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2019 REGULAR SESSION

Acts and Joint Resolutions

of the

GENERAL ASSEMBLY
OF THE STATE OF SOUTH CAROLINA

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

Ashley Harwell-Beach, Code Commissioner, P.O. Box 11489,
Columbia, S.C. 29211

Time effective

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

Ratified the 3rd day of April, 2019.

Approved the 3rd day of April, 2019.

No. 20

(R32, S205)

AN ACT TO AMEND SECTION 44-36-320, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE DUTIES OF THE ALZHEIMER'S DISEASE AND RELATED DISORDERS RESOURCE COORDINATION CENTER, SO AS TO PROVIDE FOR AN ADDITIONAL DUTY TO FACILITATE AND COORDINATE EARLY DETECTION EDUCATIONAL INITIATIVES FOR HEALTH CARE PROVIDERS.

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

Duties of Alzheimer's Disease and Related Disorders Resource Coordination Center

SECTION 1. Section 44-36-320 of the 1976 Code, as last amended by Act 261 of 2018, is further amended by adding an appropriately numbered item at the end to read:

"( ) facilitate the coordination and integration of educational initiatives for health care providers on the importance and value of early detection and timely diagnosis of cognitive impairment, validated cognitive assessment tools, and increasing understanding and awareness of early warning signs of Alzheimer's disease and other types of dementia and how to reduce the risk of cognitive decline."

Time effective

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

Ratified the 25th day of April, 2019.

Approved the 26th day of April, 2019.

No. 21

(R33, S214)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 12-36-71 SO AS TO DEFINE "MARKETPLACE FACILITATOR"; TO AMEND SECTIONS 12-36-70, 12-36-90, AND 12-36-130, ALL RELATING TO SALES TAX DEFINITIONS, SO AS TO FURTHER INFORM MARKETPLACE FACILITATORS OF THEIR REQUIREMENTS; AND TO AMEND SECTION 12-36-1340, RELATING TO THE COLLECTION OF SALES TAX BY RETAILERS, SO AS TO FURTHER INFORM MARKETPLACE FACILITATORS OF THEIR REQUIREMENTS.

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

Findings

SECTION 1. The General Assembly finds:

(1) the South Carolina Sales and Use Tax Act requires any person engaged in business as a retailer to remit the sales and use tax on all retail sales of tangible personal property not otherwise excluded or exempted from the tax. This requirement applies to all retail sales of tangible personal property by the retailer, whether the tangible personal property is owned by the retailer or another person. Retailers selling tangible personal property at retail on consignment, by auction, or in any other manner must remit the sales and use tax on such retail sales;

(2) the Internet marketplaces where a person sells tangible personal property at retail by listing or advertising, or allowing the listing or advertising of, another person's products on an online marketplace and collects or processes the payment from the customer are retailers

required to remit the sales and use tax on such retail sales under the provisions of South Carolina sales and use tax law;

(3) with the changing economy and ever expanding role of the Internet in the retail market, the longstanding requirement in the sales and use tax law that a retailer remit the tax on retail sales of tangible personal property owned by another person must apply to all retailers, including both Internet retailers and brick and mortar retailers;

(4) retailers selling another person's tangible personal property on the Internet must clearly understand and be informed of their requirements to remit the sales and use tax in the same manner as retailers selling another person's tangible personal property in a brick and mortar store; and

(5) this act shall not be construed as a statement concerning the applicability of the South Carolina Sales and Use Tax Act to any sales and use tax liability in matters currently in litigation or being audited.

Definition

SECTION 2. Article 1, Chapter 36, Title 12 of the 1976 Code is amended by adding:

"Section 12-36-71. (A)(1) 'Marketplace facilitator' means any person engaged in the business of facilitating a retail sale of tangible personal property by:

(a) listing or advertising, or allowing the listing or advertising of, the products of another person in any marketplace where sales at retail occur; and

(b) collecting or processing payments from the purchaser, either directly or indirectly through an agreement or arrangement with a third party.

(2) If a person meets the criteria set forth in item (1), then that person is a marketplace facilitator regardless of whether the person receives compensation or other consideration in exchange for his services.

(B) A marketplace may be physical or electronic and includes, but is not limited to, any space, store, booth, catalog, website, television or radio broadcast, or similar place, medium, or forum.

(C) For purposes of subsection (A), a marketplace facilitator includes any related entities assisting the marketplace facilitator in sales, storage, distribution, payment collection, or in any other manner, with respect to the marketplace.

(D) When a marketplace facilitator is comprised of multiple entities, the entity that lists or advertises, or allows the listing or advertising of, the products sold at retail in the marketplace is the entity responsible for remitting the sales and use tax to the State."

Definition

SECTION 3. Section 12-36-70 of the 1976 Code is amended by adding a new item before the last undesignated paragraph to read:

"(3) operating as a marketplace facilitator, as defined in Section 12-36-71."

Definition

SECTION 4. Section 12-36-90(1)(a) of the 1976 Code is amended to read:

"(a) the proceeds from the sale of property sold on consignment by the taxpayer, including property sold through a marketplace by a marketplace facilitator;"

Definition

SECTION 5. Section 12-36-130(1) of the 1976 Code is amended by adding a new subitem to read:

"(c) the proceeds from the sale of property sold on consignment by the taxpayer, including property sold through a marketplace by a marketplace facilitator."

Collection of tax by sellers

SECTION 6. Section 12-36-1340 of the 1976 Code is amended to read:

"Section 12-36-1340. Each seller making retail sales of tangible personal property for storage, use, or other consumption in this State shall collect and remit the tax in accordance with this chapter and shall obtain from the department a retail license as provided in this chapter, if the retail seller:

(1) maintains a place of business;
(2) qualifies to do business;

(3) solicits and receives purchases or orders by an agent, an independent contractor, a representative, an Internet website, or any other means;

(4) distributes catalogs, or other advertising matter, and by reason of that distribution receives and accepts orders from residents within the State;

(5) operates as a marketplace facilitator; or

(6) meets constitutional standards for economic nexus with South Carolina for purposes of the sales and use tax."

Time effective

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

Ratified the 25th day of April, 2019.

Approved the 26th day of April, 2019.

No. 22

(R34, S514)

AN ACT TO AMEND ARTICLE 140 OF CHAPTER 3, TITLE 56, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE ISSUANCE OF CLEMSON UNIVERSITY 2016 FOOTBALL NATIONAL CHAMPIONS SPECIAL LICENSE PLATES BY THE DEPARTMENT OF MOTOR VEHICLES, SO AS TO PROVIDE FOR THE ISSUANCE OF "CLEMSON UNIVERSITY 2018 FOOTBALL NATIONAL CHAMPIONS" SPECIAL LICENSE PLATES BY THE DEPARTMENT OF MOTOR VEHICLES.

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

Clemson University Football National Champions Special License Plates

SECTION 1. Article 140 of the 1976 Code is amended to read:

"Article 140

'Clemson University 2016 and 2018 Football National Champions'
Special License Plates

Section 56-3-14010. (A)(1) The Department of Motor Vehicles shall issue 'Clemson University 2016 Football National Champions' special license plates to owners of private passenger motor vehicles, as defined in Section 56-3-630, or motorcycles as defined in Section 56-3-20, registered in their names.

(2) The department shall issue 'Clemson University 2018 Football National Champions' special license plates to owners of private passenger motor vehicles, as defined in Section 56-3-630, or motorcycles as defined in Section 56-3-20, registered in their names.

(B) Clemson University may submit to the department for its approval the emblem, seal, or other symbol it desires to be used for its respective special license plates.

(C) The requirements for production, collection, and distribution of fees for the plates are those set forth in Section 56-3-8100. The biennial fee for each plate is the regular registration fee set forth in Article 5, Chapter 3 of this title plus an additional fee of seventy dollars. Any portion of the additional seventy-dollar fee not set aside to defray costs of production and distribution must be distributed to the fund established for Clemson University pursuant to Section 56-3-3710(B) used for the purposes provided in that section.

(D)(1) License number '1' for the 'Clemson University 2016 Football National Champions' license plate is reserved for the Clemson University Head Football Coach.

(2) License number '1' for the 'Clemson University 2018 Football National Champions' license plate is reserved for the Clemson University Head Football Coach."

Time effective

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

Ratified the 25th day of April, 2019.

Approved the 26th day of April, 2019.

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No. 23

(R36, H3180)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING ARTICLE 21 TO CHAPTER 1, TITLE 25 SO AS TO ENACT THE "SOUTH CAROLINA SERVICEMEMBERS CIVIL RELIEF ACT"; TO DEFINE THE ACT'S RELEVANT TERMS; TO ENUMERATE CERTAIN RIGHTS, BENEFITS, AND OBLIGATIONS OF SERVICEMEMBERS AND THEIR DEPENDENTS; TO AUTHORIZE A SERVICEMEMBER, THE DEPENDENT OF A SERVICEMEMBER, OR THE ATTORNEY GENERAL TO BRING A CIVIL ACTION FOR INTENTIONAL VIOLATIONS OF THE ACT; TO ESTABLISH REMEDIES AND PENALTIES; AND TO REQUIRE THE ADJUTANT GENERAL TO POST CERTAIN INFORMATION REGARDING THE ACT ON THE SOUTH CAROLINA NATIONAL GUARD WEBSITE.

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

South Carolina Servicemembers Civil Relief Act

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

"Article 21

South Carolina Servicemembers Civil Relief Act

Section 25-1-4010. This article may be cited as the 'South Carolina Servicemembers Civil Relief Act'.

Section 25-1-4020. This article is intended to expand and supplement the rights, benefits, and protections of the federal Servicemembers Civil Relief Act, 50 U.S.C. Section 3901, et seq. Nothing in this article may be construed as a restriction or limitation on the rights, benefits, and protections granted to a servicemember pursuant to federal law. A violation of the federal Servicemembers Civil Relief Act, 50 U.S.C. Section 3901, et seq., constitutes a violation of this article. The provisions of this article related to contractual agreements or obligations

shall apply to any applicable contract entered into, extended, or amended on or after July 1, 2019.

Section 25-1-4030. For purposes of this article:

(1) 'Dependent', with respect to a servicemember, has the meaning set forth in 50 U.S.C. Section 3911(4).

(2) 'Military service' means any of the following:

(a) the meaning set forth in 50 U.S.C. Section 3911(2);

(b) in the case of a servicemember who is a member or reserve member of the Army, Navy, Air Force, Marine Corps, or Coast Guard, full-time duty in the active military service of the United States, including:

(i) full-time training duty;

(ii) annual training duty; and

(iii) attendance while at a school designated as a service school by federal law or by the secretary of the military department concerned;

(c) in the case of a member of the South Carolina National Guard, service under a call to active:

(i) service authorized by the President of the United States or the Secretary of Defense for a period of more than thirty days in response to a national emergency declared by the President of the United States; or

(ii) duty authorized pursuant to Article 15 for a period of more than thirty consecutive days;

(d) in the case of a member of the National Guard of another state, service under an order of the governor of that state, which is similar to South Carolina state active duty, for a period of more than thirty consecutive days;

(e) in the case of a servicemember who is a commissioned officer of the Public Health Service or the National Oceanic and Atmospheric Administration, active service; or

(f) any period during which a servicemember is absent from duty on account of sickness, wounds, leave, or other lawful cause.

(3) 'Period of military service' means the period beginning on the date on which a servicemember enters military service and ending on the date on which the servicemember is released from military service or dies while in military service.

(4) 'Servicemember' means an individual engaged in military service or a member of the uniformed services, as that term is defined in 50 U.S.C. Section 3911(1).

Section 25-1-4040. The rights, benefits, and protections of the federal Servicemembers Civil Relief Act, 50 U.S.C. Section 3901, et seq., apply to a servicemember engaged in military service. However, in the case of a servicemember engaged in military service pursuant to Section 25-1-4030(2)(c)(ii) or (d), a person is not subject to the remedies or penalties of this article unless the servicemember gives to the person a written or electronic copy of the order to military service. A violation of the federal Servicemembers Civil Relief Act, as expanded by this section, is a violation of this article.

Section 25-1-4050. A dependent of a servicemember engaged in military service has the same rights and protections provided to a servicemember pursuant to Section 25-1-4060 and Subchapter II, Chapter 50, Title 50 of the U.S.C.

Section 25-1-4060. (A) In addition to the rights and protections regarding consumer transactions, contracts, and service providers provided to a servicemember pursuant to Subchapter III, Chapter 50, Title 50 of the U.S.C., a servicemember may terminate a contract described in subsection (B) of this section at any time after the date the servicemember receives military orders to relocate for a period of service of at least ninety days to a location that does not support the contract.

(B) This section applies to a contract to provide the following:

(1) telecommunication services;

(2) Internet services;

(3) television services including, but not limited to, cable television, direct satellite, and other similarly comparable television services;

(4) athletic club or gym memberships; or

(5) satellite radio services.

(C) A servicemember shall give to the service provider written or electronic notice of the termination and a written or electronic copy of the order to relocate, together with the date on which the service is to be terminated. If a servicemember, as defined in Section 25-1-4030(4), terminates a contract pursuant to this section, then the service provider shall inform the servicemember of the servicemember's rights posted on the South Carolina National Guard's Internet website pursuant to Section 25-1-4080.

(D) The service provider may not impose an early termination penalty, charge, or fee for a contract terminated pursuant to this section.

(E) Not later than sixty days after the termination date of the contract, the service provider shall refund to the servicemember any fee paid for a service that extends beyond the termination date of the contract.

(F) The servicemember shall pay the tax or other contractual obligation or liability that is due and unpaid at the time of termination of the contract.

(G) If the servicemember resubscribes to the service provided under the contract within ninety days of returning from military service, the service provider may not impose a charge or fee, other than the usual and customary charges and fees for the installation or acquisition of customer equipment imposed on other subscribers.

Section 25-1-4070. (A) A servicemember, the dependent of a servicemember, or the South Carolina Attorney General may bring a civil action against a person who intentionally violates a provision of this article.

(B) The court may order one or more of the following remedies:

(1) injunction; or

(2) payment of restitution to a servicemember in the amount of money unlawfully received from, or required to be refunded to, the servicemember, unless the servicemember has successfully recovered the amount in a separate action under the federal Servicemembers Civil Relief Act, 50 U.S.C. Section 3901, et seq.

(C) In the event of an intentional violation of this article, the court may assess a civil penalty not to exceed five thousand dollars per violation. Fifty percent of the proceeds of civil penalties imposed pursuant to this section must be remitted to the general fund of the State, and the remaining fifty percent may be retained by the Office of the Attorney General and carried forward to succeeding fiscal years to support enforcement or public education efforts directly related to the purpose of this article.

Section 25-1-4080. The Adjutant General shall post on the South Carolina National Guard website a list of the rights a servicemember or a servicemember's dependent has pursuant to both the South Carolina Servicemembers Civil Relief Act and the federal Servicemembers Civil Relief Act, 50 U.S.C. Section 3901, et seq."

Severability

SECTION 2. The provisions of this act are severable. If any section, subsection, paragraph, subparagraph, item, subitem, sentence, clause,

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

Time effective

SECTION 3. This act takes effect upon approval by the Governor and applies to contracts entered into on or after that date.

Ratified the 25th day of April, 2019.

Approved the 26th day of April, 2019.

No. 24

(R37, H3398)

AN ACT TO AMEND ACT 265 OF 2016, RELATING TO THE ESTABLISHMENT OF THE "TUCKER HIPPS TRANSPARENCY ACT", SO AS TO PERMANENTLY AUTHORIZE THE ACT AND TO REPEAL THE THREE-YEAR SUNSET PROVISION.

Whereas, in 2016, the General Assembly enacted the "Tucker Hipps Transparency Act" in Act 265 of 2016, requiring public institutions of higher learning in this State to maintain reports of actual findings of certain misconduct by fraternity and sorority organizations, among other things; and

Whereas, the sunset provision of Act 265 of 2016 will result in the expiration of the act on June 29, 2019, unless the provisions of the act are extended or reenacted by the General Assembly; and

Whereas, the General Assembly finds that the success of the "Tucker Hipps Transparency Act" merits its permanent continuation, making it necessary to eliminate this sunset provision. Now, therefore,

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

Act 265 of 2016 permanently authorized

SECTION 1. The "Tucker Hipps Transparency Act", as established by Act 265 of 2016 and contained in Section 59-101-210, is permanently enacted by the provisions of this act.

Act 265 of 2016 sunset provision repealed

SECTION 2. SECTION 4 of Act 265 of 2016 is repealed.

Time effective

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

Ratified the 25th day of April, 2019.

Approved the 26th day of April, 2019.

No. 25

(R38, H3420)

AN ACT TO AMEND SECTION 16-17-500, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE "YOUTH ACCESS TO TOBACCO PREVENTION ACT OF 2006", SO AS TO STRENGTHEN AGE VERIFICATION REQUIREMENTS FOR THE INTERNET SALE OF TOBACCO AND ALTERNATIVE NICOTINE PRODUCTS, TO PROHIBIT MINORS FROM ENTERING RETAIL ESTABLISHMENTS THAT PRIMARILY SELL SUCH PRODUCTS, WITH EXCEPTIONS, AND TO CREATE RELATED CRIMINAL PENALTIES; TO AMEND SECTION 16-17-501, RELATING TO TERMS DEFINED IN THE "YOUTH ACCESS TO TOBACCO PREVENTION ACT OF 2006", SO AS TO CHANGE THE

DEFINITION FOR "ALTERNATIVE NICOTINE PRODUCT" AND BY ADDING A DEFINITION FOR "ELECTRONIC SMOKING DEVICE", "E-LIQUID", AND "VAPOR PRODUCT"; BY ADDING SECTION 59-1-380 SO AS TO REQUIRE LOCAL SCHOOL DISTRICTS TO ADOPT, IMPLEMENT, AND ENFORCE A WRITTEN POLICY PROHIBITING THE USE OF TOBACCO AND ALTERNATIVE NICOTINE PRODUCTS ON SCHOOL CAMPUSES AND AT SCHOOL EVENTS; TO AMEND SECTION 44-95-20, RELATING TO THE CLEAN INDOOR AIR ACT'S PROHIBITION OF SMOKING IN SCHOOLS, SO AS TO ELIMINATE THE EXCLUSION FOR PRIVATE OFFICES AND TEACHERS LOUNGES; BY ADDING SECTION 16-17-506 SO AS TO ESTABLISH LIMITATIONS ON THE SALE OF E-LIQUID CONTAINERS AND CREATE CRIMINAL PENALTIES; AND FOR OTHER PURPOSES.

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

Sale of tobacco and alternative nicotine products to minors, prohibitions

SECTION 1. Section 16-17-500(C), (E)(1), (F)(1), and (J) of the 1976 Code is amended to read:

"(C) A person engaged in the sale of tobacco products or alternative nicotine products made through the Internet or other remote sales methods shall perform an age verification through an independent, third-party age verification service that compares information available from public records to the personal information entered by the individual during the ordering process that establishes the individual is eighteen years of age or older and shall use a method of mailing, shipping, or delivery that requires the signature of a person at least eighteen years of age before a tobacco product or alternative nicotine product will be released to the purchaser, unless the Internet or other remote sales methods employ the following protections to ensure age verification:

(1) the customer creates an online profile or account with personal information including, but not limited to, name, address, social security information, and a valid phone number, and that personal information is verified through publicly available records; or

(2) the customer is required to upload a copy of his or her government-issued identification in addition to a current photograph of the customer; and

(3) delivery is made to the customer's name and address.

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

(a) for a first offense, fined not less than two hundred dollars and not more than three hundred dollars;

(b) for a second and subsequent offense, fined not less than four hundred dollars and not more than five hundred dollars, imprisoned for not more than thirty days, or both.

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

(b) A minor under the age of eighteen years is prohibited from entering a retail establishment that has as its primary purpose the sale of tobacco products, alternative nicotine products, or both, unless the minor is actively supervised and accompanied by an adult.

(c) The provisions of this subsection do not apply to a minor under the age of eighteen who is recruited and authorized by a law enforcement agency to test an establishment's compliance with laws relating to the unlawful transfer of tobacco or alternative nicotine products. The testing must be conducted under the direct supervision of a law enforcement agency, and the law enforcement agency must have the minor's parental consent.

(J)(1) A retail establishment that has as its primary purpose the sale of tobacco products, alternative nicotine products, or both, must prohibit minors under the age of eighteen years of age from entering the retail establishment, unless the minor is actively supervised and accompanied by an adult, and shall determine whether a person is at least eighteen years by requiring proper proof of age in accordance with subsection (B), prior to the purchase of a tobacco or alternative nicotine product.

(2) A retail establishment described in item (1) must conspicuously post on all entrances to the establishment the following:

(a) a sign in boldface type that states 'NOTICE: It is unlawful for a person under eighteen years of age to enter this store, unless the minor is actively supervised and accompanied by an adult. Age will be verified prior to purchase.';

(b) a sign printed in letters and numbers at least one-half inch high that displays a toll free number for assistance to callers in quitting smoking, as determined by the Department of Health and Environmental Control.

(3) For purposes of this section, whether a retail establishment has as its primary purpose the sale of tobacco products, alternative nicotine products, or both, must be based on the totality of the circumstances. Facts that must be considered, but not be limited to, are the retail establishment's business filings, business name and signage, marketing and other advertisements, and the percentage of revenue and inventory directly related to the sale of tobacco and alternative nicotine products.

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

Alternative nicotine products, definitions

SECTION 2. A. The undesignated clause in Section 16-17-501 of the 1976 Code is amended to read:

"As used in this section and Sections 16-17-500, 16-17-502, 16-17-503, and 16-17-504:"

B. Section 16-17-501(6) of the 1976 Code is amended to read:

"(6) 'Alternative nicotine product' means any vaping product, whether or not it includes nicotine, including electronic smoking devices, that can be ingested into the body by chewing, smoking, absorbing, dissolving, inhaling, or by any other means. 'Alternative nicotine product' does not include:

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

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

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

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

C. Section 16-17-501(7) of the 1976 Code is amended to read:

"(7) 'Electronic smoking device' means any device that may be used to deliver any aerosolized or vaporized substance, including e-liquid, to the person inhaling from the device, including, but not limited to, an

e-cigarette, e-cigar, e-pipe, vape pen, vapor product, or e-hookah. 'Electronic smoking device' includes any component, part or accessory of the device, and also includes any substance intended to be aerosolized or vaporized during the use of the device, whether or not the substance includes nicotine. 'Electronic smoking device' does not include drugs, devices, or combination products authorized for sale by the U.S. Food and Drug Administration, as those terms are defined in the Federal Food, Drug and Cosmetic Act."

D. Section 16-17-501 of the 1976 Code is amended by adding appropriately numbered items at the end to read:

"(8) 'E-liquid' means a substance that:

(a) may or may not contain nicotine;

(b) is intended to be vaporized and inhaled using a vapor product; and

(c) is a legal substance under the laws of this State and the laws of the United States;

E-liquid does not include cannabis or CBD as defined under the laws of this State and the laws of the United States.

(9) 'Vapor product' means a powered vaporizer that converts e-liquid to a vapor intended for inhalation."

Mandatory tobacco and alternative nicotine product-free local school board policy

SECTION 3. Article 5, Chapter 1, Title 59 of the 1976 Code is amended by adding:

"Section 59-1-380. (A) By August 1, 2019, every local school district in the State shall adopt, implement, and enforce a written policy prohibiting at all times the use of any tobacco product or alternative nicotine product by any person in school buildings, in school facilities, on school campuses, and in or on any other school property owned or operated by the local school administrative unit. The policy also must prohibit the use of any tobacco product or alternative nicotine product by persons attending a school-sponsored event at a location not listed in this subsection when in the presence of students or school personnel or in an area where smoking or other tobacco use is otherwise prohibited by law.

(B) The policy must include at least all of the following elements:

(1) adequate notice to students, parents or guardians, the public, and school personnel of the policy;

(2) posting of signs prohibiting at all times the use of tobacco products or alternative nicotine products by any person in and on school property; and

(3) requirements that school personnel enforce the policy, including appropriate disciplinary action.

(C) Disciplinary actions for violating the policy may include, but not be limited to:

(1) for students: administrator and parent or legal guardian conference, mandatory enrollment in tobacco prevention education or cessation programs, community service, in-school suspension, suspension for extracurricular activities, or out-of-school suspension;

(2) for staff: verbal reprimand, written notification in personnel file, mandatory enrollment in tobacco prevention education, voluntary enrollment in cessation programs, or suspension;

(3) for contract or other workers: verbal reprimand, notification to contract employer, or removal from district property; and

(4) for visitors: verbal request to leave district property or prosecution for disorderly conduct for repeated offenses.

(D) The local school district shall collaborate with the Department of Health and Environmental Control, the Department of Alcohol and Other Drug Abuse Services, and the South Carolina Department of Education, as appropriate, to implement the policy, including as part of tobacco education and cessation programs and substance use prevention efforts.

(E) The policy may permit tobacco products or alternative nicotine products to be included in instructional or research activities in public school buildings if the activity is conducted or supervised by the faculty member overseeing the instruction or research and the activity does not include smoking, chewing, inhaling, or otherwise ingesting the tobacco product or alternative nicotine product.

(F) For purposes of this section:

(1) 'Tobacco product' has the same meaning as defined in Section 16-17-501.

(2) 'Alternative nicotine product' has the same meaning as defined in Section 16-17-501."

Clean Indoor Air Act, smoke-free schools

SECTION 4. Section 44-95-20(1) of the 1976 Code is amended to read:

"(1) public schools and preschools;"

Sale of e-liquid containers, restrictions

SECTION 5. Article 7, Chapter 17, Title 16 of the 1976 Code is amended by adding:

"Section 16-17-506. (1) For purposes of this section, 'container' means a bottle or other container of any kind that contains e-liquid and is offered for sale, sold, or otherwise distributed, or intended for distribution to consumers, but that does not include a cartridge that is prefilled and sealed by the manufacturer and not intended to be opened by the customer.

(2) It is unlawful to sell, hold for sale, or distribute a container of e-liquid unless:

(a) the container satisfies the requirements of 21 C.F.R. 1143.3, if applicable, for the placement of labels, warnings, or any other information upon a package of e-liquid that is to be sold within the United States;

(b) the container complies with child-resistant effectiveness standards under 16 C.F.R. 1700.15(b)(1) when tested in accordance with the requirements of 16 C.F.R. 1700.20; and

(c) the container complies with federal trademark or copyright laws.

(3) A person who knowingly sells, holds for sale, or distributes e-liquid containers in violation of subsection (2) is guilty of a misdemeanor and, upon conviction, shall be imprisoned for not more than three years or fined not more than one thousand dollars, or both.

(4) In addition to the other penalties provided by law, law enforcement may seize and destroy or sell to the manufacturer, for export only, any containers in violation of this section."

Sale of tobacco and alternative nicotine products to minors, age verification requirements

SECTION 6. Section 16-17-500(E) of the 1976 Code is amended by adding an appropriately numbered item to read:

"( ) Failure of an individual to require identification for the purpose of verifying a person's age is prima facie evidence of a violation of this section."

Time effective

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

Ratified the 25th day of April, 2019.

Approved the 26th day of April, 2019.

No. 26

(R39, H3438)

AN ACT TO AMEND SECTION 1-30-10, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE DEPARTMENTS OF STATE GOVERNMENT, SO AS TO INCLUDE THE DEPARTMENT OF VETERANS' AFFAIRS; BY ADDING SECTION 1-30-130 SO AS TO ENUMERATE THE ASSETS, RIGHTS, AND OBLIGATIONS OF THE FORMER DIVISION OF VETERANS' AFFAIRS TRANSFERRED TO THE DEPARTMENT OF VETERANS' AFFAIRS; TO AMEND CHAPTER 11, TITLE 25, RELATING TO THE DIVISION OF VETERANS' AFFAIRS, SO AS TO, AMONG OTHER THINGS, REDESIGNATE THE DIVISION OF VETERANS' AFFAIRS AS THE DEPARTMENT OF VETERANS' AFFAIRS; TO ESTABLISH THE DEPARTMENT OF VETERANS' AFFAIRS WITHIN THE EXECUTIVE BRANCH OF GOVERNMENT; TO PROVIDE THAT THE GOVERNOR SHALL APPOINT A SECRETARY OF THE DEPARTMENT OF VETERANS' AFFAIRS WITH THE ADVICE AND CONSENT OF THE SENATE, AND TO ENUMERATE THE SECRETARY'S POWERS, DUTIES, AND RESPONSIBILITIES; TO AUTHORIZE THE DEPARTMENT OF ADMINISTRATION TO PROVIDE ADMINISTRATIVE SUPPORT TO THE DEPARTMENT OF VETERANS' AFFAIRS; TO REVISE THE DEFINITION OF "VETERAN" FOR PURPOSES OF APPOINTING COUNTY VETERANS' AFFAIRS OFFICERS, AND TO PROVIDE THAT A COUNTY VETERANS' AFFAIRS OFFICER IS AN AT-WILL EMPLOYEE OF THE DEPARTMENT WHO MAY BE REMOVED FOR CAUSE AT ANY TIME BY THE DEPARTMENT SECRETARY, A

MAJORITY OF THE SENATORS REPRESENTING THE COUNTY, AND A MAJORITY OF THE HOUSE MEMBERS REPRESENTING THE COUNTY; TO MAKE CONFORMING CHANGES THROUGHOUT THE CHAPTER; TO ESTABLISH THE SOUTH CAROLINA MILITARY BASE TASK FORCE, AND TO PROVIDE FOR THE TASK FORCE'S COMPOSITION, POWERS, DUTIES, AND RESPONSIBILITIES; AND TO PROVIDE COORDINATING INSTRUCTIONS RELATING TO THE REDESIGNATION OF THE DIVISION OF VETERANS' AFFAIRS AS THE DEPARTMENT OF VETERANS' AFFAIRS.

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

Departments of State Government

SECTION 1. Section 1-30-10(A) of the 1976 Code is amended by adding an appropriately numbered item at the end to read:

"__. Department of Veterans' Affairs"

Enumeration of assets, rights, and obligations of former Division of Veterans' Affairs transferred to Department of Veterans' Affairs

SECTION 2. Chapter 30, Title 1 of the 1976 Code is amended by adding:

"Section 1-30-130. There is hereby created, within the executive branch of the state government, the Department of Veterans' Affairs, headed by a secretary appointed by the Governor pursuant to Section 25-11-20. The employees, funds, authorized appropriations, property, assets, liabilities, and all contractual rights and obligations associated with the Division of Veterans' Affairs of the Department of Administration established by Section 25-11-10, et seq. prior to July 1, 2019, are hereby transferred to and incorporated in and shall be administered as part of the Department of Veterans' Affairs."

Department of Veterans' Affairs

SECTION 3. Chapter 11, Title 25 of the 1976 Code is amended to read:

"CHAPTER 11

Department of Veterans' Affairs

Article 1

General Provisions

Section 25-11-10. (A) The Department of Veterans' Affairs is created within the executive branch of the state government for the purpose of assisting former, present, and future members of the armed forces of the United States in securing the benefits to which they are entitled under the provisions of federal legislation and under the terms of insurance policies issued by the federal government for their benefit. Powers, duties, and functions to be vested in the department shall include all those powers, duties, and functions involving cooperation with other governmental units, such as cities and counties, or with the federal government agencies concerned with participation in federal grants-in-aid programs relating to veterans and veterans' affairs. The department shall receive advice and recommendations from a panel consisting of the Governor as chairman, the Attorney General for the purpose of giving legal advice, and the Adjutant and Inspector General.

(B) The department may promulgate regulations necessary to implement the provisions of this chapter.

(C) The department may apply for and accept funds, grants, gifts, and services from the State, the United States Government or any of its agencies, or any other public or private source and may use funds derived from these sources to defray clerical and administrative costs, as may be necessary for carrying out the department's duties.

(D) The department shall submit an annual written report to the Governor and the General Assembly no later than December thirty-first of each year. The annual report shall describe:

(1) the number, nature, and kind of cases handled by the department and by county and city veteran service officers of the State;

(2) the amounts of benefits obtained for veterans;

(3) the names and addresses of all certified veteran service officers of the State;

(4) the current status and condition of the department's domiciliary and nursing homes, including the number of residents received and discharged during the preceding year, occupancy rates, staffing, and all receipts and expenditures from the preceding year; and

(5) any actions taken by the department to implement the provisions of this subsection, including other information and recommendations as the department considers prudent or necessary.

