department's appraisal as if such property were not subject to the fee; provided, the department may not undertake such an appraisal more than once every five years; and"

B. This SECTION shall take effect in each county in the first property tax year in which a countywide reassessment program is implemented after December 31, 2010.

Property qualifying for fee

SECTION 5. Section 4-12-30(J)(1)(b) of the 1976 Code, as last amended by Act 69 of 2003, is further amended to read:

"(b) property which has been subject to South Carolina property taxes, but which has never been placed in service in South Carolina, or which was placed in service in South Carolina pursuant to an inducement agreement or other preliminary approval by the county prior to execution of the lease agreement pursuant to subsection (C)(1), may qualify for the fee."

Fee in lieu of tax requirements revised, qualified nuclear plant facilities included

SECTION 6. A.Section 4-29-67 of the 1976 Code, as last amended by Act 352 of 2008, is further amended to read:

"Section 4-29-67. (A)(1) As used in this section:

(a) 'Department' means the South Carolina Department of Revenue.

(b) 'Lease agreement' means an agreement between the county and a sponsor leasing the property at the project from the county to a sponsor.

(c) 'Project' means land, buildings, and other improvements on the land including water, sewage treatment and disposal facilities, air pollution control facilities, and all other machinery apparatus, equipment, office facilities, and furnishings which are considered necessary, suitable, or useful by a sponsor. 'Project' also may consist of or include aircraft hangered or utilizing an airport in a county so long as the county expressly consents to its inclusion. Aircraft previously subject to taxation in South Carolina qualify pursuant to this provision.

(d) 'Qualified nuclear plant facility' means a nuclear electric power generating plant regulated by the Nuclear Regulatory Commission and includes all real and personal property incorporated into or associated with the facility located or to be located within this State with a total minimum level of investment of one billion dollars.

(e) 'Sponsor' means one or more entities which sign the inducement agreement with the county and also includes a sponsor affiliate unless the context clearly indicates otherwise.

(f) 'Sponsor affiliate' means an entity that joins with, or is an affiliate of, a sponsor and that participates in the investment in, or financing of, a project.

(2) Notwithstanding the provisions of Section 4-29-60, and notwithstanding that the sponsor does not request the county to issue bonds to finance the property, the county and a sponsor may enter into an inducement agreement that provides for a fee in lieu of taxes as provided in this section for certain property, title to which is held by the county and which is leased to a sponsor.

(B) For property to qualify for the fee as provided in subsection (D)(2):

(1) Title to the property must be held by the county. In the case of a project located in an industrial development park as defined in

Section 4-1-170, title may be held by more than one county, if each county is a member of the industrial development park. Real property transferred to the county through a lease agreement must include a legal description and plat of the real property. Property titled in the name of a county pursuant to this section is considered privately owned for purposes of Section 58-3-240.

(2) The project must be located in a single county or an industrial development park as defined in Section 4-1-170. A project located on a contiguous tract of land in more than one county, but not in an industrial development park, may qualify for the fee if:

(a) the counties agree on the terms of the fee and the distribution of the fee payment;

(b) the minimum millage rate is provided for in the agreement; and

(c) all the counties are parties to all agreements establishing the terms of the fee.

(3) The minimum level of investment in the project must be at least forty-five million dollars and must be invested within the time period provided in subsection (C). If a county has an average annual unemployment rate of at least twice the state average during the last twenty-four months based on data available on the most recent November first, the minimum level of investment is one million dollars. The department shall designate these reduced investment counties by December thirty-first of each year using data from the South Carolina Employment Security Commission and the United States Department of Commerce. The designations are effective for a sponsor whose inducement agreement is signed in the calendar year following the county designation. Investments may include amounts expended by a sponsor or sponsor affiliate as a nonresponsible party in a voluntary cleanup contract on the property at the project pursuant to Article 7, Chapter 56, Title 44, the Brownfields Voluntary Cleanup Program, if the Department of Health and Environmental Control certifies completion of the cleanup. If the amounts under the Brownfields Voluntary Cleanup Program equal at least one million dollars, the investment threshold requirement of this section is met.

(4)(a) A sponsor and a sponsor affiliate may qualify for the fee if each sponsor and sponsor affiliate invests the minimum level of investment at the project. If the project consists of a manufacturing, research and development, corporate office, or distribution facility as those terms are defined in Section 12-6-3360(M) and including a qualified nuclear plant facility as defined in subsection (A)(1)(d), each sponsor or sponsor affiliate is not required to invest the minimum

investment required by subsection (B)(3) if the total investment at the project exceeds forty-five million dollars.

(b)(i) Investments by sponsor affiliates within the time periods provided in subsection (C)(1) and (2) qualify for the fee regardless of whether or not the sponsor affiliate was part of the inducement agreement, so long as sponsor affiliates are approved specifically by the county and agree to be bound by agreements with the county relating to the fee; except that sponsor affiliates are not bound by agreements, or portions of agreements, to the extent those agreements do not affect the county. The investments pursuant to this subsection must be at the same project. The inducement agreement or the lease agreement may provide for a process for approval of sponsor affiliates.

(ii) The department must be notified in writing of all sponsor affiliates that have investments subject to the fee on or before ninety days after the end of the calendar year during which the project or pertinent phase of the project is placed in service. The department may extend this period upon written request. Failure to meet this notice requirement does not affect adversely the fee, but a penalty of up to ten thousand dollars a month or portion of a month with the total penalty not to exceed one hundred twenty thousand dollars may be assessed by the department for late notification.

(iii) A. Except as provided in subsection (D)(4) if, at any time, a sponsor no longer has the minimum level of investment as provided in subsection (B)(3), that sponsor no longer qualifies for the fee.

B. Except as provided in subsection (Q), if a sponsor qualifies for the fee pursuant to subsection (D)(4), the sponsor must maintain the applicable level of investment, without regard to depreciation, and any applicable job requirements provided in (D)(4). If the sponsor fails to maintain the applicable investment or any job requirements provided in (D)(4), it no longer qualifies for the fee.

C. Except as provided in subsection (Q), if an inducement agreement or a lease agreement provides for an investment above the minimum investment provided in subsection (B)(3), and the sponsor fails to maintain the investment provided for in the agreement, the sponsor no longer qualifies for the fee.

(C)(1) Except as provided in subsection (W)(1), from the end of the property tax year in which the sponsor and the county execute an inducement agreement, the sponsor has five years in which to enter into an initial lease agreement with the county.

(2)(a) From the end of the property tax year in which the sponsor and the county execute the initial lease agreement, the sponsor has five

years in which to complete its investment for purposes of qualifying for this section. If the sponsor does not anticipate completing the project within five years, the sponsor may apply to the county before the end of the five-year period for making the investment for an extension of time to complete the project. If the county agrees to grant the extension, it must be in writing, and a copy must be delivered to the department within thirty days of the date the extension was granted. The extension may not exceed five years. If a project receives an extension of less than five years, the sponsor may apply to the county before the end of the extension period for an additional extension of time to complete the project for an aggregate extension of not more than five years. Unless approved as part of the original lease documentation, the county council of the county may approve any extension by resolution, a copy of which must be delivered to the department within thirty days of the date the resolution was adopted.

(b) An extension of the five-year period in which to meet the minimum level of investment is not allowed. If the minimum level of investment is not met within five years, all property covered by the lease agreement or agreements reverts retroactively to the payments required by Section 4-29-60. The difference between the fee actually paid by the sponsor and the payment due pursuant to Section 4-29-60 is subject to interest, as provided in Section 12-54-25(D). To the extent necessary to determine if a sponsor or sponsor affiliate has met its investment requirements, any statute of limitation that might apply pursuant to Section 12-54-85 is suspended for all sponsors and sponsor affiliates and the department or the county may seek to collect any amounts that may be due pursuant to this section.

(c) Unless property qualifies as replacement property pursuant to a contract provision enacted pursuant to subsection (F)(2), property placed in service after the five-year period, or the ten-year period in the case of a project which has received an extension, is not part of the fee agreement pursuant to subsection (D)(2) and is subject to the payments required by Section 4-29-60 if the county has title to the property or ad valorem property taxes, if the sponsor has title to the property.

(d) For purposes of those businesses qualifying under subsection (D)(4), the five-year period referred to in this subsection is eight years. For those sponsors which, after qualifying pursuant to subsection (D)(4), have more than five hundred million dollars in capital invested in this State and employ more than one thousand people in this State, the five-year period referred to in this subsection is ten years, and the ten-year period is fifteen years.

(3) The annual fee provided by subsection (D)(2) is available for no more than thirty years for an applicable piece of property. The sponsor may apply to the county prior to the end of the thirty-year period for an extension of the fee period for up to ten years. The county council of the county may approve an extension by resolution upon a finding of substantial public benefit. A copy of the resolution shall be delivered to the department within thirty days of the date the resolution was adopted. For projects which are completed and placed in service during more than one year, each year's investment may be subject to the fee in subsection (D)(2) for thirty years or, if extended as provided in this subsection, up to forty years, for an aggregate maximum fee period of up to fifty years. For those sponsors qualifying under subsection (D)(4), the annual fee is available for no more than forty years for an applicable piece of property and for those projects placed in service in more than one year, the annual fee is available for an aggregate fee period of up to fifty-three years or, for those sponsors qualifying pursuant to item (2)(d), fifty-five years.

(4) During the time period allowed to meet the minimum investment level, the investor annually must inform the appropriate county official of the total amount invested.

(D) The inducement agreement must provide for fee payments, to the extent applicable, as follows:

(1)(a) Any property is subject to an annual fee payment as provided in Section 4-29-60 before being placed in service.

(b) Any undeveloped land is subject to an annual fee payment as provided in Section 4-29-60 before being developed and placed in service. The time during which fee payments are made pursuant to Section 4-29-60 is not considered part of the maximum periods provided in subsection (C)(2) and (3), and a lease is not an 'initial lease agreement' for purposes of this section until the first day of the calendar year for which a fee payment is due pursuant to subsection (D)(2) in connection with the lease.

(2) After property qualifying pursuant to subsection (B) is placed in service, an annual fee payment, determined in accordance with one of the following, is due:

(a) an annual payment in an amount not less than the property taxes that would be due on the project if it were taxable, but using:

(i) an assessment ratio of at least six percent, or four percent for those projects qualifying pursuant to subsection (D)(4);

(ii) a fixed millage rate as provided in subsection (G); and

(iii) a fair market value estimate determined by the department as follows:

A. for real property, using the original income tax basis for South Carolina income tax purposes without regard to depreciation. If real property is constructed for the fee or is purchased in an arms-length transaction, using the original tax basis, otherwise the property must be reported at its fair market value for ad valorem property tax purposes as determined by appraisal. The fair market value established for the first year of the fee remains the fair market value for the life of the fee. The county and the sponsor or sponsor affiliate may instead provide in the fee agreement or any amendment thereto that any real property subject to the fee shall be reported at its fair market value for ad valorem property taxes as determined by the department's appraisal as if such property were not subject to the fee; provided, the department may not undertake such an appraisal more than once every five years; and

B. for personal property, using the original tax basis for South Carolina income tax purposes, less depreciation allowable for property tax purposes; except that the sponsor is not entitled to any extraordinary obsolescence;

(b) an annual payment based on an alternative arrangement yielding a net present value of the sum of the fees for the life of the agreement not less than the net present value of the fee schedule as calculated pursuant to subsection (D)(2)(a). Net present value calculations performed pursuant to this subsection must use a discount rate equivalent to the yield in effect for new or existing United States Treasury bonds of similar maturity as published during the month in which the inducement agreement is executed. If no yield is available for the month in which the inducement agreement is executed, the last published yield for the appropriate maturity must be used. If there are no bonds of appropriate maturity available, bonds of different maturities may be averaged to obtain the appropriate maturity; or

(c) an annual payment as provided in subsection (D)(2)(a), except that every fifth year the applicable millage rate may increase or decrease in step with the average actual millage rate applicable in the district where the project is located based on the preceding five-year period.

(3) At the conclusion of the payments determined pursuant to items (1) and (2) of this subsection the annual fee payment is equal to the taxes due on the project as if it were taxable. When the property is no longer subject to the fee pursuant to subsection (D)(2), the fee or property taxes must be assessed:

(a) with respect to real property, based on the fair market value as of the latest reassessment date for similar taxable property; and

(b) with respect to personal property, based on the then-depreciated value applicable to the property under the fee, and after that continuing with the South Carolina property tax depreciation schedule.

(4)(a) The assessment ratio may not be lower than four percent:

(i) in the case of a single sponsor investing at least one hundred fifty million dollars and which is creating at least one hundred twenty-five new full-time jobs at the project;

(ii) in the case of a single sponsor investing at least four hundred million dollars in this State;

(iii) in the case of a project that satisfies the requirements of Section 11-41-30(2)(a), and for which the Secretary of Commerce has delivered certification pursuant to Section 11-41-70(2)(a).

For purposes of this item, if a single sponsor enters into a financing arrangement of the type described in subsection (O)(2), the investment in or financing of the property by a developer, lessor, financing entity, or other third party in accordance with this arrangement is considered investment by the sponsor. Investment by a related person to the sponsor, as described in Section 12-10-80(D)(2), is considered investment by the sponsor.

(b) The new full-time jobs requirement of this item does not apply in the case of a business that paid more than fifty percent of all property taxes actually collected in the county for more than the twenty-five years ending on the date of the lease agreement.

(c) In an instance in which the governing body of a county has provided, by contractual agreement, for a change in fee in lieu of taxes arrangements conditioned on a future legislative enactment, a new enactment does not bind the original parties to the agreement unless the change is ratified by the governing body of the county.

(5) Notwithstanding the use of the term 'assessment ratio', a sponsor qualifying for the fee may negotiate an inducement agreement with a county using differing assessment ratios for different assessment years or levels of investment covered by the inducement agreement. The lowest assessment ratio allowed is the lowest ratio for which the sponsor may qualify under this section.

(E) Calculations pursuant to subsection (D)(2) must be made on the basis that the property, if taxable, is allowed all applicable property tax exemptions except the exemption allowed pursuant to Section 3(g) of

Article X of the Constitution of this State and the exemptions allowed pursuant to Section 12-37-220(B)(32) and (34).

(F) With regard to calculation of the fee provided in subsection (D)(2), the inducement agreement may provide for the disposal of property and the replacement of property subject to the fee as follows:

(1) If a sponsor disposes of property subject to the fee, the fee must be reduced by the amount of the fee applicable to that property. Property is disposed of only when it is scrapped or sold or removed from the project. If it is removed from the project, it becomes subject to ad valorem property taxes to the extent it remains in the State. If the sponsor used any method to compute the fee other than that provided in subsection (D)(2)(a), the fee on the property which was disposed of must be recomputed in accordance with subsection (D)(2)(a) and to the extent the amount that would have been paid pursuant to subsection (D)(2)(a) exceeds the fee actually paid by the sponsor, the sponsor must pay the difference with the next fee payment due after the property is disposed of. If the sponsor used the method provided in subsection (D)(2)(c), the millage rate provided in subsection (D)(2)(c) must be used to calculate the amount which would have been paid pursuant to subsection (D)(2)(a). If there is no provision in the agreement dealing with the disposal of property in accordance with this subsection, the fee remains fixed and no adjustment to the fee is allowed for disposed property.

(2) Property placed in service as a replacement for property that is subject to the fee payment may become part of the fee payment as provided in this item:

(a) Replacement property may have a function that differs from the property it is replacing. Replacement property is considered to replace the oldest real or personal property subject to the fee and disposed of in the same property tax year as the replacement property is placed in service. Replacement property qualifies for fee treatment provided in subsection (D)(2) only up to the original income tax basis of fee property it replaces. More than one piece of replacement property may replace a single piece of fee property. To the extent that the income tax basis of the replacement property exceeds the original income tax basis of the property it replaces, the excess amount is subject to payments as provided in Section 4-29-60. Replacement property is entitled to the fee payment for the period of time remaining on the twenty-year fee period for the property it replaces.