(E) The department shall administer this chapter and shall have the authority and responsibility to apply for and administer any federal programs and develop and coordinate such state programs as may be beneficial to the particular interests of the veterans of this State.

Section 25-11-20. (A) For the purpose of carrying on this work the Governor shall appoint, with the advice and consent of the Senate, a secretary of the department, who is charged with the duty of assisting all veterans, regardless of the wars in which their service may have been rendered, in filing, presenting, and prosecuting to final determination all claims which they have for money compensation, hospitalization, training, and insurance benefits under the terms of federal legislation.

(B) The secretary must be a veteran, as defined in Section 25-11-40, who is well versed in federal legislation relating to these matters and the rules, regulations, and practice of the Veterans Administration as created by Congress.

(C) Before the appointment, the Governor shall receive a recommendation from (1) the executive committee of the American Legion, Department of South Carolina, (2) the Veterans of Foreign Wars of the United States, Department of South Carolina, and (3) the Disabled American Veterans. The Governor is not required to appoint the person recommended. The secretary is subject to removal by the Governor pursuant to the provisions of Section 1-3-240(B).

(D) The secretary's duties shall include:

(1) working with federal officials to obtain additional federal resources and coordinate veterans policy development and information exchange;

(2) coordinating with appropriate state agencies to ensure that available federal and state resources are directed toward assisting veterans and addressing all issues of mutual concern to the State and the armed forces of the Unites States, including quality of life issues unique to South Carolina's military personnel and their families, quality of educational opportunities for military children, transportation needs, substance abuse, and social service needs;

(3) monitoring and enhancing efforts to provide assistance and support for veterans living in South Carolina and members of the South Carolina National Guard and South Carolina residents in the armed forces reserves not in active federal service in the areas of medical care,

mental health and rehabilitative services, housing, homelessness prevention, job creation, and education;

(4) settling claims, actions, causes of action, and legal proceedings brought against the department or its employees acting within the scope of their employment;

(5) accepting donations and gifts of property or grants of money on behalf of the department in compliance with the law;

(6) initiating the promulgation of regulations;

(7) performing other such functions as may be necessary to supervise, direct, conduct, and administer the daily duties of the department as authorized by law or by rules and policies; and

(8) submitting an annual report to the Governor and the General Assembly, pursuant to Section 25-11-10(D).

Section 25-11-30. (A) The department shall be located in Columbia in space provided by the Department of Administration.

(B) The Department of Administration may provide administrative support to the department for the performance of its duties, including, but not limited to, financial accounting support, human resources administrative support, information technology shared services support, procurement services, and logistical support.

Section 25-11-40. (A) For the purpose of this section, 'veteran' means a person who served on active duty in the armed forces of the United States and who was honorably discharged or released from such service due to a service-connected disability.

(B) Subject to the recommendation of a majority of the Senators representing the county and a majority of the House members representing the county, the secretary shall appoint a county veterans' affairs officer for each county in the State, whose term of office shall begin July first of each odd-numbered year and shall continue for a term of two years and until a successor shall be appointed. Qualifications shall be determined by the county legislative delegation upon a majority vote of the Senators representing the county and a majority of the House members representing the county. A county veterans' affairs officer is an at-will employee of the department, subject to removal for cause at any time by the secretary, a majority of the Senators representing the county, and a majority of the House members representing the county.

(C) All county veterans' affairs officers must successfully complete a comprehensive course of training and be issued accreditation within one year following initial appointment, either through the department or through an accredited national veterans' service organization. A training

council from the South Carolina Association of County Veterans' Affairs Officers, in conjunction with the department or through an accredited national veterans' service organization, shall develop the training criteria. Training and accreditation must be provided by the department or through an accredited national veterans' service organization. A county veterans' affairs officer who does not complete the required training and receives accreditation within the first year following appointment is ineligible for reappointment by the county legislative delegation. Additionally, in order to maintain accreditation, refresher training is required yearly.

(D) In Dorchester County, appointments made pursuant to this section are governed by the provisions of Act 512 of 1996.

Section 25-11-45. Notwithstanding Section 1-30-110(4), a county veterans' affairs office must be funded with monies appropriated by the General Assembly for that purpose and payable directly to the County Treasurer's Office by the State Treasurer.

Section 25-11-50. The secretary shall establish uniform methods and procedures for the performance of service work among the several county officers, maintain contact and close cooperation with such officers, and provide assistance, advice and instructions with respect to changes in law and regulations and administrative procedure in relation to the application of such laws and he may require from time to time reports from such county veterans' affairs officers, reflecting the character and progress of their official duties.

Section 25-11-60. The county veterans' affairs officers shall render semiannually a complete report of their acts and doings to the county legislative delegation of their respective counties upon uniform forms to be furnished by the secretary.

Section 25-11-70. (A) The department shall assist the South Carolina Agent Orange Advisory Council and the Agent Orange Information and Assistance Program at the Division of Health and Environmental Control in carrying out the purposes of Chapter 40, Title 44. The department shall:

(1) refer veterans to appropriate state and federal agencies or other available resources for treatment of adverse health conditions which may have resulted from possible exposure to chemical agents, including Agent Orange;

(2) assist veterans in filing compensation claims for disabilities that may have resulted from possible exposure to chemical agents, including Agent Orange;

(3) communicate the concerns of veterans related to exposure to chemical agents, including Agent Orange, to appropriate state and federal officials.

(B) The department may request that the Attorney General represent a class of individuals composed of veterans who may have suffered adverse health conditions as a result of possible exposure to chemical agents, including Agent Orange, in a suit for release of information relating to the exposure to these chemicals during military service and for release of individual medical records.

Section 25-11-75. (A) The secretary shall appoint an additional claims representative within the department, who, in addition to being charged with the duty of assisting all veterans, regardless of the wars in which their service may have been rendered, in filing, presenting, and prosecuting to final determination all claims which they have for money compensation, hospitalization, training, and insurance benefits under the terms of federal legislation, shall also specialize in the specific needs and diseases associated with veterans of the Vietnam era. The person appointed as a claims representative under this section must be versed in federal legislation relating to these matters and the rules, regulations, and practice of the Veterans Administration as created by Congress.

(B) Subject to the direction of the secretary, and in addition to other duties prescribed in this section, the claims representative appointed pursuant to this section may represent the department on the South Carolina Agent Orange Advisory Council and on the Hepatitis C Coalition established by the South Carolina Department of Health and Environmental Control, assist the department in carrying out its duties in connection with the Agent Orange Information and Assistance program, represent the secretary in connection with functions relating to Vietnam veterans, and perform other duties as may be assigned by the secretary.

(C) The position created by this section is a classified position subject to Article 3, Chapter 11, Title 8 of the 1976 Code. In the general appropriations act for fiscal year 2001-2002 and thereafter, the General Assembly shall add the position in the budget for the department and provide for its funding.

Section 25-11-80. (A) For the purposes of this section:

(1) 'State veterans' cemetery' means a cemetery that the department establishes under this section.

(2) 'Immediate family' means those family members who are eligible for burial in a department national cemetery.

(B) The department may establish one or more cemeteries in the State for the burial of veterans and their immediate families.

(C) The department may accept land, in the name of the State, or otherwise acquire land for a state veterans' cemetery, if the department has the approval of:

(1) the governing body of the county where the state veterans' cemetery is to be located;

(2) the delegation in the General Assembly for the county where the state veterans' cemetery is to be located; and

(3) the Governor.

(D) The department shall maintain and supervise each state veterans' cemetery.

(E)(1) Subject to the limitations in this section, the department shall provide a plot in a state veterans' cemetery, without charge, to an applicant who meets the requirements of this section.

(2) In the order in which the department receives the applications for plots, the department shall allot a plot in the state veterans' cemetery that is closest to the residence of the veteran and has an available plot.

(F)(1) To qualify for a plot in a state veterans' cemetery, the applicant must be a veteran or a member of the immediate family of a veteran who meets the requirements of this subsection.

(2) The veteran must have an honorable discharge from the Armed Forces.

(3) The veteran must have been a resident of the State:

(a) when the veteran entered the Armed Forces;

(b) when the veteran or eligible family member died; or

(c) for five years, unless for a reason that the department finds compelling, the department waives the time period.

(G) To obtain a plot in a state veterans' cemetery, an applicant shall submit to the department an application on the form that the department provides.

(H) In a plot that is allotted to a veteran, the department shall bury:

(1) the veteran; and

(2) any member of the immediate family of the veteran if the family member can be buried in a space above or below the veteran.

(I)(1) The department shall bury the veteran without charge.

(2) For burial of a member of the immediate family, the department may:

(a) set a fee that does not exceed the cost of burial; or

(b) accept, from the social security burial allowance, an amount that does not exceed the cost of the burial.

(J) The department shall keep a registry of the graves of veterans who are buried in the state veterans' cemeteries.

Section 25-11-90. (A)(1) The department shall prepare a complete roster of all South Carolina members of the United States military who served on active duty during:

(a) the Korean conflict;

(b) the Vietnam conflict;

(c) Operation Urgent Fury (Grenada);

(d) Operation Just Cause (Panama);

(e) Operations Desert Shield and Desert Storm (Iraq and Kuwait);

(f) Operation Restore Hope (Somalia);

(g) Operations Joint Guard, Joint Forge, and Joint Endeavor (Bosnia-Herzegovina);

(h) Operation Joint Guardian (Kosovo);

(i) Operation Noble Eagle (Homeland Defense); and

(j) Operations Enduring Freedom and Iraqi Freedom (Afghanistan, Horn of Africa, Iraq, and Philippines).

(2) This roster shall also include veterans born in South Carolina who served on active duty but may have enlisted in another state. Upon returning to South Carolina, that veteran's name must be added to the roster.

(3) The list must be periodically updated to include persons who serve on active duty or are mobilized in any subsequent named military operation in which United States military personnel are engaged in armed conflict or any future war declared by the United States Congress.

(B) The roster shall contain the principal items of record of all military personnel included on the roster as shown by the service cards or records in the Office of State Selective Service, the Adjutant General, and the Department of Defense of the United States. The roster must be arranged in a manner to make the information readily accessible.

(C) The roster also shall contain an Order of Battle to include the name and location of assignment of every unit of the South Carolina National Guard and every active and reserve unit based in South Carolina participating in any of the conflicts listed in subsection (A). The Order of Battle must be periodically updated in conjunction with the roster.

(D) The department shall secure printing of the roster, and a copy or set must be delivered to the South Carolina Department of Archives and History, Department Headquarters of the American Legion and Auxiliary, Department Headquarters of the Veterans of Foreign Wars and Auxiliary, Department Headquarters of the Disabled American Veterans, county libraries, and each county veterans' affairs service officer. Any remaining copies must be placed in the office of the department for distribution as needed.

(E) The preparation and distribution of the roster is subject to the availability of funds as appropriated by the General Assembly to the department for this purpose. These rosters and their distribution must be maintained and updated based on workloads and availability of funds.

(F) The inclusion of a person's name on the roster does not entitle the person to any additional benefits or any benefits for which the person would not otherwise qualify.

Section 25-11-100. (A) There is hereby established the South Carolina Military Base Task Force for the purpose of enhancing the value of military installations and facilities and the quality of life for military personnel located in this State. The task force shall assist military communities with such value enhancement, address the various incentives to military personnel assigned in this State, coordinate the efforts of the military communities, and provide for other methods and incentives to accomplish these purposes. The task force shall coordinate efforts among the public and the private sectors to maintain a significant United States Department of Defense presence in South Carolina. The task force shall advise the Governor and the General Assembly on any issues and strategies related to military base closures, realignments, and mission changes.

(B)(1) The task force shall be comprised of the following members or their designees:

(a) South Carolina Adjutant General;

(b) Secretary of the South Carolina Department of Commerce;

(c) Executive Director of the South Carolina Chamber of Commerce;

(d) Chief Executive Officer of the Beaufort Chamber of Commerce;

(e) Chief Executive Officer of the Charleston Metro Chamber of Commerce;

(f) Chief Executive Officer of the Columbia Chamber of Commerce;

(g) Chief Executive Officer of the Sumter Chamber of Commerce;

(h) Chairperson of Beaufort County Council;

(i) Chairperson of Berkeley County Council;

(j) Chairperson of Dorchester County Council;

(k) Chairperson of Charleston County Council;

(l) Chairperson of Richland County Council;

(m) Chairperson of Sumter County Council;

(n) Mayor of Beaufort;

(o) Mayor of Charleston;

(p) Mayor of Columbia;

(q) Mayor of North Charleston;

(r) Mayor of Port Royal;

(s) Mayor of Sumter;

(t) one or more members of the Senate or the House of Representatives appointed by the Governor; and

(u) five at-large members appointed by the Governor who have demonstrated experience in one or more of the following areas: economic development, defense industry, military installation operation, environmental issues, finance, local government, or senior military leadership, of whom:

(i) four shall represent, respectively, the four military communities of Beaufort, Charleston, Columbia, and Sumter, and each shall reside in the military community that he is appointed to represent; and

(ii) the fifth at-large member shall serve as the task force chairman.

(2) The Governor may designate any one of the members of the task force as its vice chairman.

(C) Staff support and other resources as necessary may be provided through funding by the General Assembly and/or other resources, which shall be administered by the department to assist the task force in carrying out the directives of this section.

(D) The task force chairman shall appoint an executive committee consisting of the chairman; vice chairman, if any; Adjutant General, or his designee; Secretary of Commerce, or his designee; Executive Coordinator, if any; and the four at-large task force members who represent the four military communities of Beaufort, Charleston, Columbia, and Sumter.

(E) The task force executive committee shall also act as an executive advisory committee to the Governor and the General Assembly on various military matters that affect this State and shall coordinate an

annual meeting between the Governor, military commanders, and General Assembly members geographically representing military communities to discuss items of interest to all parties and exchange pertinent information on the current climate and challenges facing our state's military installations and their personnel.

(F) Upon the approval of the secretary, the task force may pursue specialists to provide information and assistance, develop strategic plans, and assist in executing strategies to support military installations and their related military communities to maximize the potential for increased investment by the United States Department of Defense or other defense-related federal agencies and defense-related businesses in this State.

Article 3

South Carolina Military Family Relief Fund

Section 25-11-310. For the purposes of this article:

(1) 'Active duty' means military service performed as State Active Duty under the South Carolina Military Code, or corresponding provisions of the applicable state statute for South Carolina residents who are National Guard members of other states; military service performed under the provisions of Title 32, United States Code; or military service performed under the provisions of Title 10, United States Code.

(2) 'Department' means the Department of Veterans' Affairs.

(3) 'Duty as a result of September 11, 2001, terrorist attacks' means active duty service of a minimum of thirty consecutive days, directly related to the President's Partial Mobilization Authority in response to the attacks, (currently referred to as Operation Noble Eagle and Operation Enduring Freedom); any future operations as determined by the President; or any future operations as determined by the Governor of the State.

(4) 'Families of members' means a husband, wife, child, mother, father, brother, sister, or other person who has been approved as a dependent and is enrolled in the Defense Enrollment Eligibility Reporting System (DEERS) in accordance with applicable military regulations. A custodial parent or guardian of a member's dependent may apply for a grant on behalf of that dependent.

(5) 'Next of kin' means the person listed as next of kin for the member in DEERS. In the case of multiple entries for next of kin, the first person listed is considered next of kin for the purposes of this article.

Section 25-11-320. There is established in the State Treasury a fund separate and distinct from the general fund of the State and all other funds entitled the South Carolina Military Family Relief Fund. Earnings on this fund must be credited to it and a balance in the fund at the end of a fiscal year does not lapse to the general fund of the State but is instead carried forward in the fund to the succeeding fiscal year and used for the same purposes. The fund is not subject to mid-year budget reductions. Revenues of the fund include amounts donated to it pursuant to the state individual income tax return as provided in Section 12-6-5060, other grants or donations made to the fund, regardless of source, and amounts as may be appropriated to the fund by the General Assembly. The department may award grants from the fund in the manner and for the purposes provided in this article. Grants awarded may not at any time exceed the fund balance at the time of the grant.

Section 25-11-330. (A) The intent of this article is to provide an opportunity on standard individual income tax forms to allow individual taxpayers and other donors to contribute to the South Carolina Military Family Relief Fund, and to provide the department the authority to award grants from the fund to families of South Carolina National Guard members or other Reserve component members, to include the Army Reserve, Marine Corps Reserve, Naval Reserve, Air Force Reserve, and Coast Guard Reserve, and including National Guard members of other states, who are South Carolina residents and were called to active military service as a result of the September 11, 2001, terrorist attacks.

(B) The grants must be in the form of three types of payments:

(1) payments based on the need of the member or the member's family as determined eligible under Section 25-11-340;

(2) payments based on the member's status as a member of the South Carolina National Guard or other Reserve component, made to the member or the member's family as determined eligible under Section 25-11-350;

(3) payments to the member's next of kin as determined eligible under Section 25-11-360.

Section 25-11-340. (A) The grant applicant must show proof of the following:

(1) The applicant is a member of the South Carolina National Guard or a South Carolina resident who is a member of another United States Armed Forces Reserve component, applying on behalf of the applicant's family, or is a family member of that member. Proof of

residency for military members consists of information obtained from DEERS. Proof of a familial relationship also consists of information obtained from DEERS.

(2) The South Carolina National Guard or Reserve component member was on active military duty for at least thirty consecutive days as a result of the September 11, 2001, terrorist attacks. Proof of active duty consists of a copy of the orders issued by an authorized headquarters ordering the member to this duty and documentation showing this duty was actually performed. Eligible active duty includes any active duty since September 11, 2001.

(3) A copy of a payroll record from the member's civilian employer that indicates member's monthly salary plus a copy of a military payroll record that indicates the member's monthly salary.

(4) Proof that the military salary, including Basic Allowance for Housing, of the member has decreased by thirty percent or greater from the applicant's civilian salary.

(5) Proof that the member or family member has incurred or is about to incur a specific monetary expense relating to clothing, food, housing, utilities, medical services, medical prescriptions, insurance or vehicle payments. This proof includes, but is not limited to, a copy of a bill, invoice, estimate, cancellation notice, or any other similar record.

(6) A signed statement that the grant request is for the purpose identified in the application and that the grant funds will be used for the purposes requested.

(7) The South Carolina National Guard or Reserve component member holds a pay grade no higher than O-3, if a commissioned officer, or W-2, if a warrant officer. Individuals or families are eligible for the grant based upon rank at the time of the mobilization. Proof of pay grades consists of information obtained from DEERS.

(8) If a custodial parent or guardian is applying for a grant on behalf of a member's dependent, then the custodial parent or guardian must provide proof of guardianship of a member's dependent currently enrolled in DEERS.

(9) The department may waive the requirements in subsection (A)(4) upon a written request indicating the circumstances justifying such a waiver, and upon proof that there has in fact been some decrease from the member's civilian salary. These circumstances include, but are not limited to, death, injury, or incapacity of the member, long-term deployment of the member, and unexpected expenses incurred by the member's family. The department may use discretion in granting or denying these requests.

(B) The following members are ineligible to receive grants:

(1) all commissioned and warrant officers with pay grades of O-4 and W-3, or higher;

(2) personnel serving in Active Guard/Reserve (AGR) or similar full-time unit support programs unless called to Title 10 service;

(3) members who are unmarried and have no family members enrolled in DEERS;

(4) members who, at any time before the disbursement of funds pursuant to a grant application under this section, receive a punitive discharge, or an administrative discharge with service characterized as Under Other Than Honorable Conditions.

Section 25-11-350. (A) The grant applicant must show proof of the following:

(1) The applicant is a member of the South Carolina National Guard or a South Carolina resident who is a member of another United States Armed Forces Reserve component, applying on behalf of the applicant's family or is a family member of that member. Proof of residency for military members consists of information obtained from the Defense Enrollment Eligibility Reporting System (DEERS). Proof of a familial relationship also consists of information obtained from DEERS.

(2) The South Carolina National Guard or Reserve component member was on active military duty for at least thirty consecutive days as a result of the September 11, 2001, terrorist attacks. Proof of active duty consists of a copy of the orders issued by an authorized headquarters ordering the member to this duty and documentation showing that this duty was actually performed. Eligible active duty includes any active duty since September 11, 2001.

(3) The South Carolina National Guard or Reserve component member holds a pay grade no higher than O-3, if a commissioned officer, or W-2, if a warrant officer. Individuals or families are eligible for the grant based upon rank at the time of mobilization. Proof of pay grades consists of information obtained from DEERS.

(B) The following members are ineligible to receive grants:

(1) all commissioned and warrant officers with pay grades of O-4 and W-3, or higher;

(2) personnel serving in Active Guard/Reserve (AGR) or similar full-time unit support programs unless called to Title 10 service;

(3) members who are unmarried and who have no family members enrolled in DEERS;

(4) members who receive a punitive discharge or an administrative discharge with service characterized as Under Other Than Honorable Conditions.

Section 25-11-360. (A) The grant applicant must show proof of the following:

(1) The applicant is a member of the South Carolina National Guard or a South Carolina resident who is a member of another United States Armed Forces Reserve component, applying on behalf of the applicant's family, or is next of kin of that member. Proof of residency for military members consists of information obtained from DEERS. Proof of a familial relationship also consists of information obtained from DEERS.

(2) The South Carolina National Guard or Reserve component member was on active military duty for at least thirty consecutive days as a result of the September 11, 2001, terrorist attacks. Proof of active duty consists of a copy of the orders issued by an authorized headquarters ordering the member to this duty and documentation showing that this duty was actually performed.

(3)(a) A statement signed by the member stating that the member sustained a service-connected injury or illness; or

(b) a statement signed by the member's next of kin that the member was killed in action, is missing in action, or is a prisoner of war.

(4) Proof of next of kin status includes, but is not limited to, an affidavit signed by the applicant or information obtained from DEERS.

(5) The department may waive the thirty-day requirement in subsection (A)(2) upon a written request indicating the circumstances justifying the waiver. The department may use discretion in granting or denying these requests.

(6) The department must verify with the United States Department of Defense that the member has been wounded or killed, is missing in action, is a prisoner of war, or was otherwise incapacitated while on active duty. No payments may be made without this verification.

(B) Applications submitted under this section take precedence over all other applications.

(C) Members who, at any time before the disbursement of funds pursuant to a grant application under this section, receive a punitive discharge or an administrative discharge with service characterized as Under Other Than Honorable Conditions, are ineligible to receive grants pursuant to this section.

Section 25-11-370. (A) Payments to a South Carolina National Guard or Reserve component member's family pursuant to Section 25-11-340 may not exceed two thousand dollars, to include any amounts paid pursuant to provisions of Section 25-11-380 during a state fiscal year.

(B) If a grant payment is to be used for the purpose of payments for food, housing, utilities, medical services or medical prescriptions, it may be noted on the application.

(C) No additional applications from a member or a member's family may be accepted within one hundred eighty days from receipt of any prior applications.

(D) All grants must be paid directly to the applicant. Payments must not be made directly to creditors.

(E) The department may waive the requirements in subsections (A) and (C) of this section upon a written request indicating the circumstances justifying the waiver. The department may use discretion in granting or denying these requests. However, in no event may payments authorized pursuant to this section exceed three thousand dollars during any state fiscal year.

Section 25-11-380. (A) All grants pursuant to Section 25-11-350 must be a flat rate of five hundred dollars unless the number of requests and fund balance necessitate a lesser amount as determined by the department.

(B) South Carolina National Guard or Reserve component members' families may receive a grant only one time in each fiscal year and only one time for each active duty order.

(C) All grants must be paid directly to the applicant. Payments must not be made directly to creditors.

Section 25-11-390. (A) All grants pursuant to Section 25-11-360 must be a flat rate of one thousand dollars unless the number of requests and fund balance necessitate a lesser amount as determined by the department.

(B) South Carolina National Guard or Reserve component members or next of kin may receive a grant only one time for each active duty order.

(C) All grants must be paid directly to the applicant. Payments must not be made directly to creditors.

Section 25-11-400. (A) The procedures governing the acceptance of applications are as follows:

(1) To receive consideration for a grant, applicants must request and submit an application provided by the department.

(2) All necessary documentation must be included with the application unless otherwise provided pursuant to DEERS and the applicant shall authorize access to DEERS for purposes of verification.

(3) Applications may be submitted via facsimile but the original documentation must be submitted before any grant payments are authorized.

(4) Incomplete applications must be returned to the applicant.

(5) The department, upon receipt of a complete original application, shall verify required information under DEERS and then shall process the information for payment. The application must be processed in an expeditious manner.

(B) The procedure governing payments are as follows:

(1) Payment must be made to the applicant who has met all eligibility requirements.

(2) The timeliness of payment is determined by the amount of funds available at the time of application.

(3) If adequate funds are not available, the application must be held in a queue until funds are available.

(4) Applications for casualty-based grants take precedence over all others.

(C) The procedures governing denials of applications are as follows:

(1) Grant applications from those not meeting eligibility requirements must be denied.

(2) A letter explaining the denial, as well as providing additional sources of available relief, must be sent to the applicant within thirty days after receipt of the application.

Article 5

South Carolina Prisoner of War Medal

Section 25-11-510. There is created the South Carolina Prisoner of War 'POW' Medal. The Governor may present the medal on behalf of the people of the State of South Carolina to any person who:

(1) on the date of induction into the organized militia or federal military service, was a resident of this State and who, while serving in the organized militia or in federal military service on active duty in a combat theater of operation during a time of war or emergency, was officially listed as a prisoner of war by the United States Department of Defense;

(2) on the date of induction into the organized militia or federal military service, was not a resident of this State but currently resides in this State or was a resident at the time of death and who, while serving in the organized militia or in federal military service on active duty in a combat theater of operation during time of war or emergency, was officially listed as a prisoner of war by the United States Department of Defense; or

(3) meets the residency requirements of item (1) or (2), and was taken prisoner and held captive while:

(a) engaged in an action against an enemy of the United States;

(b) engaged in military operations involving conflict with an opposing foreign force; or

(c) serving with friendly forces engaged in an armed conflict against an opposing force in which the United States is not a belligerent party.

Section 25-11-520. (A) The department, in consultation with the Adjutant General, shall determine eligibility for the medal. For any person qualifying for the medal pursuant to Section 25-11-510(3), the secretary shall determine eligibility on a case by case basis. There is no required period of captivity; however, the secretary and the Adjutant General shall compare such cases to those under which persons have generally been held captive by enemy forces during periods of armed conflict.

(B) The department may require a copy of DD Form 214 or WD Form 53 and any other information necessary to determine eligibility.

Section 25-11-530. Any person convicted by a United States military tribunal of misconduct or a criminal charge or whose discharge is less than honorable based on actions while a POW is ineligible for the medal. Any POW whose conduct was not in accord with the Code of Conduct and whose actions are documented by United States military records, is ineligible for the medal. Resolution of questionable cases shall be the responsibility of the secretary, in consultation with the Adjutant General.

Section 25-11-540. No person may be awarded more than one South Carolina POW Medal.

Section 25-11-550. The medal may be awarded for a deceased person or a person absent as a prisoner of war and presented to the person’s next of kin.

Section 25-11-560. The department must develop and implement a plan to accept nominations for the medal.

Section 25-11-570. (A) The Adjutant General, in consultation with the secretary, shall develop the appropriate design and appearance of the medal and a ribbon to be worn in lieu of the medal. However, nothing in this section requires the secretary or the Adjutant General to provide or pay for the medal, ribbon, or its design.

(B) There is created in the State Treasury a special fund to be known as the South Carolina Prisoner of War Medal Fund for the sole purpose of receipt and disbursement of donated funds from the public to be used in the design, production, purchasing, and presentation of the South Carolina Prisoner of War Medal as administered by the secretary, in consultation with the Adjutant General. The department, or the Adjutant General, shall remit all funds donated to the South Carolina Prisoner of War Medal Fund to the Office of State Treasurer for deposit and disbursement."

Coordinating instructions

SECTION 4. (A) All classified or unclassified personnel employed by these offices on the effective date of this act, either by contract or by employment at will, shall become employees of the Department of Veterans' Affairs, with the same compensation, classification, and grade level, as applicable. The Department of Administration shall cause all necessary actions to be taken to accomplish this transfer in accordance with state laws and regulations.

(B) Regulations promulgated by the Division of Veterans' Affairs as it formerly existed under the Department of Administration are continued and are considered to be promulgated by the newly created Department of Veterans' Affairs.

(C) The Code Commissioner is directed to change or correct all references to Division of Veterans' Affairs within the Department of Administration in the 1976 Code, to reflect the transfer of it to the Department of Veterans' Affairs. References to the Division of Veterans' Affairs in the 1976 Code or other provisions of law are considered to be and must be construed to mean appropriate reference to the Department of Veterans' Affairs. This authority shall not be construed to remove any authority from the Department of Administration for approval of statewide policies, procedures,

regulations, rates and fees, or specific actions requiring Department of Administration approval.

Time effective

SECTION 5. This act takes effect July 1, 2019. County veterans' affairs officers serving on or before the effective date of Section 25-11-40(B), as amended by this act, are not subject to the revised qualifications provided in this section.

Ratified the 25th day of April, 2019.

Approved the 26th day of April, 2019.

No. 27

(R40, H3483)

AN ACT TO REPEAL SECTION 3 OF ACT 138 OF 2016 RELATING TO THE AUTOMATIC REPEAL OF STATUTORY PROVISIONS REQUIRING CERTAIN COAL COMBUSTION RESIDUALS BE PLACED IN A CLASS 3 LANDFILL.

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

Section 3 of Act 138 of 2016 repealed

SECTION 1. SECTION 3 of Act 138 of 2016 is repealed.

Time effective

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

Ratified the 25th day of April, 2019.

Approved the 26th day of April, 2019.

No. 28

(R58, H3698)

AN ACT TO AMEND SECTION 48-39-80, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE DEVELOPMENT OF THE COASTAL MANAGEMENT PROGRAM, SO AS TO DEEM CERTAIN COASTAL ZONE CONSISTENCY CERTIFICATIONS APPROVED WITHIN THIRTY DAYS OF AN ADMINISTRATIVELY COMPLETE APPLICATION.

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

Dock permits, coastal zone consistency certification

SECTION 1. Section 48-39-80(B)(11) of the 1976 Code is amended to read:

"(11) Develop a system whereby the department shall have the authority to review all state and federal permit applications in the coastal zone, and to certify that these do not contravene the management plan. For individual navigable waters permits for docks located in the eight coastal counties but outside of critical areas, a coastal zone consistency certification is deemed approved if certification review is not completed within thirty days of an administratively complete application."

Time effective

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

Ratified the 9th day of May, 2019.

Approved the 13th day of May, 2019.

No. 29

(R59, H3699)

AN ACT TO AMEND SECTION 48-39-145, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO APPLICATION FEES FOR PERMITS TO ALTER CRITICAL AREAS, SO AS TO AUTHORIZE THE SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL TO DEFER TO THE UNITED STATES ARMY CORPS OF ENGINEERS IN DETERMINING THE SIZE OF A PRIVATE RECREATIONAL DOCK CONSTRUCTED ON THE ATLANTIC INTRACOASTAL WATERWAY FEDERAL NAVIGATION PROJECT.

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

Dock permits, deference to United States Army Corp of Engineers

SECTION 1. Section 48-39-145 of the 1976 Code is amended by adding an appropriately lettered subsection to read:

"( ) For permit applications to construct private recreational docks on the Atlantic Intracoastal Waterway Federal Navigation Project in a county where more than eighty percent of the Atlantic Intracoastal Waterway is outside of the critical area, the department shall defer to the United States Army Corps of Engineers in determining the total allowable dock square footage of the structure."

Time effective

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

Ratified the 9th day of May, 2019.

Approved the 13th day of May, 2019.

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No. 30

(R43, S12)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 53-3-225 SO AS TO DESIGNATE THE THIRD WEDNESDAY IN FEBRUARY OF EACH YEAR AS "BARBERS' DAY" IN SOUTH CAROLINA.

Whereas, the practice of barbering has a long history, with razors having been found among relics of the Bronze Age, around 3500 B.C., in Egypt; and

Whereas, although in modern times barbers are best known for providing haircuts and clean shaves, the work of barbers has evolved over the centuries, including serving as surgeons and dentists during the Middle Ages; and

Whereas, barbershops enjoy a special cultural significance in America, serving as gathering places where issues of the day are discussed and friendships are fostered; and

Whereas, in South Carolina today, over 4,100 barbers are engaged in this distinguished occupation, proudly serving thousands of South Carolinians daily. Now, therefore,

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

Barbers' Day established

SECTION 1. Chapter 3, Title 53 of the 1976 Code is amended by adding:

"Section 53-3-225. The third Wednesday in February of each year is designated as 'Barbers' Day' in South Carolina in recognition of the cultural significance of barbering and the invaluable contributions of the practice of barbering in the Palmetto State."

Time effective

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

Ratified the 9th day of May, 2019.

Approved the 13th day of May, 2019.

No. 31

(R44, S109)

AN ACT TO AMEND SECTION 40-79-20, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE SOUTH CAROLINA ALARM SYSTEM BUSINESS ACT, SO AS TO ADD A DEFINITION FOR "ELECTRIC FENCE", TO ADD AND REVISE OTHER DEFINITIONS, AND TO MAKE TECHNICAL CORRECTIONS.

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

Alarm businesses, electric fences, definitions

SECTION 1. Section 40-79-20 of the 1976 Code is amended to read:

"Section 40-79-20. As used in this chapter:

(1) 'Administrative personnel' means an individual who performs daily office functions for the management of an alarm business.

(2) 'Alarm business' means an entity that is licensed by the South Carolina Contractor's Licensing Board to engage in the burglar or fire alarm system business, or both.

(3) 'Alarm technician' means an individual who specializes in any activity or work related to the set up or installation, repair, alteration, or connection of an alarm system to a client's property.

(4) 'Bid' means an offer to furnish labor, equipment or materials, or other services regulated by this chapter.

(5) 'Board' means the South Carolina Contractor's Licensing Board.

(6) 'Burglar alarm system business' means a person, firm, association, partnership, corporation, or other legal entity authorized by law and approved by the board that designs, installs, services, maintains, or alters burglar alarm systems, including burglar alarm systems with an electric fence as defined herein, and heat and smoke sensors installed within a burglar alarm system; a burglar alarm system detects intrusion,

burglary, and breaking or entering but does not include home health care signaling devices.

(7) 'Contractor' means an entity licensed to engage in the burglar or fire alarm system business.

(8) 'Customer service personnel' means an individual working for a licensed alarm entity who provides support for customer problems, complaints, questions, and concerns involving an alarm system.

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

(10) 'Electric fence' means an electrified fence with a height not to exceed ten feet or two feet higher than the perimeter fence, whichever is higher, that is equipped with an energizer, driven by a commercial storage battery that does not exceed twelve volts DC. The electric charge produced by the fence upon contact must meet and may not exceed energizer characteristics that are tested against the International Electrotechnical Commission Standard. No electric fence shall be installed or used unless it is surrounded by a nonelectrical fence or wall that is not less than five feet high. Electric fences shall be permitted on any property that is not zoned exclusively for residential use. Electric fences shall be clearly identified with warning signs that read: 'Warning - Electric Fence' at intervals of not more than sixty feet. 'Electric fence' does not mean an electrified fence erected for agricultural or wildlife habitat management purposes.

(11) 'Entity' means a sole proprietorship, partnership, limited liability partnership, limited liability company, association, joint venture, cooperative, corporation, or other legal entity authorized by law and approved by the board.

(12) 'Fire alarm system business' means an individual, firm, association, partnership, corporation, or other legal entity authorized by law and approved by the board that designs, installs, services, maintains, or alters fire alarm systems.

(13) 'Individual' means a natural person.

(14) 'Installs' means activity or work which involves the set-up, installation, or connection of alarm system equipment in any manner to a client's property.

(15) 'Licensee' means an alarm business that has been issued a license by the board pursuant to this chapter.

(16) 'Monitoring personnel' means an individual who performs daily office functions, observing the operation and activation of alarm systems from a monitoring station.

(17) 'Primary qualifying party' means a qualifying party who is an owner, partner, or officer of a burglar alarm system business, or a

full-time employee holding a managerial or supervisory position within the alarm system business and who qualifies the licensee to engage in the burglar or fire alarm business and is registered as a qualifying party with the department in accordance with this chapter.

(18) 'Qualifying party' means an individual, owner, partner, officer, or employee of an alarm system business who has met the necessary requirements of a qualifying party and is registered with the department in accordance with this chapter.

(19) 'Registered' means an owner, partner, principle officer, qualifying party, or registered employee of an alarm business whose name and address has been listed or registered with the department as an individual who has access to a client's property or burglar alarm records that can reveal, but not be limited to, the type of burglar alarm system, burglar alarm security numbers or code, or any other information pertaining to the system that could compromise the client's burglar alarm system. This includes individuals who sell, install, or service a burglar alarm system at a client's residence and a full-time employee. Also included is a part-time employee that has access to customers' records or files.

(20) 'Registered employee' means an individual of an alarm system business who has not met the requirements of a qualifying party and is employed more than thirty days in any given calendar year and is registered with the department in accordance with this chapter."

Time effective

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

Ratified the 9th day of May, 2019.

Approved the 13th day of May, 2019.

No. 32

(R45, S132)

AN ACT TO AMEND SECTION 40-47-195, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO PHYSICIAN SUPERVISION OF CERTAIN PRACTITIONERS, SO AS TO MAKE VARIOUS CHANGES CONCERNING SCOPE OF PRACTICE GUIDELINES; AND TO AMEND ARTICLE 7,

CHAPTER 47, TITLE 40, RELATING TO THE SOUTH CAROLINA PHYSICIAN ASSISTANTS PRACTICE ACT, SO AS TO REVISE THE ARTICLE IN ITS ENTIRETY.

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

Supervising physicians and scopes of practice

SECTION 1. Section 40-47-195 of the 1976 Code is amended to read:

"Section 40-47-195. (A) A licensee who supervises another practitioner shall hold a permanent, active, unrestricted authorization to practice in this State and be currently engaged in the active practice of their respective profession or shall hold an active unrestricted academic license to practice medicine in this State.

(B) Pursuant to this chapter, only licensed physicians may supervise another practitioner who performs delegated medical acts in accordance with the practitioner's applicable scope of professional practice authorized by state law. It is the supervising physician's responsibility to ensure that delegated medical acts to other practitioners are performed under approved written scope of practice guidelines or approved written protocol in accordance with the applicable scope of professional practice authorized by state law. A copy of approved written scope of practice guidelines or approved written protocol, dated and signed by the supervising physician and the practitioner, must be provided to the board by the supervising physician within seventy-two hours of request by a representative of the department or board.

(C) In evaluating a written guideline or protocol, the board and supervising physician or medical staff shall consider the:

(1) training and experience of the supervising physician;

(2) nature and complexity of the delegated medical acts being performed;

(3) geographic proximity of the supervising physician to the supervised practitioner; when the supervising physician is not located at the same site as the supervised practitioner, special consideration must be given to the manner in which the physician intends to monitor the practitioner, and prior board approval must be received for this practice unless otherwise provided in this chapter; and

(4) number of other practitioners the physician or medical staff supervises. Reference must be given to the number of supervised practitioners, as prescribed by law. When the supervising physician assumes responsibility for more than the number of practitioners

prescribed by law, special consideration must be given to the manner in which the physician intends to monitor, and prior board approval must be received for this practice.

(D)(1) A physician or medical staff who are engaged in practice with a PA, NP, CNM, or CNS must:

(a)(i) hold permanent, active, and unrestricted authorization to practice medicine in this State and be actively practicing medicine within the geographic boundaries of this State; or

(ii) hold an active, unrestricted academic license to practice medicine in this State and be actively practicing medicine within the geographic boundaries of this State;

(b) have in place prior to beginning practice and during its continuation a practice agreement as defined in Section 40-47-20(35) or scope of practice guidelines as defined in Section 40-47-20(5), a copy of which the physician must make available to the board within seventy-two hours of a request;

(c) not enter into scope of practice guidelines or practice agreements with more than the equivalent of six full-time PAs, NPs, CNMs, or CNSs and must not practice in a situation in which the number of NPs, CNMs, or CNSs providing clinical services with whom the physician is working, combined with the number of PAs providing clinical services whom the physician is supervising, is greater than six individuals at any one time, provided, however, that the board may approve an exception to these requirements upon application by the physician, if the board determines that an exception is warranted and that quality of care and patient safety will be maintained;

(d) not enter into a practice agreement with a PA, NP, CNM, or CNS performing a medical act, task, or function that is outside the usual practice of that physician or outside of the physician's training or experience, provided, however, that the board may approve an exception to this requirement upon application by the physician, if the board determines that an exception is warranted and that quality of care and patient safety will be maintained; and

(e) maintain responsibility in the practice agreement for the health care delivery team pursuant to rules and regulations of the Board of Medical Examiners.

(2) The board is authorized to conduct random audits of scope of practice guidelines and practice agreements."

South Carolina Physician Assistant Practice Act, revised

SECTION 2. Article 7, Chapter 47, Title 40 of the 1976 Code is amended to read:

"Article 7

South Carolina Physician Assistants Practice Act

Section 40-47-905. This article may be cited as the 'South Carolina Physician Assistants Practice Act'.

Section 40-47-910. As used in this article:

(1) 'Alternate physician supervisor' or 'alternate supervising physician' means a South Carolina licensed physician currently possessing an active, unrestricted permanent license to practice medicine in South Carolina who accepts the responsibility to supervise a PA's activities in the absence of the supervising physician and this physician is approved by the physician supervisor in writing in the scope of practice guidelines.

(2) 'Board' means the Board of Medical Examiners of South Carolina.

(3) 'Committee' means the Physician Assistant Committee as established by this article as an advisory committee responsible to the board.

(4) 'Immediate consultation' means a supervising physician must be available for direct communication by telephone or other means of telecommunication.

(5) 'NCCPA' means the National Commission on Certification of Physician Assistants, Inc., the agency recognized to examine and evaluate the education of PAs, or its successor organization as recognized by the board.

(6) 'Physician assistant' or 'PA' means a health care professional licensed to assist in the practice of medicine with a physician supervisor.

(7) 'Physician supervisor' or 'supervising physician' means a South Carolina licensed physician currently possessing an active, unrestricted permanent license to practice medicine in South Carolina who is approved to serve as a supervising physician. The physician supervisor is the individual who is responsible for supervising a PA's activities.

(8) 'Supervising' means overseeing the activities of, and accepting responsibility for, the medical services rendered by a PA as part of a physician-led team in a manner approved by the board.

Section 40-47-915. This article does not apply to a person:

(1) who is employed as a PA by the United States Government, where such services are provided solely under the direction or control of the United States Government;

(2) pursuing a course of study leading to a degree or certificate to practice as a physician assistant in a program accredited by the Accreditation Review Commission on Education for the Physician Assistant, or its successor agency, provided, however, the person must be clearly identified by a badge or other adornment with that person's name and the words 'Physician Assistant Student' clearly legible. The badge or adornment must be at least one inch by three inches in size.

Section 40-47-920. The Director of the Department of Labor, Licensing and Regulation may employ additional staff as necessary for the performance of the department's duties under this article.

Section 40-47-925. (A) There is created the Physician Assistant Committee as an advisory committee to the board which consists of nine members to be appointed by the Board of Medical Examiners. Three of the members must be licensed PAs with a minimum of three years of patient care experience in this State. Two members must be consumers, and three members must be physicians who are licensed to practice in this State. Of the three physician members, at least two must regularly supervise a PA. One member of the Board of Medical Examiners shall serve on the committee ex officio. All organizations, groups, or interested individuals may submit recommendations to the board of at least two individuals for each position to be filled on the committee.

(B) The members shall serve for terms of four years and until their successors are appointed and qualify, except the initial term of two PAs, the consumer member, and one physician are for two years. Vacancies must be filled in the manner of the original appointment for the unexpired portion of the term. The board, after notice and opportunity for hearing, may remove any member of the committee for negligence, neglect of duty, incompetence, revocation or suspension of license, or other dishonorable conduct. Members of the committee shall receive mileage, subsistence, and per diem as provided by law for members of state boards, commissions, and committees for each meeting attended. No member may serve more than two full four-year terms consecutively, but may be eligible for reappointment four years from the date the last full four-year term expired.

(C) The committee shall meet at least two times yearly and at other times as may be necessary. A quorum for all meetings shall consist of five members. At its initial meeting, and at the beginning of each year thereafter, the committee shall elect from its membership a chairman, vice chairman, and secretary to serve for a term of one year.

(D) The committee shall receive and account for all monies under the provisions of this article and shall pay all monies collected to the board for deposit with the State Treasurer as provided for by law.

Section 40-47-930. (A) The committee shall evaluate the qualifications for licensure and make recommendations to the board.

(B) The board may issue subpoenas, examine witnesses, and administer oaths and may investigate allegations of practices violating the provisions of this article.

(C) The committee:

(1) may recommend regulations to the board relating to professional conduct to carry out the provisions of this article including, but not limited to, professional certification and the establishment of ethical standards of practice for persons holding a license to practice as PAs in this State;

(2) shall conduct hearings and keep records and minutes necessary to carry out its functions;

(3) shall provide notice of all hearings authorized under this article pursuant to the Administrative Procedures Act;

(4) shall determine the qualifications and make recommendations regarding the issuance of licenses to qualified PAs;

(5) shall recommend to the board whether to issue or renew licenses under those conditions prescribed in this article;

(6) may recommend requirements to the board for continuing professional education of PAs to the board;

(7) shall keep a record of its proceedings and a register of all licensees, including their names and last known places of employment and residence. The board shall annually compile and make available a list of PAs authorized to practice in this State. An interested person may obtain a copy of this list upon application to the board and payment of an amount sufficient to cover the cost of printing and mailing;

(8) shall report annually to the board on duties performed, actions taken, and recommendations;

(9) shall hear disciplinary cases and recommend findings of fact, conclusions of law, and sanctions to the board. The board shall conduct a final hearing at which it shall make a final decision; and

(10) shall perform such duties and tasks as may be delegated to the committee by the board.

Section 40-47-935. (A) PAs may perform:

(1) medical acts, tasks, or functions within written scope of practice guidelines under physician supervision;

(2) those duties and responsibilities, including the prescribing and dispensing of drugs and medical devices, that are lawfully delegated by their supervising physicians; provided, however, only PAs holding a permanent license may prescribe drug therapy as provided in this article; and

(3) telemedicine in accordance with the requirements of Section 40-47-37 including, but not limited to, Section 40-47-37(C)(6) requiring board authorization prior to prescribing Schedule II and Schedule III prescriptions; Section 40-47-113, approved written scope of practice guidelines, and pursuant to all physician supervisory requirements imposed by this chapter.

(B) Notwithstanding any provisions of state law other than this chapter, and to the extent permitted by federal law, a PA may perform the following medical acts unless otherwise provided in the scope of practice guidelines:

(1) provide noncontrolled prescription drugs at an entity that provides free medical care for indigent patients;

(2) certify that a student is unable to attend school but may benefit from receiving instruction given in his home or hospital;

(3) refer a patient to physical therapy for treatment;

(4) pronounce death, certify the manner and cause of death, and sign death certificates pursuant to the provisions of Chapter 63, Title 44 and Chapter 8, Title 32;

(5) issue an order for a patient to receive appropriate services from a licensed hospice as defined in Chapter 71, Title 44;

(6) certify that an individual is handicapped and declare that the handicap is temporary or permanent for the purposes of the individual's application for a placard; and

(7) execute a do not resuscitate order pursuant to the provisions of Chapter 78, Title 44.

(C)(1) If provided in the scope of practice guidelines, a PA may delegate the following tasks to unlicensed assistive personnel to be performed under the PA's supervision:

(a) meeting patients' needs for personal hygiene;

(b) meeting patients' needs relating to nutrition;

(c) meeting patients' needs relating to ambulation;

(d) meeting patients' needs relating to elimination;
(e) taking vital signs;
(f) maintaining asepsis; and
(g) observing, recording, and reporting any of the tasks enumerated in this subsection.

(2) A PA may not delegate the administration of medication to unlicensed assistive personnel.

(D) A PA is an agent of his supervising physician in the performance of all practice-related activities, including, but not limited to, the ordering of diagnostic, therapeutic, and other medical services.

(E) A PA may sign specified documents on behalf of the supervising physician or alternate supervising physician if authorized in the scope of practice guidelines.

Section 40-47-938. (A) A physician currently possessing an active, unrestricted permanent license to practice medicine under the provisions of this chapter, who accepts the responsibility to supervise a PA's activities, must enter into a supervisory relationship with a PA licensed pursuant to this article, subject to approval of scope of practice guidelines by the board. The physician must notify the board, in writing, of the proposed supervisory relationship and include the proposed scope of practice guidelines for the relationship. The PA may begin clinical practice with the named supervising physician and alternate physicians ten business days after the scope of practice guidelines have been submitted to the board and until a final determination is made by the board.

(B) A supervising physician may determine that there are additional medical acts, tasks, or functions for which a PA under the physician's supervision needs additional training or education to meet the needs of the physician's practice and that the physician would like to incorporate into the PA's scope of practice guidelines. The physician must determine, in consultation with the PA, the means of educating the PA, which may include training under the direct supervision of the physician, education, or certification of proposed practices or other appropriate educational methods. The physician must notify the board in writing of the requested changes to the PA's scope of practice guidelines and must provide documentation to the board of the competence of the PA to perform the additional medical acts, tasks, or functions. The PA may incorporate these additional medical acts, tasks, or functions into practice ten business days after the proposed changes have been submitted to the board and until a final determination is made by the board.

(C) The board shall review and determine whether to approve these proposed scope of practice guidelines or requested changes to the scope of practice guidelines within ten business days after receipt of notice from the supervising physician as required by subsections (A) and (B). If the board needs additional information or clarification, a physician member of the board must contact the supervisory physician within ten business days of receipt of the physician's notice. If the board requests additional information or clarification to consider approval of scope of practice guidelines or changes to these guidelines, the supervising physician shall provide it in a timely manner; and upon receipt, a determination regarding approval must be made within three business days. If the proposed scope of practice guidelines or proposed changes, or a portion thereof, is disapproved by the board, then the board must provide a written explanation for its determination and a suggested remedy if possible. Upon receipt of the board's determination, the supervising physician and PA must practice in accordance with the board's determination.

(D) If a PA is to be employed by a hospital system or provider group with a credentialing committee, then the credentialing committee may begin the credentialing process necessary to employ the PA upon submittal of the proposed scope of practice guidelines to the board.

(E) A physician and a PA beginning practice pursuant to this section under a proposed scope of practice guidelines or proposed changes to a scope of practice guidelines ten business days after submittal to the board, but before a determination is made by the board, must not be subject to any disciplinary action for beginning practice.

Section 40-47-940. A license application must be submitted to the board on forms supplied by the board. The application must be complete in every detail before licensure may be granted and must be accompanied by a nonrefundable fee, provided, however, that a PA may not practice until the supervising physician and PA comply with the requirements of Section 40-47-938.

Section 40-47-945. Except as otherwise provided in this article, an individual shall obtain a permanent license from the board before the individual may practice as a PA. The board shall grant a permanent license as a PA to an applicant who has:

(1) submitted a completed application on forms provided by the board;

(2) paid the nonrefundable application fees established in this article;

(3) successfully completed an educational program for PAs approved by the Accreditation Review Commission on Education for the Physician Assistant or its predecessor or successor organization;

(4) successfully passed the PA National Certifying Examination administered by the National Commission on the Certification of Physician Assistants (NCCPA) and provided documentation that the applicant possesses a current, active NCCPA certificate;

(5) certified that the applicant is mentally and physically able to engage safely in practice as a PA;

(6) no licensure, certificate, or registration as a PA under current discipline, revocation, suspension, probation, or investigation for cause resulting from the applicant's practice as a PA;

(7) good moral character; and

(8) submitted to the board other information the board considers necessary to evaluate the applicant's qualifications, participated in an interview if requested by the board, or both.

Section 40-47-950. (A) The board may issue a limited PA license to an applicant who has:

(1) submitted a completed application on forms provided by the board;

(2) paid the nonrefundable application fees established by this regulation;

(3) successfully completed an educational program for PAs approved by the Accreditation Review Commission on Education for the Physician Assistant or its predecessor or successor organization;

(4) not previously failed two consecutive NCCPA certifying examinations and has registered for, or intends to register to take the next offering of, the NCCPA examination;

(5) certified that the applicant mentally and physically is able to engage safely in practice as a PA;

(6) no licensure, certificate, or registration as a PA under current discipline, revocation, suspension, probation, or investigation for cause resulting from the applicant's practice as a PA;

(7) good moral character;

(8) submitted to the board any other information the board considers necessary to evaluate the applicant's qualifications; and

(9) appeared before a board member or board designee if requested by the board with any documents requested by the board and demonstrated knowledge of the contents of this article.

(B) A limited license is not renewable and is valid only until the results of a limited licensee's two consecutive NCCPA certifying

examinations are reported to the board. When a limited licensee has failed two consecutive NCCPA certifying examinations, or fails one exam and does not take the NCCPA certifying examination at the next opportunity or, after applying for a limited license, fails to register for the next offering of the examination, the limited license immediately is void and the applicant is no longer eligible to apply for further limited licensure.

(C) The supervising physician of a limited licensee physically must be present on the premises at all times when the limited licensee is performing a task.

Section 40-47-955. (A) The supervising physician is responsible for all aspects of the PA's practice. Supervision must be continuous but must not be construed as necessarily requiring the physical presence of the supervising physician at the time and place where the services are rendered, except as otherwise required for limited licensees. The supervising physician shall identify the PA's scope of practice and determine the delegation of medical acts, tasks, or functions. Medical acts, tasks, or functions must be defined in written scope of practice guidelines which must be appropriate to the PA's ability and knowledge.

(B) Pursuant to scope of practice guidelines, a PA may:

(1) practice in a public place, a private place, or a facility where the supervising physician regularly sees patients; and

(2) make house calls, perform hospital duties, perform telemedicine, and perform any functions performed by the supervising physician if the PA is also qualified to perform those functions.

(C) A PA who has less than two years continuous practice or who is changing specialties may not practice at a location off site from the supervising physician until the PA has sixty days clinical experience on-site with the supervising physician. This sixty-day requirement, or a portion thereof, may be waived by the supervising physician in writing on a form approved by the board and submitted to the board. The supervising physician or alternate must review, initial, and date the offsite physician assistant's charts periodically as specified in the written scope of practice guidelines to ensure quality of care and patient safety.

Section 40-47-960. (A) A PA practicing at all sites shall practice pursuant to written scope of practice guidelines signed by all supervisory physicians and the PA. Copies of the guidelines must be on file at all practice sites. The guidelines shall include at a minimum the:

(1) name, license number, and practice addresses of all supervising physicians;

(2) name and practice address of the PA;

(3) date the guidelines were developed and dates they were reviewed and amended;

(4) medical conditions for which therapies may be initiated, continued, or modified;

(5) treatments that may be initiated, continued, or modified;

(6) drug therapy, if any, that may be prescribed with drug-specific classifications; and

(7) situations that require direct evaluation by or immediate referral to the physician, including Schedule II controlled substance prescription authorization as provided for in Section 40-47-965.

(B) In a hospital practice setting, a list of alternate supervising physicians may be submitted to the board without the signatures of the alternate supervising physicians.

Section 40-47-965. (A) If the written scope of practice guidelines authorizes the PA to prescribe drug therapy:

(1) prescriptions for authorized drugs and devices shall comply with all applicable state and federal laws;

(2) prescriptions must be limited to drugs and devices authorized by the supervising physician and set forth in the written scope of practice guidelines;

(3) prescriptions must be signed or electronically submitted by the PA and must bear the PA's identification number as assigned by the board and all prescribing numbers required by law. The preprinted prescription form shall include both the PA's and physician's name, address, and phone number, and, if possible, the physician through the electronic system, and shall comply with the provisions of Section 39-24-40;

(4) drugs or devices prescribed must be specifically documented in the patient record;

(5) the PA may request, receive, and sign for professional samples of drugs authorized in the written scope of practice guidelines and may distribute professional samples to patients in compliance with appropriate federal and state regulations and the written scope of practice guidelines;

(6) the PA may authorize prescriptions for an orally administered Schedule II controlled substance, as defined in the federal Controlled Substances Act, pursuant to the following requirements:

(a) the authorization to prescribe is expressly approved by the supervising physician as set forth in the PA's written scope of practice guidelines;

(b) the PA has directly evaluated the patient, provided, however, that a PA may authorize a prescription if the PA is assigned to take calls for the supervising physician or alternate supervising physician treating the patient;

(c) the authority to prescribe a Schedule II narcotic controlled substance is limited to an initial prescription not to exceed a five-day supply;

(d) any subsequent prescription authorization for a Schedule II narcotic controlled substance after the initial prescription must be in consultation with and approved by the supervising physician, and such approval must be documented in the patient's chart; and

(e) any prescription for continuing drug therapy must include consultation with the supervising physician and must be documented in the patient's chart;

(7) the PA may authorize a medical order for parenteral administration of a Schedule II controlled substance, as defined in the federal Controlled Substances Act, pursuant to the following requirements:

(a) the authorization to write a medical order is expressly approved by the supervising physician as set forth in the PA's written scope of practice guidelines;

(b) the PA is providing patient care in a hospital setting, including emergency and outpatient departments affiliated with the hospital;

(c) an initial patient examination and evaluation has been performed by the supervising physician, or his delegate physician, and has been documented in the patient's chart; however, in a hospital emergency department, a PA may authorize such a medical order if the supervising or delegate physician is unavailable due to clinical demands, but remains on the premises and is immediately available, and the supervising or delegate physician conducts the patient evaluation as soon as practicable and is documented in the patient's chart;

(d) the PA has directly evaluated the patient, provided, however, that the PA may authorize a medical order if the PA is assigned to take call for the supervising physician or alternate supervising physician treating the patient; and

(e) the written medical order may not exceed a one-time administration within a twenty-four hour period without the approval of the supervising physician or alternate supervising physician, and such approval must be documented in the patient's chart.

(B) When applying for controlled substance prescriptive authority, the applicant shall comply with the following requirements:

(1) the PA shall provide evidence of education in pharmacotherapeutics as determined by the board before application;

(2) every two years, the PA shall provide documentation of four continuing education hours related to approved procedures of prescribing and monitoring controlled substances listed in Schedules II, III, and IV of the schedules provided for in Sections 44-53-210, 44-53-230, and 44-53-250; and

(3) the PA must have a valid Drug Enforcement Administration (DEA) registration and prescribe in accordance with DEA rules.

(C) A PA's prescriptive authorization may be terminated by the board if the PA:

(1) practices outside the written scope of practice guidelines;

(2) violates any state or federal law or regulation applicable to prescriptions; or

(3) violates a state or federal law applicable to PAs.

Section 40-47-970. A PA may not:

(1) perform a medical act, task, or function which has not been listed approved on the scope of practice guidelines;

(2) prescribe drugs, medications, or devices not specifically authorized by the supervising physician and documented in the written scope of practice guidelines;

(3) prescribe, under any circumstances, controlled substances in Schedule II except as authorized in Section 40-47-965;

(4) perform a medical act, task, or function that is outside the usual practice of the supervising physician or outside the supervising physician's training or experience unless the board approves an exception pursuant to Section 40-47-195(D)(1)(d).

Section 40-47-985. The board or a person designated by the board may make unscheduled inspections of any office or facility employing a PA.

Section 40-47-990. A PA must clearly identify himself as a PA to ensure that the PA is not mistaken or misrepresented as a physician. A PA shall wear a clearly legible identification badge or other adornment of at least one inch by three inches in size bearing the PA's name and the words 'Physician Assistant', 'PA-C', or 'PA'.

Section 40-47-995. If the supervisory relationship between a PA and the supervising physician is terminated for any reason, the PA and the supervising physician shall inform the board immediately in writing of

the termination, including the reasons for the termination. The approval of the practice setting terminates coterminous with the termination of the relationship, and practice shall cease until new scope of practice guidelines are submitted by a supervising physician and are approved by the board. After notification to the board, a current alternate supervising physician for the PA may serve as the supervising physician under the existing scope of practice guidelines, for a period not to exceed ninety days, until a new supervising physician is designated and new scope of practice guidelines are approved.

Section 40-47-1000. (A) It is unlawful for a person who is not licensed under this article to hold himself out as a PA. A person who holds himself out as a PA without being licensed under this article, during a period of suspension, or after his license has been revoked by the board is guilty of a misdemeanor and, upon conviction, must be fined not more than three hundred dollars or imprisoned for not more than ninety days, or both.

(B) For the purpose of any investigation or proceeding under the provisions of this article, the board or a person designated by the board may administer oaths and affirmations, subpoena witnesses, take testimony, and require the production of any documents or records which the board considers relevant to the inquiry.

(C) If the board has sufficient evidence that a person is violating a provision of this article, the board, in addition to all other remedies, may order the person to immediately desist and refrain from this conduct. The board may apply to an administrative law judge as provided under Article 5, Chapter 23, Title 1 for an injunction restraining the person from this conduct. An administrative law judge may issue a temporary injunction ex parte and upon notice and full hearing may issue any other order in the matter it considers proper. No bond may be required of the board by an administrative law judge as a condition to the issuance of any injunction or order contemplated by the provisions of this section.

(D) Investigations and disciplinary proceedings under this article must be conducted in accordance with the provisions of Article 1.

(E) No provision of this article may be construed as prohibiting the respondent or his legal counsel from exercising the respondent's constitutional right of due process under the law or prohibiting the respondent from normal access to the charges and evidence filed against him as a part of due process under the law.

Section 40-47-1005. Misconduct constituting grounds for revocation, suspension, probation, reprimand, restrictions, or denial of a license must be found when a PA:

(1) has knowingly allowed himself or herself to be misrepresented as a physician;

(2) has filed or has had filed on his or her behalf with the board any false, fraudulent, or forged statement or documents;

(3) has performed any work assignment, task, or other activity which is not on the PA scope of practice guidelines;

(4) misuses alcohol or drugs to such a degree to render him or her unfit to practice as a PA;

(5) has been convicted of a felony or a crime involving moral turpitude or drugs;

(6) has sustained any physical or mental disability which renders further practice dangerous to the public;

(7) has engaged in any dishonorable or unethical conduct that is likely to deceive or harm patients;

(8) has used or made any false or fraudulent statement in any document connected with practice or licensure as a PA;

(9) has obtained or assisted another person in obtaining fees under dishonorable, false, or fraudulent circumstances;

(10) has violated or conspired with another person to violate any provision of this article; or

(11) otherwise demonstrates a lack of the ethical or professional competence required to act as a PA.

Section 40-47-1010. A license issued pursuant to this chapter may be renewed biennially or as otherwise provided by the board and department. A person who has not demonstrated continuing education, as required by this article, is not eligible for issuance or renewal of an authorization to practice.

Section 40-47-1015. (A) Fees for PA licensure are established as follows:

(1) initial licensing fee, not to exceed five hundred dollars;

(2) renewal of license fee, not to exceed one hundred fifty dollars;

(3) late renewal fee, not to exceed the renewal fee doubled; and

(4) reactivation application fee, not to exceed two hundred dollars.

(B) Fees may be adjusted biennially pursuant to Section 40-1-50 to ensure that they are sufficient but not excessive to cover expenses including the total of the direct and indirect costs to the State for the operations of the committee.

Section 40-47-1020. Nothing in this article may be construed to require third party reimbursement directly to a PA for services rendered."

Time effective

SECTION 3. This act takes effect ninety days after the approval of the Governor.

Ratified the 9th day of May, 2019.

Approved the 13th day of May, 2019.

No. 33

(R46, S196)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY REPEALING SECTION 20-1-300 RELATING TO THE ISSUANCE OF A MARRIAGE LICENSE TO MINORS WHEN THE FEMALE IS PREGNANT OR HAS GIVEN BIRTH TO A CHILD.

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

Repeal

SECTION 1. Section 20-1-300 of the 1976 Code is repealed.

Time effective

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

Ratified the 9th day of May, 2019.

Approved the 13th day of May, 2019.