(b) The new replacement property that qualifies for the fee provided in subsection (D)(2) is recorded using its income tax basis, and the fee is calculated using the millage rate and assessment ratio

provided on the original fee property. The fee payment for replacement property must be based on subsection (D)(2)(a) or (c) if the investor originally used that method, without regard to present value.

(c) To qualify as replacement property, title to the replacement property must be held by the county.

(d) If there is no provision in the inducement agreement dealing with replacement property, any property placed in service after the time period allowed for investments as provided by subsection (C)(2), is subject to the payments required by Section 4-29-60 if the county has title to the property or ad valorem property taxes, if the sponsor has title to the property.

(G)(1) The county and the sponsor may enter into a millage rate agreement to establish the millage rate for purposes of calculating payments pursuant to subsection (D)(2)(a) and the first five years pursuant to subsection (D)(2)(c). This millage rate agreement may be executed at any time up to and including, but not later than, the date of the initial lease agreement. This millage rate agreement may be a separate agreement or may be made a part of either the inducement agreement or the initial lease agreement.

(2) The millage rate established pursuant to item (1) of this subsection must be no lower than the cumulative property tax millage rate levied by or on behalf of all taxing entities within which the project is to be located on either:

(a) June thirtieth of the year preceding the year in which the millage rate agreement is executed or the initial lease agreement is executed if no millage rate agreement is executed; or

(b) June thirtieth of the year in which the millage rate agreement is executed if a millage rate agreement is not executed the lease agreement is deemed to be the millage rate agreement for purposes of this item.

(H)(1) Upon agreement of the parties, and except as provided in subsection (H)(2), an inducement agreement, a millage rate agreement, or both, may be amended or terminated and replaced with regard to all matters including, but not limited to, the addition or removal of sponsors or sponsor affiliates.

(2) An amendment or a replacement of an inducement agreement or millage rate agreement may not be used to lower the millage rate, discount rate, assessment ratio, or, except as provided in subsections (C)(2) and (C)(4) increase the term of the agreement; except that an existing inducement agreement that has not been implemented by the execution and delivery of a millage rate agreement or a lease agreement

may be amended up to the date of execution and delivery of a millage rate agreement or a lease agreement in the discretion of the governing body.

(I) Investment expenditures incurred by a sponsor in connection with the project, or relevant phase of a project, for a project completed and placed in service in more than one year, qualify as expenditures subject to the fee in subsection (D)(2), so long as these expenditures are incurred before the end of the applicable five-year, eight-year, ten-year, or fifteen-year period referenced in subsection (C)(2) or (3). An inducement agreement must be executed within two years after the date the county adopts an inducement resolution; otherwise, only investment expenditures made or incurred by a sponsor after the date of the inducement agreement in connection with a project qualify as expenditures subject to the fee in subsection (D)(2).

(J) Subject to subsection (K), project expenditures incurred within the applicable time period provided in subsection (I) by an entity whose investments are not computed at the level of investment for purposes of subsection (B) or (C) qualify as investment expenditures subject to the fee in subsection (D)(2) if the:

(a) expenditures are part of the original cost of property that is transferred, within the applicable time period provided in subsection (I) to one or more other investors or investor affiliates whose investments are being computed at the level of investment for purposes of subsection (B) or (C);

(b) property would have qualified for the fee in subsection (D)(2) if it had been initially acquired by the sponsor instead of the transferor entity;

(c) the income tax basis of the property immediately before the transfer equal the income tax basis of the property immediately after the transfer; except that, to the extent income tax basis of the property immediately after the transfer unintentionally exceeds the income tax basis of the property immediately before the transfer, the excess is subject to payments pursuant to Section 4-29-60;

(d) the county agrees to an inclusion in the fee of the property described in subsection (J).

(K)(1) Property previously subject to property taxes in South Carolina does not qualify for the fee except as provided in this subsection:

(a) land, excluding improvements on it, on which a new project is located may qualify for the fee even if it has previously been subject to South Carolina property taxes;

(b) property that has been subject previously to South Carolina property taxes, but has never been placed in service in South Carolina, or which was placed in service in South Carolina pursuant to an inducement agreement or other preliminary approval by the county prior to execution of the lease agreement pursuant to subsection (C)(1), may qualify for the fee; and

(c) property placed in service in South Carolina and subject to South Carolina property taxes that is purchased in a transaction other than between any of the entities specified in Section 267(b) of the Internal Revenue Code, as defined pursuant to Chapter 6, Title 12 as of the time of the transfer, may qualify for the fee if the sponsor invests at least an additional forty-five million dollars in the project.

(2) Repairs, alterations, or modifications to real or personal property which are not subject to a fee are not eligible for a fee, even if they are capitalized expenditures, except for modifications to existing real property improvements constituting an expansion of the improvements.

(L)(1) For a project not located in an industrial development park as defined in Section 4-1-170, distribution of the fee in lieu of taxes on the project must be made in the same manner and proportion that the millage levied for school and other purposes would be distributed if the property were taxable but without regard to exemptions otherwise available to a project pursuant to Section 12-37-220 for that year.

(2) For a project located in an industrial development park as defined in Section 4-1-170, distribution of the fee in lieu of taxes on the project must be made in the manner provided for by the agreement establishing the industrial development park.

(3) A county or municipality or special purpose district that receives and retains revenues from a payment in lieu of taxes may use a portion of this revenue for the purposes outlined in Section 4-29-68 without the requirement of issuing special source revenue bonds or the requirements of Section 4-29-68(A)(4) by providing a credit against or payment derived from the fee due from the sponsor.

(4) Misallocations of the distribution of the fee in lieu of taxes on the project pursuant to this chapter may be corrected by adjusting later distributions, but these adjustments must be made in the same fiscal year as the misallocations. To the extent distributions are made improperly in prior years, a claim for adjustment must be made within one year of the distribution.

(M) As a directly foreseeable result of negotiating the fee, gross revenue of a school district in which a project is located in any year a fee negotiated pursuant to this section is paid may not be less than

gross revenues of the district in the year before the first year for which a fee in lieu of taxes is paid. In negotiating the fee, the parties shall assume that the formulas for the distribution of state aid at the time of the execution of the inducement agreement must remain unchanged for the duration of the lease agreement.

(N) Projects on which a fee in lieu of taxes is paid pursuant to this section are considered taxable property at the level of the negotiated payments for purposes of bonded indebtedness pursuant to Sections 14 and 15 of Article X of the Constitution of this State, and for purposes of computing the index of taxpaying ability pursuant to Section 59-20-20(3). However, for a project located in an industrial development park as defined in Section 4-1-170, projects are considered taxable property in the manner provided in Section 4-1-170 for purposes of bonded indebtedness pursuant to Sections 14 and 15 of Article X of the Constitution of this State, and for purposes of computing the index of taxpaying ability pursuant to Section 59-20-20(3). Provided, however, that the computation of bonded indebtedness limitation is subject to the requirements of Section 4-29-68(E).

(O)(1) An interest in an inducement agreement, millage rate agreement, and lease agreement, and property to which these agreements relate, may be transferred to another entity at any time. Notwithstanding another provision of this chapter, an equity interest in a sponsor or sponsor affiliate may be transferred to another entity or person at any time. To the extent an agreement is transferred, the transferee assumes the current basis the sponsor has in the property subject to the fee for purposes of calculating the fee.

(2) A sponsor or county may enter into a lending, financing, security, lease, or similar arrangement, or succession of such arrangements, with a financing entity, concerning all or part of a project including, without limitation, a sale-leaseback arrangement, equipment lease build-to-suit-lease, synthetic lease, Nordic lease, defeased tax benefit, transfer lease, assignment, sublease, or similar arrangement, or succession of such arrangements, with one or more financing entities, concerning all or part of a project, regardless of the identity of the income tax owner of the property which is subject to the fee payment pursuant to subsection (D)(2). Even though income tax basis is changed for income tax purposes, neither the original transfer to the financing entity nor the later transfer from the financing entity back to the original sponsor pursuant to terms in the sale-leaseback agreement, affects the amount of the fee due.

(3) A transfer undertaken with respect to other projects to effect a financing authorized by subsection (O) must meet the following requirements:

(a) The department and the county shall receive written notification, within sixty days after the transfer, of the identity of each transferee and other information required by the department with the appropriate returns. Failure to meet this notice requirement does not affect adversely the fee, but a penalty up to ten thousand dollars a year or portion of a year up to a maximum penalty of fifty thousand dollars may be assessed by the department for late notification.

(b) If the financing entity is the income tax owner of property, either the financing entity is primarily liable for the fee as to that portion of the project to which the transfer relates with the sponsor remaining secondarily liable for the payment of the fee or the sponsor agrees to be primarily liable for the payment of the fee as to that portion of the project to which the transfer relates.

(4) A sponsor may transfer an inducement agreement, millage rate agreement, lease agreement, or the assets subject to the lease agreement, if it obtains the prior approval, or subsequent ratification, of the county with which it entered into the original agreement. The county's prior approval or subsequent ratification may be evidenced by any one of the following, in the absolute and sole discretion of the county providing the approval or ratification: (i) a letter or other writing executed by an authorized county representative as designated in the respective inducement, millage rate, or lease agreement; (ii) a resolution passed by the county council; or (iii) an ordinance passed by the county council following three readings and a public hearing. That approval is not required in connection with transfers to sponsor affiliates or other financing-related transfers.

(P) An inducement agreement, a millage rate agreement, or a lease agreement, or the rights of a sponsor or sponsor affiliate pursuant to that agreement including, without limitation, the availability of the subsection (D)(2) fee, may not be affected adversely if the bonds issued pursuant to that agreement are purchased by one or more of the entities that are or become sponsor or sponsor affiliates.

(Q) Except as provided in subsection (B)(4)(a), if a sponsor fails to make the minimum investment required by subsection (D)(2) or an investment under subsection (D)(4) if applicable, within the time provided in subsection (C)(2), then the sponsor is entitled to the benefits of Chapter 12 of this title if and to the extent allowed pursuant to an applicable agreement between the sponsor and the county, and if the requirements of subsection (B)(4)(a) are satisfied. Otherwise, the

fee provided in subsection (D)(2) or (D)(4) is no longer available and the sponsor must make the payments due pursuant to Section 4-29-60 for the remainder of the lease period.

(R) The minimum amount of the initial investment provided in subsection (B)(3) of this section may not be reduced except by a special vote which, for purposes of this section, means an affirmative vote in each branch of the General Assembly by two-thirds of the members present and voting, but not less than three-fifths of the total membership in each branch.

(S)(1) The sponsor shall file the returns, contracts, and other information that may be required by the department.

(2) Fee payments, and returns showing investments and calculating fee payments, are due at the same time as property tax payments and property tax returns would be due if the property were owned by the sponsor obligated to make the fee payments and file such returns.

(3) Failure to make a timely fee payment and file required returns results in penalties being assessed as if the payment or return were a property tax payment or return.

(4) The department may issue rulings and promulgate regulations necessary or appropriate to carry out the purpose of this section.

(5) The provisions of Chapters 4 and 54, Title 12, applicable to property taxes, apply to this section, and, for purposes of that application, the fee is considered a property tax. Sections 12-54-20, 12-54-80, and 12-54-155 do not apply to this section.

(6) Within thirty days of the date of execution of an inducement or lease agreement, a copy of the agreement must be filed with the department and the county auditor and the county assessor for every county in which the project is located. If the project is located in an industrial development park, the agreements must be filed with the auditors and assessors for all counties participating in the industrial development park.

(7) The department, for good cause, may allow additional time for filing of returns required under this section. The request for an extension may be granted only if the request is filed with the department on or before the date the return is due. However, the extension must not exceed sixty days from the date the return is due. The department shall develop applicable forms and procedures for handling and processing extension requests. An extension may not be granted to a sponsor who has been granted an extension for a previous period and has not fulfilled the requirements of the previous period.

(8) To the extent a form or return is filed with the department, the sponsor must file a copy of the form or return with the county auditor, assessor, and treasurer of the county or counties in which the project is physically located. To the extent requested, the county auditor of the county in which the project is physically located shall make these forms and returns available to any county auditor of a county participating in an industrial development park in which the project is located.

(T) Except as otherwise expressly provided in subsection (C)(2), a loss of fee benefits pursuant to this section is prospective only from the date of noncompliance and, subject to subsection (Q), only with respect to that portion of the project to which the noncompliance relates; except that the loss of fee benefits may not result in the recovery from the sponsor of fee payments for more than:

(1) three years from the date a return concerning the fee is filed for the time period during which the noncompliance occurs. A showing of bad faith noncompliance increases the three-year period to a ten-year period; or

(2) ten years if a return is not filed for the time period during which the noncompliance occurs.

(U) Section 4-29-65 does not apply to this section. All references in this section to taxes mean South Carolina taxes unless otherwise expressly stated.

(V)(1) Notwithstanding another provision of this section, in the case of a project consisting of a qualified recycling facility, the annual fee is available for no more than thirty years, and for those projects constructed or placed in service during a period of more than one year, the annual fee is available for a maximum of forty years.

(2) Notwithstanding another provision of this section, for a qualified recycling facility, the assessment ratio must be at least three percent.

(3) Any machinery and equipment foundations, port facilities, or railroad track systems used, or to be used, for a qualified recycling facility is considered tangible personal property.

(4) Notwithstanding subsections (F) and (I) of this section, the total costs of all investments made for a qualified recycling facility are eligible for fee payments as provided in this section.

(5) For purposes of fees that may be due on undeveloped property for which title has been transferred to the county by or for the owner or operator of a qualified recycling facility, the assessment ratio is three percent.

(6) Notwithstanding subsection (D)(2)(b) of this section, in the case of a qualified recycling facility, net present value calculations performed pursuant to that subsection must use a discount rate equivalent to the yield in effect for new or existing United States Treasury bonds of similar maturity as published on any day selected by the sponsor during the year in which assets are placed into service or in which the inducement agreement is executed.

(7) As used in this subsection, 'qualified recycling facility' and 'investment' have the meaning provided in Section 12-7-1275(A).

(W)(1) Notwithstanding subsection (C)(1), in the case of a qualified nuclear plant facility, the sponsor has five years from the end of the calendar year in which the Nuclear Regulatory Commission grants the sponsor a combined license to construct and operate a nuclear power plant to enter into an initial lease agreement with the county but in no event more than fifteen years from the latter of the adoption of an inducement resolution or execution of an inducement agreement by the county.

(2) Notwithstanding subsection (C)(2)(d), in the case of a qualified nuclear plant facility, the sponsor has fifteen years from the end of the calendar year in which the initial lease agreement is executed to meet the minimum investment and fifteen years from the end of the calendar year in which the first piece of property is placed into service to complete the project.

(X)(1) All agreements entered into pursuant to this section must include as the first portion of the document a recapitulation of the remaining contents of the document which includes, but is not limited to, the following:

(a) the legal name of each party to the agreement;

(b) the county and street address of the project and property to be subject to the agreement;

(c) the minimum investment agreed upon;

(d) the length and term of the agreement;

(e) the assessment ratio applicable for each year of the agreement;

(f) the millage rate applicable for each year of the agreement;

(g) a schedule showing the amount of the fee and its calculation for each year of the agreement;

(h) a schedule showing the amount to be distributed annually to each of the affected taxing entities;

(i) a statement answering the following questions:

(i) Is the project to be located in a multi-county park formed pursuant to Chapter 29, Title 4?;

(ii) Is disposal of property subject to the fee allowed?;

(iii) Will special source revenue bonds be issued or credits for infrastructure investment be allowed in connection with this project?;

(iv) Will payment amounts be modified using a net present value calculation?; and

(v) Do replacement property provisions apply?;

(j) any other feature or aspect of the agreement which may affect the calculation of subitems (g) and (h) of this item;

(k) a description of the effect upon the schedules required by subitems (g) and (h) of this item of any feature covered by subitems (i) and (j) not reflected in the schedules for subitems (g) and (h);

(l) which party or parties to the agreement are responsible for updating any information contained in the summary document.