No. 34

(R47, S277)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 40-67-75 SO AS TO PROVIDE SPEECH-LANGUAGE PATHOLOGISTS AND SPEECH-LANGUAGE PATHOLOGY ASSISTANTS UNDER THEIR SUPERVISION SHALL ADHERE TO CERTAIN GUIDELINES; TO AMEND SECTION 40-67-30, RELATING TO THE SUPERVISION OF SPEECH-LANGUAGE PATHOLOGY INTERNS AND ASSISTANTS, SO AS TO MAKE TECHNICAL CORRECTIONS; TO AMEND SECTION 40-67-260, RELATING TO THE COMPLETION OF CERTAIN CONTINUING EDUCATION HOURS FOR LICENSE RENEWAL, SO AS TO ALLOW FOR THE COMPLETION OF CONTINUING EDUCATION UNITS AS AN ALTERNATIVE; TO AMEND SECTION 40-67-280, RELATING TO THE COMPLETION OF CERTAIN CONTINUING EDUCATION HOURS FOR INACTIVE LICENSE REACTIVATIONS, SO AS TO ALLOW FOR THE COMPLETION OF CONTINUING EDUCATION UNITS AS AN ALTERNATIVE; TO AMEND SECTION 40-67-300, RELATING TO THE APPLICABILITY OF THE CHAPTER, SO AS TO REVISE CERTAIN EXEMPTIONS; TO REDESIGNATE CHAPTER 67, TITLE 40 AS "SPEECH-LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS"; AND TO REPEAL ACT 124 OF 2015 RELATING TO THE TEMPORARY EXEMPTION OF CERTAIN APPLICANTS FOR LICENSURE AS SPEECH-LANGUAGE PATHOLOGY ASSISTANTS FROM THE REQUIREMENT OF HAVING A BACHELOR'S DEGREE FROM A REGIONALLY ACCREDITED INSTITUTION OF HIGHER EDUCATION.

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

Responsibilities and supervision of speech-language pathology assistants

SECTION 1. Chapter 67, Title 40 of the 1976 Code is amended by adding:

"Section 40-67-75. A speech-language pathology assistant may adhere to the responsibilities within the scope for speech-language pathology assistants set forth by the American Speech-Language-Hearing Association. A speech-language pathologist supervising a speech-language pathology assistant may adhere to the guidelines for supervision of a speech-language pathology assistant set forth by the American Speech-Language-Hearing Association."

Supervision of certain licensees, conforming changes and technical corrections

SECTION 2. Section 40-67-30 of the 1976 Code is amended to read:

"Section 40-67-30. No person may practice speech-language pathology or audiology without a license issued in accordance with this chapter. A speech-language pathology intern and a speech-language pathology assistant only may practice under the direct supervision of a speech-language pathologist, and an audiology intern only may practice under the direct supervision of an audiologist as specified by the board."

License renewals, continuing education

SECTION 3. Section 40-67-260 of the 1976 Code is amended to read:

"Section 40-67-260. (A) As a condition of license renewal, a speech-language pathologist or audiologist shall satisfactorily complete sixteen hours of approved continuing education or 1.6 continuing education units (CEUs) during each license period.

(B) As a condition of an intern license renewal, a speech-language pathologist or audiologist shall satisfactorily complete eight hours of approved continuing education or 0.8 CEUs during each license period.

(C) As a condition of an assistant license renewal, a speech-language pathology assistant shall satisfactorily complete eight hours of approved continuing education or 0.8 CEUs during each license period.

(D) Continuing education must be reported on forms and in the time and manner specified by the board in regulation.

(E) A licensee shall maintain records of continuing education hours or CEUs earned for a period of four years, and these records must be made available to the director or his designee upon request for an audit that the board biennially may conduct."

Inactive license reactivations, continuing education

SECTION 4. Section 40-67-280 of the 1976 Code is amended to read:

"Section 40-67-280. To activate an inactive license, an individual shall submit a form approved by the board and evidence attesting to his satisfactory completion of sixteen hours of approved continuing education or 1.6 CEUs for each two years of inactive licensure."

Exemptions

SECTION 5. Section 40-67-300 of the 1976 Code is amended to read:

"Section 40-67-300. This chapter does not apply to:

(1) A speech-language pathologist or audiologist employed by a state or federal agency or a political subdivision of the State before September 1, 2020, while engaged in the discharge of official duties; however, federal and state or political subdivision employees or employees of a political subdivision of the State who are licensed by this board are subject to the provisions of this chapter.

(2) A student of speech-language pathology or audiology enrolled in a course of study at an accredited institution of higher learning whose activities constitute a part of the course of study.

(3) A hearing aid specialist licensed to fit and sell hearing aids pursuant to Chapter 25; provided, nothing in this chapter is in lieu of, may conflict with, or supersede Chapter 25 and the rights of those licensed under Chapter 25.

(4) A registered nurse, licensed practical nurse, or other certified technician trained to perform audiometric screening tests in industrial operations and whose work is under the supervision of a company physician, otological consultant, or licensed audiologist.

(5) A person licensed by the State under this title or any other provision of law whose scope of practice overlaps with the practice of speech-language pathology or audiology unless the person holds himself out to be a practitioner of speech-language pathology or audiology.

(6) An educator certified by the State Board of Education, including an educator certified as a speech-language therapist who is not licensed as a speech-language pathologist and does not hold a certificate of clinical competence in speech-language pathology credential from the American Speech-Language-Hearing Association."

Chapter redesignation

SECTION 6. Chapter 67, Title 40 is redesignated "Speech-Language Pathologists and Audiologists".

Repeal

SECTION 7. Act 124 of 2015 is repealed.

Time effective

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

Ratified the 9th day of May, 2019.

Approved the 13th day of May, 2019.

No. 35

(R48, S310)

AN ACT TO AMEND SECTION 12-21-2870, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO UNSTAMPED OR UNTAXED CIGARETTES, SO AS TO PROVIDE THAT CIGARETTES FOUND AT ANY POINT THAT DO NOT HAVE STAMPS AFFIXED TO THEIR PACKAGE ARE CONSIDERED CONTRABAND IN CERTAIN CIRCUMSTANCES.

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

Cigarette stamps

SECTION 1. Section 12-21-2870 of the 1976 Code is amended to read:

"Section 12-21-2870. (A) Except as otherwise provided in this chapter, cigarettes found at any point within the State that do not have the stamps required pursuant to this chapter affixed to their package are contraband goods if the goods are in the possession of a person:

(1) offering the cigarettes for sale or distribution and that person was not the first to receive the untaxed cigarettes in this State;

(2) importing, receiving, or acquiring cigarettes for use or consumption within the State; or

(3) offering the cigarettes for sale at retail within this State.

(B) Cigarettes declared to be contraband goods under this section may be seized by the department, its employees, or any law enforcement agency of the State without a warrant. The seized cigarettes must be delivered to the department."

Time effective

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

Ratified the 9th day of May, 2019.

Approved the 13th day of May, 2019.

No. 36

(R49, S401)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 57-5-880 SO AS TO DEFINE CERTAIN TERMS, PROVIDE AN ENTITY UNDERTAKING A TRANSPORTATION IMPROVEMENT PROJECT SHALL BEAR THE COSTS RELATED TO RELOCATING WATER AND SEWER LINES, TO PROVIDE THE REQUIREMENTS FOR UTILITIES TO BE ELIGIBLE FOR RELOCATION PAYMENTS, AND TO PROVIDE A SUNSET PROVISION.

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

Transportation Improvement Projects

SECTION 1. Article 5, Chapter 5, Title 57 of the 1976 Code is amended by adding:

"Section 57-5-880. (A) For the purposes of this section:

(1) 'Betterment' means any upgrade to a facility being relocated that is made solely for the benefit of the public water system and that is

not attributable to the improvement, construction, reconstruction, or alteration of roads, streets, or highways undertaken by the department.

(2) 'Costs related to relocating water and sewer lines' means the amount attributable to the relocation, less the amount of any betterment made to the system. Costs related to relocating water and sewer lines include, but are not limited to, right-of-way acquisition to accommodate the relocated utility, if in the best interests of the transportation improvement project, design, engineering, permitting, removal, installation, inspection, materials, and labor costs.

(3) 'Large public sewer utility' means a public sewer utility that does not meet the definition of a small public sewer utility.

(4) 'Large public water utility' means a public water utility that does not meet the definition of a small public water utility.

(5) 'Public highway system' means:

(a) the state highway system as defined in Section 57-5-10;

(b) roads, streets, and highways under the jurisdiction of a county or municipality; and

(c) bridges, tunnels, overpasses, underpasses, interchanges, and other similar facilities located throughout the State.

(6) 'Public sewer system' means a sewer system that provides sewer services to the public and that is publicly owned or owned by a private, not-for-profit entity as defined in Chapter 31, Title 33.

(7) 'Public water system' means, for the purposes of this chapter, any publicly owned or privately owned not-for-profit, as defined in Chapter 31, Title 33, waterworks system that provides water, whether piped or delivered through some other constructed conveyance, for human consumption, including the source of supply, whether the source of supply is of surface or subsurface origin.

(8) 'Relocating' or 'relocated' means an adjustment necessitated by a transportation improvement project of a public water system or public sewer system facility by removing and reinstalling the facility; a move, rearrangement, or change of the type of existing facilities; necessary safety and protective measures; or the construction of a replacement facility that is both functionally equivalent to, but not including any betterment of, the existing facility that is necessary for the continuous operation of the system's service.

(9) 'Small public sewer utility' means a public sewer utility that has ten thousand or fewer sewer connections and that serves a population of thirty thousand or less. In determining whether a public utility offering water or sewer services qualifies as a small utility, the number of water taps and sewer connections shall be counted separately and shall not be combined.

(10) 'Small public water utility' means a public water utility that has ten thousand or fewer water taps and that serves a population of thirty thousand or less. In determining whether a public utility offering water or sewer services qualifies as a small utility, the number of water taps and sewer connections shall be counted separately and shall not be combined.

(11) 'Transportation improvement project' or 'project' means a permanent improvement, construction, reconstruction, or alteration to the public highway system undertaken by a state or local governmental entity, or a political subdivision.

(B)(1) Notwithstanding any encroachment permit conditions to the contrary, an entity undertaking a transportation improvement project must bear the costs, according to the schedule prescribed in subsections (C) and (D), related to relocating water and sewer lines:

(a) that are maintained and operated by a public water system or a public sewer system and are located within the rights-of-way for a transportation improvement project; and

(b) that must be relocated to undertake the project.

(2) To be eligible for payment of the relocation costs, the relocation must be placed under the control of the general contractor for the transportation improvement project, unless the public water or public sewer system opts out of placing the relocation under the control of the general contractor according to subsection (F).

(3) To be eligible for payment of the relocation, the public water or public sewer utility must meet the bidding and construction schedule established by the entity undertaking the transportation improvement project, such as design conferences and submittal of all relocation drawings and bid documents. All documents necessary for inclusion in the transportation improvement project must be provided by the utility at least one hundred eighty days prior to the receipt of bids for the project. However, if the transportation improvement project is under an accelerated schedule, then the entity undertaking the project shall notify the utility of the date by which the documents must be provided. Failure to meet the bidding and construction schedule requirements shall result in the utility having to bear all relocation costs, except if the delay is due to an event beyond the control of the utility.

(C) For a small public water utility or a small public sewer utility, the transportation improvement project shall bear all of the relocation costs, including design costs.

(D) Subject to subsection (E), for a large public water utility or a large public sewer utility, the transportation improvement project shall bear all of the relocation costs, including design costs, up to four percent of

the original construction bid amount of the transportation improvement project. Should more than one large public water utility or large public sewer utility be required to relocate by a single transportation improvement project, the total cost share of up to four percent under this section shall be divided pro rata among the large public water or public sewer utilities required to relocate under the project.

(E) For a transportation improvement project that impacts both a large public utility and a small public utility, the entity undertaking the transportation improvement must pay all of the small public utility's relocation costs, without limitation. The entity must also pay up to four and one-half percent, minus the costs of the small public utility's relocation costs, of the original construction bid amount of the transportation improvement project toward the large public utility's relocation costs.

(F) A large public water utility or a large public sewer utility may choose not to have the relocation placed under the control of the general contractor. A decision by a large public water utility or large public sewer utility to not have the relocations placed under the control of the general contractor must be communicated in writing to the entity undertaking the transportation improvement project one hundred eighty days prior to the receipt of bids for the project. Failure to meet the project contract requirements and construction schedule shall result in the utility having to bear all relocation costs.

(G) Nothing herein shall prohibit or limit payment by a transportation improvement project for the relocation of public water or public sewer lines necessary for the transportation improvement project if a public utility has a prior right to situate the water or sewer lines in their present location.

(H) The department shall include metrics on utility relocation under this section in its annual accountability report."

Sunset provision

SECTION 2. The requirements of Section 57-5-880, as added by this act, expire on July 1, 2026, unless otherwise extended by the General Assembly.

Time effective

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

Ratified the 9th day of May, 2019.

Approved the 13th day of May, 2019.

No. 37

(R50, S439)

AN ACT TO AMEND SECTION 12-6-3375, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE TAX CREDIT FOR A PORT CARGO VOLUME INCREASE, SO AS TO INCREASE THE MAXIMUM AMOUNT OF THE AVAILABLE TAX CREDITS FOR PORT CARGO VOLUME INCREASES, AND TO PROVIDE FOR A PORT TRANSPORTATION CREDIT FOR THE COSTS OF TRANSPORTING FREIGHT, GOODS, AND MATERIALS FROM QUALIFYING FACILITIES IN SOUTH CAROLINA TO A SOUTH CAROLINA PORT FACILITY; AND BY ADDING SECTION 12-36-2140 SO AS TO PROVIDE THAT A PORT FACILITY IS A DISTRIBUTION FACILITY FOR PURPOSES OF CERTAIN SALES TAX EXEMPTIONS.

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

Increased tax credit for port cargo volume increase

SECTION 1. Section 12-6-3375(A) and (D) of the 1976 Code is amended to read:

"(A)(1) A taxpayer engaged in any of the following: manufacturing, warehousing, freight forwarding, freight handling, goods processing, cross docking, transloading, wholesaling of goods, or distribution, exported or imported through port facilities in South Carolina and which increases its port cargo volume at these facilities by a minimum of five percent in a single calendar year over its base year port cargo volume is eligible to claim an income tax credit or a credit against employee withholding in the amount determined by the Coordinating Council for Economic Development (council).

(2) The maximum amount of tax credits allowed to all qualifying taxpayers pursuant to this section may not exceed fifteen million dollars for each calendar year. The credits may be claimed against the taxes

imposed pursuant to Sections 12-6-530 and 12-6-545 and against employee withholdings. The council has sole discretion in allocating the credits provided by this section and must consider the following factors:

(a) the amount of base year port cargo volume;

(b) the total and percentage increase in port cargo volume; and

(c) factors related to the economic benefit of the State or other factors.

(D) The council annually may award up to one million dollars of the fifteen million dollars of credits against employee withholdings that are not otherwise refundable pursuant to this title to a new warehouse or distribution facility which commits to expending at least forty million dollars at a single site and creating one hundred new full-time jobs, and the base year cargo may not be less than five thousand TEUs or its non-containerized equivalent. The council may make the award in the year the facility is announced provided that it may not tender the certificate until it has received satisfactory proof that the capital investment and job creation requirements have, or will be, satisfied. Any credit certificate expires three years after issuance if satisfactory proof has not been received. If the credit exceeds the taxpayer's withholding tax liability for the taxable quarter that is not otherwise refundable pursuant to this title, the excess amount may be carried forward and claimed against withholding liability that is not otherwise refundable pursuant to this title in the next twenty succeeding taxable quarters."

Port transportation credit

SECTION 2. Section 12-6-3375 of the 1976 Code is amended by adding an appropriately lettered subsection at the end to read:

"( )(1) A taxpayer engaged in any of the businesses identified in subsection (A)(1) at a facility located in this State is eligible to claim a port transportation credit or a port volume cargo credit in the form of an income tax credit or a credit against employee withholding in an amount determined by the council in its sole discretion, except that the port transportation credit must be based on the taxpayer's transportation costs. A taxpayer may not claim both the port transportation credit and the port volume cargo credit in the same tax year.

(2) For purposes of this subsection, 'transportation costs' means the costs of transporting freight, goods, and materials to and from port facilities in South Carolina.

(3) The maximum amount of port transportation credits allowed to all qualifying taxpayers pursuant to this subsection is limited to the following amounts of the fifteen million dollars of credits available under this section:

(a) one million dollars for the calendar year ending December 31, 2019;

(b) two million dollars for the calendar year ending December 31, 2020; and

(c) three million dollars for all calendar years after December 31, 2020, until the port transportation credit expires pursuant to item (6).

(4)(a) If the allocable port transportation credit exceeds the taxpayer's income tax liability for the taxable year, the excess amount may be carried forward and claimed against income taxes in the next five succeeding taxable years.

(b) If the allocable port transportation credit exceeds the taxpayer's withholding tax liability for the taxable quarter that is not otherwise refundable pursuant to this title, the excess amount may be carried forward and claimed against withholding liability that is not otherwise refundable pursuant to this title in the next twenty succeeding taxable quarters.

(5)(a) The port transportation credit is allowable to a qualifying taxpayer without regard to whether the taxpayer qualifies for any of the other credits available under this section. A qualifying taxpayer seeking to claim the port transportation credit must submit an application to the council after the calendar year in which the taxpayer seeks to claim the port transportation credit. The application must be made on a form to be prescribed by the council.

(b) 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.

(6) A taxpayer may not claim the port transportation credit in any tax year after the tax year in which a port in Jasper County is opened and is accepting shipments."

Port facility

SECTION 3. Article 21, Chapter 36, Title 12 of the 1976 Code is amended by adding:

"Section 12-36-2140. For purposes of the exemptions set forth in this article, the term 'distribution facility' includes, but is not limited to, a port facility as defined in Section 12-6-3375."

Time effective

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

Ratified the 9th day of May, 2019.

Approved the 13th day of May, 2019.

No. 38

(R51, S463)

AN ACT TO AMEND SECTION 40-43-86, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO FACILITY REQUIREMENTS FOR PHARMACIES, THE PRESENCE OF PHARMACISTS-IN-CHARGE, CONSULTANT PHARMACISTS, PRESCRIPTION DRUG ORDERS, THE TRANSFERRING OF PRESCRIPTIONS, THE SUBSTITUTION OF AN EQUIVALENT DRUG OR INTERCHANGEABLE BIOLOGICAL PRODUCT, LABEL REQUIREMENTS, PATIENT RECORDS AND COUNSELING, POLICIES AND REQUIREMENTS FOR AUTOMATED SYSTEMS, UNLAWFUL PRACTICES, SALES TO OPTOMETRISTS AND HOME MEDICAL EQUIPMENT PROVIDERS, THE CODE OF ETHICS, THE SALE OF POISONS AND RETURNED MEDICATIONS, PERMIT FEES, AND COMPOUNDING REGULATIONS AND RESTRICTIONS, SO AS TO PROVIDE PHARMACISTS MAY EXERCISE THEIR PROFESSIONAL JUDGMENT TO DISPENSE UP TO A NINETY-DAY SUPPLY OF MEDICATION FOR EACH REFILL UP TO THE TOTAL NUMBER OF DOSAGE UNITS AS AUTHORIZED BY THE PRESCRIBER ON THE ORIGINAL PRESCRIPTION, TO PROVIDE CERTAIN RELATED REQUIREMENTS, AND TO PROVIDE EXCEPTIONS.

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

Authorized refills, exceptions, third party payor agreements

SECTION 1. Section 40-43-86 of the 1976 Code, as last amended by Act 143 of 2018, is further amended by adding an appropriately lettered subsection at the end to read:

"( )(1) Unless a prescriber has specified on a prescription that dispensing the prescription for a maintenance medication in an initial amount followed by periodic refills is medically necessary, a pharmacist may exercise his professional judgment, in consultation with the patient, to dispense up to a ninety-day supply of medication per refill up to the total number of dosage units as authorized by the prescriber on the original prescription. In consulting with the patient, the pharmacist must utilize readily available, existing mechanisms such as online claim adjudication and inform the patient of any cost changes of the proposed dispensing change. If the pharmacist is presenting the patient with an option to not use an available benefit plan, then the pharmacist must inform the patient that any amounts paid would potentially not apply to the deductibles or other out-of-pocket calculations of his benefit plan.

(2) Item (1) does not apply to scheduled medications, psychotherapeutic drugs, or any medications for which a report is required under the prescription monitoring program.

(3) This section shall not be construed to supersede or invalidate any third party payor agreement, in whole or in part, between a third party payor and a retail pharmacy."

Time effective

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

Ratified the 9th day of May, 2019.

Approved the 13th day of May, 2019.

No. 39

(R53, S546)

AN ACT TO AMEND SECTION 7-7-430, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE DESIGNATION OF VOTING PRECINCTS IN OCONEE COUNTY, SO AS TO REDESIGNATE THE MAP NUMBER ON WHICH THE NAMES OF THESE PRECINCTS MAY BE FOUND AND MAINTAINED BY THE REVENUE AND FISCAL AFFAIRS OFFICE.

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

Oconee County voting precincts map number redesignated

SECTION 1. Section 7-7-430(B) of the 1976 Code is amended to read:

"(B) The precinct lines defining the above precincts in Oconee County are as shown on the official map prepared by and on file with the Revenue and Fiscal Affairs Office designated as document P-73-19 and as shown on certified copies of the official map provided to the Board of Voter Registration and Elections of Oconee County."

Time effective

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

Ratified the 9th day of May, 2019.

Approved the 13th day of May, 2019.

No. 40

(R54, S607)

AN ACT TO AMEND SECTION 7-7-120, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE DESIGNATION OF VOTING PRECINCTS IN BERKELEY COUNTY, SO AS TO ADD SIXTEEN PRECINCTS, TO ELIMINATE TWO PRECINCTS, AND TO REDESIGNATE THE MAP NUMBER ON

WHICH THE NAMES OF THESE PRECINCTS MAY BE FOUND AND MAINTAINED BY THE REVENUE AND FISCAL AFFAIRS OFFICE.

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

Designation of Berkeley County voting precincts

SECTION 1. Section 7-7-120 of the 1976 Code is amended to read:

"Section 7-7-120. (A) In Berkeley County there are the following voting precincts:

Alvin
Bethera
Beverly Hill
Bonneau
Bonneau Beach
Boulder Bluff
Bushy Park
Central
Cainhoy
Cane Bay
Cane Bay East
Cane Bay North
Cane Bay South
Carnes Cross Road 1
Carnes Cross Road 2
Cobblestone
Cordesville
Cross
Daniel Island 1
Daniel Island 2
Daniel Island 3
Daniel Island 4
Devon Forest 1
Devon Forest 2
Discovery
Eadytown
Fifty-two
Foster Creek 1
Foster Creek 2
Foster Creek 3

Foxbank
Hanahan 1
Hanahan 2
Hanahan 3
Hanahan 4
Hanahan 5
Harbour Lake
Hilton Cross Roads
Horseshoe
Howe Hall 1
Howe Hall 2
Huger
Jamestown
Lebanon
Liberty Hall
Live Oak
Macedonia
Macedonia 2
McBeth
Medway
Moncks Corner 1
Moncks Corner 2
Moncks Corner 3
Moncks Corner 4
Moultrie
Nexton
Old 52
Pimlico
Pine Grove
Pinopolis
Pomflant
Royle
Russellville
Sangaree 1
Sangaree 2
Sangaree 3
Sedgefield 1
Sedgefield 2
Sedgefield 3
Seventy Eight
Shulerville
St. James

St. Stephen 1
St. Stephen 2
Stone Lake
Stratford 1
Stratford 2
Stratford 3
Stratford 4
Stratford 5
The Village
Tramway
Wassamassaw 1
Wassamassaw 2
Weatherstone
Westview 1
Westview 2
Westview 3
Westview 4
Whitesville 1
Whitesville 2
Wildcat Trail
Yeamans Club
Yellow House

(B) The precinct lines defining the precincts provided in subsection (A) are as shown on the official map prepared by and on file with the Revenue and Fiscal Affairs Office designated as document P-15-19 and as shown on copies provided to the Board of Voter Registration and Elections of Berkeley County.

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

Time effective

SECTION 2. This act takes effect upon approval by the Governor and applies to elections conducted in Berkeley County after June 30, 2019.

Ratified the 9th day of May, 2019.

Approved the 13th day of May, 2019.

No. 41

(R52, S530)

AN ACT TO AMEND SECTION 11-35-20, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE PURPOSE AND POLICIES OF THE CONSOLIDATED PROCUREMENT CODE, SO AS TO PROVIDE THAT THE CODE MUST BE CONSTRUED AND APPLIED TO PROMOTE THE UNDERLYING PURPOSES AND POLICIES; BY ADDING SECTION 11-35-27 SO AS TO PROVIDE THAT NO PART OF THE CHAPTER MAY BE CONSIDERED IMPLIEDLY REPEALED BY SUBSEQUENT LEGISLATION; TO AMEND SECTION 11-35-40, RELATING TO THE APPLICATION OF THE PROCUREMENT CODE, SO AS TO PROVIDE THAT CERTAIN FAILURES TO COMPLY ARE NOT SUBJECT TO REVIEW UNDER ARTICLE 17; TO AMEND SECTION 11-35-70, RELATING TO SCHOOL DISTRICTS SUBJECT TO THE PROCUREMENT CODE, SO AS TO CHANGE THE REFERENCE TO THE OFFICE OF GENERAL SERVICES TO THE DIVISION OF PROCUREMENT SERVICES; TO AMEND SECTION 11-35-210, RELATING TO CERTAIN DETERMINATIONS, SO AS TO PROVIDE THAT ALL FINDINGS, DETERMINATIONS, DECISIONS, POLICIES, AND PROCEDURES ALLOWED BY THIS CHAPTER ARE EXEMPT FROM CERTAIN REQUIREMENTS; TO AMEND SECTION 11-35-310, RELATING TO DEFINITIONS, SO AS TO AMEND CERTAIN DEFINITIONS AND ADD DEFINITIONS OF "BUSINESS DAY", "PERSON", AND "PUBLIC FUNDS"; TO AMEND SECTION 11-35-410, RELATING TO PUBLIC ACCESS TO PROCUREMENT INFORMATION, SO AS TO PROVIDE THAT A GOVERNMENTAL BODY MAY KEEP PORTIONS OF A SOLICITATION CONFIDENTIAL AND PROVIDE FOR CERTAIN WRITTEN DISCLOSURES; TO AMEND SECTION 11-35-510, RELATING TO THE CENTRALIZATION OF MATERIALS MANAGEMENT AUTHORITY, SO AS TO PROVIDE THAT THE VESTING AUTHORITY IS ALSO

SUBJECT TO SECTION 11-35-1560; TO AMEND SECTION 11-35-530, RELATING TO ADVISORY COMMITTEES, SO AS TO REMOVE CERTAIN REQUIREMENTS OF THE BOARD WORKING IN ACCORDANCE WITH REGULATIONS OF THE BOARD; TO AMEND SECTION 11-35-540, RELATING TO THE AUTHORITY AND DUTIES OF THE BOARD, SO AS TO REMOVE CERTAIN REQUIREMENTS OF THE CHIEF EXECUTIVE OFFICER IN RELATION TO A DESIGNATED BOARD OFFICE; TO AMEND SECTION 11-35-710, RELATING TO CERTAIN EXEMPTIONS, SO AS TO REQUIRE THE STATE FISCAL ACCOUNTABILITY AUTHORITY TO MAINTAIN AND POST PUBLICLY A RUNNING LIST OF ALL CURRENTLY EFFECTIVE ACTIONS TAKEN BY THE BOARD; TO AMEND SECTION 11-35-810, RELATING TO THE CREATION OF THE MATERIALS MANAGEMENT OFFICE, SO AS TO CHANGE THE OFFICE OF GENERAL SERVICES TO THE DIVISION OF PROCUREMENT SERVICES; TO AMEND SECTION 11-35-820, RELATING TO THE CREATION OF THE INFORMATION TECHNOLOGY MANAGEMENT OFFICE, SO AS TO PROVIDE THAT THE OFFICE IS RESPONSIBLE FOR ADMINISTERING ALL PROCUREMENT AND CONTRACTING ACTIVITIES UNDERTAKEN FOR GOVERNMENTAL BODIES INVOLVING INFORMATION TECHNOLOGY; TO AMEND SECTION 11-35-1210, RELATING TO CERTAIN CERTIFICATIONS, SO AS TO PROVIDE THAT UP TO CERTAIN DOLLAR AMOUNTS AN INDIVIDUAL GOVERNMENTAL BODY MAY MAKE DIRECT PROCUREMENTS NOT UNDER TERM CONTRACTS; TO AMEND SECTION 11-35-1230, RELATING TO AUDITING AND FISCAL REPORTING, SO AS TO REMOVE THE REQUIREMENT THAT THE DIVISION OF BUDGET ANALYSIS WITH THE COMPTROLLER GENERAL SHALL ASSUME RESPONSIBILITY FOR CERTAIN FISCAL REPORTING PROCEDURES; TO AMEND SECTION 11-35-1410, RELATING TO DEFINITIONS, SO AS TO ADD DEFINITIONS FOR "COMMERCIAL PRODUCT" AND "COMMERCIALLY AVAILABLE OFF-THE-SHELF PRODUCT"; TO AMEND SECTION 11-35-1510, RELATING TO THE METHODS OF SOURCE SELECTION, SO AS TO ADD SECTION 11-35-1535 TO THE LIST OF EXCEPTIONS; TO AMEND SECTION 11-35-1520, RELATING TO COMPETITIVE SEALED BIDDING, SO AS TO REMOVE CERTAIN

REQUIREMENTS FOR DISCUSSION WITH BIDDERS; TO AMEND SECTION 11-35-1525, RELATING TO COMPETITIVE FIXED PRICE BIDDING, SO AS TO REMOVE CERTAIN PROVISIONS FOR DISCUSSION WITH RESPONSIVE BIDDERS AND REMEDIES; TO AMEND SECTION 11-35-1528, RELATING TO COMPETITIVE BEST VALUE BIDDING, SO AS TO REMOVE CERTAIN PROVISIONS FOR DISCUSSION WITH RESPONSIVE BIDDERS; TO AMEND SECTION 11-35-1529, RELATING TO COMPETITIVE ONLINE BIDDING, SO AS TO PROVIDE FOR PUBLIC NOTICE; TO AMEND SECTION 11-35-1530, RELATING TO COMPETITIVE SEALED PROPOSALS, SO AS TO PROVIDE THAT OFFERORS MUST BE ACCORDED FAIR AND EQUAL TREATMENT WITH RESPECT TO ANY OPPORTUNITY FOR DISCUSSIONS; BY ADDING SECTION 11-35-1535 SO AS TO PROVIDE FOR COMPETITIVE NEGOTIATIONS AND TO PROVIDE CERTAIN REQUIREMENTS; TO AMEND SECTION 11-35-1540, RELATING TO NEGOTIATIONS AFTER AN UNSUCCESSFUL COMPETITIVE SEALED BIDDING, SO AS TO PROVIDE THAT THE PROCUREMENT OFFICER, NOT THE PROCURING AGENCY, SHALL CONSIDER IF A BID IS UNREASONABLE; TO AMEND SECTION 11-35-1550, RELATING TO CERTAIN SMALL PURCHASE PROCEDURES, SO AS TO AMEND CERTAIN DOLLAR AMOUNT CAPS; TO AMEND SECTION 11-35-1560, RELATING TO SOLE SOURCE PROCUREMENT, SO AS TO PROVIDE FOR ADEQUATE PUBLIC NOTICE; TO AMEND SECTION 11-35-1570, RELATING TO EMERGENCY PROCUREMENTS, SO AS TO PROVIDE CERTAIN NOTICE OF THE AWARD; BY ADDING SECTION 11-35-1610 SO AS TO PROVIDE THAT A CHANGE OR MODIFICATION IN A CONTRACT MAY NOT ALTER A CONTRACT IN A MANNER INCONSISTENT WITH THIS CODE; TO AMEND SECTION 11-35-1810, RELATING TO THE RESPONSIBILITY OF BIDDERS AND OFFERORS, SO AS TO PROVIDE THAT CERTAIN COMMUNICATION IS PRIVILEGED; TO AMEND SECTION 11-35-1830, RELATING TO COST OR PRICING DATA, SO AS TO ADD COMPETITIVE NEGOTIATIONS PURSUANT TO SECTION 11-35-1535; BY ADDING SECTION 11-35-1840 SO AS TO PROVIDE THAT THE BOARD MAY PROMULGATE CERTAIN REGULATIONS; BY ADDING SECTION 11-35-2015 SO AS TO PROVIDE THAT A CONTRACT OR AMENDMENT IS NOT EFFECTIVE AGAINST

A GOVERNMENTAL BODY UNLESS THE CONTRACT OR AMENDMENT IS IN WRITING AND SIGNED BY A CERTAIN OFFICER; TO AMEND SECTION 11-35-2030, RELATING TO MULTITERM CONTRACTS, SO AS TO PROVIDE THAT EVERY CONTRACT WITH A POTENTIAL DURATION EXCEEDING SEVEN YEARS MUST BE APPROVED BY THE BOARD; BY ADDING SECTION 11-35-2040 SO AS TO PROVIDE THAT CERTAIN LAWS ARE INAPPLICABLE TO CONTRACTS FOR THE PROCUREMENT OF COMMERCIAL PRODUCTS; BY ADDING SECTION 11-35-2050 SO AS TO PROVIDE THAT CERTAIN TERMS OR CONDITIONS IN A CONTRACT ARE VOID; TO AMEND SECTION 11-35-2410, RELATING TO THE FINALITY OF DETERMINATIONS, SO AS TO ADD CERTAIN SECTIONS; TO AMEND SECTION 11-35-2420, RELATING TO THE REPORTING OF ANTICOMPETITIVE PRACTICES, SO AS TO PROVIDE THAT CERTAIN COMMUNICATIONS TO THE OFFICE OF THE ATTORNEY GENERAL ARE PRIVILEGED; TO AMEND SECTION 11-35-3010, RELATING TO THE CHOICE OF PROJECT DELIVERY METHODS, SO AS TO PROVIDE THAT THE USE OF CERTAIN PROJECT DELIVERY METHODS MUST BE APPROVED BY THE BOARD; TO AMEND SECTION 11-35-3015, RELATING TO THE SOURCE SELECTION METHODS ASSIGNED TO PROJECT DELIVERY METHODS, SO AS TO ADD REFERENCES TO SECTION 11-35-1530 AND SECTION 11-35-1535; TO AMEND SECTION 11-35-3020, RELATING TO ADDITIONAL BIDDING PROCEDURES FOR CONSTRUCTION PROCUREMENT, SO AS TO PROVIDE THAT ADEQUATE NOTICE MUST BE GIVEN; TO AMEND SECTION 11-35-3023, RELATING TO PREQUALIFICATION ON STATE CONSTRUCTION, SO AS TO REMOVE CERTAIN REQUIREMENTS FOR A REQUEST FOR QUALIFICATIONS; TO AMEND SECTION 11-35-3024, RELATING TO ADDITIONAL PROCEDURES APPLICABLE TO PROCUREMENT OF CERTAIN PROJECT DELIVERY METHODS, SO AS TO PROVIDE THAT CERTAIN PROVISIONS DO NOT APPLY IF COMPETITIVE NEGOTIATIONS ARE CONDUCTED; TO AMEND SECTION 11-35-3030, RELATING TO BOND AND SECURITY, SO AS TO PROVIDE THAT CERTAIN SOLICITATIONS MAY PROVIDE FOR CERTAIN BOND AND SECURITY REQUIREMENTS; TO AMEND SECTION 11-35-3040, RELATING TO CONTRACT

CLAUSES AND THEIR ADMINISTRATION, SO AS TO PROVIDE THAT CERTAIN CONTRACTS MAY INCLUDE CLAUSES PROVIDING FOR THE UNILATERAL RIGHT OF A GOVERNMENTAL BODY TO ORDER IN WRITING CERTAIN CHANGES WITHIN THE GENERAL SCOPE OF THE CONTRACT; TO AMEND SECTION 11-35-3070, RELATING TO THE APPROVAL OF CERTAIN CHANGES WHICH DO NOT ALTER SCOPE OR INTENT OR EXCEED APPROVED BUDGET, SO AS TO PROVIDE THAT A GOVERNMENTAL BODY MAY APPROVE CERTAIN AMENDMENTS CONSISTENT WITH ANY APPLICABLE REGULATION OF THE BOARD; TO AMEND SECTION 11-35-3220, RELATING TO QUALIFICATIONS-BASED SELECTION PROCEDURES, SO AS TO PROVIDE THAT ADEQUATE NOTICE OF THE INVITATION MUST BE GIVEN; TO AMEND SECTION 11-35-3230, RELATING TO THE EXCEPTION FOR SMALL ARCHITECT-ENGINEER AND LAND SURVEYING SERVICES CONTRACTS, SO AS TO PROVIDE THAT A GOVERNMENTAL BODY MAY NOT NEGOTIATE WITH A FIRM UNLESS ANY UNSUCCESSFUL NEGOTIATIONS WITH A DIFFERENT FIRM HAVE BEEN CONCLUDED IN WRITING; BY ADDING SECTION 11-35-3305 SO AS TO PROVIDE THAT A PROCUREMENT OFFICER MAY ESTABLISH CONTRACTS PROVIDING FOR AN INDEFINITE QUANTITY OF CERTAIN SUPPLIES, SERVICES, OR INFORMATION TECHNOLOGY; TO AMEND SECTION 11-35-3310, RELATING TO INDEFINITE DELIVERY CONTRACTS, SO AS TO REMOVE PROVISIONS RELATING TO CONSTRUCTION SERVICES; BY ADDING SECTION 11-35-3320 SO AS TO DEFINE "TASK ORDER CONTRACT" AND TO PROVIDE WHEN A GOVERNMENTAL BODY MAY ENTER INTO A TASK ORDER CONTRACT; TO AMEND SECTION 11-35-3410, RELATING TO CONTRACT CLAUSES AND THEIR ADMINISTRATION, SO AS TO PROVIDE THAT CERTAIN CONTRACTS MAY INCLUDE CLAUSES PROVIDING FOR THE UNILATERAL RIGHT OF A GOVERNMENTAL BODY TO ORDER IN WRITING CERTAIN CHANGES WITHIN THE GENERAL SCOPE OF THE CONTRACT; TO AMEND SECTION 11-35-3820, RELATING TO THE ALLOCATION OF PROCEEDS FOR SALE OR DISPOSAL OF SURPLUS SUPPLIES, SO AS TO CHANGE REFERENCES TO THE DIVISION OF GENERAL SERVICES TO THE DEPARTMENT OF ADMINISTRATION; TO AMEND SECTION

11-35-3830, RELATING TO TRADE-IN SALES, SO AS TO CHANGE REFERENCES TO THE BOARD TO THE DEPARTMENT OF ADMINISTRATION; TO AMEND SECTION 11-35-3840, RELATING TO LICENSING FOR PUBLIC SALE OF CERTAIN PUBLICATIONS AND MATERIALS, SO AS TO CHANGE A REFERENCE TO THE DIVISION OF GENERAL SERVICES TO THE DIVISION OF PROCUREMENT SERVICES; TO AMEND SECTION 11-35-3850, RELATING TO THE SALE OF UNSERVICEABLE SUPPLIES, SO AS TO CHANGE REFERENCES TO THE BOARD TO THE DEPARTMENT OF ADMINISTRATION; TO AMEND SECTION 11-35-4210, RELATING TO CERTAIN PROTESTS AND PROCEDURES, SO AS TO PROVIDE THAT AN ACTUAL BIDDER, OFFEROR, CONTRACTOR, OR SUBCONTRACTOR WHO IS AGGRIEVED SHALL NOTIFY THE APPROPRIATE OFFICER IN WRITING; TO AMEND SECTION 11-35-4215, RELATING TO THE POSTING OF BOND OR IRREVOCABLE LETTER OF CREDIT, SO AS TO PROVIDE THAT THE AMOUNT RECOVERED MAY NOT EXCEED FIFTEEN THOUSAND DOLLARS; TO AMEND SECTION 11-35-4220, RELATING TO THE AUTHORITY TO DEBAR OR SUSPEND, SO AS TO PROVIDE THAT A VIOLATION OF THE ETHICS, GOVERNMENT ACCOUNTABILITY, AND CAMPAIGN REFORM ACT OF 1991 IS A CAUSE FOR DEBARMENT; TO AMEND SECTION 11-35-4230, RELATING TO THE AUTHORITY TO RESOLVE CONTRACT AND BREACH OF CONTRACT CONTROVERSIES, SO AS TO PROVIDE THAT THE DIVISION OF PROCUREMENT SERVICES MAY INITIATE AND PURSUE RESOLUTION OF CERTAIN CONTRACT CONTROVERSIES; TO AMEND SECTION 11-35-4310, RELATING TO SOLICITATIONS OR AWARDS IN VIOLATION OF THE LAW, SO AS TO PROVIDE THAT CERTAIN REMEDIES MAY BE GRANTED ONLY AFTER REVIEW; BY ADDING SECTION 11-35-4315 SO AS TO PROVIDE THAT THE BOARD MAY PROVIDE BY REGULATION APPROPRIATE ACTION WHERE A CONTRACT AWARD OR MODIFICATION IS IN VIOLATION OF THE PROCUREMENT CODE; BY ADDING SECTION 11-35-4340 SO AS TO PROVIDE THAT THERE IS NO REMEDY AGAINST THE STATE OTHER THAN THOSE PROVIDED IN THIS CHAPTER; TO AMEND SECTION 11-35-4410, RELATING TO THE PROCUREMENT REVIEW PANEL, SO AS TO

PROVIDE THAT AN APPEAL ONLY MAY BE MADE TO THE COURT OF APPEALS; BY ADDING SECTION 11-35-4425 SO AS TO PROVIDE THAT IF A FINAL ORDER IS NOT APPEALED THE CHIEF PROCUREMENT OFFICER MAY FILE A CERTIFIED COPY OF THE FINAL RULING; BY ADDING SECTION 11-35-4430 SO AS TO PROVIDE THAT PANEL MEMBERS MAY NOT COMMUNICATE IN CONNECTION WITH ANY ISSUE OF FACT OR ISSUE OF LAW; TO AMEND SECTION 11-35-4610, RELATING TO DEFINITIONS, SO AS TO EXPAND ON THE DEFINITION OF "PUBLIC PROCUREMENT UNIT"; TO AMEND SECTION 11-35-4810, RELATING TO COOPERATIVE PURCHASING AUTHORIZED, SO AS TO PROVIDE THAT CERTAIN COOPERATIVE PURCHASING WITH OTHER STATES MUST BE THROUGH CONTRACTS AWARDED THROUGH FULL AND OPEN COMPETITION; TO AMEND SECTION 11-35-4830, RELATING TO THE SALE, ACQUISITION, OR USE OF SUPPLIES BY A PUBLIC PROCUREMENT UNIT, SO AS TO PROVIDE THAT A PUBLIC PROCUREMENT UNIT MAY SELL TO, ACQUIRE FROM, OR USE ANY SUPPLIES BELONGING TO ANOTHER PUBLIC PROCUREMENT UNIT INDEPENDENT OF CERTAIN REQUIREMENTS; TO AMEND SECTION 11-35-4840, RELATING TO THE COOPERATIVE USE OF SUPPLIES OR SERVICES, SO AS TO PROVIDE THAT ANY PUBLIC PROCUREMENT UNIT MAY ENTER INTO AN AGREEMENT INDEPENDENT OF CERTAIN REQUIREMENTS; TO AMEND SECTION 11-35-4860, RELATING TO THE SUPPLY OF PERSONNEL, INFORMATION, AND TECHNICAL SERVICES, SO AS TO PROVIDE THAT THE PROCEEDS FROM CERTAIN SALES MUST BE PLACED IN A REVENUE ACCOUNT; TO AMEND SECTION 11-35-4870, RELATING TO THE USE OF PAYMENTS RECEIVED BY A SUPPLYING PUBLIC PROCUREMENT UNIT, SO AS TO PROVIDE THAT CERTAIN PAYMENTS MUST BE DEPOSITED IN A SPECIAL REVENUE ACCOUNT; TO AMEND SECTION 11-35-4880, RELATING TO PUBLIC PROCUREMENT UNITS IN COMPLIANCE WITH CODE REQUIREMENTS, SO AS TO REMOVE A REFERENCE TO EXTERNAL PROCUREMENT ACTIVITY; BY ADDING SECTION 11-35-4900 SO AS TO PROVIDE FOR APPROVAL OF CERTAIN INTERGOVERNMENTAL ACQUISITIONS; TO AMEND SECTION 1-23-600, AS AMENDED, RELATING TO THE SOUTH CAROLINA ADMINISTRATIVE LAW COURT

HEARINGS AND PROCEEDINGS, SO AS TO PROVIDE THAT AN APPEAL FROM THE PROCUREMENT REVIEW PANEL IS TO THE COURT OF APPEALS; TO AMEND SECTION 57-1-490, RELATING TO THE DEPARTMENT OF TRANSPORTATION'S ANNUAL AUDITS, SO AS TO REMOVE THE REQUIREMENT THAT THE DEPARTMENT'S INTERNAL PROCUREMENT OPERATION MUST BE AUDITED ANNUALLY; BY ADDING SECTION 1-11-190 SO AS TO PROVIDE RESPONSIBILITIES FOR THE DEPARTMENT OF ADMINISTRATION; TO PROVIDE THAT THE STATE FISCAL ACCOUNTABILITY AUTHORITY SHALL PUBLISH INTERIM REGULATIONS IT WILL FOLLOW TO IMPLEMENT CERTAIN CHANGES; TO REPEAL SECTION 11-35-1580 RELATING TO INFORMATION TECHNOLOGY PROCUREMENTS; TO REDESIGNATE ARTICLE 10, CHAPTER 35, TITLE 11 AS "INDEFINITE QUANTITY CONTRACTS"; AND TO RECODIFY SECTIONS 11-35-35, RELATING TO SURETY BONDS, 11-35-55, RELATING TO THE PURCHASE OF GOODS OR SERVICES FROM AN ENTITY EMPLOYING PRISON INMATES, AND 11-35-70, RELATING TO SCHOOL DISTRICTS SUBJECT TO THE PROCUREMENT CODE.

Whereas, the General Assembly finds that it adopted a modified version of the 1979 ABA Model Procurement Code for State and Local Governments, when it enacted 1981 Act No. 148. Since then, the ABA has revised its recommended model by adopting the 2000 ABA Model Procurement Code for State and Local Governments, a primary goal of which was to encourage the competitive use of new forms of project delivery in public construction procurement. With the enactment of Act 174 in 2008, the General Assembly adopted a modified version of the changes made by the 2000 ABA Model Code. In recognition of the state's long history of reliance on the model code, the applicable official comments to the model code, and the relevant and applicable construction given to the model code, should be examined as persuasive authority for interpreting and construing the South Carolina Consolidated Procurement Code; and

Whereas, it is the intent of the General Assembly that agencies and institutions comply with Section 11-35-1530, which limits use of this source selection method to circumstances in which the use of competitive sealed bidding is either not practicable or not advantageous to the State; accordingly, the basis for such determinations must be

specified with particularity and must be documented in sufficient detail to satisfy the requirements of audit. The Materials Management Officer is responsible for controlling the use of RFPs by the respective offices of the Division of Procurement Services and for monitoring the adequacy of such determinations statewide; and

Whereas, the General Assembly finds that thorough and considered acquisition planning, including appropriate market research, industry-government communications, requirements definitions, risk analysis, and contract administration plans, is necessary to provide increased economy in state procurement activities, to maximize to the fullest extent practicable the purchasing values of funds, and to foster effective broad-based competition for public procurement, all of which are key purposes of the procurement laws; accordingly, the head of each using agency, as defined in Section 11-35-310, is expected to have in place an effective system to implement such planning, and the State Fiscal Accountability Authority is expected to promulgate regulations, establishing guidelines for and requiring such planning, and to audit for compliance with such regulations; and

Whereas, the General Assembly finds that acquisition policies that more closely resemble those of the commercial marketplace, encourage the acquisition of commercial items, and, where possible, allow use of terms and conditions accepted in the marketplace, will promote efficiency and economy in contracting and avoid unnecessary burdens for agencies and contractors. Accordingly, it adopts simplified procedures for the acquisition of commercially available off-the-shelf products, including higher dollar thresholds for agency purchases of those products. Now, therefore,

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

Construction and application of code

SECTION 1. Section 11-35-20 of the 1976 Code is amended to read:

"Section 11-35-20. (1) This code must be construed and applied to promote underlying purposes and policies.

(2) The underlying purposes and policies of this code are:

(a) to provide increased economy in state procurement activities and to maximize to the fullest extent practicable the purchasing values of funds while ensuring that procurements are the most advantageous to

the State and in compliance with the provisions of the Ethics Government Accountability and Campaign Reform Act;

(b) to foster effective broad-based competition for public procurement within the free enterprise system;

(c) to develop procurement capability responsive to appropriate user needs;

(d) to consolidate, clarify, and modernize the law governing procurement in this State and permit the continued development of explicit and thoroughly considered procurement policies and practices;

(e) to require the adoption of competitive procurement laws and practices by units of state and local governments;

(f) to ensure the fair and equitable treatment of all persons who deal with the procurement system which will promote increased public confidence in the procedures followed in public procurement;

(g) to provide safeguards for the maintenance of a procurement system of quality and integrity with clearly defined rules for ethical behavior on the part of all persons engaged in the public procurement process; and

(h) to develop an efficient and effective means of delegating roles and responsibilities to the various government procurement officers."

No implied repeal

SECTION 2. Article 1, Chapter 35, Title 11 of the 1976 Code is amended by adding:

"Section 11-35-27. No part of this chapter may be considered to be impliedly repealed by subsequent legislative enactment if such construction of the subsequent legislative enactment can be reasonably avoided."

Application of the Procurement Code

SECTION 3. Section 11-35-40(2) and (3) of the 1976 Code is amended to read:

"(2) Application to State Procurement. This code applies to every procurement or expenditure of funds by this State under contract acting through a governmental body as herein defined irrespective of the source of the funds, including federal assistance monies, except as specified in Section 11-35-40(3) (Compliance with Federal Requirements) and except that this code does not apply to gifts, to the issuance of grants, or

to contracts between public procurement units, except as provided in Article 19 (Intergovernmental Relations). Notwithstanding the foregoing, the provisions of Article 23 (Statewide Provisions) apply as provided therein. It also shall apply to the disposal of state supplies as provided in Article 15 (Supply Management). No state agency or subdivision thereof may sell, lease, or otherwise alienate or obligate telecommunications and information technology infrastructure of the State by temporary proviso and unless provided for in the general laws of the State.

(3) Compliance with Federal Requirements. Where a procurement involves the expenditure of federal assistance, grant, or contract funds, the governmental body also shall comply with federal laws (including authorized regulations) as are mandatorily applicable and which are not presently reflected in this code; however, failure to comply with the foregoing is not subject to review under Article 17. Notwithstanding, where federal assistance, grant, or contract funds are used in a procurement by a governmental body as defined in Section 11-35-310(18), this code, including any requirements that are more restrictive than federal requirements, must be followed, except to the extent such action would render the governmental body ineligible to receive federal funds whose receipt is conditioned on compliance with mandatorily applicable federal law. In those circumstances, the solicitation must identify and explain the impact of such federal laws on the procurement process, including any required deviation from this code."

Conforming change

SECTION 4. Section 11-35-70 of the 1976 Code is amended to read:

"Section 11-35-70. Irrespective of the source of funds, any school district whose budget of total expenditures, including debt service, exceeds seventy-five million dollars annually is subject to the provisions of Chapter 35, Title 11, and shall notify the Director of the Division of Procurement Services of the State Fiscal Accountability Authority of its expenditures within ninety days after the close of its fiscal year. However, if a district has its own procurement code which is, in the written opinion of the Division of Procurement Services of the State Fiscal Accountability Authority, substantially similar to the provisions of the South Carolina Consolidated Procurement Code, the district is exempt from the provisions of the South Carolina Consolidated Procurement Code except for a procurement audit which must be

performed every three years by an audit firm approved by the Division of Procurement Services. Costs associated with the internal review and audits are the responsibility of the school district and will be paid to the entity performing the audit."

Determinations exemption

SECTION 5. Section 11-35-210 of the 1976 Code is amended to read:

"Section 11-35-210. (A) Written determinations expressly required by the code or regulations must be retained in an official contract file of the governmental body administering the contract. These determinations must be documented in sufficient detail to satisfy the requirements of audit as provided in Section 11-35-1230.

(B) All findings, determinations, decisions, policies, and procedures allowed by this chapter are exempt from the requirements of Section 1-23-140(b)."

Definitions

SECTION 6. Section 11-35-310 of the 1976 Code is amended to read:

"Section 11-35-310. Unless the context clearly indicates otherwise:

(1) 'Information Technology (IT)' means information resources, telecommunications, and information services:

(a) 'Information resources' means any equipment including interconnected systems or subsystems of equipment that is used in the automatic acquisition, creation, conversion, duplication, storage, analysis, evaluation, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information by the using agency.

(i) 'Information resources' includes, but is not limited to, computers, ancillary equipment, including imaging peripherals, input, output, and storage devices and devices necessary for security and surveillance, peripheral equipment designed to be controlled by the central processing unit of a computer, databases, software, firmware, middleware, and application and application development software; whether owned, leased, licensed, or accessed as a service; and routine maintenance and support.

(ii) 'Database' means a collection of recorded information in a form capable of, and for the purpose of, being stored in, processed, and operated on by a computer.

(iii) 'Software' means computer programs that comprise a series of instructions, rules, routines, or statements, regardless of the media in which recorded, that allow or cause a computer to perform a specific operation or series of operations.

(iv) For purposes of this definition, equipment is used by an agency if the equipment is used by the agency directly or is used by a contractor under a contract with the agency that requires its use.

(b) 'Telecommunications' means voice, data, message, and video transmissions, and includes the transmission and switching facilities of public telecommunications systems, as well as operating and network software.

(c) 'Information Services' means services provided by a contractor associated with any aspect of information resources or telecommunications, except that information services does not include information resources or telecommunications.

(2) 'Board' means governing body of the State Fiscal Accountability Authority.

(3) 'Business' means any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other legal entity.

(4) 'Business day' means a day that is neither a Saturday, Sunday, nor a state or federal holiday.

(5) 'Change order' means any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of any contract accomplished by mutual agreement of the parties to the contract.

(6) 'Chief procurement officer' means (a) the management officer for information technology, (b) the state engineer for areas of construction, architectural and engineering, construction management, and land surveying services, and (c) the materials management officer for all other procurements.

(7) 'Construction' means the process of building, altering, repairing, remodeling, improving, or demolishing a public infrastructure facility, including any public structure, public building, or other public improvements of any kind to real property. It does not include the routine operation, routine repair, or routine maintenance of an existing public infrastructure facility, including structures, buildings, or real property.

(8) 'Contract' means all types of state agreements, regardless of what they may be called, for the procurement or disposal of supplies, services, information technology, or construction.

(9) 'Contract modification' means a written order signed by the procurement officer, directing the contractor to make changes which the

changes clause of the contract authorizes the procurement officer to order without the consent of the contractor.

(10) 'Contractor' means any person having a contract with a governmental body.

(11) 'Cost effectiveness' means the ability of a particular product or service to efficiently provide goods or services to the State. In determining the cost effectiveness of a particular product or service, the procurement officer shall list the relevant factors in the bid notice or solicitation and use only those listed relevant factors in determining the award.

(12) 'Data' means recorded information, regardless of form or characteristics.

(13) 'Days' means calendar days. In computing any period of time prescribed or allowed by this code or the ensuing regulations, or by any order of the Procurement Review Panel, the day of the act, event, or default from which the designated period of time begins to run is not to be included. The last day of the period computed is to be included, unless it is a Saturday, Sunday, or a state or federal holiday, in which event the period runs to the end of the next day which is neither a Saturday, Sunday, nor such holiday.

(14) 'Debarment' means the disqualification of a person to receive invitations for bids, or requests for proposals, or the award of a contract by the State, for a specified period of time commensurate with the seriousness of the offense or the failure or inadequacy of performance.

(15) 'Designee' means a duly authorized representative of a person with formal responsibilities under the code.

(16) 'Employee' means an individual drawing a salary from a governmental body, whether elected or not, and any nonsalaried individual performing personal services for any governmental body.

(17) (Reserved)

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

(19) 'Grant' means the furnishing by the State or the United States government of assistance, whether financial or otherwise, to a person to support a program authorized by law. It does not include an award, the primary purpose of which is to procure specified end products, whether in the form of supplies, services, information technology, or construction. A contract resulting from such an award must not be considered a grant but a procurement contract.

(20) 'Information Technology Management Officer' means the person holding the position as the head of the State Information Technology Office.

(21) 'Invitation for bids' means a written or published solicitation issued by an authorized procurement officer for bids to contract for the procurement or disposal of stated supplies, services, information technology, or construction, which will ordinarily result in the award of the contract to the responsible bidder making the lowest responsive bid.

(22) 'Materials Management Officer' means the person holding the position as the head of the materials management office of the State.

(23) 'Person' means any business, individual, union, committee, club, other organization, or group of individuals.

(24) 'Political subdivision' means all counties, municipalities, school districts, public service or special purpose districts.

(25) 'Procurement' means buying, purchasing, renting, leasing, or otherwise acquiring any supplies, services, information technology, or construction. It also includes all functions that pertain to the obtaining of any supply, service, information technology, or construction, including description of requirements, selection, and solicitation of sources, preparation and award of contracts, and all phases of contract administration.

(26) 'Procurement officer' means any person duly authorized by the appropriate chief procurement officer or the head of the purchasing agency to enter into and administer contracts and make written determinations and findings with respect thereto. The term also includes an authorized representative of the governmental body within the scope of his authority.

(27) 'Public funds' means any money or property owned by the State or a political subdivision thereof, regardless of form and whether in specie or otherwise.

(28) 'Purchasing agency' means any governmental body other than the chief procurement officers authorized by this code or by way of delegation from the chief procurement officers to enter into contracts.

(29) 'Real property' means any land, all things growing on or attached thereto, and all improvements made thereto including buildings and structures located thereon.

(30) 'Request for proposals' (RFP) means a written or published solicitation issued by an authorized procurement officer for proposals to provide supplies, services, information technology, or construction which ordinarily result in the award of the contract to the responsible offeror making the proposal determined to be most advantageous to the State.

(31) 'Services' means the furnishing of labor, time, or effort by a contractor not required to deliver a specific end product, other than reports which are merely incidental to required performance. This term includes consultant services other than architectural, engineering, land surveying, construction management, and related services. This term does not include employment agreements or information services as defined in Section 11-35-310(1)(c).

(32) 'Subcontractor' means any person having a contract to perform work or render service to a prime contractor as a part of the prime contractor's agreement with a governmental body.

(33) 'Supplies' means all personal property including, but not limited to, equipment, materials, printing, and insurance.

(34) 'State' means state government.

(35) 'State Engineer' means the person holding the position as head of the state engineer's office.

(36) 'Suspension' means the disqualification of a person to receive invitations for bids, requests for proposals, or the award of a contract by the State, for a temporary period pending the completion of an investigation and any legal proceedings that may ensue because a person is suspected upon probable cause of engaging in criminal, fraudulent, or seriously improper conduct or failure or inadequacy of performance which may lead to debarment.

(37) 'Term contract' means contracts established by the chief procurement officer for specific supplies, services, or information technology for a specified time and for which it is mandatory that all governmental bodies procure their requirements during its term. As provided in the solicitation, if a governmental body is offered the same supplies, services, or information technology at a price that is at least ten percent less than the term contract price, it may purchase from the vendor offering the lower price after first offering the vendor holding the term contract the option to meet the lower price. The solicitation used to establish the term contract must specify contract terms applicable to a purchase from the vendor offering the lower price. If the vendor holding

the term contract meets the lower price, then the governmental body shall purchase from the contract vendor. All decisions to purchase from the vendor offering the lower price must be documented by the procurement officer in sufficient detail to satisfy the requirements of an external audit. A term contract may be a multiterm contract as provided in Section 11-35-2030.

(38) 'Using agency' means any governmental body of the State which utilizes any supplies, services, information technology, or construction purchased under this code."

Public access to procurement information exception

SECTION 7. Section 11-35-410 of the 1976 Code is amended to read:

"Section 11-35-410. (A) Procurement information must be a public record to the extent required by Chapter 4, Title 30 (The Freedom of Information Act), except as otherwise provided by this code, and with the exception that commercial or financial information obtained in response to a request for proposals or any type of bid solicitation that is privileged and confidential need not be disclosed.

(B) Privileged and confidential information is information in specific detail not customarily released to the general public, the release of which might cause harm to the competitive position of the party supplying the information. Examples of this type of information include:

(1) customer lists;

(2) design recommendations and identification of prospective problem areas under an RFP;

(3) design concepts, including methods and procedures;

(4) biographical data on key employees of the bidder.

(C) The board shall promulgate regulations directing the public availability and disposition of documents submitted in response or with regard to a solicitation or other request where no award is made.

(D) For all documents submitted in response or with regard to any solicitation or other request, the person submitting the documents shall comply with instructions provided in the solicitation for marking information exempt from public disclosure. Information not marked as required by the applicable instructions may be disclosed to the public.

(E) A governmental body, with the approval of the appropriate chief procurement officer, may keep portions of a solicitation confidential and release the information to prospective offerors only upon execution of a nondisclosure agreement, provided the information is otherwise exempted from disclosure by law.

(F) If requested in writing before a final award by an actual bidder, offeror, contractor, or subcontractor with regard to a specific intended award or award of a contract, the procurement officer shall, within five days of the receipt of any such request, make documents directly connected to the procurement activity and not otherwise exempt from disclosure available for inspection at an office of the responsible procurement officer. Without otherwise limiting any other exemptions granted by law, and except as provided herein, documents of and documents incidental to proposed contractual arrangements, including those used for contract negotiations, are not exempt from disclosure after the date notice of intent to award is posted, unless the notice is subsequently canceled."

Conforming change

SECTION 8. Section 11-35-510 of the 1976 Code is amended to read:

"Section 11-35-510. All rights, powers, duties, and authority relating to the procurement of supplies, services, and information technology and to the management, control, warehousing, sale and disposal of supplies, construction, information technology, and services now vested in or exercised by a state governmental body pursuant to the provisions of law relating thereto, and regardless of source of funding, are hereby vested in the appropriate chief procurement officer, or with regard to Article 15, as provided therein. This vesting of authority is subject to Section 11-35-710 (Exemptions), Section 11-35-1250 (Authority to Contract for Auditing Services), Section 11-35-1260 (Authority to Contract for Legal Services), Section 11-35-1550 (Small Purchases), Section 11-35-1560 (Sole Source Procurement), Section 11-35-1570 (Emergency Procurements), Section 11-35-3230 (Exception for Small Architect-Engineer, and Land Surveying Services Contracts), and Section 11-35-3620 (Management of Warehouses and Inventory)."

Advisory committees

SECTION 9. Section 11-35-530 of the 1976 Code is amended to read:

"Section 11-35-530. The following advisory committees may be established by the board for the purpose of advising the board:

(a) The board may appoint a purchasing policies and procedures advisory committee comprised of state and local government, and public

members to discuss the performance of public purchasing in the State and to consider specific methods for improvement.

(b) The board may appoint an information technology and procedures advisory committee comprised of state and local government and public members to discuss the purchasing performance of information technology for government in the State and to consider specific methods for improvement.

(c) The board may appoint a construction, architect-engineer, construction management, and land surveying services advisory committee comprised of state and local government and public members to discuss the purchasing performance of these services in the State and to consider specific methods of improvement. The advisory committee shall be comprised of the following: the State Engineer, a state agency representative, a banker, an attorney, a representative of local government, a registered architect, a registered engineer, a licensed building contractor, and a licensed subcontractor."

Deletion of duty of the chief executive officer

SECTION 10. Section 11-35-540(5) of the 1976 Code is deleted.