(2) The auditor shall prepare a bill for each installment of the fee according to the schedule set forth in subitem (1)(g) or as modified pursuant to subitem (1)(j), (k), or (l) and that payment must be distributed to the affected taxing entities according to the schedule in subitem (1)(g) or as modified pursuant to subitem (1)(j), (k), or (l).

(3) The county and the sponsor and sponsor affiliates may agree to waive any or all of the items described in this subsection.

B. The provisions of this section take effect upon approval by the Governor except that the provisions of Section 4-29-67(C)(3) take effect January 1, 2011, provided that a county may amend an existing fee-in-lieu agreement at any time prior to the expiration of the fee to incorporate the amendments to Section 4-29-67(C)(3) as contained in subsection A. Also, except that Section 4-29-67(D) shall take effect in each county in the first property tax year in which a countywide reassessment program is implemented after December 31, 2010."

Bond issuance for personal property; removal of personal property

SECTION 7. Section 4-29-68(A)(2) of the 1976 Code, as last amended by Act 116 of 2007, is further amended to read:

"(2)(i) The bonds are issued for the purpose of paying the cost of designing, acquiring, constructing, improving, or expanding (a) the infrastructure serving the issuer or the project, (b) for improved or unimproved real estate and personal property including machinery and equipment used in the operation of a manufacturing or commercial enterprise, or (c) aircraft which qualifies as a project pursuant to

Section 12-44-30(16), which property is determined by the issuer to enhance the economic development of the issuer. Costs of issuance of the bonds also may be paid from bond proceeds. Bonds issued pursuant to this section to finance the acquisition of real or personal property may be additionally secured by a mortgage of that real or personal property.

(ii) To the extent that the bonds or any credit or offset against a fee in lieu of taxes that is allowed in lieu of the issuance of the bonds, is used as payment for personal property, including machinery and equipment, and the personal property is removed from the project at any time during the life of the fee, the amount of the fee in lieu of taxes due on the personal property for the year in which the personal property was removed from the project also shall be due for the two years immediately following the removal. The amounts will be remitted by the department to the county in which the project is located.

(a) To the extent that any payment amounts were used for both real property and personal property or infrastructure and personal property, all amounts will be presumed to have been first used for personal property.

(b) If personal property is removed from the project but is replaced with qualifying replacement property, then the personal property will not be considered to have been removed from the property."

Definitions revised

SECTION 8. A. Section 12-44-30 of the 1976 Code, as last amended by Act 352 of 2008, is further amended to read:

"Section 12-44-30. As used in this chapter:

(1) 'Alternative payment method' means fee payments as provided in Section 12-44-50(A)(3).

(2) 'Commencement date' means the last day of the property tax year during which economic development property is placed in service, except that this date must not be later than the last day of the property tax year which is three years from the year in which the county and the sponsor enter into a fee agreement. The commencement date for an economic development project as defined in subsection (17) is the last day of the first property tax year in which economic development property is placed in service.

(3) 'County' means the county or counties in which the project is proposed to be located. A project may be located in more than one county, subject to the provisions of Section 12-44-40(H).

(4) 'County council' means the governing body of the county in which the economic development property is located, except as specifically provided by Section 12-44-40(H).

(5) 'Department' means the South Carolina Department of Revenue.

(6) 'Economic development property' means each item of real and tangible personal property comprising a project which satisfies the provisions of Section 12-44-40(C) and other requirements of this chapter and is subject to a fee agreement. That property, other than replacement property qualifying under Section 12-44-60, must be placed in service by the end of the investment period.

(7) 'Enhanced investment' means a project that results in a total investment:

(a) by a single sponsor investing at least one hundred fifty million dollars and creating at least one hundred twenty-five new full-time jobs at the project; provided that the new full-time jobs requirement of this subsection does not apply to a taxpayer who paid more than fifty percent of all property taxes actually collected in the county for more than twenty-five years, ending on the date of the fee agreement;

(b) by a single sponsor investing at least four hundred million dollars; or

(c) that satisfies the requirements of Section 11-41-30(2)(a), and for which the Secretary of Commerce has delivered certification pursuant to Section 11-41-70(2)(a).

For purposes of this item, if a single sponsor enters into a financing arrangement of the type described in Section 12-44-120(B), the investment in or financing of the property by a developer, lessor, financing entity, or other third party in accordance with this arrangement is considered investment by the sponsor. Investment by a related person to the sponsor, as described in Section 12-10-80(D)(2), is considered investment by the sponsor.

(8) 'Exemption period' means the period beginning on the first day of the property tax year after the property tax year in which an applicable piece of economic development property is placed in service and ending on the termination date. For projects which are completed and placed in service during more than one year, the exemption period applies to each year's investment made by a sponsor during the investment period.

(9) 'Fee' means the amount paid in lieu of ad valorem property tax as provided in the fee agreement.

(10) 'Fee agreement' means an agreement between the sponsor and the county obligating the sponsor to pay fees instead of property taxes during the exemption period for each item of economic development property as more particularly described in Section 12-44-40.

(11) 'Inducement resolution' means a resolution of the county setting forth the commitment of the county to enter into a fee agreement.

(12) 'Infrastructure improvement credit' means a credit against the fee as provided by Section 12-44-70.

(13) 'Investment period' means the period beginning with the first day that economic development property is purchased or acquired and ending five years after the commencement date; except that for a project with an enhanced investment as described above, the period ends eight years after the commencement date. The minimum investment must be completed within five years of the commencement date. For an enhanced investment, the applicable minimum investment and job requirements under subsection (7) must be completed within eight years of the commencement date. Investment period means for a qualified nuclear plant facility the period beginning with the first day that economic development property is purchased or acquired and ending ten years after the commencement date. For those sponsors that, after qualifying for the enhanced investment, have more than five hundred million dollars in capital invested in this State and employ more than one thousand people in this State, the investment period ends ten years after the commencement date. If the sponsor does not anticipate completing the project within these periods, the sponsor may apply to the county before the end of the investment period for an extension of time to complete the project. The extension may not exceed five years. If a project receives an extension of less than five years, the sponsor may apply to the county before the end of the extension period for an additional extension of time to complete the project for an aggregate extension of not more than five years. Unless approved as part of the original fee documentation, the county council of the county may approve an extension by resolution, a copy of which must be delivered to the department within thirty days of the date the resolution was adopted. An extension is not allowed for the time period in which the sponsor must meet the minimum investment requirement.

(14) 'Minimum investment' means an investment in the project of at least two and one-half million dollars within the investment period. If

a county has an average annual unemployment rate of at least twice the state average during the last twenty-four month period based on data available on the most recent November first, the minimum investment is one million dollars. The department shall designate these reduced investment counties by December thirty-first of each year using data from the South Carolina Employment Security Commission and the United States Department of Commerce. The designations are effective for a sponsor whose fee agreement is signed in the calendar year following the county designation. For all purposes of this chapter, the minimum investment may include amounts expended by a sponsor or sponsor affiliate as a nonresponsible party in a voluntary cleanup contract on the property pursuant to Article 7, Chapter 56, Title 44, the Brownfields Voluntary Cleanup Program, if the Department of Health and Environmental Control certifies completion of the cleanup. If the amounts under the Brownfields Voluntary Cleanup Program equal at least one million dollars, the investment threshold requirement of this chapter is deemed to have been met.

(15) 'Industrial development park' means an industrial or business park developed by two or more counties as defined in Section 4-1-170.

(16) 'Project' means land, buildings, and other improvements on the land, including water, sewage treatment and disposal facilities, air pollution control facilities, and all other machinery, apparatus, equipment, office facilities, and furnishings which are considered necessary, suitable, or useful by a sponsor. 'Project' also may consist of or include aircraft hangered or utilizing an airport in a county so long as the county expressly consents to its inclusion. Aircraft previously subject to taxation in South Carolina qualify pursuant to this provision.

(17) 'Qualified nuclear plant facility' means a nuclear electric power generating plant regulated by the Nuclear Regulatory Commission and includes all real and personal property incorporated into or associated with the facility located or to be located within this State with a total minimum level of investment of one billion dollars.

(18) 'Replacement property' means property placed under the fee agreement to replace economic development property previously subject to the fee agreement, as provided in Section 12-44-60.

(19) 'Sponsor' means one or more entities which sign the fee agreement with the county and makes the minimum investment, subject to the provisions of Section 12-44-40, each of which makes the minimum investment as provided in subsection (13) and also includes a sponsor affiliate unless the context clearly indicates otherwise. If a project consists of a manufacturing, research and development,

corporate office, or distribution facility, as those terms are defined in Section 12-6-3360(M) and including a qualified nuclear plant facility as defined in subsection (17) of this section, each sponsor or sponsor affiliate is not required to invest the minimum investment if the total investment at the project exceeds five million dollars.

(20) 'Sponsor affiliate' means an entity that joins with or is an affiliate of a sponsor and that participates in the investment in, or financing of, a project.

(21) 'Termination date' means the date that is the last day of a property tax year that is the twenty-ninth year following the first property tax year in which an applicable piece of economic development property is placed in service. A sponsor may apply to the county prior to the termination date for an extension of the termination date beyond the twenty-ninth year up to ten years. The county council of the county shall approve an extension by resolution upon a finding of substantial public benefit. A copy of the resolution must be delivered to the department within thirty days of the date the resolution was adopted. If the fee agreement is terminated in accordance with Section 12-44-140, the termination date is the date the agreement is terminated."

B. The provisions of this section take effect upon approval by the Governor except that the provisions of Section 12-44-30(21) take effect January 1, 2011, provided that a county may amend an existing fee-in-lieu agreement at any time prior to the expiration of the fee to incorporate the amendments to Section 12-44-30(21) as contained in subsection A.

Time period required

SECTION 9. Section 12-44-40 of the 1976 Code, as last amended by Act 116 of 2007, is further amended to read:

"Section 12-44-40. (A) To obtain the benefits provided by this chapter, the sponsor and the county must enter into a fee agreement requiring the payment of the fee described in Section 12-44-50. The county must adopt an ordinance approving the fee agreement with the sponsor.

(B) If the county and the sponsor enter into a fee agreement, all economic development property is exempt from all ad valorem property taxation for the entire exemption period. Upon termination of

the exemption period, the property is subject to property taxation in the manner provided by law, unless the property is otherwise exempt.

(C) Subject to the provisions of subsection (D) and the provisions of Section 12-44-110, real or tangible personal property of a sponsor or sponsor affiliate which has been acquired for which expenditures have been incurred by the sponsor or sponsor affiliate and which are used in connection with a project or a portion of a project, qualifies as economic development property, if the expenditures are incurred or the property is acquired before the end of the investment period.

(D) A county has two years from the date it takes action reflecting or identifying the project, or proposed project, to adopt an inducement resolution if the inducement resolution was not the original county action reflecting or identifying the project or proposed project. Otherwise, expenditures incurred before adoption of the inducement resolution do not qualify as economic development property.

(E) If a fee agreement is not executed within five years after action by the county identifying or reflecting the project, the real property or tangible personal property of a sponsor for which expenditures have been incurred by the sponsor with respect to the project does not qualify as economic development property. An action includes an inducement resolution adopted by the county council of the county.

(F) Notwithstanding another provision of this chapter, in the case of a qualified nuclear plant facility, the sponsor has five years from the end of the calendar year in which the Nuclear Regulatory Commission grants the sponsor a combined license to construct and operate a nuclear power plant to enter into a fee agreement with the county but in no event more than fifteen years from the latter of the adoption of an inducement resolution or execution of an inducement agreement by the county.

(G) To be eligible to enter into a fee agreement, the sponsor shall commit to a project which meets the minimum investment level and, with respect to applicable enhanced investments, the total applicable investment and the minimum job creation levels required for an enhanced investment.

(H) The project must be located in a single county or in an industrial development park. A project located on contiguous tracts of land in more than one county, but not in an industrial development park, may qualify for the fee if:

(1) the counties agree on the terms of the fee and the distribution of the fee payment;

(2) a minimum millage rate is provided for in the agreement; and

(3) all counties are parties to all agreements establishing the terms of the fee.

(I)(1) Before undertaking a project, the county council shall find that:

(a) the project is anticipated to benefit the general public welfare of the locality by providing services, employment, recreation, or other public benefits not otherwise adequately provided locally;

(b) the project gives rise to no pecuniary liability of the county or incorporated municipality or a charge against its general credit or taxing power; and

(c) the purposes to be accomplished by the project are proper governmental and public purposes and the benefits of the project are greater than the costs.

(2) In making the findings of this subsection, the county council may seek the advice and assistance of the department or the Board of Economic Advisors. The determination and findings must be set forth in an ordinance.

(J) If the county council has by contractual agreement provided for a change in fee in lieu of taxes arrangements conditioned on a future legislative enactment, a new enactment does not bind the original parties to the agreement unless the change is ratified by the county council.

(K)(1) Upon agreement of the parties, and except as provided in item (2), a fee agreement may be amended or terminated and replaced with regard to all matters, including the addition or removal of sponsors or sponsor affiliates.

(2) An amendment or replacement of a fee agreement must not be used to lower the millage rate, discount rate, assessment ratio, or, except as provided in Sections 12-44-30(13) and (21), increase the term of the agreement."

Reporting of property value

SECTION 10. A. Section 12-44-50(A)(1)(c)(i) of the 1976 Code, as last amended by Act 69 of 2003, is further amended to read:

"(i) if real property is constructed for the fee or is purchased in an arm's length transaction, the fair market value of real property is determined by using the original income tax basis for South Carolina income tax purposes without regard to depreciation, otherwise the property must be reported at its fair market value for ad valorem property taxes as determined by appraisal. The fair market value

estimate established for the first year of the fee remains the fair market value of the real property for the life of the fee. The county and the sponsor or sponsor affiliate may instead provide in the fee agreement or any amendment thereto that any real property subject to the fee shall be reported at its fair market value for ad valorem property taxes as determined by appraisal as if such property were not subject to the fee; provided, the department may not undertake such an appraisal more than once every five years;"

B. This SECTION shall take effect in each county in the first property tax year in which a countywide reassessment program is implemented after December 31, 2010.

Property qualifying

SECTION 11. Section 12-44-110(2) of the 1976 Code, as last amended by Act 69 of 2003, is further amended to read:

"(2) property which has been subject to property taxes in this State, but which has never been placed in service in this State, or which was placed in service in this State pursuant to an inducement agreement or other preliminary approval by the county prior to execution of the fee agreement pursuant to Section 12-44-40(E), may qualify as economic development property;"

Reference changed

SECTION 12. Section 12-44-130(A) of the 1976 Code, as last amended by Act 384 of 2006, is further amended to read:

"(A) Except as otherwise provided in Section 12-44-30(19), to be eligible for the fee, a sponsor and each sponsor affiliate must invest the minimum investment as defined in Section 12-44-30(14). For an enhanced investment pursuant to Section 12-44-30(7), a single sponsor must make the investment, unless otherwise provided in that section. The county and the sponsors who are part of the fee agreement may agree that investments by other sponsor affiliates within the investment period qualify for the fee regardless of whether the sponsor affiliate was part of the fee agreement, except that each new sponsor affiliate must invest at least the minimum investment or the enhanced investment if applicable in the project, unless the project is a manufacturing, research and development corporate office, or

distribution facility as provided in Section 12-44-30(19). To qualify for the fee, the sponsor affiliates must be approved specifically by the county and must agree to be bound by agreements with the county relating to the fee. These sponsor affiliates are not bound by agreements, or portions of agreements, to the extent the agreements do not affect the county. The investments pursuant to this subsection must be at the sponsor's project. The fee agreement may provide for a process for approval of sponsor affiliates."