Eleemosynary exemption

SECTION 11. Section 11-35-710 of the 1976 Code is amended to read:

"Section 11-35-710. (A) The board, upon the recommendation of the chief procurement officer, may exempt governmental bodies from purchasing certain items through the respective chief procurement officer's area of responsibility. The board may exempt specific supplies, services, information technology, or construction from the purchasing procedures required in this chapter and for just cause by unanimous written decision limit or may withdraw exemptions provided for in this section. The following exemptions are granted from this chapter:

(1) the construction, maintenance, and repair of bridges, highways, and roads; vehicle and road equipment maintenance and repair; and other emergency-type parts or equipment utilized by the Department of Transportation or the Department of Public Safety;

(2) the purchase of raw materials by the South Carolina Department of Corrections, Division of Prison Industries;

(3) South Carolina State Ports Authority;

(4) Division of Public Railways of the Department of Commerce;

(5) South Carolina Public Service Authority;

(6) expenditure of funds at state institutions of higher learning derived wholly from athletic or other student contests, from the activities of student organizations, and from the operation of canteens and bookstores, except as the funds are used for the procurement of construction, architect-engineer, construction-management, and land surveying services;

(7) livestock, feed, and veterinary supplies;

(8) articles for commercial sale by all governmental bodies;

(9) fresh fruits, vegetables, meats, fish, milk, and eggs;

(10) South Carolina Arts Commission and South Carolina Museum Commission for the purchase of one-of-a-kind items such as paintings, antiques, sculpture, and similar objects. Before a governmental body procures the objects, the head of the purchasing agency shall prepare a written determination specifying the need for the objects and the benefits to the State. The South Carolina Arts Commission shall review the determination and forward a recommendation to the board for approval;

(11) published books, periodicals, and technical pamphlets;

(12) South Carolina Research Authority;

(13) the purchase of supplies, services, or information technology by state offices, departments, institutions, agencies, boards, and commissions or the political subdivisions of this State from the South Carolina Department of Corrections, Division of Prison Industries;

(14) Medical University Hospital Authority, if the Medical University Hospital Authority has promulgated a procurement process in accordance with its enabling provision;

(15) if approved in writing by the State Engineer in advance, and if some aspect of the overall transaction is otherwise approved by the board in advance of the acquisition, an acquisition of construction from an eleemosynary corporation or foundation, or a wholly owned business thereof, established solely for the governmental body's benefit, but only if the eleemosynary corporation or foundation acquires the construction on behalf of or for the use of the governmental body and does so pursuant to this code, as required by Section 11-35-40(4).

(B) The State Fiscal Accountability Authority shall maintain and post publicly a running list of all currently effective actions taken by the board pursuant to subsection (A)."

Conforming change

SECTION 12. Section 11-35-810 of the 1976 Code is amended to read:

"Section 11-35-810. There is hereby created, within the Division of Procurement Services, a Materials Management Office to be headed by the Materials Management Officer."

Responsibilities of the Information Technology Management Office

SECTION 13. Section 11-35-820 of the 1976 Code is amended to read:

"Section 11-35-820. There is created within the Division of Procurement Services, the Information Technology Management Office to be headed by the Information Technology Management Officer. The office is responsible for administering all procurement and contracting activities undertaken for governmental bodies involving information technology in accordance with this chapter, and may establish a training and certification program in accordance with Section 11-35-1030. All procurements involving information technology, and any pre-procurement and post-procurement activities in this area, must be conducted in accordance with the regulations promulgated by the board."

Direct procurements not under term contracts

SECTION 14. Section 11-35-1210(1), (2), and (4) is amended to read:

"(1) Authority. In an amount up to fifty thousand dollars in actual or potential value, individual governmental bodies may make direct procurements not under term contracts. Subject to the following and subject to any ensuing regulations:

(a) the board may assign differential dollar limits below which individual governmental bodies may make direct procurements not under term contracts. The Division of Procurement Services shall review the respective governmental body's internal procurement operation, shall certify in writing that it is consistent with the provisions of this code and the ensuing regulations, and recommend to the board those dollar limits for the respective governmental body's procurement not under term contract; and

(b) the Director of the Division of Procurement Services may authorize an individual governmental body to make direct procurements not under term contracts in an amount up to one hundred fifty thousand dollars. All authority granted pursuant to this item must be in writing,

and the director shall advise the board in writing of all such authorizations.

(2) Policy. Authorizations granted by the board or the Director of the Division of Procurement Services to a governmental body are subject to the following:

(a) adherence to the provisions of this code and the ensuing regulations, particularly concerning competitive procurement methods;

(b) responsiveness to user needs;

(c) obtaining the best prices for value received.

(4) Subject to subsection (1), the State Board for Technical and Comprehensive Education, in coordination with the appropriate chief procurement officer, may approve a cumulative total of up to fifty thousand dollars in additional procurement authority for technical colleges, provided that the Division of Procurement Services makes no material audit findings concerning procurement. As provided by regulation, any authority granted pursuant to this paragraph is effective when certified in writing by the Division of Procurement Services."

Deletion of responsibility of the Division of Budget Analysis in auditing and fiscal reporting

SECTION 15. Section 11-35-1230 of the 1976 Code is amended to read:

"Section 11-35-1230. (1) The Division of Procurement Services, through consultation with the chief procurement officers, shall develop written plans for the auditing of state procurements.

(2) In procurement audits of governmental bodies thereafter, the auditors from the Division of Procurement Services shall review the adequacy of the governmental body's internal controls in order to ensure compliance with the requirement of this code and the ensuing regulations. A noncompliance discovered through audit must be transmitted in management letters to the audited governmental body and the board. The Division of Procurement Services shall provide in writing proposed corrective action to governmental bodies. Based upon audit recommendations, the board may revoke certification as provided in Section 11-35-1210 and require the governmental body to make all procurements through the appropriate chief procurement officer above a dollar limit set by the board, until such time as the board is assured of compliance with this code and its regulations by that governmental body."

Definitions

SECTION 16. Section 11-35-1410 of the 1976 Code is amended to read:

"Section 11-35-1410. Unless the context clearly indicates otherwise:

(1) 'Commercial product' means supplies, other than printing, or information resources:

(a) that is of a type customarily used by the general public and that has been sold, leased, or licensed to the general public;

(b) that would satisfy the criteria in subitem (a) were it not for modifications of a type customarily available in the commercial marketplace, or minor modifications made to meet state requirements; or

(c) that is a combination of products meeting the requirements of subitem (a) or (b) that are of a type customarily combined and sold in combination to the general public.

(2) 'Commercially available off-the-shelf product' means supplies, other than printing, or information resources: that is a commercial product, as defined herein, that is sold in substantial quantities in the commercial marketplace; and is offered to the State, without modification, in the same form in which it is sold in the commercial marketplace. It does not include agricultural products, petroleum products, and other items customarily sold in bulk.

(3) 'Cost-reimbursement contract' means a contract under which a contractor is reimbursed for costs which are allowable and allocable in accordance with the contract terms and the provisions of this code, and paid a fee, if any.

(4) 'Established catalog price' means the price included in a catalog, price list, schedule, or other form that:

(a) is regularly maintained by a manufacturer or vendor of an item;

(b) is either published or otherwise available for inspection by customers;

(c) states prices at which sales are currently or were last made to a significant number of buyers constituting the general buying public for the supplies, services, or information technology involved.

(5) 'Invitation for bids' means all documents, whether attached or incorporated by reference, utilized for soliciting bids in accordance with the procedures set forth in Section 11-35-1520.

(6) 'Purchase description' means specifications or other document describing the supplies, services, information technology, or construction to be procured.

(7) 'Request for proposals' means all documents, whether attached or incorporated by reference, utilized for soliciting proposals.

(8) 'Responsible bidder or offeror' means a person who has the capability in all respects to perform fully the contract requirements and the integrity and reliability which will assure good faith performance which may be substantiated by past performance.

(9) 'Responsive bidder or offeror' means a person who has submitted a bid or proposal which conforms in all material aspects to the invitation for bids or request for proposals."

Addition of competitive negotiations to methods of source selection

SECTION 17. Section 11-35-1510 of the 1976 Code is amended to read:

"Section 11-35-1510. Unless otherwise provided by law, all state contracts must be awarded by competitive sealed bidding, pursuant to Section 11-35-1520, except as provided in:

(1) Section 11-35-1250 (Authority to Contract for Auditing Services);

(2) Section 11-35-1260 (Authority to Contract for Legal Services);

(3) Section 11-35-1525 (Fixed Priced Bidding);

(4) Section 11-35-1528 (Competitive Best Value Bidding);

(5) Section 11-35-1529 (Competitive Online Bidding);

(6) Section 11-35-1530 (Competitive Sealed Proposals);

(7) Section 11-35-1535 (Competitive Negotiations);

(8) Section 11-35-1540 (Negotiations After Unsuccessful Competitive Sealed Bidding);

(9) Section 11-35-1550 (Small Purchases);

(10) Section 11-35-1560 (Sole Source Procurements);

(11) Section 11-35-1570 (Emergency Procurements);

(12) Section 11-35-1575 (Participation in Auction or Bankruptcy Sale);

(13) (Reserved)

(14) Section 11-35-3015 (Source Selection Methods Assigned to Project Delivery Methods);

(15) Section 11-35-3220 (Architect Engineer, Construction Management and Land Surveying Services Procurement Procedures); and

(16) Section 11-35-3230 (Exception for Small Architect-Engineer and Land Surveying Services contracts)."

Competitive sealed bidding

SECTION 18. Section 11-35-1520(1), (3), (7), (8), and (10) of the 1976 Code is amended to read:

"(1) Condition for Use. Contracts must be awarded by competitive sealed bidding except as otherwise provided in Section 11-35-1510.

(3) Notice. Adequate notice of the invitation for bids must be given at a reasonable time before the date set forth in it for the opening of bids. The notice must include publications in 'South Carolina Business Opportunities'. Governmental bodies may charge vendors the cost incurred for copying and mailing bid or proposal documents requested in response to a procurement.

(7) Correction or Withdrawal of Bids; Cancellation of Awards. Correction or withdrawal of inadvertently erroneous bids before or after award, or cancellation and re-award of awards or contracts, after award but before performance, may be permitted in accordance with regulations promulgated by the board. After bid opening, changes in bid prices or other provisions of bids prejudicial to the interest of the State or fair competition must not be permitted. After opening, bids must not be corrected or withdrawn except in accordance with the provisions of this code and the regulations promulgated pursuant to it. Except as otherwise provided by regulation, all decisions to permit the correction or withdrawal of bids, or to cancel awards or contracts, after award but before performance, must be supported by a written determination of appropriateness made by the chief procurement officers or head of a purchasing agency.

(8) Reserved.

(10) Award. Unless there is a compelling reason to reject bids as prescribed by regulation of the board, notice of an award or an intended award of a contract to the lowest responsive and responsible bidders whose bid meets the requirements set forth in the invitation for bids must be given by posting the notice on the date and at a location specified in the invitation for bids. For contracts with a total or potential value in excess of one hundred thousand dollars, notice of an intended award of a contract must be given by posting the notice for seven business days

before entering into a contract and must be sent electronically to all bidders responding to the solicitation on the same day that the notice is posted in accordance with this section. The posting date shall appear on the face of all these notices. If a change to the posting date is necessary, notice of the revised posting date must be given by posting the notice for three business days at the location identified in the solicitation and must be sent electronically to all bidders responding to the solicitation on the same day that the notice is posted in accordance with this section. The invitation for bids and a notice of award or notice of intent to award must contain a statement of a bidder's right to protest pursuant to Section 11-35-4210(1). When only one response is received, the notice of intent to award and the delay of award may be waived."

Competitive fixed price bidding

SECTION 19.A. Section 11-35-1525(1), (6), (8), and (9) of the 1976 Code is amended to read:

"(1) Conditions for Use. When the procurement officer determines in writing that the use of competitive sealed bidding is either not practicable or not advantageous to the State, a contract may be entered into by competitive fixed price bidding subject to the provisions of Section 11-35-1520 and the ensuing regulations, unless otherwise provided for in this section.

(6) Reserved.

(8) Bids Received After Award. As provided in the solicitation, bidders not responding to the initial fixed price bid may be added to the awarded vendors' list provided the bidder furnishes evidence of responsibility and responsiveness to the state's original fixed price bid as required by the solicitation."

B. The deletion of Section 11-35-1525(9) may not be interpreted as an indication that the failure of a specific offeror to receive business is grounds for a dispute.

Competitive best value bidding

SECTION 20. Section 11-35-1528 (1), (4), (5), (6), and (7) of the 1976 Code is amended to read:

"(1) Conditions for Use. When the procurement officer determines in writing that the use of competitive sealed bidding is either not practicable or not advantageous to the State, a contract may be entered into by competitive best value bidding subject to the provisions of Section 11-35-1520 and the ensuing regulations, unless otherwise provided for in this section.

(4) Bid Opening. At bid opening, the only information that will be released is the names of the participating bidders. Price information will be provided after the ranking of bidders and the issuance of award.

(5) Evaluation Factors. The best value bid must state the factors to be used in determination of award and the numerical weighting for each factor. Price must be a factor in determination of award and cannot be weighted at less than sixty percent. Best value bid evaluation factors may include, but are not limited to, any of the following:

(a) operational costs the State would incur if the bid is accepted;

(b) quality of the product or service or its technical competency;

(c) reliability of delivery and implementation schedules;

(d) maximum facilitation of data exchange and systems integration;

(e) warranties, guarantees, and return policy;

(f) vendor financial stability;

(g) consistency of the proposed solution with the state's planning documents and announced strategic program direction;

(h) quality and effectiveness of business solution and approach;

(i) industry and program experience;

(j) prior record of vendor performance;

(k) vendor expertise with engagement of similar scope and complexity;

(l) extent and quality of the proposed participation and acceptance by all user groups;

(m) proven development methodologies and tools; and

(n) innovative use of current technologies and quality results.

(6) Clarification of Responsive Bid. The procurement officer may ask a responsive bidder to clarify an ambiguity in its bid; however, no material modification of the bid is allowed.

(7) Selection and Ranking. Bids shall be evaluated by using only the criteria and weightings stated in the invitation for best value bids. All evaluation factors, other than price, will be considered independent of and prior to determining the effect of price on the score for each participating bidder. Once the evaluation is complete, all responsive bidders must be ranked from most advantageous to least advantageous

to the State, considering only the evaluation factors stated in the invitation for best value bids."

Competitive online bidding

SECTION 21. Section 11-35-1529 of the 1976 Code is amended to read:

"Section 11-35-1529. (1) Conditions for Use. When the procurement officer determines in writing that on-line bidding is more advantageous than competitive sealed bidding, a contract may be entered into by competitive on-line bidding, subject to the provisions of Section 11-35-1520 and the ensuing regulations, unless otherwise provided in this section.

(2) Public Notice. Adequate public notice of the request for the solicitation must be given in the same manner as provided in Section 11-35-1520(3).

(3) Bidding Process. The solicitation must designate both an Opening Date and Time and a Closing Date and Time. The Closing Date and Time need not be a fixed point in time, but may remain dependent on a variable specified in the solicitation. At the Opening Date and Time, the State must begin accepting real-time electronic bids. The solicitation must remain open until the Closing Date and Time. Before the Opening Date and Time, the State shall require bidders to register, shall register only responsible bidders, and, as a part of that registration, require bidders to agree to any terms, conditions, or other requirements of the solicitation. If less than two bidders are registered, the solicitation must be canceled. Following receipt of the first bid after the Opening Date and Time, the lowest bid price must be posted electronically to the Internet and updated on a real-time basis. At any time before the Closing Date and Time, a bidder may lower the price of its bid, except that after Opening Date and Time, a bidder may not lower its price unless that price is below the then lowest bid. Bid prices may not be increased after Opening Date and Time. Except for bid prices, bids may be modified only as otherwise allowed by this code. A bid may be withdrawn only in compliance with Section 11-35-1520. If a bid is withdrawn, a later bid submitted by the same bidder may not be for a higher price. If the lowest responsive bid is withdrawn after the Closing Date and Time, the State may cancel the solicitation in accordance with this code or reopen electronic bidding to all pre-existing bidders by giving adequate notice to all pre-existing bidders of both the new Opening Date and Time and

the new Closing Date and Time. Notice that electronic bidding will be reopened must be given as specified in the solicitation.

(4) Receipt and Safeguarding of Bids. Other than price, any information provided to the State by a bidder must be safeguarded as required by Section 11-35-1520(4).

(5) Provisions Not to Apply. Section 11-35-1524 and paragraph (5) (Bid Opening) of Section 11-35-1520 do not apply to solicitations issued pursuant to this section."

Competitive sealed proposals

SECTION 22. Section 11-35-1530 of the 1976 Code is amended to read:

"Section 11-35-1530. (1) Conditions for Use.

(a) If the procurement officer determines in writing that the use of competitive sealed bidding is either not practicable or not advantageous to the State, a contract may be entered into by competitive sealed proposals subject to the provisions of Section 11-35-1520 and the ensuing regulations, unless otherwise provided in this section.

(b) The board may provide by regulation that it is either not practicable or not advantageous to the State to procure specified types of supplies, services, information technology, or construction by competitive sealed bidding.

(2) Public Notice. Adequate public notice of the request for proposals must be given in the same manner as provided in Section 11-35-1520(3).

(3) Receipt of Proposals. Proposals must be opened publicly in accordance with regulations of the board. A tabulation of proposals must be prepared in accordance with regulations promulgated by the board and must be open for public inspection after contract award.

(4) Request for Qualifications.

(a) Before soliciting proposals, the procurement officer may issue a request for qualifications from prospective offerors. The request must contain at a minimum a description of the scope of the work to be solicited by the request for proposals and must state the deadline for submission of information and how prospective offerors may apply for consideration. The request must require information only on their qualifications, experience, and ability to perform the requirements of the contract.

(b) After receipt of the responses to the request for qualifications from prospective offerors, rank of the prospective offerors must be

determined in writing from most qualified to least qualified on the basis of the information provided. Proposals then must be solicited from at least the top two prospective offerors by means of a request for proposals. The determination regarding how many proposals to solicit is not subject to review pursuant to Article 17.

(5) Evaluation Factors. The request for proposals must state the relative importance of the factors to be considered in evaluating proposals but may not require a numerical weighting for each factor. Price may, but need not, be an evaluation factor.

(6) Discussion with Offerors. As provided in the request for proposals, discussions may be conducted with offerors who submit proposals determined to be reasonably susceptible of being selected for award for the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements. Offerors must be accorded fair and equal treatment with respect to any opportunity for discussions. In conducting discussions, there must be no disclosure of confidential information derived from proposals submitted by competing offerors. The board shall promulgate regulations governing discussions.

(7) Selection and Ranking. Proposals must be evaluated using only the criteria stated in the request for proposals and there must be adherence to weightings that have been assigned previously. Once evaluation is complete, all responsive offerors must be ranked from most advantageous to least advantageous to the State, considering only the evaluation factors stated in the request for proposals.

(8) Negotiations. After proposals have been ranked pursuant to Section 11-35-1530(7), the procurement officer, in his sole discretion and not subject to review under Article 17, may proceed in any of the manners indicated below, except that in no case may confidential information derived from proposals and negotiations submitted by competing offerors be disclosed:

(a) negotiate with the highest ranking offeror on price, on matters affecting the scope of the contract, so long as the changes are within the general scope of the request for proposals, or on both. If a satisfactory contract cannot be negotiated with the highest ranking offeror, negotiations may be conducted, in the sole discretion of the procurement officer, with the second, and then the third, and so on, ranked offerors to the level of ranking determined by the procurement officer in his sole discretion;

(b) during the negotiation process as outlined in item (a) above, if the procurement officer is unsuccessful in his first round of negotiations,

he may reopen negotiations with any offeror with whom he previously negotiated; or

(c) before or after negotiations pursuant to Section 11-35-1530(8), the procurement officer may make changes to the request for proposals within the general scope of the request for proposals and may provide all responsive offerors an opportunity to submit their best and final offers, which must be reevaluated and ranked pursuant to Section 11-35-1530(7).

(9) Award. Award must be made to the responsible offeror whose proposal is determined in writing to be the most advantageous to the State, taking into consideration the evaluation factors set forth in the request for proposals, unless the procurement officer determines to utilize one of the options provided in Section 11-35-1530(8). The award of the contract must be made on the basis of evaluation factors that must be stated in the RFP. The contract file must contain the basis on which the award is made and must be sufficient to satisfy external audit. Procedures and requirements for the notification of intent to award the contract must be the same as those provided in Section 11-35-1520(10)."

Competitive negotiations

SECTION 23. Subarticle 3, Article 5, Chapter 35, Title 11 of the 1976 Code is amended by adding:

"Section 11-35-1535. (A) Conditions for Use.

(1) Competitive negotiations are most appropriate for complex, major acquisitions.

(2) If the procurement officer determines in writing that the use of competitive negotiations is appropriate and in the using agency's interest, a contract may be entered into by competitive negotiations subject to the provisions of Section 11-35-1520 and the ensuing regulations, unless otherwise provided in this section. This section may not be used to acquire only commercially available off-the-shelf products.

(3) Competitive negotiated acquisitions may be conducted only by the office of the appropriate chief procurement officer.

(B) Definitions. As used in this section:

(1) 'Clarification' means any communication in which the procurement officer requests or accepts information that clarifies any information in a proposal. Clarification does not include the request or acceptance of any change to the terms of a contractual offer.

(2) 'Competitive range' means the offeror or group of offerors selected for negotiation.

(3) 'Negotiations' means any communication that invites or permits an offeror to change the terms of its contractual offer in any way.

(C) Request for qualifications. Offerors may be prequalified as provided in Section 11-35-1530(4).

(D) Requests for proposals.

(1)(a) Solicitations for competitive negotiations must be requests for proposals and must, at a minimum, describe:

(i) the state's requirements;

(ii) anticipated terms and conditions that will apply to the contract. The solicitation may authorize offerors to propose alternative terms and conditions, including alternative contract line items;

(iii) information required to be in the offerors proposal; and

(iv) evaluation factors.

(b) The request for proposals must state the relative importance of all factors to be considered in evaluating proposals but need not state a numerical weighting for each factor. Except as provided by regulation, past performance and price must be evaluated. If price is an evaluation factor, the solicitation must state whether all evaluation factors other than price, when combined, are significantly more important than, approximately equal to, or significantly less important than price.

(2) Amendments. Amendments issued after the established time and date for receipt of proposals may not exceed the general scope of the request for proposals and must be issued to those offerors that have not been eliminated from the competition.

(E) Public Notice. Adequate public notice of the request for proposals must be given in the same manner as provided in Section 11-35-1520(3).

(F) Receipt of Proposals. Proposals must be opened in accordance with regulations of the board. A tabulation of proposals must be prepared in accordance with regulations promulgated by the board and must be open for public inspection after contract award.

(G) Evaluation. Proposal evaluation is an assessment of the proposal and the offeror's ability to perform the prospective contract successfully. All proposals must be evaluated and, after evaluation, their relative qualities must be assessed solely on the factors and subfactors specified in the solicitation. The relative strengths, deficiencies, significant weaknesses, and risks supporting proposal evaluation must be documented in the contract file.

(H) Competitive Range. After complying with subsection (G), the procurement officer shall establish a competitive range comprised of the

offerors that submitted the most promising offers. Ordinarily, the competitive range should not include more than three offerors. The procurement officer may select only one offeror and may select more than three. The procurement officer shall document the rationale for the selections.

(I) Exchanges with Offerors.

(1) Fairness and impartiality. The procurement officer shall treat all offerors fairly and impartially when deciding whether and when to seek clarification or to negotiate. Similarly situated offerors must be given similar opportunities to clarify and, if in the competitive range, to negotiate.

(2) Clarifications. The procurement officer may conduct clarifications at any time before the award decision.

(3) Negotiations.

(a) The procurement officer shall negotiate with each offeror in the competitive range. The primary objective is to maximize the state's ability to obtain best value, based on the requirements and the evaluation factors set forth in the solicitation. Subject to item (1), the scope and extent of negotiations are a matter of the procurement officer's judgement.

(b)(i) At a minimum, the procurement officer shall identify and seek the elimination of any term of a contractual offer that does not conform to a material requirement of a solicitation and any other undesirable terms in a contractual offer.

(ii) The procurement officer may negotiate with offerors to seek changes in their contractual offers that the State desires and to allow them to make other improvements.

(iii) Negotiations may include pricing.

(iv) The procurement officer may not relax or change any material term of the solicitation during negotiation except by amendment.

(v) In conducting negotiations, the procurement officer may not disclose confidential information derived from proposals submitted by competing offerors.

(c) The procurement officer shall document the using agency's prenegotiation objectives with regard to each offeror in the competitive range and shall prepare a record of each negotiation session.

(d) The procurement officer may eliminate an offeror from the competitive range after negotiation if the offeror is no longer considered to be among the most promising.

(4) The board must promulgate regulations governing exchanges with offerors.

(J) Proposal Revisions. The procurement officer may request or allow proposal revisions to clarify and document understandings reached during negotiations. If an offeror's proposal is eliminated or otherwise removed from the competitive range, no further revisions to that offeror's proposal may be accepted or considered. Upon the completion of negotiations, the contracting officer shall request that offerors still in the competitive range submit final proposals no later than a specified common cutoff date and time.

(K) Award.

(1) Award must be based on a comparative assessment of final proposals from offerors within the competitive range against all source selection criteria in the solicitation. Award must be made to the responsible offeror whose final proposal meets the announced requirements in all material respects and is determined in writing to provide the best value to the State, taking into consideration the evaluation factors set forth in the request for proposals and, if price is an evaluation factor, any tradeoffs among price and non-price factors. As provided by regulation, the contract file must document the basis on which the award is made, and the documentation must explain and justify the rationale for any business judgments and tradeoffs made or relied on in the award determination, including benefits associated with additional costs. Section 11-35-1524 does not apply.

(2) Procedures and requirements for the notification of intent to award the contract must be the same as those provided in Section 11-35-1520(1)."

Conforming change

SECTION 24. Section 11-35-1540 of the 1976 Code is amended to read:

"Section 11-35-1540. When bids received pursuant to an invitation for bids under Section 11-35-1520 are considered unreasonable by the procurement officer, or are not independently reached in open competition, or the low bid exceeds available funds as certified by the appropriate fiscal officer, and it is determined in writing by the chief procurement officer, the head of a purchasing agency, or the designee of either officer above the level of procurement officer, that time or other circumstances will not permit the delay required to resolicit competitive sealed bids, a contract may be negotiated pursuant to this section, provided that:

(1) each responsible bidder who submitted a bid under the original solicitation is notified of the determination and is given reasonable opportunity to negotiate;

(2) the negotiated price is lower than the lowest rejected bid by any responsible and responsive bidder under the original solicitation;

(3) the negotiated price is the lowest negotiated price offered by any responsible and responsive offeror."

Small purchase procedures

SECTION 25. Section 11-35-1550 of the 1976 Code is amended to read:

"Section 11-35-1550. (1) Authority. The following small purchase procedures may be utilized only in conducting procurements for governmental bodies that are up to the amounts specified herein, but not in excess of the authority granted pursuant to Section 11-35-1210. Procurement requirements must not be artificially divided by governmental bodies so as to constitute a small purchase pursuant to this section.

(2) Competition and Price Reasonableness.

(a) No Competition. Small purchases not exceeding ten thousand dollars may be accomplished without securing competitive quotations if the prices are considered reasonable. The purchasing office must annotate the purchase requisition: 'Price is fair and reasonable' and sign. The purchases must be distributed equitably among qualified suppliers. When practical, a quotation must be solicited from other than the previous supplier before placing a repeat order. The administrative cost of verifying the reasonableness of the price of purchase 'not in excess of' may more than offset potential savings in detecting instances of overpricing. Action to verify the reasonableness of the price need be taken only when the procurement officer of the governmental body suspects that the price may not be reasonable, comparison to previous price paid, or personal knowledge of the item involved.

(b) Three Written Quotes. Written request for written quotes from a minimum of three qualified sources of supply may be made and, unless adequate public notice is provided in the South Carolina Business Opportunities, documentation of at least three bona fide, responsive, and responsible quotes must be attached to the purchase requisition for a small purchase not in excess of twenty-five thousand dollars, or for a small purchase of commercially available off-the-shelf products not in excess of one hundred thousand dollars, or for a small purchase of

construction not in excess of one hundred thousand dollars. The award must be made to the lowest responsive and responsible sources. The request for quotes must include a purchase description. Requests must be distributed equitably among qualified supplies unless advertised as provided above.

(c) Advertised Small Purchase. Written solicitation of written quotes, bids, or proposals may be made for a small purchase, other than a small purchase of construction, not in excess of one hundred thousand dollars. The procurement must be advertised at least once in the South Carolina Business Opportunities publication. A copy of the written solicitation and written quotes must be attached to the purchase requisition. The award must be made to the lowest responsive and responsible source or, when a request for proposal process is used, the highest ranking offeror.

(3) Advertising Threshold. Except for procurements of either commercially available off-the-shelf products or construction, if conducted pursuant to item (2)(b), all competitive procurements above twenty-five thousand dollars must be advertised at least once in the South Carolina Business Opportunities publication. Governmental bodies may charge vendors the cost incurred for copying and mailing bid or proposal documents requested in response to a procurement.

(4) The Division of Aeronautics of the Department of Commerce may act as its own purchasing agency for all procurements of maintenance services for aircraft and these procurements may be conducted pursuant to subsection (2)(b).”

Sole source procurement public notice

SECTION 26. Section 11-35-1560 of the 1976 Code is amended to read:

“Section 11-35-1560. (A) A contract may be awarded for a supply, service, information technology, or construction item without competition if, under regulations promulgated by the board, the chief procurement officer, the head of a purchasing agency, or a designee of either officer, above the level of the procurement officer, determines in writing that there is only one source for the required supply, service, information technology, or construction item. Except for contracts with a total potential value of fifty thousand dollars or less, adequate public notice of the intent to award without competition must be posted in South Carolina Business Opportunities, except that public notice is not required if the appropriate chief procurement officer, after consultation

with the head of the purchasing agency, determines in writing that award without such notice is in the interest of the State. Notice must contain a statement of the right to protest under Section 11-35-4210(1) and must be posted at least five business days before entering a contract. For contracts with a total potential value greater than two hundred fifty thousand dollars, such notice must be posted at least ten business days before entering a contract.

(B) Written documentation must include the determination and basis for the proposed sole source procurement. A delegation of authority by either the chief procurement officer or the head of a governmental body with respect to sole source determinations must be submitted in writing to the Materials Management Officer. In cases of reasonable doubt, competition must be solicited. Any decision by a governmental body that a procurement be restricted to one potential vendor must be accompanied by a thorough, detailed explanation as to why no other will be suitable or acceptable to meet the need.

(C) A violation of these regulations by a purchasing agency, upon recommendation of the Division of Procurement Services with approval of the majority of the board, must result in the temporary suspension, not to exceed one year, of the violating governmental body's ability to procure supplies, services, information technology, or construction items pursuant to this section."

Emergency procurements public notice

SECTION 27. Section 11-35-1570 of the 1976 Code is amended to read:

"Section 11-35-1570. (A) Notwithstanding any other provision of this code, the chief procurement officer, the head of a purchasing agency, or a designee of either officer may award or authorize others to award emergency contracts only when there exists an immediate threat to public health, welfare, critical economy and efficiency, or safety under emergency conditions as defined in regulations promulgated by the board; and provided, that such emergency procurements shall be made with as much competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file.

(B) When a contract entered pursuant to subsection (A) has a total or potential value in excess of fifty thousand dollars, notice of the award must be posted in South Carolina Business Opportunities (SCBO) as

soon as practicable thereafter. The posted notice must contain a statement of the right to protest under Section 11-35-4210(1)."

Change order or contract modification

SECTION 28. Subarticle 5, Article 5, Chapter 35, Title 11 of the 1976 Code is amended by adding:

"Section 11-35-1610. A change order or a contract modification may not alter a contract in a manner or degree inconsistent with the underlying purposes and policies of this code or the regulations of the board."

Public procurement units

SECTION 29. Section 11-35-1810(3) of the 1976 Code is amended to read:

"(3) Right of Nondisclosure. Except as otherwise provided by law, information furnished by a bidder or offeror pursuant to this section shall not be disclosed outside of the offices of the board, the Office of the Attorney General, the using agency, or the purchasing agency without prior written consent by the bidder or offeror.

(4) Public procurement units, as defined in Section 11-35-4610, may provide information to one another relating to the responsibility or prior performance of a bidder or offeror, or provide any other information about a bidder or offeror that is otherwise related to procurement. Any person affiliated with a public procurement unit in an official capacity, who provides such information in good faith, is immune from civil and criminal liability which might otherwise result by reason of his actions. In all such civil or criminal proceedings, good faith is a rebuttable presumption."

Cost or pricing data

SECTION 30. Section 11-35-1830 of the 1976 Code is amended to read:

"Section 11-35-1830. (1) Contractor Certification. A contractor shall, except as provided in subsection (3) of this section, submit cost or pricing data and shall certify that, to the best of his knowledge and belief,

the cost or pricing data submitted is accurate, complete, and current as of mutually determined specified date prior to the date of:

(a) the pricing of any contract awarded by competitive sealed proposals pursuant to Section 11-35-1530, by competitive negotiations pursuant to Section 11-35-1535, or pursuant to the sole source procurement authority as provided in Section 11-35-1560 where the total contract price exceeds an amount established by the board in regulations; or

(b) the pricing of any change order or contract modification which exceeds an amount established by the board in regulations.

(2) Price Adjustment. Any contract, change order, or contract modification under which a certificate is required shall contain a provision that the price to the State, including profit or fee, shall be adjusted to exclude any significant sums by which the State finds that such price was increased because the contractor furnished cost or pricing data was inaccurate, incomplete, or not current as of the date agreed upon between parties.

(3) Cost or Pricing Data Not Required. The requirements of this section shall not apply to contracts:

(a) where the contract price is based on adequate price competition;

(b) where the contract price is based on established catalog prices or market prices;

(c) where contract prices are set by law or regulations;

(d) where it is determined in writing in accordance with regulations promulgated by the board that the requirements of this section may be waived and the reasons for such waiver are stated in writing."

Promulgate regulations

SECTION 31. Subarticle 7, Article 5, Chapter 35, Title 11 of the 1976 Code is amended by adding:

"Section 11-35-1840. The board may promulgate regulations to prescribe responsibilities, general rules, and procedures for identifying, evaluating, and resolving organizational conflicts of interest. The aims of such regulations are preventing the existence of conflicting roles that might bias a contractor's judgement, and preventing unfair competitive advantage."

Effect of contract or amendment

SECTION 32. Subarticle 9, Article 5, Chapter 35, Title 11 of the 1976 Code is amended by adding:

"Section 11-35-2015. A contract or amendment thereto, including, but not limited to, a change order or contract modification, is not effective against a governmental body unless the contract or amendment is in writing and signed by an officer having actual authority to bind the governmental body."

Multiterm contracts authority approval

SECTION 33. Section 11-35-2030 of the 1976 Code is amended to read:

"Section 11-35-2030. (1) Specified Period. Unless otherwise provided by law, a contract for supplies, services, or information technology must not be entered into for any a period of more than one year unless approved in a manner prescribed by regulation of the board. The term of the contract and conditions of renewal or extension must be included in the solicitation and funds must be available for the first fiscal period at the time of contracting. Payment and performance obligations for succeeding fiscal periods must be subject to the availability and appropriation of funds for them.

(2) Determination Prior to Use. Before the utilization of a multiterm contract, it must be determined in writing by the appropriate governmental body that:

(a) estimated requirements cover the period of the contract and are reasonably firm and continuing; and

(b) such a contract serves the interest of the State by encouraging effective competition or otherwise promoting economies in state procurement.

(3) Cancellation Due to Unavailability of Funds in Succeeding Fiscal Periods. When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract must be canceled.

(4) Maximum Duration. The maximum potential duration for a contract is five years. A maximum potential duration of up to seven years may be approved by the appropriate chief procurement officer.

(5) Authority Approval. Every type of contract with a maximum potential duration exceeding seven years must be approved by the board.

For competitive procurements, approval of the maximum potential duration must be granted before solicitation."

Inapplicable laws

SECTION 34. Subarticle 9, Article 5, Chapter 35, Title 11 of the 1976 Code is amended by adding:

"Section 11-35-2040. The following laws are inapplicable to contracts solely for the procurement of commercially available off-the-shelf products pursuant to Section 11-35-1550:

(1) Chapter 14, Title 8, Unauthorized Aliens and Public Employment;

(2) Section 11-9-105, Contracts for Legal or Consultant Services;

(3) Section 11-35-5300, Prohibition of Contracting with Discriminatory Business;

(4) Chapter 57, Title 11, Iran Divestment Act;

(5) Chapter 107, Title 44, Drug-Free Workplace Act; and

(6) any other provision of law identified by regulation of the board, that the board determines sets forth policies, procedures, or requirements that impact the procurement of commercially available off-the-shelf products by the State, except for a provision of law that: (i) provides for criminal or civil penalties; (ii) appears in Article 17 of this chapter; or (iii) specifically refers to this section and provides that, notwithstanding this section, it is applicable to contracts for the procurement of commercially available off-the-shelf products."

Void contract terms or conditions

SECTION 35. Subarticle 9, Article 5, Chapter 35, Title 11 of the 1976 Code is amended by adding:

"Section 11-35-2050. Any term or condition in any contract entered into by the State that requires the State to defend, indemnify, or hold harmless another person, must be void ab initio, unless such term is expressly authorized by law. All contracts must be governed by South Carolina law. Without limiting the applicability of Section 11-35-4230, the exclusive venue for any dispute arising out of or related to any contract is in South Carolina. Any contract containing any terms or conditions inconsistent with any of the foregoing are otherwise enforceable as if it did not contain such term or condition."

Finality of determinations

SECTION 36. Section 11-35-2410(A) of the 1976 Code is amended to read:

"(A) The determinations required by the following sections and related regulations are final and conclusive, unless clearly erroneous, arbitrary, capricious, or contrary to law: Section 11-35-1520(7) (Competitive Sealed Bidding: Correction or Withdrawal of Bids; Cancellation of Awards), Section 11-35-1520(11) (Competitive Sealed Bidding: Request for Qualifications), Section 11-35-1525(1) (Competitive Fixed Price Bidding: Conditions for Use), Section 11-35-1528(1) (Competitive Best Value Bidding: Conditions for Use), Section 11-35-1528(8) (Competitive Best Value Bidding: Award), Section 11-35-1529(1) (Competitive Online Bidding: Conditions for Use), Section 11-35-1530(1) (Competitive Sealed Proposals, Conditions for Use), Section 11-35-1530(4) (Competitive Sealed Proposals: Request for Qualifications), Section 11-35-1530(7) (Competitive Sealed Proposals, Selection and Ranking of Prospective Offerors), Section 11-35-1530(9) (Competitive Sealed Proposals Award), Section 11-35-1535(A) (Competitive Negotiations: Conditions for Use), Section 11-35-1535(C) (Competitive Negotiations: Request for Qualifications), Section 11-35-1535(G) (Competitive Negotiations; Evaluation), Section 11-35-1535(H) (Competitive Negotiations: Competitive Range), Section 11-35-1535(J) (Competitive Negotiations: Proposal Revisions, elimination or removal from the competitive range), Section 11-35-1535(K) (Competitive Negotiations: Award), Section 11-35-1540 (Negotiations After Unsuccessful Competitive Sealed Bidding), Section 11-35-1560 (Sole Source Procurement), Section 11-35-1570 (Emergency Procurement), Section 11-35-1710 (Cancellation of Invitation for Bids or Requests for Proposals), Section 11-35-1810 (Responsibility of Bidders and Offerors), Section 11-35-1830(3) (Cost or Pricing Data, Cost or Pricing Data Not Required), Section 11-35-2010 (Types and Forms of Contracts), Section 11-35-2020 (Approval of Accounting System), Section 11-35-2030(2) (Multiterm Contracts, Determination Prior to Use), Section 11-35-3010(1) (Choice of Project Delivery Method), Section 11-35-3020(d) (Construction Procurement Procedures: Negotiations After Unsuccessful Competitive Sealed Bidding), Section 11-35-3023 (Prequalification on State Construction), Section 11-35-3220(5) (Procurement Procedure, Selection and Ranking of the Three Most Qualified), Section 11-35-4210(7) (Stay of Procurement During Protests, Decision to Proceed), and Section

11-35-4810 (Cooperative Use of Supplies, Services, or Information Technology)."

Privileged communications

SECTION 37. Section 11-35-2420 of the 1976 Code is amended to read:

"Section 11-35-2420. (A) When any information or allegations concerning anticompetitive practices among any bidders or offerors, come to the attention of any employee of the State, immediate notice of the relevant facts shall be transmitted to the Office of the Attorney General.

(B) Communications to the Office of the Attorney General and any testimony relating to the matters described in Section 11-35-2420(A) are privileged and may not be disclosed without prior approval of the Office of the Attorney General. A person required or permitted to report pursuant to Section 11-35-2420(A) or who participates in an investigation or judicial proceedings resulting from the report, acting in good faith, is immune from civil and criminal liability which might otherwise result by reason of these actions. In all such civil or criminal proceedings, good faith is a rebuttable presumption."

Project delivery method approval

SECTION 38. Section 11-35-3010 of the 1976 Code is amended by adding an appropriately numbered subsection to read:

"( ) In addition to the requirement of subsection (1), use of the project delivery methods authorized by Section 11-35-3005(1)(e), (1)(f), and (2) must be approved by the board if the total potential value of the overall transaction exceeds twenty-five million dollars."

Source selection methods assigned to project delivery methods

SECTION 39. Section 11-35-3015(1), (5), (6), and (7) of the 1976 Code is amended to read:

"(1) Scope. This section specifies the source selection methods applicable to procurements for the project delivery methods identified in Section 11-35-3005 (Project delivery methods authorized), except as provided in Sections 11-35-1550 (Small Purchases), 11-35-1560 (Sole Source Procurement), 11-35-1570 (Emergency Procurements),

11-35-3230 (Exception for small architect-engineer, and land surveying services contract), 11-35-3310 (Indefinite quantity contracts for architectural-engineering, and land surveying services), and 11-35-3320 (Indefinite quantity contracts for construction).

(5) Design-build. Contracts for design-build must be procured by competitive sealed proposals, as provided in Section 11-35-1530 (Competitive Sealed Proposals) or competitive negotiation, as provided in Section 11-35-1535 (Competitive Negotiations).

(6) Design-build-operate-maintain. Contracts for design-build-operate-maintain must be procured by competitive sealed proposals, as provided in Section 11-35-1530 (Competitive Sealed Proposals) or competitive negotiation, as provided in Section 11-35-1535 (Competitive Negotiations).

(7) Design-build-finance-operate-maintain. Contracts for design-build-finance-operate-maintain must be procured by competitive sealed proposals, as provided in Section 11-35-1530 (Competitive Sealed Proposals) or Section 11-35-1535 (Competitive Negotiations)."

Construction procurement adequate notice

SECTION 40. Section 11-35-3020 of the 1976 Code is amended to read:

"Section 11-35-3020. Exceptions in Competitive Sealed Bidding Procedures. The process of competitive sealed bidding as required by Section 11-35-3015(2)(b) must be performed in accordance with the procedures outlined in Article 5 of this code subject to the following exceptions:

(a) Invitation for Bids. Each governmental body is responsible for developing a formal invitation for bids for each state construction project. The invitation must include, but not be limited to, all contractual terms and conditions applicable to the procurement. A copy of each invitation for bids must be filed with the State Engineer's Office and must be advertised formally in an official state government publication. Adequate notice of the invitation for bids must be given at a reasonable time before the date set forth in it for the opening of bids. The manner in which this official state government publication must be published, the content of the publication itself, the frequency of the publication, the method of subscription to the publication, and the manner by which the publication is distributed must be established by regulation of the board.

(b) Bid Acceptance. Instead of Section 11-35-1520(6), the following provision applies. Bids must be accepted unconditionally without alteration or correction, except as otherwise authorized in this code. The governmental body's invitation for bids must set forth all requirements of the bid including, but not limited to:

(i) The governmental body, in consultation with the architect-engineer assigned to the project, shall identify by license classification or subclassification in the invitation for bids all subcontractors who are expected to perform work for the prime contractor to or about the construction when those subcontractors' contracts are each expected to exceed three percent of the prime contractor's total base bid. In addition, the governmental body, in consultation with the architect-engineer assigned to the project, may identify by license classification or subclassification in the invitation for bids a subcontractor who is expected to perform work which is vital to the project. The determination of which subcontractors are included in the list provided in the invitation for bids is not protestable pursuant to Section 11-35-4210 or another provision of this code. A bidder in response to an invitation for bids shall clearly identify in his bid only those subcontractors to perform the work as identified in the invitation for bids. If the bidder determines to use his own employees to perform a portion of the work for which he would otherwise be required to list a subcontractor and if the bidder is qualified to perform that work under the terms of the invitation for bids, the bidder shall list himself in the appropriate place in his bid and not subcontract that work except with the approval of the governmental body for good cause shown.

(ii) Failure to complete the list provided in the invitation for bids renders the bidder's bid unresponsive.

(iii) The governmental body shall send all responsive bidders a copy of the bid tabulation within ten working days following the bid opening.

(c) Instead of Section 11-35-1520(10), the following provisions apply:

(i) Unless there is a compelling reason to reject bids as prescribed by regulation of the board, notice of an intended award of a contract to the lowest responsive and responsible bidder whose bid meets the requirements set forth in the invitation for bids must be given by posting the notice at a location that is specified in the invitation for bids. The invitation for bids and the posted notice must contain a statement of the bidder's right to protest pursuant to Section 11-35-4210(1) and the date and location of posting must be announced at bid opening. In addition to posting notice, the governmental body promptly shall send all responsive

bidders a copy of the notice of intended award and of the bid tabulation. The mailed notice must indicate the posting date and must contain a statement of the bidder's right to protest pursuant to Section 11-35-4210(1).

(ii) After five business days' notice is given, the governmental body may enter into a contract with the bidder named in the notice in accordance with the provisions of this code and of the bid solicited. The procurement officer must comply with Section 11-35-1810.

(iii) If, at bid opening, only one bid is received and determined to be responsive and responsible and within the governmental body's construction budget, award may be made without the five-day waiting period.

(d) Negotiations after Unsuccessful Competitive Sealed Bidding. Instead of Section 11-35-1540, the following provisions apply:

(i) If bids received pursuant to an invitation for bids exceed available funds, and it is determined in writing by the governmental body that circumstances do not permit the delay required to resolicit competitive sealed bids, and the base bid, less deductive alternates, does not exceed available funds by an amount greater than ten percent of the construction budget established for that portion of the work, a contract may be negotiated pursuant to this section with the lowest responsible and responsive bidder. The governmental body may change the scope of the work to reduce the price to be within the established construction budget but may not reduce the price below the established construction budget more than ten percent without a written request by the agency and the written approval of the chief procurement officer based on the interest of the State.

(ii) If the lowest base bid received pursuant to an invitation for bids exceeds approved available funds and the governmental body is able to identify additional funds for the project, as certified by the appropriate fiscal officers, in the amount of the difference between the lowest base bid and the approved available funds for the project, the governmental body shall submit a request to use those additional funds in accordance with Chapter 47, Title 2."

Prequalification on state construction

SECTION 41. Section 11-35-3023 of the 1976 Code is amended to read:

"Section 11-35-3023. In accordance with this section, the applicable section of Article 5, and procedures published by the State Engineer, a

governmental body may limit participation in a solicitation for construction to only those businesses, including potential subcontractors, that are prequalified. The prequalification process may be used only with the approval and supervision of the State Engineer's Office. If fewer than two businesses are prequalified, the prequalification process must be canceled."

Applicability of competitive negotiations

SECTION 42. Section 11-35-3024(1) and (2) of the 1976 Code is amended to read:

"(1) Applicability. In addition to the requirements of Section 11-35-1530 (Competitive Sealed Proposals) or Section 11-35-1535 (Competitive Negotiations), the procedures in this section apply as provided in items (2), (3), and (4) below.

(2) Content of Request for Proposals. A Request for Proposals for design-build, design-build-operate-maintain, or design-build-finance-operate-maintain:

(a) must include design requirements;

(b) must solicit proposal development documents; and

(c) may, if the governmental body determines that the cost of preparing proposals is high in view of the size, estimated price, and complexity of the procurement:

(i) prequalify offerors in accordance with Section 11-35-3023 by issuing a request for qualifications in advance of the request for proposals;

(ii) select, pursuant to procedures designated in the Manual for Planning and Execution of State Permanent Improvements, a short list of responsible offerors who submit proposals determined to be reasonably susceptible of being selected for award before discussions and evaluations pursuant to Section 11-35-1530, if the number of proposals to be short-listed is stated in the Request for Proposals and prompt public notice is given to all offerors as to which proposals have been short-listed; or

(iii) pay stipends to unsuccessful offerors, if the amount of the stipends and the terms under which stipends are paid are stated in the Request for Proposals.

Subsection (2)(c)(ii) is inapplicable if competitive negotiations are conducted pursuant to Section 11-35-1535."

Bond and security

SECTION 43. Section 11-35-3030(1) and (2)(a) of the 1976 Code is amended to read:

"(1) Bid Security.

(a) Requirement for Bid Security. Bid security is required for all competitive sealed bidding for construction contracts in a design-bid-build procurement in excess of one hundred thousand dollars and other contracts as may be prescribed by the State Engineer's Office. Bid security is a bond provided by a surety company meeting the criteria established by the regulations of the board or otherwise supplied in a form that may be established by regulation of the board.

(b) Amount of Bid Security. Bid security must be in an amount equal to at least five percent of the amount of the bid at a minimum.

(c) Rejection of Bids for Noncompliance with Bid Security Requirements. When the invitation for bids requires security, noncompliance requires that the bid be rejected except that a bidder who fails to provide bid security in the proper amount or a bid bond with the proper rating must be given one working day from bid opening to cure the deficiencies. If the bidder is unable to cure these deficiencies within one working day of bid opening, his bid must be rejected.

(d) Withdrawal of Bids. After the bids are opened, they must be irrevocable for the period specified in the invitation for bids. If a bidder is permitted to withdraw its bid in accordance with regulations promulgated by the board, action must not be had against the bidder or the bid security.

(2) Contract Performance Payment Bonds.

(a) When Required-Amounts. Contracts for construction must require the following bonds or security:

(i) a performance bond satisfactory to the State, executed by a surety company meeting the criteria established by the board in regulations, or otherwise secured in a manner satisfactory to the State, in an amount equal to one hundred percent of the portion of the contract price that does not include the cost of operation, maintenance, and finance;

(ii) a payment bond satisfactory to the State, executed by a surety company meeting the criteria established by the board in regulations, or otherwise secured in a manner satisfactory to the State, for the protection of all persons supplying labor and material to the contractor or its subcontractors for the performance of the construction work provided for in the contract. The bond must be in an amount equal

to one hundred percent of the portion of the contract price that does not include the cost of operation, maintenance, and finance;

(iii) in the case of a construction contract valued at fifty thousand dollars or less, the governmental body may waive the requirements of subitems (i) and (ii) above, if the governmental body has protected the State;

(iv) in the case of a construction manager at-risk contract, the solicitation may provide that bonds or security are not required during the project's preconstruction or design phase, if construction does not commence until the requirements of subitems (i) and (ii) above have been satisfied. Additionally, the solicitation may provide that bonds or security as described in subitems (i) and (ii) above may be furnished for one or more designated portions of the project, in an amount equal to one hundred percent of the value of the construction of each designated portion, and also may prescribe the time of delivery of the bonds or security. In no event may construction of any portion of the work commence until the appropriate bonds or security have been delivered to the governmental body;

(v) in the case of a design-build, design-build-operate-maintain, or design-build-finance-operate-maintain contract, the solicitation may provide that bonds or security as described in subitems (i) and (ii) above may be furnished for one or more designated portions of the project, in an amount equal to one hundred percent of the value of the design and construction of each designated portion, and also may prescribe the time of delivery of the bonds or security. In no event may design or construction of any portion of the work commence until the appropriate bonds or security have been delivered to the governmental body."

Contract clauses and their administration

SECTION 44. Section 11-35-3040(1)(a) of the 1976 Code is amended to read:

"(a) the unilateral right of a governmental body to order in writing:

(i) all changes in the work within the general scope of the contract; and

(ii) all changes in the time of performance of the contract which do not alter the general scope of the contract work;"

Approval of changes consistent with applicable regulations

SECTION 45. Section 11-35-3070 of the 1976 Code is amended to read:

"Section 11-35-3070. Consistent with any applicable regulation of the board, a governmental body may approve and pay for amendments to architectural/engineering contracts and change orders to construction contracts, within the governmental body's authority, which do not alter the general scope or intent of the project and which do not exceed the previously approved project budget."

Adequate notice of invitation

SECTION 46. Section 11-35-3220(2)(b) and (3) of the 1976 Code is amended to read:

"(b) The invitation must include, but not be limited to, the project title, the general scope of work, a description of all professional services required for that project, the submission deadline, and how interested firms may apply for consideration. The agency selection committee shall file a copy of the project description and the invitation with the State Engineer's Office. Adequate notice of the invitation must be given at a reasonable time before the date set forth in it for receipt of responses. The invitation must be advertised formally in an official state government publication. The manner in which this official state government publication must be published, the content of the publication itself, the frequency of the publication, the method for subscription to the publication, and the manner by which the publication is distributed must be established by regulation of the board.

(3) Response to Invitation. The date for submission of information from interested persons or firms in response to an invitation must not be less than fifteen days after publication of the invitation. Interested architect-engineer, construction management, and land surveying persons or firms shall respond to the invitation with the submission of a current and accurate Federal Standard Form 330, Architect-Engineer and Related Services Questionnaire, or successor form or similar information as the State Engineer may specify in the Manual for Planning and Execution of State Permanent Improvement Projects, Part II, and other information that the particular invitation may require."

Value of small contracts

SECTION 47. Section 11-35-3230 of the 1976 Code is amended to read:

"Section 11-35-3230. (1) Procurement Procedures for Certain Contracts. A governmental body securing architect-engineer, construction management, or land surveying services which are estimated not to exceed fifty thousand dollars may award contracts by direct negotiation and selection, taking into account:

(a) the nature of the project;

(b) the proximity of the architect-engineer or land surveying services to the project;

(c) the capability of the architect, engineer, or land surveyor to produce the required service within a reasonable time;

(d) past performance; and

(e) ability to meet project budget requirements.

(2) Maximum Value of Small Contracts with One Person or Firm. The total value of contracts awarded to a single architectural engineering, construction management, or land surveying firm by a single governmental body pursuant to subsection (1) may not exceed one hundred fifty thousand dollars in a twenty-four-month period. Persons or firms seeking to render professional services pursuant to this section shall furnish the governmental body with whom the firm is negotiating a list of professional services, including fees paid for them, performed for the governmental body during the fiscal year immediately preceding the fiscal year in which the negotiations are occurring and during the fiscal year in which the negotiations are occurring.

(3) Submission of Contracts to State Engineer's Office. Copies of contracts, including the negotiated scope of services and fees, awarded pursuant to this section must be submitted to the State Engineer's Office for information.

(4) Splitting of Larger Projects Prohibited. A governmental body may not break a project into small projects for the purpose of circumventing the provisions of Section 11-35-3220 and this section.

(5) When negotiating a contract pursuant to this section, a governmental body may not negotiate with a firm unless any unsuccessful negotiations with a different firm have been concluded in writing. Once negotiations with a firm have been concluded, negotiations may not be reopened."

Establishment of indefinite quantity contracts

SECTION 48. Article 10, Chapter 35, Title 11 of the 1976 Code is amended by adding:

"Section 11-35-3305. With the approval of the appropriate chief procurement officer, and in accordance with any applicable regulations, a procurement officer may establish contracts providing for an indefinite quantity, within state maximum or minimum limits, of specified supplies, service, or information technology, to be furnished during a fixed period, and that provide for the issuance of orders for delivery or performance of individual requirements during the period of the contract. The appropriate chief procurement officer may establish the contracts on behalf of any governmental body or for use by any public procurement unit."

Indefinite quantity contracts

SECTION 49. Section 11-35-3310 of the 1976 Code is amended to read:

"Section 11-35-3310. (1) General Applicability. Indefinite quantity contracts may be awarded on an as-needed basis for architectural-engineering and land-surveying services pursuant to Section 11-35-3220.

(2) Architectural-Engineering and Land-Surveying Services. When architectural-engineering and land-surveying services contracts are awarded, each contract must be limited to a total expenditure of three hundred thousand dollars for a two-year period with individual project expenditures not to exceed one hundred thousand dollars; however, for public institutions of higher learning, and for technical college service contracts authorized by the State Board for Technical and Comprehensive Education, these limits shall be five hundred thousand dollars for total expenditures and two hundred thousand dollars for individual expenditures within the time periods specified.

(3) Small Indefinite Quantity Contracts. Small indefinite quantity contracts for architectural-engineering and land-surveying services may be procured as provided in Section 11-35-3230. A contract established under this section must be subject to Section 11-35-3230, and any applicable regulations."

Task order contract

SECTION 50. Article 10, Chapter 35, Title 11 of the 1976 Code is amended by adding:

"Section 11-35-3320. (A) The term 'task order contract' means a contract that does not procure or specify a firm quantity of services, other than a minimum or maximum quantity, and that provides for the issuance of task orders for the performance of tasks during the period of the contract. Subject to the requirements of this section and other applicable law, a governmental body may enter into task order contracts to acquire construction services when the exact time or exact quantities of future tasks are not known at the time of contract award. In accordance with Section 11-35-4810, the State Engineer may award task order contracts on behalf of any governmental body and for use by any state public procurement unit authorized by the State Engineer.

(B) At any given time, a governmental body may enter into task order contracts with four businesses for each geographic area for each licensing classification and subclassification for construction. Licensing classification and subclassification has the meaning provided by Chapter 11, Title 40. Except as otherwise provided in this section, a task order contract for construction must be procured as provided in Section 11-35-1530, not including paragraph (4) (Request for Qualifications) or paragraph (8) (Negotiations). All evaluations must be conducted by a panel composed of at least three members. A governmental body shall invite the State Engineer or his designee to serve as one of the panel members. Except as provided by regulation, award must be made to the four responsible offerors whose proposals are determined in writing to be the most advantageous to the State, taking into consideration the evaluation factors set forth in the request for proposals. The contract file must contain the basis on which the awards will be made and must be sufficient to satisfy external audit. Procedures and requirements for the notification of intent to award the contracts must be the same as those provided in Section 11-35-1520(1) (Award). Section 11-35-3023 does not apply to contracts awarded pursuant to this section.

(C) Limitations on task order contracts.

(1) A task order contract awarded for geographic area may not be used to perform services at a different geographic area.

(2) A task order contract may not exceed five years, including extensions.

(3) Total expenditures pursuant to all task order contracts for construction resulting from a single solicitation may not exceed four million dollars.

(4) The total construction cost of a single project performed using multiple task orders or task orders in combination with other types of contracts may not exceed five hundred thousand dollars. Projects may not be divided artificially to avoid this limitation.

(5) A single project must not be performed using task order contracts for construction in combination with contracts awarded pursuant to Section 11-35-1550. Standards for determining whether work constitutes a single project must be established in the Manual for Planning and Execution of State Permanent Improvements.

(D) Limitations on task orders.

(1) A task order must clearly specify all tasks to be performed or property to be delivered under the order so the full price for the performance of the work can be established when the order is placed. All task orders must be issued on a fixed-price basis.

(2) A quote request for construction must be provided to all task order contractors. A task order for construction may not be issued unless the governmental body receives at least two responsive, bona fide, fixed-price quotes. Any award must be issued to the contractor submitting the lowest responsive quote.

(3) All task orders must be issued within the period of the contract and must be within the scope and maximum value of the contract.

(4) A task order for construction may not be less than ninety thousand dollars and may not exceed three hundred fifty thousand dollars. Work may not be aggregated or divided artificially in order to avoid these limits.

(E) Any solicitation for a task order contract must include the following:

(1) the period of the contract, including the number of options to extend the contract and the period for which the contract may be extended under each option, if any;

(2) the maximum dollar value of the services to be procured under the contract;

(3) the minimum and maximum dollar value of the services to be procured under a single task order;

(4) a description that reasonably describes the licensing classification and the general scope, nature, complexity, and purposes of the services to be procured under the contract in a manner that will enable a prospective offeror to decide whether to submit an offer;

(5) the procedures that the governmental body will use for requesting fixed price quotes and for issuing orders, a restriction on communications between contractors regarding pending quote requests, and a requirement that all contractors must respond to all quote requests;

(6) the geographic area to which the task order contract applies. Ordinarily, a geographically contiguous area should not be subdivided; and

(7) the number of task order contracts to be awarded.

(F) Every award of a task order contract must be approved by the Office of the State Engineer and is subject to procedures or guidelines established in the Manual for Planning and Execution of State Permanent Improvements. A governmental body shall submit to the Office of the State Engineer any reports required by the Manual for Planning and Execution of State Permanent Improvements.

(G) Administrative review under Article 17 is not available for the award of an individual task order, except for a protest of the award of a task order on the ground that the order increases the scope, period, or maximum value of the task order contract under which the order is issued."

Contract clauses and their administration

SECTION 51.A. Section 11-35-3410(1)(a) of the 1976 Code is amended to read:

"(a) the unilateral right of a governmental body to order in writing changes in the work within the general scope of the contract and temporary stopping of the work or delaying performance; and"

B. Section 11-35-3410(2)(a)(vi) of the 1976 Code is amended to read:

"(vi) in the absence of agreement by the parties, through unilateral determination by the governmental body of the costs attributable to the events or situations under such clauses, with adjustment of profit or fee, all as computed by the governmental body in accordance with applicable sections of the regulations issued under Article 13 of this chapter, if any, and subject to the provisions of Article 17 of this chapter."

Allocation of proceeds for sale or disposal of surplus supplies

SECTION 52. Section 11-35-3820 of the 1976 Code is amended to read:

"Section 11-35-3820. Except as provided in Section 11-35-3830 and the regulations pursuant thereto, the sale of all state-owned supplies, or personal property not in actual public use must be conducted and directed by the Department of Administration. The sales must be held at such places and in a manner as in the judgment of the department is most advantageous to the State. Unless otherwise determined, sales must be by either public auction or competitive sealed bid to the highest bidder. Each governmental body shall inventory and report to the division all surplus personal property not in actual public use held by that governmental body for sale. The department shall deposit the proceeds from the sales, less expense of the sales, in the state general fund or as otherwise directed by regulation. This policy and procedure applies to all governmental bodies unless exempt by law."

Approval and record of trade-in sales

SECTION 53. Section 11-35-3830(2) and (3) of the 1976 Code is amended to read:

"(2) Approval of Trade-In Sales. When the trade-in value of personal property of a governmental body exceeds the specified amount, the Department of Administration shall have the authority to determine whether:

(a) the subject personal property shall be traded in and the value applied to the purchase of new like items; or

(b) the property shall be classified as surplus and sold in accordance with the provisions of Section 11-35-3820. The department's determination shall be in writing and be subject to the provisions of this chapter.

(3) Record of Trade-In Sales. Governmental bodies shall submit quarterly to the Division of Procurement Services a record listing all trade-in sales made under subsections (1) and (2) of this section, including any applicable written determinations."

Proceeds from the sale of publications and materials

SECTION 54. Section 11-35-3840 of the 1976 Code is amended to read:

"Section 11-35-3840. The Division of Procurement Services may license for public sale publications, including South Carolina Business

Opportunities, materials pertaining to training programs, and information technology products that are developed during the normal course of its activities. The items must be licensed at reasonable costs established in accordance with the cost of the items. All proceeds from the sale of the publications and materials must be deposited in the State Treasury in a special account and expended only for the costs of providing the goods and services, and such funds may be retained and expended for the same purposes."

Sale of unserviceable supplies

SECTION 55. Section 11-35-3850 of the 1976 Code is amended to read:

"Section 11-35-3850. Governmental bodies approved by the Department of Administration may sell any supplies owned by it after the supplies have become entirely unserviceable and can properly be classified as 'junk', in accordance with procedures established by the department. All sales of unserviceable supplies by the governmental body must be made in public to the highest bidder, after advertising for fifteen days, and the funds from the sales must be credited to the account of the governmental body owning and disposing of the unserviceable supplies."

Right to protest, procedure, duty and authority to attempt to settle, stay of procurement

SECTION 56. Section 11-35-4210(1), (2), (3), and (7) of the 1976 Code is amended to read:

"(1) Right to Protest.