Property use

SECTION 13. Section 12-43-220(a)(4) of the 1976 Code, as last amended by Act 313 of 2008, is further amended to read:

"(4) Real property owned by or leased to a manufacturer and used primarily for warehousing and wholesale distribution is not considered used by a manufacturer in the conduct of the business of the manufacturer for purposes of classification of property pursuant to subsection (a). For purposes of this item, the real property owned by or leased to a manufacturer and used primarily for warehousing and wholesale distribution must not be physically attached to the manufacturing plant unless the warehousing and wholesale distribution area is separated by a permanent wall."

Purposes revised; availability

SECTION 14. Section 12-10-85 of the 1976 Code, as last amended by Act 353 of 2008, is further amended to read:

"Section 12-10-85. (A) Funds received by the department for the State Rural Infrastructure Fund must be deposited in the State Rural Infrastructure Fund of the council. The fund must be administered by the council for the purpose of providing financial assistance to local governments for infrastructure and other economic development activities including, but not limited to:

(1) training costs and facilities;

(2) improvements to regionally planned public and private water and sewer systems;

(3) improvements to both public and private electricity, natural gas, and telecommunications systems including, but not limited to, an electric cooperative, electrical utility, or electric supplier described in Chapter 27, Title 58;

(4) fixed transportation facilities including highway, rail, water, and air;

(5) site preparation;

(6) acquiring or improving real property; and

(7) relocation expenses, but only for those employees to whom the company is paying gross wages at least two times the lower of the per capita income for either the state or the county in which the project is located.

The council may retain up to five percent of the revenue received for the State Rural Infrastructure Fund for administrative, reporting, establishment of grant guidelines, review of grant applications, and other statutory obligations.

(B) Rural Infrastructure Fund grants must be available to benefit counties or municipalities designated as 'Tier IV' or 'Tier III' as defined in Section 12-6-3360 according to guidelines established by the council, except that up to twenty-five percent of the funds annually available in excess of ten million dollars must be set aside for grants to areas of 'Tier II' and 'Tier I' counties. A governing body of a 'Tier II' or 'Tier I' county must apply to the council for these set-aside grants stating the reasons that certain areas of the county qualify for these grants because the conditions in that area of the county are comparable to those conditions qualifying a county as 'Tier IV' or 'Tier III'.

(C) For purposes of this section, 'local government' means a county, municipality, or group of counties organized pursuant to Section 4-9-20(a), (b), (c), or (d).

(D) The council shall submit a report to the Governor and General Assembly by March fifteenth covering activities for the prior calendar year.

(E) The department shall retain unexpended or uncommitted funds at the close of the state's fiscal year of the State and expend the funds in subsequent fiscal years for like purposes."

Volume Cap Allocation Act

SECTION 15. A. Title 11 of the 1976 Code is amended by adding:

"CHAPTER 18

South Carolina Volume Cap Allocation Act

Section 11-18-5. This chapter shall be known as the 'South Carolina Volume Cap Allocation Act'.

Section 11-18-10. The General Assembly finds and determines that:

(a) Sections 1400U-2 and 1400U-3 of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5.123 Stat. 115 (2009) (codified at Section 1400U-2 and -3 of the Internal Revenue Code) ('ARRA') added two new types of bonds as recovery zone bonds:

(1) a new type of exempt facility bonds called 'recovery zone facility bonds' to be used to finance construction, renovation, and equipping of recovery zone property for use in any trade or business in a recovery zone, all as defined in ARRA; and

(2) a new type of governmental bond called 'recovery zone economic development bonds'.

(b) The provisions of ARRA provide a formula for allocation of authority to issue recovery zone facility bonds and recovery zone economic development bonds to the states and by the states to the counties and large municipalities within the states. The United States Department of the Treasury, Internal Revenue Service provided for recovery zone bond volume cap allocations in IRS Notice 2009-50 and provided calculations for individual counties and large municipalities on that same date. The notice made specific provision for reallocation of the volume cap allocations that are waived or deemed waived by a county or municipality by giving the state in which such county or municipality is located the authority to reallocate the waived volume cap in any reasonable manner as it shall determine in good faith in its discretion.

(c) Section 1112 of ARRA amended Section 54D(d) of the Internal Revenue Code to increase the volume cap authorization for qualified energy conservation bonds, which were created by Section 301(a) of Tax Extenders and Alternative Minimum Tax Relief Act of 2008, Pub. L. 110-343.122 Stat. 1365 (2008). The United States Department of the Treasury, Internal Revenue Service provided for qualified energy conservation bond volume cap allocations to the states in IRS Notice 2009-29 and authorized the states to allocate such volume cap allocations.

(d) Because of several factors, including the relatively small amounts of some of the allocations, limitations on legal borrowing capacity affecting counties and large municipalities and the lack of access to borrowing by possible beneficiaries of the bonds described above, very little of the allocations of bonds described herein have been utilized in connection with the issuance of these bonds in South Carolina.

(e) These bonds are a valuable resource to South Carolina in its efforts to revitalize its economy and to provide additional employment, all to the promotion of the health and welfare of the citizens of South Carolina.

(f) Because recovery zone bonds must be issued before January 1, 2011, it is in the best interests of the State to provide a procedure for determining as to when counties or large municipalities have waived their allocations of these bonds and to provide for the reallocation of such waived allocations.

(g) Recovery zone facility bonds are bonds with substantially all of the proceeds of which are used for 'recovery zone property', as defined in the ARRA. The definition of 'recovery zone property' includes facilities that may not currently be authorized under the state's private activity bond enabling statutes. These projects will provide much needed employment, thus it is the best interest of the health and welfare of the citizens of the State to provide authorization for bonds to finance recovery zone property.

(h) The purpose of this chapter is to provide the procedures for the reallocation of recovery zone bonds as well as provide the authorization for the allocation of Qualified Energy Conservation Bonds and Other Federal Bonds as defined below.

Section 11-18-20. (a) 'ARRA Bonds' mean:

(1) recovery zone bonds authorized under Section 1401 of ARRA; and

(2) Qualified Energy Conservation Bonds authorized under Section 301(a) of Tax Extenders and Alternative Minimum Tax Relief Act of 2008, Pub. L. 110-343, 122 Stat. 1365 (2008) as amended by Section 112 of ARRA.

(b) 'Board' means the South Carolina Budget and Control Board.

(c) 'Code' means the Internal Revenue Code of 1986, as amended.

(d) 'Local Government' means each county and municipality that received an allocation of Volume Cap pursuant to the Code and IRS Notice 2009-50.

(e) 'Other federal bonds' mean any such bond, whether tax–exempt, taxable or tax credit, created after the date hereof whereby a volume cap limitation is proscribed under the Code.

(f) 'Qualified energy conservation bond' means the term as defined in Section 54D(a) of the Code.

(g) 'Recovery zone' means the term as defined in Section 1400U-1(b) of the Code.

(h) 'Recovery zone economic development bond' means the term as defined in Section 1400U-2 of the Code.

(i) 'Recovery zone facility bond' means the term as defined in Section1400U-3 of the Code.

(j) 'State' means the State of South Carolina.

(k) 'Volume Cap' means the amount or other limitation of ARRA Bonds allocated to each state and to counties and large municipalities within each state in accordance with Section 1400U-1(a)(4) of the Code, with respect to Recovery Zone Economic Development Bonds and Recovery Zone Facility Bonds, Section 54D(e)(1) of the Code, with respect to Qualified Energy Conservation Bonds, and any other section of the Code which imposes a volume cap limitation on any other Federal Bonds.

Section 11-18-30. For any Volume Cap allocation of Qualified Energy Conservation Bonds and any other Volume Cap allocation for Other Federal Bonds, which has not been or shall not be further suballocated by the Code, the Internal Revenue Service or the United States Department of the Treasury, the board is authorized to suballocate such Volume Cap allocation.

Section 11-18-40. (A) In accordance with the provisions of this chapter, the board shall establish a method for determining when a Local Government has waived all or part of its Volume Cap allocation and shall manage the reallocation of such Volume Cap. All allocations and reallocations made pursuant to this chapter shall be made by the board with the advice and recommendation of an advisory committee which the board may from time to time appoint and which shall be comprised of members who are, in the sole determination of the board, familiar with the subject matter germane to the specific federal bond program.

(B) When appropriate, the board shall provide written notice of Volume Cap allocations of ARRA Bonds and Other Federal Bonds to Local Governments by United States registered or certified mail. Written notice shall be effective on the date shown on the return receipt. Such notice may include a deadline by which ARRA Bonds and Other Federal Bonds must be issued.

(C) A Local Government may waive its Volume Cap allocation by providing written notice of such waiver to the board within thirty days of the written notice provided in subsection (B).

(D) In determining when a Local Government has waived all or part of its Volume Cap, the board shall provide that if it has not received

from a Local Government a notice of intent to use its Volume Cap allocation within a designated number of days of the written notice provided in subsection (B), the Local Government shall be deemed to have waived its Volume Cap allocation. The form of the notice of intent to use a Local Government's Volume Cap allocation shall be determined by the board. Each notice of intent to use its Volume Cap allocation submitted by a Local Government must contain evidence satisfactory to the board, in its sole discretion, that the allocation will in fact be used. This evidence may consist of:

(1) resolution or otherwise of the designation of a Recovery Zone, if such designation is required;

(2) the form of the resolution or ordinance in substantially final form authorizing the issuance of bonds or approving such other financing as may be done accompanied by a written opinion of legal counsel that the Local Government has the legal ability to effect such issuance or borrowing;

(3) a written opinion of legal counsel that the ARRA Bonds or Other Federal Bonds that the Local Government intends to issue will qualify, based on information available at that time to such legal counsel, as such ARRA Bonds or Other Federal Bonds when issued;

(4) a schedule for the closing of the issue which must not be later than a date determined by the board; and

(5) other documentation as the board deems appropriate.

(E) Failure to issue ARRA Bonds or Other Federal Bonds by any deadline established by the board shall constitute a waiver of Volume Cap allocation unless the board extends such deadline.

Section 11-18-50. (A) Within thirty days of the effective date of this chapter, the board shall develop a form for use by any eligible issuer in applying for reallocation of any waived Volume Cap allocation. Applications for reallocation may be accepted by the board at times prescribed by the board. The board may make reallocations as soon as it determines that there is an actual or deemed waiver of any Volume Cap allocation.

(B) In making reallocations, the board may consider the following factors:

(1) the likelihood of successful completion of such financing;

(2) the number of jobs to be created or preserved and the wages for such jobs;

(3) relative economic need and benefit to the applicant and any other entity benefiting from the proposed issue; and

(4) the overall best interest of the State and the people of the State.

(C) Upon making any reallocation, the board shall provide written notice of the reallocation of Volume Cap to the eligible issuer by United States registered or certified mail.

Section 11-18-60. Local Governments allocated Volume Cap pursuant to this chapter may, by order or resolution of its governing body, suballocate such allocation to any other eligible issuers authorized to issue ARRA Bonds or Other Federal Bonds pursuant to the Code or any related pronouncements made by the Internal Revenue Service or the United States Treasury Department. Each Local Government that suballocates Volume Cap shall attach a copy of the order, ordinance, or resolution authorizing the suballocation to its notice of intent to use Volume Cap required by Section 11-18-40. Local Governments shall be authorized to take any other action required by the Code or related pronouncements made by the Internal Revenue Service or the Treasury Department to issue ARRA Bonds or Other Federal Bonds.

Section 11-18-70. (A) The purpose of this chapter is to ensure that the state's allocations of ARRA Bonds and Other Federal Bonds are used. To that end, the board is authorized and directed to make such exceptions and waivers or extend or shorten time requirements as it deems most likely to effect the purposes hereof. The board is encouraged to avoid the development of rigid procedures and formalities in the determination of waived allocations or reallocations. The board is directed to focus on the probability of the Local Governments' using the Volume Cap for ARRA Bonds prior to January 1, 2011.

(B) The board may adopt any further policies and procedures it considers necessary for the equitable and effective administration of this chapter.

Section 11-18-80. In order to make the maximum use of Volume Cap allocations, any bond enabling act which specifies particular projects or users must be construed to provide that any recovery zone property as defined in Section 1400U-3(b) of the Code will be deemed to qualify as a project. Accordingly, any person engaged in a qualified business as defined in Section 1400U-3(b)(2) of the Code will be permitted as beneficiary of any such bonds."

B. Section 4-29-10(3) of the 1976 Code, as last amended by Act 89 of 2001, is further amended to read:

"(3) 'Project' means any land and any buildings and other improvements on the land including, without limiting the generality of the foregoing, water, sewage treatment and disposal facilities, air pollution control facilities, and all other machinery, apparatus, equipment, office facilities, and furnishings which are considered necessary, suitable, or useful by the following investors or any combination of them:

(a) any enterprise for the manufacturing, processing, or assembling of any agricultural or manufactured products;

(b) any commercial enterprise engaged in storing, warehousing, distributing, transporting, or selling products of agriculture, mining, or industry, or engaged in providing laundry services to hospitals, to convalescent homes, or to medical treatment facilities of any type, public or private, within or outside of the issuing county or incorporated municipality and within or outside of the State;

(c) any enterprise for research in connection with any of the foregoing or for the purpose of developing new products or new processes or improving existing products or processes;

(d) any enterprise engaged in commercial business including, but not limited to, wholesale, retail, or other mercantile establishments; residential and mixed use developments of two thousand five hundred acres or more; office buildings; computer centers; tourism, sports, and recreational facilities; convention and trade show facilities; and public lodging and restaurant facilities if the primary purpose is to provide service in connection with another facility qualifying under this subitem; and

(e) any enlargement, improvement, or expansion of any existing facility in subitems (a), (b), (c), and (d) of this item.

The term 'project' does not include facilities for an enterprise primarily engaged in the sale or distribution to the public of electricity, gas, or telephone services. A project may be located in one or more counties or incorporated municipalities. The term 'project' also includes any structure, building, machinery, system, land, interest in land, water right, or other property necessary or desirable to provide facilities to be owned and operated by any person, firm, or corporation for the purpose of providing drinking water, water, or wastewater treatment services or facilities to any public body, agency, political subdivision, or special purpose district. This definition is for purposes of industrial revenue bonds only.

Notwithstanding another provision hereof, the term 'project' shall include any recovery zone property as defined in Section 1400U-3(b) of the Internal Revenue Code and any 'Qualified Conservation Purpose' as defined in Section 54D(f) of the Internal Revenue Code or other purposes set forth in Section 54D(e) of the Code. No restriction herein relating to the user or use of a project shall apply to any recovery zone property."

Job tax credit provisions revised

SECTION 16. Section 12-6-3360 of the 1976 Code, as last amended by Act 116 of 2007, is further amended to read:

"Section 12-6-3360. (A) Taxpayers that operate manufacturing, tourism, processing, warehousing, distribution, research and development, corporate office, qualifying service-related facilities, agribusiness operations, extraordinary retail establishment, and qualifying technology intensive facilities, and banks as defined pursuant to this title are allowed an annual jobs tax credit as provided in this section. In addition, taxpayers that operate retail facilities and service-related industries qualify for an annual jobs tax credit in counties designated as 'Tier IV'. As used in this section, 'corporate office' includes general contractors licensed by the South Carolina Department of Labor, Licensing and Regulation. Credits pursuant to this section may be claimed against income taxes imposed by Section 12-6-510 or 12-6-530, bank taxes imposed pursuant to Chapter 11 of this title, and insurance premium taxes imposed pursuant to Chapter 7, Title 38, and are limited in use to fifty percent of the taxpayer's South Carolina income tax, bank tax, or insurance premium tax liability. In computing a tax payable by a taxpayer pursuant to Section 38-7-90, the credit allowable pursuant to this section must be treated as a premium tax paid pursuant to Section 38-7-20.

(B) The department shall rank and designate the state's counties by December thirty-first each year using data from the South Carolina Employment Security Commission and the United States Department of Commerce. The county designations are effective for taxable years that begin in the following calendar year. The counties are ranked using the last three completed calendar years of per capita income data and the last thirty-six months of unemployment rate data that are available on November first, with equal weight given to unemployment rate and per capita income as follows:

(1) The twelve counties with a combination of the highest unemployment rate and lowest per capita income are designated 'Tier IV' counties. Notwithstanding any other provision of law, no more than twelve counties may be designated or classified as 'Tier IV' and notwithstanding any other provision of this section, a county may be designated as 'Tier IV' only by virtue of the criteria provided in this item.

(2) The twelve counties with a combination of the next highest unemployment rate and next lowest per capita income are designated 'Tier III' counties.

(3) The eleven counties with a combination of the next highest unemployment rate and the next lowest per capita income are designated 'Tier II' counties.

(4) The eleven counties with a combination of the lowest unemployment rate and the highest per capita income are designated 'Tier I' counties.

(C)(1) Subject to the conditions provided in subsection (M) of this section, a job tax credit is allowed for five years beginning in year two after the creation of the job for each new full-time job created if the minimum level of new jobs is maintained. The credit is available to taxpayers that increase employment by ten or more full-time jobs, and no credit is allowed for the year or any subsequent year in which the net employment increase falls below the minimum level of ten. The amount of the initial job credit is as follows:

(a) Eight thousand dollars for each new full-time job created in 'Tier IV' counties.

(b) Four thousand two hundred fifty dollars for each new full-time job created in 'Tier III' counties.

(c) Two thousand seven hundred fifty dollars for each new full-time job created in 'Tier II' counties.

(d) One thousand five hundred dollars for each new full-time job created in 'Tier I' counties.

(2)(a) Subject to the conditions provided in subsection (M) of this section, a job tax credit is allowed for five years beginning in year two after the creation of the job for each new full-time job created if the minimum level of new jobs is maintained. The credit is available to taxpayers with ninety-nine or fewer employees that increase employment by two or more full-time jobs, and may be received only if the gross wages of the full-time jobs created pursuant to this section amount to a minimum of one hundred twenty percent of the county's or state's average per capita income, whichever is lower. No credit is allowed for the year or any subsequent year in which the net

employment increase falls below the minimum level of two. The amount of the initial job credit is as described in subsection (C)(1).

(b) If the taxpayer with ninety-nine or fewer employees increases employment by two or more full-time jobs but the gross wages do not amount to a minimum one hundred twenty percent of the county's or state's average per capita income, whichever is lower, then the amount of the initial job credit is as follows:

(i) Four thousand dollars for each new full-time job created in 'Tier IV' counties.

(ii) Two thousand one hundred twenty-five dollars for each new full-time job created in 'Tier III' counties.

(iii) One thousand three hundred seventy-five dollars for each new full-time job created in 'Tier II' counties.

(iv) Seven hundred fifty dollars for each new full-time job created in 'Tier I' counties.

(D) If the taxpayer qualifying for the new jobs credit under subsection (C) creates additional new full-time jobs in years two through six, the taxpayer may obtain a credit for those new jobs for five years following the year in which the job is created. The amount of the credit for each new full-time job is the same as provided in subsection (C).

(E)(1) Taxpayers which qualify for the job tax credit provided in subsection (C) and which are located in a business or industrial park jointly established and developed by a group of counties pursuant to Section 13 of Article VIII of the Constitution of this State are allowed an additional one thousand dollar credit for each new full-time job created. This additional credit is permitted for five years beginning in the taxable year following the creation of the job.

(2) Taxpayers which otherwise qualify for the job tax credit provided in subsection (C) and which are located and the qualifying jobs are located on property where a response action has been completed pursuant to a nonresponsible party voluntary cleanup contract pursuant to Article 7, Chapter 56, Title 44, the Brownfields Voluntary Cleanup Program, are allowed an additional one thousand dollar credit for each new full-time job created. This additional credit is permitted for five years beginning in the taxable year following the creation of the job. No credit under this item is allowed a taxpayer that is a 'responsible party' as defined in that article.

(F)(1) The number of new and additional new full-time jobs is determined by comparing the monthly average number of full-time employees subject to South Carolina income tax withholding in the applicable county for the taxable year with the monthly average in the

prior taxable year. For purposes of calculating the monthly average number of full-time employees in the first year of operation in this State, a taxpayer may use the actual months in operation or a full twelve-month period. If a taxpayer's business is in operation for less than twelve months a year, the number of new and additional new full-time jobs is determined using the monthly average for the months the business is in operation.

(2)(a) A taxpayer who makes a capital investment of at least fifty million dollars at a single site within a three-year period may elect to have the number of new and additional new full-time jobs determined by comparing the monthly average number of full-time jobs subject to South Carolina income tax withholding at the site for the taxable year with the monthly average for the prior taxable year.

(b) For purposes of this item, 'single site' means a stand-alone building whether or not several stand-alone buildings are located in one geographical location.

(c) The calculation of new and additional jobs provided for in this item is allowed for only a five-year period commencing in the year in which the fifty million dollars of capital investment is completed.

(d) For purposes of this subsection a 'new job' does not include a job transferred from one site to another site by the taxpayer or a related person. A related person includes any entity or person that bears a relationship to the taxpayer as set forth in Section 267 of the Internal Revenue Code.

(G) Except for credits carried forward under subsection (H), the credits available under this section are only allowed for the job level that is maintained in the taxable year that the credit is claimed. If the job level for which a credit was claimed decreases, the five-year period for eligibility for the credit continues to run.

(H) A credit claimed pursuant to this section but not used in a taxable year may be carried forward for fifteen years from the taxable year in which the credit is earned by the taxpayer. Credits that are carried forward must be used in the order earned and before jobs credits claimed in the current year. A taxpayer who earns credits allowed by this section and who also is eligible for the moratorium provided in Section 12-6-3367 may claim the credits and may carry forward unused credits beginning after the moratorium period expires.

(I) The merger, consolidation, or reorganization of a taxpayer, where tax attributes survive, does not create new eligibility in a succeeding taxpayer, but unused job tax credits may be transferred and continued by the succeeding taxpayer subject to the limitations of Section 12-6-3320. In addition, a taxpayer may assign its rights to its

jobs tax credit to another taxpayer if it transfers all or substantially all of the assets of the taxpayer or all or substantially all of the assets of a trade or business or operating division of a taxpayer related to the generation of the jobs tax credits to that taxpayer if the required number of new jobs is maintained for that amount of credit. A taxpayer is not allowed a jobs tax credit if the net employment increase for that taxpayer falls below two. The appropriate agency shall determine if qualifying net increases or decreases have occurred and may require reports, adopt rules or promulgate regulations, and hold hearings needed for substantiation and qualification.

(J) For a taxpayer which plans a significant expansion in its labor forces at a location in this State, the appropriate agency shall prescribe certification procedures to ensure that the taxpayer can claim credits in future years even if a particular county is removed from the list of 'Tier IV', 'Tier III', or 'Tier II' counties.

(K)(1) An 'S' corporation, limited liability company taxed as a partnership, or partnership that qualifies for a credit under this section may pass through the credit earned to each shareholder of the 'S' corporation, partner of the partnership, or member of the limited liability company. For purposes of this subsection, limited liability company means a limited liability company taxed as a partnership.

(2)(a) The amount of the credit allowed a shareholder, partner, or member by this subsection is equal to the shareholder's percentage of stock ownership, partner's interest in the partnership, or member's interest in the limited liability company for the taxable year multiplied by the amount of the credit earned by the entity. This nonrefundable credit is allowed against taxes due under Section 12-6-510 or 12-6-530 and bank taxes imposed pursuant to Chapter 11 of this title and may not exceed fifty percent of the shareholder's, partner's, or member's tax liability under Section 12-6-510 or 12-6-530 or bank tax liability imposed pursuant to Chapter 11 of this title.

(b) Notwithstanding subitem (a), the credit earned pursuant to this section by an 'S' corporation owing corporate level income tax must be used first at the entity level. Only the remaining credit passes through to each shareholder.

(3) A credit claimed pursuant to this subsection but not used in a taxable year may be carried forward by each shareholder, partner, or member for fifteen years from the close of the tax year in which the credit is earned by the 'S' corporation, partnership, or limited liability company. The entity earning the credit may not carry over credit that passes through to its shareholders, partners, or members.

(L) Reserved

(M) As used in this section:

(1) 'Taxpayer' means a sole proprietor, partnership, corporation of any classification, limited liability company, or association taxable as a business entity that is subject to South Carolina taxes as contained in Section 12-6-510, Section 12-6-530, Chapter 11, Title 12, or Chapter 7, Title 38.

(2) 'Appropriate agency' means the Department of Revenue, except that for taxpayers subject to the premium tax imposed by Chapter 7, Title 38, it means the Department of Insurance.

(3) 'New job' means a job created in this State at the time a new facility or an expansion is initially staffed. Except as otherwise provided in this item, the term does not include a job created when an employee is shifted from an existing location in this State to a new or expanded facility whether the transferred job is from, or to, a facility of the taxpayer or a related person. A related person includes any entity or person that bears a relationship to the taxpayer as described in Section 267 of the Internal Revenue Code. However, this exclusion of a new job created by employee shifting does not extend to a job created at a new or expanded facility located in a county in which is located an 'applicable federal facility' as defined in Section 12-6-3450(A)(1)(b). The term 'new job' also includes an existing job at a facility of an employer which is reinstated after the employer has rebuilt the facility due to:

(a) its destruction by accidental fire, natural disaster, or act of God;

(b) involuntary conversion as a result of condemnation or exercise of eminent domain by the State or any of its political subdivisions or by the federal government.

Destruction for purposes of this provision means that more than fifty percent of the facility was destroyed. For purposes of this section, involuntary conversion as a result of condemnation or exercise of eminent domain includes a legally binding agreement for the purchase of a facility of an employer entered into between an employer and the State of South Carolina or a political subdivision of the State under threat of exercise of eminent domain by the State or its political subdivision.

The year of reinstatement is the year of creation of the job. All reinstated jobs qualify for the credit pursuant to this section, and a comparison is not required to be made between the number of full-time jobs of the employer in the taxable year and the number of full-time jobs of the employer with the corresponding period of the prior taxable year.

(4) 'Full-time' means a job requiring a minimum of thirty-five hours of an employee's time a week for the entire normal year of company operations or a job requiring a minimum of thirty-five hours of an employee's time for a week for a year in which the employee was hired initially for or transferred to the South Carolina facility. For the purposes of this section, two half-time jobs are considered one full-time job. A 'half-time job' is a job requiring a minimum of twenty hours of an employee's time a week for the entire normal year of the company's operations or a job requiring a minimum of twenty hours of an employee's time a week for a year in which the employee was hired initially for or transferred to the South Carolina facility.

(5) 'Manufacturing facility' means an establishment where tangible personal property is produced or assembled.

(6) 'Processing facility' means an establishment that prepares, treats, or converts tangible personal property into finished goods or another form of tangible personal property. The term includes a business engaged in processing agricultural, aquacultural, or maricultural products and specifically includes meat, poultry, and any other variety of food processing operations. It does not include an establishment in which retail sales of tangible personal property are made to retail customers.

(7) 'Warehousing facility' means an establishment where tangible personal property is stored but does not include any establishment where retail sales of tangible personal property are made to retail customers.

(8) 'Distribution facility' means an establishment where shipments of tangible personal property are processed for delivery to customers. The term does not include an establishment where retail sales of tangible personal property are made to retail customers on more than twelve days a year except for a facility which processes customer sales orders by mail, telephone, or electronic means, if the facility also processes shipments of tangible personal property to customers and if at least seventy-five percent of the dollar amount of goods sold through the facility are sold to customers outside of South Carolina. Retail sales made inside the facility to employees working at the facility are not considered for purposes of the twelve-day and seventy-five percent limitation. For purposes of this definition, 'retail sale' and 'tangible personal property' have the meaning provided in Chapter 36 of this title.

(9) 'Research and development facility' means an establishment engaged in laboratory, scientific, or experimental testing and development related to new products, new uses for existing products,

or improving existing products. The term does not include an establishment engaged in efficiency surveys, management studies, consumer surveys, economic surveys, advertising, promotion, banking, or research in connection with literary, historical, or similar projects.

(10) 'Corporate office facility' means a corporate headquarters that meets the definition of a 'corporate headquarters' contained in Section 12-6-3410(J)(1). The corporate headquarters of a general contractor licensed by the South Carolina Department of Labor, Licensing and Regulation qualifies even if it is not a regional or national headquarters as those terms are defined in Section 12-6-3410(J)(1).

(11) The terms 'retail sales' and 'tangible personal property' for purposes of this section are defined in Chapter 36 of this title.

(12) 'Tourism facility' means an establishment used for a theme park; amusement park; historical, educational, or trade museum; botanical garden; cultural center; theater; motion picture production studio; convention center; arena; auditorium; or a spectator or participatory sports facility; and similar establishments where entertainment, education, or recreation is provided to the general public. Tourism facility also includes new hotel and motel construction, except that to qualify for the credits allowed by this section and regardless of the county in which the facility is located, the number of new jobs that must be created by the new hotel or motel is twenty or more. It does not include that portion of an establishment where retail merchandise or retail services are sold directly to retail customers.

(13) 'Qualifying service-related facility' means:

(a) an establishment engaged in an activity or activities listed under the North American Industry Classification System Manual (NAICS) Section 62, subsectors 621, 622, and 623; or

(b) a business, other than a business engaged in legal, accounting, banking, or investment services or retail sales, which has a net increase of at least:

(i) two hundred fifty jobs at a single location;

(ii) one hundred twenty-five jobs at a single location and the jobs have an average cash compensation level of more than one and one-half times the lower of state per capita income or per capita income in the county where the jobs are located;

(iii) seventy-five jobs at a single location and the jobs have an average cash compensation level of more than twice the lower of state per capita income or per capita income in the county where the jobs are located; or

(iv) thirty jobs at a single location and the jobs have an average cash compensation level of more than two and one-half times the lower of state per capita income or per capita income in the county where the jobs are located.

A taxpayer shall use the most recent per capita income data available as of the end of the taxable year in which the jobs are filled. Determination of the required number of jobs is in accordance with the monthly average described in subsection (F).

(14) 'Technology intensive facility' means:

(a) a facility at which a firm engages in the design, development, and introduction of new products or innovative manufacturing processes, or both, through the systematic application of scientific and technical knowledge. Included in this definition are the following North American Industrial Classification Systems, NAICS, Codes published by the Office of the Management and Budget of the federal government:

(i) 5114 database and directory publishers;
(ii) 5112 software publishers;
(iii) 54151 computer systems design and related services;
(iv) 541511 custom computer programming services;
(v) 541512 computer systems design services;
(vi) 541710 scientific research and development services;
(vii) 9271 space research and technology; or

(b) a facility primarily used for one or more activities listed under the 2002 version of the NAICS Codes 51811 (Internet Service Providers and Web Search Portals).

(15) 'Extraordinary retail establishment' as defined in Sections 12-21-6520 and 12-21-6590.

(N) Except for employees employed in 'Tier IV' counties, the maximum aggregate credit that may be claimed in any tax year for a single employee pursuant to this section and Section 12-6-3470(A) is five thousand five hundred dollars."

Tax credits for port cargo volume increases revised

SECTION 17. Section 12-6-3375 of the 1976 Code, as last amended by Act 386 of 2006, is further amended to read:

"Section 12-6-3375. (A)(1) A taxpayer engaged in manufacturing, warehousing, or distribution which uses port facilities in this State and which increases its port cargo volume at these facilities by a minimum of five percent in a single calendar year over

its base year port cargo volume is eligible to claim an income tax credit or a credit against employee withholding in the amount determined by the Coordinating Council for Economic Development (council).

(2) The maximum amount of tax credits allowed to all qualifying taxpayers pursuant to this section may not exceed eight million dollars for each calendar year and credits against employee withholdings may not exceed four million dollars out of eight million dollars. The council has sole discretion in allocating the credits provided by this section on a priority basis or such other basis as the board deems appropriate, taking into consideration the following factors:

(a) the amount of base year port cargo volume;

(b) the total and percentage increase in port cargo volume;

(c) the number of qualifying taxpayers;

(d) the type of cargo transported; and

(e) other factors related to the economic benefit of the State, as determined by the council.

(3) If the credit exceeds the taxpayer's tax liability for the taxable year, the excess amount may be carried forward and claimed against income taxes in the next five succeeding taxable years.

(4) The credit may be claimed by the taxpayer as provided in subsection (A)(1) only if the taxpayer owns the cargo at the time the port facilities are used.

(B)(1) For every year in which a taxpayer claims the credit, the taxpayer shall submit an application to the council after the calendar year in which the increase in port cargo volume occurs. The council may make allocations of the credit on a monthly, quarterly, or annual basis. The taxpayer shall attach a schedule to the taxpayer's application to the council with the following information and information requested by the council or the department:

(a) a description of how the base year port cargo volume and the increase in port cargo volume was determined;

(b) the amount of the base year port cargo volume;

(c) the amount of the increase in port cargo volume for the taxable year stated both as a percentage increase and as a total increase in net tons of noncontainerized cargo and TEUs of cargo, including information which demonstrates an increase in port cargo volume in excess of the minimum amount required to claim the tax credits pursuant to this section;

(d) any tax credit utilized by the taxpayer in prior years; and

(e) the amount of tax credit carried over from prior years.

(2) To receive the credit the taxpayer shall claim the credit on its income tax or withholding return in a manner prescribed by the

department. The department may require a copy of the certification form issued by the council be attached to the return or otherwise provided.

(C) As used in this section:

(1) 'TEU' means a 'twenty-foot equivalent unit'; a volumetric measure based on the size of a container twenty feet long by eight feet wide by eight feet, six inches high.

(2) 'Base year port cargo volume' initially means the total amount of net tons of noncontainerized cargo or TEUs of cargo actually transported by way of a waterborne ship through a port facility during the period from January 1, 2009, through December 31, 2009. Base year port cargo volume must be at least seventy-five net tons of noncontainerized cargo or ten TEUs for a taxpayer to be eligible for the credits provided in this section. For a taxpayer that does not ship that amount in the year ending December 31, 2009, including a taxpayer who locates in South Carolina after December 31, 2009, its base cargo volume will be measured by the initial January first through December thirty-first calendar year in which it meets the requirements of seventy-five net tons of noncontainerized cargo or ten loaded TEUs. Base year port cargo volume must be recalculated each calendar year after the initial base year.

(3) 'Port facility' means any publicly or privately owned facility located within this State through which cargo is transported by way of a waterborne ship or vehicle to or from destinations outside this State and which handles cargo owned by third parties in addition to cargo owned by the port facility's owner.

(4) 'Port cargo volume' means the total amount of net tons of noncontainerized cargo or containers measured in twenty-foot equivalent units (TEUs) of cargo transported by way of a waterborne ship or vehicle through a port facility.

(D) The council may annually award up to one million dollars of the eight million dollars of credits to a new warehouse or distribution facility which commits to expending at least forty million dollars at a single site and creating one hundred new full-time jobs, and the base year cargo provisions contained in this section do not apply. The council may make the award in the year the facility is announced provided that it may not tender the certificate until it has received satisfactory proof that the capital investment and job creation requirements have, or will be, satisfied. Any credit certificate expires three years after issuance if satisfactory proof has not been received.

(E) Notwithstanding Section 12-54-240, the department and the Department of Commerce may exchange information submitted by a taxpayer pursuant to this section."

Project qualifications; infrastructure definition revised; report

SECTION 18. Section 12-20-105 of the 1976 Code, as last amended by Act 313 of 2008, is further amended to read:

"Section 12-20-105. (A) Any company subject to a license tax under Section 12-20-100 may claim a credit against its license tax liability for amounts paid in cash to provide infrastructure for an eligible project.

(B)(1) To be considered an eligible project for purposes of this section, the project must qualify for income tax credits under Chapter 6, Title 12, withholding tax credit under Chapter 10, Title 12, income tax credits under Chapter 14, Title 12, or fees in lieu of property taxes under either Chapter 12, Title 4, Chapter 29, Title 4, or Chapter 44, Title 12.

(2) If a project is located in an office, business, commercial, or industrial park, or combination of these, is used exclusively for economic development and is owned or constructed by a county, political subdivision, or agency of this State when the qualifying improvements are paid for, the project does not have to meet the qualifications of item (1) to be considered an eligible project. As provided in subsection (C)(4), the county or political subdivision may sell all or a portion of the business or industrial park.

(C) For the purpose of this section, 'infrastructure' means improvements for water, wastewater, hydrogen fuel, sewer, gas, steam, electric energy, and communication services made to a building or land that are considered necessary, suitable, or useful to an eligible project. These improvements include, but are not limited to:

(1) improvements to both public or private water and sewer systems;

(2) improvements to both public or private electric, natural gas, and telecommunications systems including, but not limited to, ones owned or leased by an electric cooperative, electric utility, or electric supplier, as defined in Chapter 27, Title 58;

(3) fixed transportation facilities including highway, road, rail, water, and air;

(4) for a qualifying project under subsection (B)(2), infrastructure improvements include shell buildings, incubator

buildings whose ownership is retained by the county, political subdivision, or agency of the State and the purchase of land for an office, business, commercial, or industrial park, or combination of these, used exclusively for economic development which is owned or constructed by a county, political subdivision, or agency of this State. The county, political subdivision, or agency may sell the shell building or all or a portion of the park at any time after the company has paid in cash to provide the infrastructure for an eligible project; and

(5) for a qualifying project pursuant to subsection (B)(2), infrastructure improvements also include due diligence expenditures relating to environmental conditions made by a county or political subdivision after it has acquired contractual rights to an industrial park. Due diligence expenditures include such items as Phase I and II studies and environmental or archeological studies required by state or federal statutes or guidelines or similar lender requirements. Contractual rights include options to purchase real property or other similar contractual rights acquired before the county or political subdivision files a deed to the property with the Register of Mesne Conveyances.

(D) A company is not allowed the credit provided by this section for actual expenses it incurs in the construction and operation of any building or infrastructure it owns, leases, manages, or operates.

(E) The maximum aggregate credit that may be claimed in any tax year by a single company is three hundred thousand dollars.

(F) The credits allowed by this section may not reduce the license tax liability of the company below zero. If the applicable credit originally earned during a taxable year exceeds the liability and is otherwise allowable under subsection (D), the amount of the excess may be carried forward to the next taxable year.

(G) For South Carolina income tax and license purposes, a company that claims the credit allowed by this section is ineligible to claim the credit allowed by Section 12-6-3420.

(H) By March first of each year, the Department of Revenue shall issue a report to the Chairman of the Senate Finance Committee, the Chairman of the House Ways and Means Committee, and the Secretary of the Department of Commerce outlining the history of the credit allowed pursuant to this section. The report shall include the amount of credit allowed pursuant to this section and the types of infrastructure provided to eligible projects."

Job development credit provisions revised

SECTION 19. Section 12-10-80 of the 1976 Code, as last amended by Act 352 of 2008, is further amended to read:

"Section 12-10-80. (A) A business that qualifies pursuant to Section 12-10-50(A) and has certified to the council that the business has met the minimum job requirement and minimum capital investment provided for in the revitalization agreement may claim job development credits as determined by this section.

(1) A business may claim job development credits against its withholding on its quarterly state withholding tax return for the amount of job development credits allowable pursuant to this section.

(2) A business that is current with respect to its withholding tax and other tax due and owing the State and that has maintained its minimum employment and investment levels identified in the revitalization agreement may claim the credit on a quarterly basis beginning with the first quarter after the council's certification to the department that the minimum employment and capital investment levels were met for the entire quarter. If a qualifying business is not current as to all taxes due and owing to the State as of the date of the return on which the credit would be claimed, without regard to extensions, the business may claim the credit only in an amount reduced by the amount of taxes due and owing to the State as of the date of the return on which the credit is claimed.

(3) A qualifying business may claim its initial job development credit only after the council has certified to the department that the qualifying business has met the required minimum employment and capital investment levels.

(4) To be eligible to apply to the council to claim a job development credit, a qualifying business shall create at least ten new, full-time jobs, as defined in Section 12-6-3360(M), at the project described in the revitalization agreement within five years of the effective date of the agreement.

(5) A qualifying business is eligible to claim a job development credit pursuant to the revitalization agreement for not more than fifteen years.

(6) A company's job development credits shall be suspended during any quarter in which the company fails to maintain one hundred percent of the minimum job requirement set forth in the company's revitalization agreement. A company only may claim credits on jobs,

including a range of jobs approved by the council, as set forth in the company's final revitalization agreement.

(7) Credits may be claimed beginning the quarter subsequent to the council's approval of the company's documentation that the minimum jobs and capital investment requirements have been met.

(8) To the extent any return of an overpayment of withholding that results from claiming job development credits is not used as permitted by subsection (C) or by Section 12-10-95, it must be treated as misappropriated employee withholding.

(9) Job development credits may not be claimed for purposes of this section with regard to an employee whose job was created in this State before the taxable year of the qualifying business in which it enters into a preliminary revitalization agreement.

(10) If a qualifying business claims job development credits pursuant to this section, it shall make its payroll books and records available for inspection by the council and the department at the times the council and the department request. Each qualifying business claiming job development credits pursuant to this section shall file with the council and the department the information and documentation requested by the council or department respecting employee withholding, the job development credit, and the use of any overpayment of withholding resulting from the claiming of a job development credit according to the revitalization agreement.

(11) Each qualifying business claiming in excess of ten thousand dollars in a calendar year must furnish to the council and to the department a report that itemizes the sources and uses of the funds. The report must be filed with the council and the department no later than June thirtieth following the calendar year in which the job development credits are claimed, except when a qualifying business obtains the written approval by the council for an extension of that date. Extensions may be granted only for good cause shown. The department shall impose a penalty pursuant to Section 12-54-210 for all reports filed after June thirtieth or the approved extension date, whichever is later. The department shall audit each qualifying business with claims in excess of ten thousand dollars in a calendar year at least once every three years to verify proper sources and uses of the funds.

(12) Each qualifying business claiming ten thousand dollars or less in any calendar year must furnish a report prepared by the company that itemizes the sources and uses of the funds. This report must be filed with the council and the department no later than June thirtieth following the calendar year in which the job development credits are claimed, except when a qualifying business obtains the

written approval by the council for an extension of that date. Extensions may be granted only for good cause shown. The department shall impose a penalty pursuant to Section 12-54-210 for all reports filed after June thirtieth or the approved extension date, whichever is later.

(13) An employer may not claim an amount that results in an employee's receiving a smaller amount of wages on either a weekly or on an annual basis than the employee would receive otherwise in the absence of this chapter.

(B)(1) The maximum job development credit a qualifying business may claim for new employees is limited to the lesser of withholding tax paid to the State on a quarterly basis or the sum of the following amounts:

(a) two percent of the gross wages of each new employee who earns $8.74 or more an hour but less than $11.64 an hour;

(b) three percent of the gross wages of each new employee who earns $11.65 or more an hour but less than $14.55 an hour;

(c) four percent of the gross wages of each new employee who earns $14.56 or more an hour but less than $21.84 an hour; and

(d) five percent of the gross wages of each new employee who earns $21.85 or more an hour.

(2) The hourly gross wage figures in item (1) must be adjusted annually by an inflation factor determined by the State Budget and Control Board.

(C) To claim a job development credit, the qualifying business must incur qualified expenditures at the project or for utility or transportation improvements that serve the project. To be qualified, the expenditures must be:

(1) incurred during the term of the revitalization agreement, including a preliminary revitalization agreement, or within sixty days before council's receipt of an application for benefits pursuant to this section;

(2) authorized by the revitalization agreement; and

(3) used for any of the following purposes:

(a) training costs and facilities;

(b) acquiring and improving real property whether constructed or acquired by purchase, or in cases approved by the council, acquired by capital or operating lease with at least a five-year term or otherwise;

(c) improvements to both public and private utility systems including water, sewer, electricity, natural gas, and telecommunications;

(d) fixed transportation facilities including highway, rail, water, and air;

(e) construction or improvements of real property and fixtures constructed or improved primarily for the purpose of complying with local, state, or federal environmental laws or regulations;

(f) employee relocation expenses, but only for those employees to whom the company is paying gross wages at least two times the lower of the per capita income for either the state or the county in which the project is located;

(g) financing the costs of a purpose described in items (a) through (f);

(h) training for all relevant employees that enable a company to export or increase a company's ability to export its products, including training for logistics, regulatory, and administrative areas connected to the company's export process and other export process training that allows a qualified company to maintain or expand its business in this State;

(i) apprenticeship programs;

(j) quality improvement programs of the South Carolina Quality Forum.

(D)(1) The amount of job development credits a qualifying business may claim for its use for qualifying expenditures is limited according to the designation of the county as defined in Section 12-6-3360(B), as follows:

(a) one hundred percent of the maximum job development credits may be claimed by businesses located in counties designated as 'Tier IV';

(b) eighty-five percent of the maximum job development credits may be claimed by businesses located in counties designated as 'Tier III';

(c) seventy percent of the maximum job development credits may be claimed by businesses located in counties designated as 'Tier II'; or

(d) fifty-five percent of the maximum job development credits may be claimed by businesses located in counties designated as 'Tier I'.

(2) The amount that may be claimed as a job development credit by a qualifying business is limited by this subsection and by the revitalization agreement. The council may approve a waiver of ninety-five percent of the limits provided in item (1) for:

(a) a significant business; and

(b) a related person to a significant business if the related person is located at the project site of the significant business and qualifies for job development credits pursuant to this chapter.

For purposes of this item, a related person includes any entity or person that bears a relationship to a significant business as provided in Internal Revenue Code Section 267 and includes, without limitation, a limited liability company of which more than fifty percent of the capital interest or profits is owned directly or indirectly by a significant business or by a person or entity, or group of persons or entities which owns, more than fifty percent of the capital interest or profits in the significant business.

(3) The county designation of the county in which the project is located on the date the application for job development credit incentives is received in the Office of the Coordinating Council remains in effect for the entire period of the revitalization agreement, except as to additional jobs created pursuant to an amendment to a revitalization agreement entered into before June 1, 1997, as provided in Section 12-10-60. In that case the county designation on the date of the amendment remains in effect for the remaining period of the revitalization agreement as to any additional jobs created after the effective date of the amendment.

(E) The council shall certify to the department the maximum job development credit for each qualifying business. After receiving certification, the department shall remit an amount equal to the difference between the maximum job development credit and the job development credit actually claimed to the State Rural Infrastructure Fund as defined and provided in Section 12-10-85.

(F) Any job development credit of a qualifying business permanently lapses upon expiration or termination of the revitalization agreement. If an employee is terminated, the qualifying business immediately must cease to claim job development credits as to that employee.

(G) For purposes of the job development credit allowed by this section, an employee is a person whose job was created in this State.

(H) Job development credits may not be claimed by a governmental employer who employs persons at a closed or realigned military installation as defined in Section 12-10-88(E).

(I) A taxpayer who qualifies for the job development credit pursuant to the provisions of this section and who is located in a multicounty business or industrial park jointly established pursuant to Section 13 of Article VIII of the Constitution of this State is allowed a job development credit equal to the amount allowed pursuant to

subsection (D) for the designation of the county which has the lowest development status of the counties containing the park if:

(1) the park is developed and established on the geographical boundary of adjacent counties; and

(2) the written agreement, pursuant to Section 4-1-170, requires revenue from the park to be allocated to each county on an equal basis.

(J) Where the qualifying business that creates new jobs under this section is a qualifying service-related facility as defined in Section 12-6-3360(M)(13), the determination of the number of jobs created must be based on the total number of new jobs created within five years of the effective date of the revitalization agreement, without regard to monthly or other averaging."

Purposes revised

SECTION 20. Section 12-14-20 of the 1976 Code is amended to read:

"Section 12-14-20. It is the purpose of this chapter to establish a program of providing tax incentives for the creation of capital investment in order:

(1) to revitalize capital investment in this State, primarily by encouraging the formation of new businesses and the retention and expansion of existing businesses; and

(2) to promote meaningful employment."

Investment tax credit provisions revised

SECTION 21. Section 12-14-60 of the 1976 Code, as last amended by Act 113 of 2005, is further amended to read:

"Section 12-14-60. (A)(1) There is allowed an investment tax credit against the tax imposed pursuant to Chapter 6 of this title for any taxable year in which the taxpayer places in service qualified manufacturing and productive equipment property.

(2) The amount of the credit allowed by this section is equal to the aggregate of:

three-year property one-half percent of total aggregate bases for all three-year property that qualifies;

five-year property one percent of total aggregate bases for all five-year property that qualifies;

seven-year property one and one-half percent of total aggregate bases for all seven-year property that qualifies;

ten-year property two percent of total aggregate bases for all ten-year property that qualifies;

fifteen-year property two and one-half percent of total aggregate bases for all or greater fifteen-year or greater property that qualifies.

For purposes of this section, whether property is three-year property, five-year property, seven-year property, ten-year property, or fifteen-year property is determined based on the applicable recovery period for such property under Section 168(e) of the Internal Revenue Code.

(B) For purposes of this section:

(1) 'qualified manufacturing and productive equipment property' means any property:

(a) which is used as an integral part of manufacturing or production, or used as an integral part of extraction of or furnishing transportation, communications, electrical energy, gas, water, or sewage disposal services in the economic impact zone;

(b) which is tangible property to which Section 168 of the Internal Revenue Code applies;

(c) which is Section 1245 property (as defined in Section 1245(a)(3)of the Internal Revenue Code); and

(d)(i) the construction, reconstruction, or erection of which is completed by the taxpayer in this State; or

(ii) which is acquired by the taxpayer if the original use of such property commences with the taxpayer inside this State.

(2) In the case of any computer software which is used to control or monitor a manufacturing or production process inside this State and with respect to which depreciation (or amortization in lieu of depreciation) is allowable, the software must be treated as qualified manufacturing and productive equipment property.

(C) This section does not apply to any property to which the other tax credits would apply unless the taxpayer elects to waive the application of the other credits to the property.

(D)(1) Unused credit allowed pursuant to this section may be carried forward for ten years from the close of the tax year in which the credit was earned.

(2) In the case of credit unused within the initial ten-year period, a taxpayer may continue to carry forward unused credits for use in any subsequent tax years if the taxpayer:

(a) is engaged in this State in an activity or activities listed under the North American Industry Classification System Manual (NAICS) Section 31, 32, or 33;

(b)(i) is employing one thousand or more full-time workers in this State and having a total capital investment in this State of not less than five hundred million dollars; or

(ii) is employing eight hundred fifty or more full-time workers in this State and having a total capital investment in this State of not less than seven hundred fifty million dollars; and

(c) made a total capital investment of not less than fifty million dollars in the previous five years.

Credits carried forward beyond the initial ten-year period may not reduce a taxpayer's state income tax liability in any subsequent tax year by more than twenty-five percent.

(E) If during any taxable year and before the end of applicable recovery period for such property as determined under Section 168(e) of the Internal Revenue Code, the taxpayer disposes of or removes from this State qualified manufacturing and productive equipment property, then the tax due under Chapter 6 by the taxpayer for the current taxable year must be increased by an amount of any credit claimed in prior years with respect to such property determined by assuming the credit is earned ratably over the useful life of the property and recapturing pro rata the unearned portion of the credit.

(F) For South Carolina income tax purposes, the basis of the qualified manufacturing and productive equipment property must be reduced by the amount of any credit claimed with respect to the property. If a taxpayer is required to recapture the investment tax credit in accordance with subsection (E), the taxpayer may increase the basis of the property by the amount of any basis reduction attributable with claiming the investment tax credit in prior years. The basis must be increased in the year in which the credit is recaptured.

(G) The credit allowed by this section for investments made after June 30, 1998, is limited to no more than five million dollars for an entity subject to the license tax as provided in Section 12-20-100. "

Biodiesel expenditure tax credit expanded and revised

SECTION 22. Section 12-6-3631 of the 1976 Code, as last amended by Act 261 of 2008, is further amended to read:

"Section 12-6-3631. (A) For taxable years beginning after 2007, and before 2012, a taxpayer is allowed a credit against the income tax

imposed pursuant to this chapter for qualified expenditures for research and development.

(B) For purposes of this section:

(1) 'Qualified expenditures for research and development' means expenditures to develop feedstocks and processes for cellulosic ethanol, waste grease-derived biodiesel, and for algae-derived biodiesel, including:

(a) enzymes and catalysts involving cellulosic ethanol, waste grease-derived biodiesel, and algae-derived biodiesel;

(b) best and most cost efficient feedstocks for South Carolina; or

(c) product and development, including cellulosic ethanol, waste grease-derived biodiesel, or algae-derived biodiesel products.

(2) 'Cellulosic ethanol' means fuel from ligno-cellulosic materials, including wood chips derived from noncommercial sources, corn stover, and switchgrass.

(C) The credit is equal to twenty-five percent of qualified expenditures for research and development, except for expenditures related to waste grease-derived biodiesel, which credit is equal to ten percent. A taxpayer's total credit in all years, for all expenditures allowed pursuant to this section, must not exceed one hundred thousand dollars. Unused credits may be carried forward for five years after the tax year in which a qualified expenditure was made. The credit is nonrefundable.

(D) Expenditures qualifying for a tax credit allowed by this section must be certified by the State Energy Office. The State Energy Office may consult with the Department of Agriculture and the South Carolina Institute for Energy Studies on standards for certification.

(E)(1) To obtain the maximum amount of the credit available to a taxpayer, each taxpayer must submit a request for the credit to the State Energy Office by January thirty-first for qualifying research expenses incurred in the previous calendar year and the State Energy Office must notify the taxpayer that the submitted expenditures qualify for the credit and the amount of credit allocated to such taxpayer by March first of that year. A taxpayer may claim the maximum amount of the credit for its taxable year which contains the December thirty-first of the previous calendar year. The Department of Revenue may require any documentation that it deems necessary to administer the credit.

(2) For the state's fiscal year beginning July 1, 2008, the maximum amount of the credit is to be determined based on an eighteen-month period beginning July 1, 2008, through December 31, 2009. Applications are to be made by January 31, 2010, for the

previous eighteen-month period commencing July 1, 2008, and ending December 31, 2009. A taxpayer allocated a credit for this eighteen-month period may claim the credit for its tax year which contains December 31, 2009.

(3) To the extent the maximum amount of the credit contained in this section is repealed, the elimination of the maximum amount shall be seen as the last expression of the legislature and to the extent any language in this act conflicts with that repeal, it shall be considered null and void."

Renewable energy tax incentives

SECTION 23. Chapter 6, Title 12 of the 1976 Code is amended by adding:

"Section 12-6-3588. (A) The General Assembly has determined to enact the 'South Carolina Renewable Energy Tax Incentive Program' as contained in this section to encourage business investment that will produce high quality employment opportunities and enhance this State's position as a center for production and use of renewable energy products. The program accomplishes this goal by providing tax incentives to companies in the solar, wind, geothermal, and other renewable energy industries who are expanding or locating in South Carolina.

(B) As used in this section:

(1) 'Capital investment' means an expenditure to acquire, lease, or improve property that is used in operating a business, including land, buildings, machinery, and fixtures.

(2) 'Manufacturing' means fabricating, producing, or manufacturing raw or unprepared materials into usable products, imparting new forms, qualities, properties, and combinations. Manufacturing does not include generating electricity for off-site consumption.

(3) 'Qualifying investment' means investment in land, buildings, machinery, and fixtures for expansion of an existing facility or establishment of a new facility in this State. Qualifying investment does not include relocating an existing facility in this State to another location in this State without additional capital investment.

(4) 'Renewable energy operations' are limited to manufacturers of systems and components that are used or useful in manufacturing renewable energy equipment for the generation, storage, testing and research and development, and transmission or distribution of

electricity from renewable sources, including specialized packaging for the renewable energy equipment manufactured at the facility.

(C) A business or corporation meeting the requirements of this section beginning in 2010 is eligible to receive a ten percent nonrefundable income tax credit of the cost of the company's total qualifying investments in plant and equipment in this State for renewable energy operations.

(D) The business or corporation must:

(1) manufacture renewable energy systems and components in South Carolina for solar, wind, geothermal, or other renewable energy uses in order to be eligible for the tax credit authorized by this section;

(2) invest at least five hundred million dollars in the year the tax credit is claimed in new qualifying plant and equipment; and

(3) have created one and one-half full-time jobs for every five hundred thousand dollars of capital investment qualifying for the credit that each pays at least one hundred twenty-five percent of this State's average annual median wage as defined by the Department of Commerce.

(E) The income tax credit program is for a five-year period beginning January 1, 2010, and ending December 31, 2015.

(F) A taxpayer may separately qualify for new facilities in separate locations or for separate expansions of existing facilities located in this State.

(G) A taxpayer's total credit for all expenditures allowed pursuant to this section must not exceed five hundred thousand dollars for any year and five million dollars total for all years. Unused credits may be carried forward for fifteen years after the tax year in which a qualified expenditure was made. The credit is nonrefundable.

(H) Expenditures qualifying for a tax credit allowed by this section must be certified by the State Energy Office. The State Energy Office may consult with appropriate state and federal officials on standards for certification.

(I) To obtain the amount of the credit available to a taxpayer, each taxpayer must submit a request for the credit to the State Energy Office by January thirty-first for qualifying expenses incurred in the previous calendar year and the State Energy Office must notify the taxpayer that the submitted expenditures qualify for the credit and the amount of credit allocated to such taxpayer by March first of that year. A taxpayer may claim the maximum amount of the credit for its taxable year which contains the December thirty-first of the previous calendar year. The Department of Commerce must certify to the State Energy

Office that the taxpayer has met the job creation requirements of subsection (D).

(J) The credits authorized by this section are in lieu of any other applicable income tax credits or abatements allowed by state law, and in the event of an overlap or conflict in available credits or abatements to a taxpayer, the taxpayer must select the credit or abatement he desires in the manner prescribed by the Department of Revenue to the extent the credits or abatements conflict or overlap."

Citation changed

SECTION 24. Section 12-15-10 of the 1976 Code, as added by Act 187 of 2004, is amended to read:

"Section 12-15-10. This chapter may be cited as the South Carolina Life Sciences and Renewable Energy Manufacturing Act."

Renewable energy manufacturing facility definition added

SECTION 25. Section 12-15-20 of the 1976 Code, as added by Act 187 of 2004, is amended to read:

"Section 12-15-20. (A) For purposes of this chapter, a 'life sciences facility' means a business engaged in pharmaceutical, medicine, and related laboratory instrument manufacturing, processing, or research and development. Included in this definition are the following North American Industrial Classification Systems, NAICS Codes published by the Office of Management and Budget of the federal government:

(1) 3254 Pharmaceutical and Medical Manufacturing;

(2) 334516 Analytical Laboratory Instrument Manufacturing.

(B) A 'renewable energy manufacturing facility' means a business which manufactures qualifying machinery and equipment for use by solar and wind turbine energy producers. It also includes a facility manufacturing qualifying advanced lithium ion, or other batteries for the alternative energy motor vehicles described in Section 12-6-3377 or other vehicles certified by the South Carolina Energy Office. The South Carolina Energy Office shall qualify a facility as a Renewable Energy Manufacturing Facility and the South Carolina Energy Office's decision is determinative as to whether a facility qualifies under this subsection."

Facilities that qualify; duration of provisions

SECTION 26. Section 12-15-30 of the 1976 Code, as added by Act 187 of 2004, is amended to read:

"Section 12-15-30. (1) For all purposes of Chapter 10, Title 12 of the 1976 Code, the Enterprise Zone Act of 1995, including all definitions applicable to that chapter:

(a) Employee relocation expenses that qualify for reimbursement pursuant to Section 12-10-80(C)(3)(f) include such expenses associated with a new or expanded facility qualifying under Section 12-15-20 investing a minimum of one hundred million dollars in the project, as defined in Section 12-10-30(8) of the 1976 Code, and creating at least two hundred new full-time jobs at the project with an average annual cash compensation of at least one hundred fifty percent of annual per capita income in this State or the county in which the facility is located, whichever is less. Per capita income must be determined using the most recent per capita income data available as of the end of the taxable year in which the jobs are filled.

(b) The waiver that may be approved by the Coordinating Council for Economic Development pursuant to Section 12-10-80(D)(2) on maximum job development credits that may be claimed also may be approved for a facility meeting the requirements of subitem (1)(a) of this section. In determining whether to approve a waiver for such a facility, the Coordinating Council for Economic Development shall consider the creditworthiness of the business and economic viability of the project, as defined in Section 12-10-30(8).

(2) The provisions of item (1) of this section apply with respect to capital investment made and new jobs created after June 30, 2010, and before July 1, 2014."

Facilities to which provisions apply, revised

SECTION 27. Section 12-15-40 of the 1976 Code, as added by Act 187 of 2004, is amended to read:

"Section 12-15-40. In the case of a taxpayer establishing a facility meeting the requirements of Section 12-15-20, the South Carolina Department of Revenue, in its discretion, may enter into an agreement with the taxpayer pursuant to Section 12-6-2320 for a period not to exceed fifteen years if the facility otherwise meets the requirements of that section."

Depreciation allowances expanded

SECTION 28. Section 12-37-930 35. of the 1976 Code, as added by Act 187 of 2004, is amended to read:

"35. Life sciences and renewable energy manufacturing…...20%

Includes machinery and equipment used directly in the manufacturing process by a life sciences or renewable energy manufacturing facility. For purposes of this item, a qualifying facility means a business engaged in pharmaceutical, medicine, and related laboratory instrument manufacturing, processing, or research and development, or that manufactures qualifying machinery and equipment for use by solar and wind turbine energy producers, as well as manufacturers of qualifying batteries for alternative energy motor vehicles, that invests a minimum of one hundred million dollars in the project, as defined in Section 12-10-30(8), and creates at least two hundred new full-time jobs at the project with an average cash compensation level of at least one hundred fifty percent of the annual per capita income in this State or the county in which the facility is located, whichever is less. Per capita income must be determined using the most recent per capita income data available as of the end of the taxable year in which the jobs are filled. Included in this definition are the following North American Industrial Classification Systems, NAICS Codes published by the Office of Management and Budget of the federal government:

(i) 3254 Pharmaceutical and Medical Manufacturing;

(ii) 334516 Analytical Laboratory Instrument Manufacturing."

Expenditures of funds authorized

SECTION 29. Section 12-28-2910 of the 1976 Code, as last amended by Act 176 of 2005, is further amended by adding:

"(E) From the amount set aside pursuant to subsection (A), the council is authorized to expend funds which were not obligated or committed as of July first of the current fiscal year only as necessary for the location or expansion of an industry or business facility in South Carolina. Eligible expenditures include water and sewer projects, road or rail construction and improvement projects, land acquisition, fiber-optic cable, relocation of new employees, pollution-control equipment, environmental testing and related due diligence reports,

acquiring and improving real property, and site preparation. Site preparation is defined as surveying, environmental and geotechnical study and mitigation, clearing, filling, and grading. Relocation expenses constitute eligible expenditures only for those employees to whom the company is paying gross wages at least two times the lower of the per capita income for either the State or the county in which the project is located. The Coordinating Council annually shall prepare a detailed report for submission to the General Assembly by March fifteenth which itemizes the expenditures from the fund for the preceding calendar year. The report shall include an identification of the following information:

(a) company name or confidential project number;
(b) location of project;
(c) amount of grant award; and
(d) scope of grant award."

Procedures and criteria for endowments revised

SECTION 30. Section 2-75-30 of the 1976 Code, as last amended by Act 355 of 2008, is further amended to read:

"Section 2-75-30. (A) There is created the Centers of Excellence Matching Endowment. The endowment must be funded annually by appropriations from the South Carolina Education Lottery Account in an amount equal to thirty million dollars annually, except that endowment appropriations may not be funded until all state-supported scholarships are fully funded and only if eighty percent of the total state appropriations have been awarded by the review board as of June thirtieth of the previous fiscal year. Three-quarters of the endowment shall be awarded by the review board in its discretion. One-quarter of the endowment shall be awarded by the review board pursuant to requests by and recommendations of the Secretary of Commerce as set forth in subsection (C). The total state appropriated funding amount shall include funds that have been returned to the endowment due to a dissolution, withdrawal, or termination of a center of excellence. The fund must be managed by the State Treasurer, subject to awards from the endowment as provided in this chapter. Interest earnings of the endowment must remain in the fund, and may be used at the review board's discretion for additional state awards. Interest earnings are not considered part of the total state appropriations unless used by the review board for additional state awards.

(B) Except as provided in subsection (C), an endowed chair proposal is considered awarded once a full review process is complete and the review board has voted in an affirmative on each proposal. A full review process shall include the following, but is not limited to:

(1) a technical and scientific review of each proposal. The three research universities shall work with the review board staff to nominate reviewers. The review board staff shall select no fewer than five technical reviewers to review each proposal, and a minimum of three technical and scientific reviews must be received by the review board staff for each proposal. The review board staff shall determine an appropriate number of technical reviewers and scientific and technical reviews. The review board staff shall limit the number of university-nominated reviewers to two per proposal;

(2) an on-site review of each proposal. The review board staff shall contract with a minimum of five out-of-state expert reviewers, to include individuals with expertise in economic development as well as in appropriate scientific disciplines, to serve on a site review team that shall visit each of the research universities. The review board staff shall determine an appropriate number of expert reviewers. The on-site review team shall interview relevant investigators and other university personnel regarding proposals and shall have access to collected scientific and technical reviews as well as other materials germane to the proposed projects. The on-site review team shall evaluate the proposals using an approved set of metrics; each recommendation must include a detailed narrative which explains the on-site review team's recommendations; and

(3) a presentation of findings. The on-site review team shall present its findings to the review board, which shall make final decisions on awards. The on-site review team shall recommend an appropriate level of funding to achieve successfully the stated goals of each project. The review board shall consider these recommendations in determining award amounts for each project.

(C) The Secretary of Commerce may request that the review board allocate and award, pursuant to Sections 2-75-50 and 2-75-60, an endowment of up to two million dollars for each significant capital investment committed by a qualified project or industry sector. Upon such request, the review board shall review the requested endowment and may award the endowment upon an affirmative vote. Once allocated, the qualified project or industry sector will have thirty-six months from the date of allocation to make the significant capital investment. Once the significant capital investment has been made, the Secretary of Commerce shall certify to the review board and the review

board shall make awards for one or more endowed professors who will directly support the industry in which the significant capital investment is made. The review board only may make awards from funds appropriated from the South Carolina Lottery account pursuant to this section from Fiscal Year 2011 forward, together with any unallocated funds and any accrued interest earnings which have not already been awarded by the review board, including funds that have been returned to the endowment due to a dissolution, withdrawal, or termination of a center of excellence. A dissolution, withdrawal, or termination of a center of excellence includes the failure of the center to provide the requisite matching funds during the allowable timeframe. For purposes of this subsection:

(i) 'qualified projects or industries' are those that have made a significant capital investment in South Carolina after January 1, 2010, in one or more of the following areas: Engineering, Nanotechnology, Biomedical Sciences, Energy Sciences, Environmental Sciences, Information and Management Sciences, Distribution and Logistics Sciences, or any other science, research, development, or industry that creates well-paying jobs and enhanced economic opportunities for the State as determined by the Secretary of Commerce; and

(ii) 'significant capital investment' means at least one hundred million private dollars for a single project or at least five hundred million private dollars for an industry sector. No public funds used to support a qualified project or industry may be included as part of the significant capital investment.

The requirements related to matching funds contained in Sections 2-75-50, 2-75-90, and 2-75-110 shall not apply to these awards. Awards by the review board pursuant to this subsection only may be used to fund new or existing endowed professorships at one or more of the state's three research universities."

Date changed

SECTION 31. Section 2-75-10 of the 1976 Code, as last amended by Act 355 of 2008, is further amended to read:

"Section 2-75-10. There is created the Research Centers of Excellence Review Board. The review board shall consist of eleven members. Of the eleven members, three must be appointed by the Governor, three must be appointed by the President Pro Tempore of the Senate, three must be appointed by the Speaker of the House of Representatives, one by the Chairman of the Senate Finance

Committee, and one by the Chairman of the House Ways and Means Committee. The terms of members are three years and members are eligible to be appointed for no more than two additional terms. Of the members initially appointed by the Governor, the President Pro Tempore, and the Speaker of the House, one shall be appointed for a term of one year, one for a term of two years, and one for a term of three years, the initial term of each member to be designated by the Governor, President Pro Tempore, and Speaker of the House when making the appointments. The Governor, the President Pro Tempore, and the Speaker of the House shall appoint persons with substantial experience in business, law, accounting, technology, manufacturing, engineering, or other professions and experience which provide an understanding of the purposes of this chapter. The review board shall be responsible for providing annually to the Commission on Higher Education a schedule by which applications for funding are received and awarded on a competitive basis, the awarding of matching funds as provided in Section 2-75-60, and for oversight and operation of the fund created by Section 2-75-30. Members of the review board shall serve without compensation and must provide an annual report by November thirtieth of each calendar year to the General Assembly as well as the State Budget and Control Board, which shall include an audit performed by an independent auditor. This annual report must include, but not be limited to, a complete accounting for total state appropriations to the endowment and total proposals awarded up to the previous fiscal year."

Member revised

SECTION 32. Section 13-1-1710 of the 1976 Code, as last amended by Act 206 of 2010, is further amended to read:

"Section 13-1-1710. There is created the Coordinating Council for Economic Development. The membership consists of the Secretary of Commerce, the Commissioner of Agriculture, the Executive Director of the Department of Employment and Workforce, the Director of the South Carolina Department of Parks, Recreation and Tourism, the Chairman of the State Board for Technical and Comprehensive Education, the Chairman of the South Carolina Ports Authority, the Chairman of the South Carolina Public Service Authority, the Chairman of the South Carolina Jobs Economic Development Authority, the Director of the South Carolina Department of Revenue, and the Chairman of the South Carolina Research Authority. The

Secretary of Commerce serves as the chairman of the coordinating council."

Widening and dredging of canals and waterways

SECTION 33. A. The General Assembly finds that in order to encourage economic development along the channels, canals, and waterways, it is essential to maintain the waterways at appropriate depths and widths. Accordingly, the General Assembly concludes that to avoid deleterious effects on economic development along the waterways of this State, it is necessary to preserve and maintain the waterways of this State, and that the creation of a municipal improvement district to widen and dredge the waterways by issuing bonds payable from assessments on the district is a practical manner in which to do so.

B. Section 5-37-35 of the 1976 Code is amended to read:

"Section 5-37-35. (A) Notwithstanding the provisions of Section 5-37-30, assessments, revenues, or debt service on bonds which may be used under this chapter to fund municipal improvements must not impose or be derived from, in whole or in part, a tax or assessment on property not located in the improvement district. Bonds issued pursuant to Section 5-37-30, however, may be made payable from assessments imposed on property located in the improvement district, and may be additionally secured, in whole or in part, by the full faith, credit, and taxing power of the municipality, if the governing body of the municipality certifies on the date of issuance of the bonds that the assessments as imposed are sufficient as to both amount and duration to pay all debt service on these bonds as they become due.

(B) The provisions of this section do not apply to projects or undertakings designated by a municipal governing body as a 'system' pursuant to Section 6-21-40."

C. Section 5-37-20(2) of the 1976 Code is amended to read:

"(2) 'Improvements' include open or covered malls, parkways, parks and playgrounds, recreation facilities, athletic facilities, pedestrian facilities, parking facilities, parking garages, and underground parking facilities, and facade redevelopment, the widening and dredging of existing channels, canals, and waterways used specifically for recreational or other purposes provided that the municipality, the State,

or other public entity owns fee simple title or an easement for maintenance in these channels, canals, or waterways, the relocation, construction, widening, and paving of streets, roads, and bridges, including demolition of them, underground utilities, all activities authorized by Chapter 1, Title 31 (State Housing Law), a building or other facilities for public use, a public works eligible for financing pursuant to the provisions of Section 6-21-50, services or functions which a municipality in accordance with state law may by law provide, and all things incidental to the improvements, including planning, engineering, administration, managing, promotion, marketing, and acquisition of necessary easements and land, and may include facilities for lease or use by a private person, firm, or corporation. However, improvements as defined in this chapter must comply with all applicable state and federal laws and regulations governing these activities. These improvements may be designated by the governing body as public works eligible for revenue bond financing pursuant to Section 6-21-50, and these improvements, taken in the aggregate, may be designated by the governing body as a 'system' of related projects within the meaning of Section 6-21-40. The governing body of a municipality, after due investigation and study, may determine that improvements located outside the boundaries of an improvement district confer a benefit upon property inside an improvement district or are necessary to make improvements within the improvement district effective for the benefit of property inside the improvement district."

D. Section 5-37-40(A)(5) and (B) of the 1976 Code, as last amended by Act 109 of 2005, are further amended to read:

"(5) it would be fair and equitable to finance all or part of the cost of the improvements by an assessment upon the real property within the district, the governing body may establish the area as an improvement district and implement and finance, in whole or in part, an improvement plan in the district in accordance with the provisions of this chapter. However, except in the case of an improvement district in which the sole improvements are the widening and dredging of canals, owner-occupied residential property which is taxed or will be taxed pursuant to Section 12-43-220(c) must not be included within an improvement district unless the owner at the time the improvement district is created gives the governing body written permission to include the property within the improvement district.

(B) If an improvement district is located in a redevelopment project area created pursuant to Chapter 6, Title 31, the improvement district

being created under the provisions of this chapter must be considered to satisfy items (1) through (5) of subsection (A). The ordinance creating an improvement district may be adopted by a majority of council after a public hearing at which the plan is presented, including the proposed basis and amount of assessment, or upon written petition signed by a majority in number of the owners of real property within the district which is not exempt from ad valorem taxation as provided by law. However, except in the case of an improvement district in which the sole improvements are the widening and dredging of canals, owner-occupied residential property which is taxed or will be taxed pursuant to Section 12-43-220(c) must not be included within an improvement district unless the owner at the time the improvement district is created gives the governing body written permission to include the property within the improvement district."

E. Section 5-37-50 of the 1976 Code, as last amended by Act 109 of 2009, is further amended to read:

"Section 5-37-50. The governing body, by resolution adopted, shall describe the improvement district and the improvement plan to be effected, including a property within the improvement district to be acquired and improved, the projected time schedule for the accomplishment of the improvement plan, the estimated cost and the amount of the cost to be derived from assessments, bonds, or other general funds, together with the proposed basis and rates of assessments to be imposed within the improvement district. However, except in the case of an improvement district in which the sole improvements are the widening and dredging of canals, owner-occupied residential property which is taxed or will be taxed pursuant to Section 12-43-220(c) must not be included within an improvement district unless the owner at the time the improvement district is created gives the governing body written permission to include the property within the improvement district. The resolution also shall establish the time and place of a public hearing to be held within the municipality not sooner than twenty days nor more than forty days following the adoption of the resolution at which an interested person may attend and be heard either in person or by attorney on a matter in connection with the improvement district."

F. Section 5-37-100 of the 1976 Code is amended to read:

"Section 5-37-100. Not sooner than ten days nor more than one hundred twenty days following the conclusion of the public hearing provided in Section 5-37-50, the governing body, by ordinance, may provide for the creation of the improvement district as originally proposed or with the changes and modifications in it as the governing body may determine, and provide for the financing by assessment, bonds, or other revenues as provided in this chapter. However, except in the case of an improvement district in which the sole improvements are the widening and dredging of canals, owner-occupied residential property which is taxed pursuant to Section 12-43-220(c) must not be included within an improvement district unless the owner gives the governing body written permission to include the property within the improvement district. The ordinance may not become effective until at least seven days after it has been published in a newspaper of general circulation in the municipality. The ordinance may incorporate by reference plats and engineering reports and other data on file in the offices of the municipality. The place of filing and reasonable hours for inspection must be made available to all interested persons."

Period revised

SECTION 34. Section 12-10-88(C) of the 1976 Code, as last amended by Act 313 of 2008, is further amended to read:

"(C) Redevelopment fees may be remitted to the applicable redevelopment authority for a period beginning with the date that the applicable redevelopment authority first submits the information described in subsection (B) to the department and ending fifteen years later or January 1, 2017, whichever occurs last. If the redevelopment authority fails to provide the department with the required statement within the requisite time limits, no redevelopment fees must be remitted for that quarter."

Amount increased

SECTION 35. Section 6-1-530(B)(2) of the 1976 Code is amended to read:

"(2) In a county in which less than nine hundred thousand dollars in accommodations taxes is collected annually pursuant to Section 12-36-920, an amount not to exceed fifty percent of the revenue in the preceding fiscal year of the local accommodations tax authorized

pursuant to this article may be used for the additional purposes provided in item (1) of this subsection."

Amount increased

SECTION 36. Section 6-1-730(B)(2) of the 1976 Code, as last amended by Act 314 of 2006, is further amended to read:

"(2) In a county in which less than nine hundred thousand dollars in accommodations taxes is collected annually pursuant to Section 12-36-920, an amount not to exceed fifty percent of the revenue in the preceding fiscal year of the local hospitality tax authorized pursuant to this article may be used for the additional purposes provided in item (1) of this subsection."

Repeal

SECTION 37. Act 150 of 2010 is repealed.

Repeal

SECTION 38. Sections 12-6-3450, 12-14-30, 12-14-40, 12-14-50, and 12-14-70 of the 1976 Code are repealed.

Time effective

SECTION 39. Unless otherwise provided specifically herein, this act takes effect on January 1, 2011, except for SECTION 6, SECTION 8, SECTION 9, SECTION 15, SECTION 25, SECTION 26, SECTION 27, SECTION 28, and SECTIONS 37 and 38 which take effect upon approval by the Governor.

Ratified the 21st day of June, 2010.

Approved the 23rd day of June, 2010.

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