(a) A prospective bidder, offeror, contractor, or subcontractor who is aggrieved in connection with a solicitation shall protest to the appropriate chief procurement officer in the manner stated in subsection (2) within fifteen days of the date of issuance of the Invitation For Bids Request for Proposals or other solicitation documents, whichever is applicable, or any amendment to it, if the amendment is at issue. An Invitation for Bids or Requests for Proposals or other solicitation document, not including an amendment to it, is considered to have been issued on the date required notice of the issuance is given in accordance with this code.

(b) Any actual bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the intended award or award of a contract shall notify the appropriate chief procurement officer in writing of its intent to protest within seven business days of the date that award or notification of intent to award, whichever is earlier, is posted and sent in accordance with this code. Any actual bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the intended award or award of a contract and has timely notified the appropriate chief procurement officer of its intent to protest, may protest to the appropriate chief procurement officer in the manner stated in subsection (2) within fifteen days of the date award or notification of intent to award, whichever is earlier, is posted and sent in accordance with this code; except that a matter that could have been raised pursuant to subitem (a) as a protest of the solicitation may not be raised as a protest of the award or intended award of a contract.

(c) Any actual or prospective bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the intended award or award of a contract pursuant to Section 11-35-1560 or Section 11-35-1570 shall notify the appropriate chief procurement officer in writing of its intent to protest within five business days of the date that award or notification of intent to award, whichever is earlier, is posted in accordance with this code. Any actual or prospective bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the intended award or award of such a contract and has timely notified the appropriate chief procurement officer of its intent to protest, may protest to the appropriate chief procurement officer in the manner stated in subsection (2) within fifteen days of the date award or notification of intent to award, whichever is earlier, is posted in accordance with this code; except that a matter that could have been raised pursuant to subitem (a) as a protest of the solicitation may not be raised as a protest of the award or intended award of a contract.

(d) The rights and remedies granted by subsection (1) and Section 11-35-4410(1)(b) are not available for contracts with an actual or potential value of up to fifty thousand dollars.

(2) Protest Procedure. A protest pursuant to subsection (1) must be in writing, filed with the appropriate chief procurement officer, and set forth the grounds of the protest and the relief requested with enough particularity to give notice of the issues to be decided. The protest must be received by the appropriate chief procurement officer within the time provided in subsection (1).

(3) Duty and Authority to Attempt to Settle Protests. Before commencement of an administrative review as provided in subsection

(4), the appropriate chief procurement officer, the head of the purchasing agency, or their designees may attempt to settle by mutual agreement a protest of an aggrieved bidder, offeror, contractor, or subcontractor, actual or prospective, concerning the solicitation or award of the contract. The appropriate chief procurement officer has the authority to approve any settlement reached by mutual agreement.

(7) Automatic Stay of Procurement During Protests. In the event of a timely protest pursuant to subsection (1), the State shall not proceed further with the solicitation or award of the contract until ten days after a decision is posted by the appropriate chief procurement officer, or, in the event of timely appeal to the Procurement Review Panel, until a decision is rendered by the panel except that solicitation or award of a protested contract is not stayed if the appropriate chief procurement officer, after consultation with the head of the using agency, makes a written determination that the solicitation or award of the contract without further delay is necessary to protect the interest of the State."

Posting of bond or irrevocable letter of credit

SECTION 57. Section 11-35-4215 of the 1976 Code is amended to read:

"Section 11-35-4215. The agency may request that the appropriate chief procurement officer require any bidder or offeror who files an action protesting the intended award or award of a contract solicited under Article 5 of this code and valued at one million dollars or more to post with the appropriate chief procurement officer a bond or irrevocable letter of credit payable to the State of South Carolina in an amount equal to one percent of the total potential value of the contract as determined by the appropriate chief procurement officer. The chief procurement officer's decision to require a bond or irrevocable letter of credit is not appealable under Article 17. The bond or irrevocable letter of credit shall be conditioned upon the payment of all reasonable reimbursement costs which may be adjudged against the bidder or offeror filing the protest in the administrative hearing in which the action is brought and in any subsequent appellate court proceeding. For protests of sole source or emergency procurements, the bond or irrevocable letter of credit shall be in an amount equal to one percent of the requesting agency's estimate of the contract amount for the sole source or emergency procurement requested. In lieu of a bond or irrevocable letter of credit, the appropriate chief procurement officer may accept a cashier's check or money order

in the amount of the bond or irrevocable letter of credit. If, after completion of the administrative hearing process and any appellate court proceedings, the agency prevails, it may request that the Procurement Review Panel allow it to recover all reasonable reimbursement costs and charges associated with the protest which shall be included in the final order or judgment, excluding attorney's fees. Upon payment of such costs and charges by the bidder or offeror protesting the intended award or award of a contract, the bond, irrevocable letter of credit, cashier's check, or money order shall be returned to the bidder or offeror. Failure to pay such costs and charges by the bidder or offeror protesting the intended award or award of a contract shall result in the forfeiture of the bond, irrevocable letter of credit, cashier's check, or money order to the extent necessary to cover the payment of all reasonable reimbursement costs adjudged against the protesting bidder or offeror. If the bidder or offeror prevails in the protest, the cost of providing the bond, irrevocable letter of credit or cashier's check may be sought from the agency requesting the bond or irrevocable letter of credit; provided that in no event may the amount recovered exceed fifteen thousand dollars."

Authority to debar or suspend

SECTION 58. Section 11-35-4220 of the 1976 Code is amended to read:

"Section 11-35-4220. (1) Authority. After reasonable notice to the person or firm involved, and a reasonable opportunity for that person or firm to be heard, the appropriate chief procurement officer has the authority to debar a person for cause from consideration for award of contracts or subcontracts. The appropriate chief procurement officer has authority to suspend a person or firm from consideration for award of contracts or subcontracts during an investigation if there is probable cause for debarment. The period of debarment or suspension is as prescribed by the appropriate chief procurement officer.

(2) Causes for Debarment or Suspension. The causes for debarment shall include, but not be limited to:

(a) conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of the contract or subcontract;

(b) conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or another offense indicating a lack of business integrity

or professional honesty which currently, seriously, and directly affects responsibility as a state contractor;

(c) conviction under state or federal antitrust laws arising out of the submission of bids or proposals;

(d) violation of contract provisions, as set forth below, of a character regarded by the appropriate chief procurement officer to be so serious as to justify debarment action:

(i) deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or

(ii) a recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts; except, that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor must not be considered a basis for debarment;

(e) violation of an order of a chief procurement officer or the Procurement Review Panel;

(f) violation of the Ethics, Government Accountability, and Campaign Reform Act of 1991, as amended, as determined by the State Ethics Commission, as an incident to obtaining or attempting to obtain a public contract or subcontract, or in the performance of the contract, or subcontract; and

(g) any other cause the appropriate chief procurement officer determines to be so serious and compelling as to affect responsibility as a state contractor or subcontractor, including debarment by another governmental entity for any cause listed in this subsection.

(3) Decision. The appropriate chief procurement officer shall issue a written decision to debar or suspend within ten days of the completion of his administrative review of the matter. The decision must state the action taken, the specific reasons for it, and the period of debarment or suspension, if any.

(4) Notice of Decision. A copy of the decision pursuant to subsection (3) and a statement of appeal rights pursuant to Section 11-35-4220(5) must be mailed or otherwise furnished immediately to the debarred or suspended person and any other party intervening. The appropriate chief procurement officer also shall post a copy of the decision at a time and place communicated to all parties participating in the administrative review and the posted decision must indicate the date of posting on its face and shall be accompanied by a statement of the right to appeal provided in Section 11-35-4220(5).

(5) Finality of Decision. A decision pursuant to subsection (3) is final and conclusive, unless fraudulent or unless the debarred or suspended

person requests further administrative review by the Procurement Review Panel pursuant to Section 11-35-4410(1), within ten days of the posting of the decision in accordance with Section 11-35-4220(4). The request for review must be directed to the appropriate chief procurement officer, who shall forward the request to the panel, or to the Procurement Review Panel, and must be in writing, setting forth the reasons why the person disagrees with the decision of the appropriate chief procurement officer. The person also may request a hearing before the Procurement Review Panel. The appropriate chief procurement officer and any affected governmental body must have the opportunity to participate fully in any review or appeal, administrative or legal.

(6) Debarment constitutes debarment of all divisions or other organizational elements of the contractor, unless the debarment decision is limited by its terms to specific divisions, organization elements, or commodities. The debarring official may extend the debarment decision to include any principals and affiliates of the contractor if they are specifically named and given written notice of the proposed debarment and an opportunity to respond. For purposes of this section, business concerns, organizations, or individuals are affiliates of each other if, directly or indirectly, either one controls or has the power to control the other, or a third party controls or has the power to control both. Indications of control include, but are not limited to, interlocking management or ownership, identity of interests among family members, shared facilities and equipment, common use of employees, or a business entity organized following the debarment, suspension, or proposed debarment of a contractor which has the same or similar management, ownership, or principal employees as the contractor that was debarred, suspended, or proposed for debarment. For purposes of this section, the term ‘principals’ means officers, directors, owners, partners, and persons having primary management or supervisory responsibilities within a business entity including, but not limited to, a general manager, plant manager, head of a subsidiary, division, or business segment, and similar positions.

(7)(a) The fraudulent, criminal, or other seriously improper conduct of any officer, director, shareholder, partner, employee, or other individual associated with a contractor may be imputed to the contractor when the conduct occurred in connection with the individual’s performance of duties for or on behalf of the contractor, or with the contractor’s knowledge, approval, or acquiescence. The contractor’s acceptance of the benefits derived from the conduct is evidence of such knowledge, approval, or acquiescence.

(b) The fraudulent, criminal, or other seriously improper conduct of a contractor may be imputed to any officer, director, shareholder, partner, employee, or other individual associated with the contractor who participated in, knew of, or had reason to know of the contractor's conduct.

(c) The fraudulent, criminal, or other seriously improper conduct of one contractor participating in a joint venture or similar arrangement may be imputed to other participating contractors if the conduct occurred for or on behalf of the joint venture or similar arrangement, or with the knowledge, approval, or acquiescence of these contractors. Acceptance of the benefits derived from the conduct is evidence of such knowledge, approval, or acquiescence.

(8) The chief procurement officers shall maintain and update a list of debarred and suspended persons, and shall make the list publicly available."

Division of Procurement Services' authority to resolve contract controversies

SECTION 59. Section 11-35-4230(1) and (2) of the 1976 Code is amended to read:

"(1) Applicability. This section applies to controversies between a governmental body and a contractor or subcontractor, when the subcontractor is the real party in interest, which arise under or by virtue of a contract between them including, but not limited to, controversies based upon breach of contract, mistake, misrepresentation, or other cause for contract modification or rescission. The procedure set forth in this section constitutes the exclusive means of resolving a controversy between a governmental body and a contractor or subcontractor, when the subcontractor is the real party in interest, concerning a contract governed by the provisions of the South Carolina Consolidated Procurement Code. On behalf of any governmental body or South Carolina public procurement unit that participates in a multiagency, term, or cooperative contract awarded by or under the authority of a chief procurement officer, the Division of Procurement Services may initiate and pursue resolution of any contract controversy which arises under or by virtue of a contract between them including, but not limited to, controversies based upon breach of contract, mistake, misrepresentation, or other cause for contract modification or rescission.

(2) Request for Resolution; Time for Filing. Either the contracting state agency or the contractor or subcontractor, when the subcontractor

is the real party in interest, may initiate resolution proceedings before the appropriate chief procurement officer by submitting a request for resolution to the appropriate chief procurement officer in writing setting forth the specific nature of the controversy and the specific relief requested with enough particularity to give notice of every issue to be decided. A request for resolution of contract controversy must be filed within one year after the date the contractor last performs work under the contract or within one year after the claim accrues, whichever is later; except that in the case of latent defects a request for resolution of a contract controversy must be filed within three years of the date the requesting party first knows or should know of the grounds giving rise to the request for resolution."

Solicitations or awards in violation of the law

SECTION 60. Section 11-35-4310(1) and (3) of the 1976 Code is amended to read:

"(1) Applicability. The provisions of this section apply where it is determined by either the appropriate chief procurement officer or the Procurement Review Panel, upon administrative review, that a solicitation or award of a contract is in violation of the law. The remedies set forth herein may be granted by either the appropriate chief procurement officer, only after review under Section 11-35-4210, or by the Procurement Review Panel, only after review under Section 11-35-4410(1).

(3) Remedies After Award. If, after an award of a contract, it is determined that the solicitation or award is in violation of law:

(a) the contract may be ratified and affirmed, provided it is in the interest of the State; or

(b) the contract may be terminated and the payment of such damages, if any, as may be provided in the contract, may be awarded."

Unauthorized award or modification of a contract

SECTION 61. Subarticle 2, Article 17, Chapter 35, Title 11 of the 1976 Code is amended by adding:

"Section 11-35-4315. The board may provide by regulation for appropriate action where it is discovered either: (a) that a person lacking actual authority has made an unauthorized award or modification of a

contract, or (b) that a contract award or modification is otherwise in violation of the Consolidated Procurement Code or these regulations."

Rights and remedies

SECTION 62. Subarticle 2, Article 17, Chapter 35, Title 11 of the 1976 Code is amended by adding:

"Section 11-35-4340. There is no remedy against the State other than those provided in this chapter in any case involving a procurement subject to this code. The rights and remedies granted in this article are to the exclusion of all other rights and remedies against the State for matters arising out of or related to this code."

Finality of the Procurement Review Panel

SECTION 63. Section 11-35-4410(6) of the 1976 Code is amended to read:

"(6) Finality. Notwithstanding another provision of law, including the Administrative Procedures Act, the decision of the Procurement Review Panel is final as to administrative review and may be appealed only to the court of appeals pursuant to Section 1-23-380, and the filing of an appeal does not stay a decision of the panel."

Final order not appealed

SECTION 64. Subarticle 3, Article 17, Chapter 35, Title 11 of the 1976 Code is amended by adding:

"Section 11-35-4425. If a final order of a chief procurement officer or the Procurement Review Panel is not appealed in accordance with the provisions of this code, upon request of a party to the proceedings, the chief procurement officer or Procurement Review Panel may file a certified copy of the final ruling with a clerk of the circuit court, or a court of competent jurisdiction, as requested. After filing, the certified ruling has the same effect as a judgment of the court where filed and may be recorded, enforced, or satisfied in the same manner as a judgment of that court.

Section 11-35-4430. Unless required for the disposition of ex parte matters authorized by law, members or employees of the panel assigned

to render a decision or to make findings of fact and conclusions of law in a matter pending before the panel shall not communicate, directly or indirectly, in connection with any issue of fact, with any person or party, nor, in connection with any issue of law, with any party or his representative, except upon notice and opportunity for all parties to participate. A panel member: (a) may communicate with other members of the panel, and (b) may have the aid and advice of one or more personal assistants. Any person who violates the provisions of this section shall be deemed guilty of a misdemeanor and, upon conviction, shall be fined not more than two hundred fifty dollars or imprisoned for not more than six months."

Definitions

SECTION 65. Section 11-35-4610 of the 1976 Code is amended to read:

"Section 11-35-4610. As used in this article, unless the context clearly indicates otherwise:

(1) 'Cooperative purchasing' means procurement conducted by, or on behalf of, more than one public procurement unit, or by a public procurement unit with an external procurement activity.

(2) 'External procurement activity' means:

(a) any buying organization not located in this State which, if located in this State, would qualify as a public procurement unit;

(b) buying by the United States government.

(3) 'Local public procurement unit' means any political subdivision or unit of this State which expends public funds for the procurement of supplies, services, information technology, or construction.

(4) 'Mandatory opting' is the requirement for a local procurement unit to choose whether to utilize a state contract before it is established as prescribed in regulation by the board.

(5) 'Public procurement unit' means any of the following:

(a) a local public procurement unit;

(b) a state public procurement unit;

(c) an external procurement activity; or

(d) any not-for-profit entity comprised only of more than one activity or unit listed in subitems (a), (b), or (c), if and as approved in writing by the Materials Management Officer.

(6) 'State public procurement unit' means the offices of the chief procurement officers, any purchasing agency of this State, and any other unit of South Carolina state government."

Cooperative purchasing

SECTION 66. Section 11-35-4810 of the 1976 Code is amended to read:

"Section 11-35-4810. (1) Any public procurement unit may participate in, sponsor, conduct, or administer a cooperative purchasing agreement for the procurement of any supplies, services, technology information, or construction with one or more public procurement units in accordance with an agreement entered into between the participants. Such cooperative purchasing may include, but is not limited to, joint or multi-party contracts between public procurement units and open-ended state public procurement unit contracts which shall be made available to local public procurement units, except as provided in Section 11-35-4820 or except as may otherwise be limited by the appropriate chief procurement officer.

(2) Without limiting other requirements of this code, all cooperative purchasing with other states conducted under this article must be through contracts awarded through full and open competition, including use of source selection methods substantially equivalent to those specified in Article 5 and, as applicable, Article 9 of this code, and consistent with the requirements of Section 11-35-2730 (Assuring Competition).

(3) The offices of the chief procurement officers, and any other purchasing agency of this State, may participate in cooperative purchasing as provided in Section 11-35-4810(1) only if the appropriate chief procurement officer determines in writing: (i) that participation is in the interest of the State, (ii) that the procurement will conform to subsection (2), if applicable, and (iii) that any entities responsible for the management and administration of the procurement, other than another state's central procurement office, have in place appropriate and adequate internal controls to provide safeguards for the maintenance of a procurement system of quality and integrity with clearly defined rules for ethical behavior on the part of all persons engaged in the public procurement process. In making his determination, the chief procurement officer shall evaluate and consider the impact on South Carolina businesses.

(4) Thirty days' prior notice of a proposed multistate solicitation must be provided in accordance with Section 11-35-1520(3). Supplies acquired pursuant to such contracts may be distributed only through vendors with an in-state office, as defined in Section 11-35-1524(A)(6), when available; provided, however, that the provisions of this paragraph

do not apply to public institutions of higher learning if the institution demonstrates a cost savings to the appropriate chief procurement officer in regard to the multistate solicitation and procurement."

Sale, acquisition, or use of supplies by a public procurement unit

SECTION 67. Section 11-35-4830 of the 1976 Code is amended to read:

"Section 11-35-4830. Any public procurement unit may sell to, acquire from, or use any supplies belonging to another public procurement unit independent of the requirements of Articles 5 and 15 of this chapter; provided, that such procurement shall take place only when the procuring entities have good reason to expect the intergovernmental procurement to be more cost effective than doing their own procurement."

Cooperative use of supplies or services

SECTION 68. Section 11-35-4840 of the 1976 Code is amended to read:

"Section 11-35-4840. Any public procurement unit may enter into an agreement independent of the requirements of Articles 5 and 15 of this chapter with any other public procurement unit for the cooperative use of supplies, services, or information technology under the terms agreed upon between the parties; provided, that such cooperative use of supplies, services, or information technology shall take place only when the public procurement units have good reason to expect the cooperative use to be more cost effective than utilizing their own supplies and services."

Supply and proceeds of information services

SECTION 69. Section 11-35-4860(3) and (5) of the 1976 Code is amended to read:

"(3) State Information Services. Upon request, the chief procurement officers may make available to public procurement units or external procurement activities the following services among others:

(a) standard forms;

(b) printed manuals;

(c) product specifications and standards;
(d) quality assurance testing services and methods;
(e) qualified product lists;
(f) source information;
(g) common use commodities listings;
(h) supplier prequalification information;
(i) supplier performance ratings;
(j) debarred and suspended bidders lists;
(k) forms for invitations for bids, requests for proposals, instruction to bidders, general contract provisions and other contract forms;
(l) contracts; or
(m) published summaries of contracts, including price and time of delivery information.

(5) Fees. The chief procurement officers may enter into contractual arrangements and publish a schedule of fees for the services provided under subsections (3) and (4) of this section. All proceeds from the sale of such services must be deposited in the State Treasury in a special account and expended only for the costs of providing the goods and services, and such funds may be retained and expended for the same purposes."

Payments from public procurement

SECTION 70. Section 11-35-4870 of the 1976 Code is amended to read:

"Section 11-35-4870. All payments from any public procurement unit or external procurement activity received by the Division of Procurement Services in connection with sponsoring or administering a cooperative purchase, must be deposited in the State Treasury in a special account and expended only for the costs of providing the goods and services, and such funds may be retained and expended for the same purposes."

Public procurement units in compliance with code requirements

SECTION 71. Section 11-35-4880 of the 1976 Code is amended to read:

"Section 11-35-4880. Where the public procurement unit administering a cooperative purchase complies with the requirements of this code, any public procurement unit participating in such a purchase shall be deemed to have complied with this code. Public procurement units shall not enter into a cooperative purchasing agreement for the purpose of circumventing this code."

Intergovernmental acquisitions

SECTION 72. Subarticle 3, Article 19, Chapter 35, Title 11 of the 1976 Code is amended by adding:

"Section 11-35-4900. Intergovernmental Acquisitions.

(1) Any procurement by a governmental body from any other public procurement unit must be approved in advance of contracting by the applicable chief procurement officer unless either the supply, service, or information technology is expressly authorized by the enabling legislation of the governmental body supplying the item, or the board has exempted the type of procurement from such approval. Upon recommendation of the division, the board may establish criteria for approval. Absent approval, any procurement by a governmental body from any other public procurement unit must be in accordance with the other articles of this code.

(2) Any procurement by a governmental body from any other public procurement unit must be reported to the Division of Procurement Services quarterly. The division shall determine the means and content of the information to be reported. The division shall report to the board annually on such procurements."

Appeals to the court of appeals

SECTION 73. Section 1-23-600(D) of the 1976 Code, as last amended by Act 134 of 2018, is further amended to read:

"(D) An administrative law judge also shall preside over all appeals from final decisions of contested cases pursuant to the Administrative Procedures Act, Article I, Section 22, Constitution of South Carolina, 1895, or another law, except that an appeal from a final order of the Public Service Commission and the State Ethics Commission is to the Supreme Court or the court of appeals as provided in the South Carolina Appellate Court Rules, an appeal from the Procurement Review Panel is to the court of appeals as provided in Section 11-35-4410, and an appeal

from the Workers' Compensation Commission is to the court of appeals as provided in Section 42-17-60. An administrative law judge shall not hear an appeal from an inmate in the custody of the Department of Corrections involving the loss of the opportunity to earn sentence-related credits pursuant to Section 24-13-210(A) or Section 24-13-230(A) or an appeal involving the denial of parole to a potentially eligible inmate by the Department of Probation, Parole and Pardon Services."

Annual audits

SECTION 74. Section 57-1-490 of the 1976 Code is amended to read:

"Section 57-1-490. (A) The department shall be audited by a certified public accountant or firm of certified public accountants once each year to be designated by the State Auditor. The designated accountant or firm of accountants shall issue audited financial statements in accordance with generally accepted accounting principles, and such financial statements must be made available annually by October fifteenth to the General Assembly. The costs and expenses of the audit must be paid by the department out of its funds.

(B) The Legislative Audit Council shall contract for an independent performance and compliance audit of the department's finance and administration division, mass transit division, and construction engineering and planning division. This audit must be completed by January 15, 2010. The Legislative Audit Council may contract for follow-up audits or conduct follow-up audits as needed based upon the audit's initial findings. The costs of these audits, including related administrative and management expenses of the Legislative Audit Council, are an operating expense of the department. The department shall pay directly to the Legislative Audit Council the cost of the audits.

(C) Copies of every audit conducted pursuant to this section must be made available to the Department of Transportation Commission, the State Auditor, the Governor, the Chairmen of the Senate Finance and Transportation Committees, and the Chairmen of the House of Representatives Ways and Means and Education and Public Works Committees."

Department of Administration responsibilities

SECTION 75. Article 1, Chapter 11, Title 1 of the 1976 Code is amended by adding:

"Section 1-11-190. The Department of Administration is responsible for:

(a) assessing the need for and use of information technology;

(b) evaluating the use and management of information technology;

(c) operating a comprehensive inventory and accounting reporting system for information technology;

(d) developing policies and standards for the management of information technology in state government;

(e) initiating a state plan for the management and use of information technology;

(f) providing management and technical assistance to state agencies in using information technology; and

(g) establishing a referral service for state agencies seeking technical assistance or information technology services."

Publication of interim regulations

SECTION 76. No later than the first Monday in September after this act takes effect, the State Fiscal Accountability Authority shall publish interim regulations it will follow to implement changes to Chapter 35, Title 11 of the 1976 Code, as contained in this act. These interim regulations must be used in implementing this act until such time as the final rules and regulations are adopted in accordance with this section and Chapter 23, Title 1. No later than the first Monday in November after this act takes effect, the State Fiscal Accountability Authority shall publish a draft of the proposed final regulations it will follow to implement changes; provided, however, the interim regulations are not subject to the provisions of Chapter 23, Title 1.

Repeal

SECTION 77. Section 11-35-1580 of the 1976 Code is repealed.

Indefinite Quantity Contracts redesignation

SECTION 78. Article 10, Chapter 35, Title 11 of the 1976 Code is redesignated as "Indefinite Quantity Contracts".

Recodification

SECTION 79. Section 11-35-35 is recodified as Section 11-35-5310. Section 11-35-50 is recodified as Section 11-35-5320. Section 11-35-55

is recodified as Section 11-35-5330. Section 11-35-70 is recodified as Section 11-35-5340.

Time effective

SECTION 80. This act takes effect upon approval by the Governor and applies to solicitations issued after that date.

Ratified the 9th day of May, 2019.

Approved the 13th day of May, 2019.

No. 42

(R62, S21)

AN ACT TO AMEND SECTION 63-17-70, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO COURT ORDERS DETERMINING THAT A PUTATIVE FATHER IS THE LEGAL FATHER, SO AS TO REQUIRE THAT THE CHILD'S BIRTH CERTIFICATE BE AMENDED AND FOR OTHER PURPOSES; TO AMEND SECTION 44-63-163, RELATING TO BIRTH CERTIFICATES PREPARED AFTER A PATERNITY DETERMINATION, SO AS TO MAKE CONFORMING CHANGES; AND TO AMEND SECTION 44-1-310, RELATING TO THE MATERNAL MORBIDITY AND MORTALITY REVIEW COMMITTEE, SO AS TO CHANGE THE OPERATION OF THE COMMITTEE BY ASSIGNING CERTAIN RESPONSIBILITIES TO STAFF OF THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL, TO PROVIDE FUNDING CONTINGENCIES, AND FOR OTHER PURPOSES.

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

Paternity court orders

SECTION 1. Section 63-17-70 of the 1976 Code is amended to read:

"Section 63-17-70. (A)(1) Upon a finding that the putative father is the natural father of the child, the court must issue an order designating the putative father as the natural father and ordering that the birth certificate be amended to include the name of the father.

(2) The order must:

(a) set forth the social security numbers, or the alien identification numbers assigned to resident aliens who do not have social security numbers, of both parents;

(b) establish a duty of support and provide for child support payments in amounts and at a frequency to be determined by the court; and

(c) provide for other relief which has been properly prayed for in the pleadings and which is considered reasonable and just by the court.

(B) Upon a finding that the putative father is not the father of the child, the court shall issue an order which sets forth this finding.

(C) Upon entry of a court order or an administrative determination that the putative father is the legal father pursuant to subsection (A), the clerk of court shall send a report to the Registrar of the Division of Vital Statistics of the Department of Health and Environmental Control showing such information as may be required on an amended certificate of birth to be furnished by the Division of Vital Statistics of the Department of Health and Environmental Control."

Birth certificate after paternity determination

SECTION 2. Section 44-63-163 of the 1976 Code is amended to read:

"Section 44-63-163. Upon entry of a court order or an administrative determination that the putative father is the legal father pursuant to Section 63-17-70(A), the clerk of court shall send a report to the Registrar of the Division of Vital Statistics of the Department of Health and Environmental Control showing such information as may be required on an amended certificate of birth to be furnished by the Division of Vital Statistics of the Department of Health and Environmental Control. A new certificate must be prepared for a child born in this State to reflect the name of the father determined by the court or an administrative agency of competent jurisdiction upon receipt of a certified copy of a court or administrative determination of paternity pursuant to Section 63-17-10. Orders modifying, vacating, or amending paternity orders must be handled by the clerk of court and State Registrar in the same manner. If the surname of the child is not decreed by the court, the surname must not be changed on the certificate. When an

amended certificate is prepared, the original certificate and certified copy of the court order must be placed in a sealed file not to be subject to inspection except by order of the family court."

Maternal Morbidity and Mortality Review Committee

SECTION 3. Section 44-1-310 of the 1976 Code is amended to read:

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

(B) The State Registrar shall provide the following necessary data from death certificates of women who died within a year of pregnancy to the department staff for review to assist in identifying maternal death information:

(1) name;
(2) date and time of death;
(3) state and county of residence;
(4) date of birth;
(5) marital status;
(6) citizenship status;
(7) United States armed forces veteran status;
(8) educational background;
(9) race and ethnicity;
(10) date and time of injury;
(11) place of injury;
(12) location where injury occurred;
(13) place of death (facility name and/or address);
(14) manner of death;
(15) whether an autopsy was performed and findings available as to the cause of death;
(16) whether tobacco contributed to death;
(17) primary and contributing causes of death.

(C) The State Registrar shall provide the following necessary data from birth certificates or fetal death reports linked to the woman for whom data from the death certificate was provided pursuant to subsection (B), where available, to department staff for review to assist in identifying maternal death information:

(1) medical record number;
(2) date of delivery;
(3) location of event;
(4) name of mother;
(5) mother's date of birth;
(6) mother's race and ethnicity;
(7) mother's pregnancy history;
(8) mother's height and weight;
(9) date of last normal menstrual period;
(10) date of first prenatal visit;
(11) number of prenatal visits;
(12) plurality;
(13) use of WIC during pregnancy;
(14) delivery payment method;
(15) cigarette smoking before and during pregnancy;
(16) risk factors during pregnancy;
(17) infections present or treated during pregnancy;
(18) onset of labor;
(19) obstetric procedures;
(20) characteristics of labor and delivery;
(21) maternal morbidity.

(D) The department must not disclose any information collected under this section that would identify the mother or baby with anyone outside the department, including the committee. Identifying information includes, but may not be limited to, names, addresses more specific than the county of residence, medical record numbers, and dates and times of birth or death.

(E) The department, or its representatives, on behalf of the committee, shall:

(1) extract necessary data elements from death certificates and birth certificates or fetal death reports, as applicable, and provide de-identified information to the committee for its review and consideration;

(2) review and abstract medical records and other relevant data;

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

(F) The committee shall:

(1) review information and records provided by the department;

(2) determine whether maternal death cases reviewed are pregnancy related, as defined as a death within one year of the pregnancy with a direct or indirect causation related to the pregnancy or postpartum period;

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

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

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

(6) disseminate findings and recommendations pursuant to subsection (J).

(G)(1) Health care providers and pharmacies licensed pursuant to Title 40 shall provide reasonable access to the department and its representatives, on behalf of the committee, to all relevant medical records associated with a case under review by the committee.

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

(3) Coroners and law enforcement shall provide reasonable access to the department and its representatives, on behalf of the committee, to all relevant records associated with a case under review by the committee.

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

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

(I)(1) All proceedings and activities of the committee, opinions of members of the committee formed as a result of the proceedings and activities, and records obtained, created, or maintained pursuant to this section, including records of interviews, written reports, and statements

procured by the department or another person, agency, or organization acting jointly or under contract with the department in connection with the requirements of this section, are confidential and are not subject to the provisions of Chapter 4, Title 30 relating to open meetings or public records, or subject to subpoena, discovery or introduction into evidence in any civil or criminal proceeding. However, this section must not be construed to limit or restrict the right to discover or use in any civil or criminal proceeding anything that is available from another source and entirely independent of the committee's proceedings.

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

(J) Reports of aggregated nonindividually identifiable data for the previous calendar year must be compiled and disseminated by March first of the following year in an effort to further study the causes and problems associated with maternal deaths. Reports must be distributed to the General Assembly, the Director of the Department of Health and Environmental Control, health care providers and facilities, key governmental agencies, and others necessary to reduce the maternal death rate.

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

(L) The department shall apply for and use any available federal or private monies to help fund the costs associated with implementing the provisions of this section."

Time effective

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

Ratified the 13th day of May, 2019.

Approved the 16th day of May, 2019.

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No. 43

(R63, S105)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 47-1-225 SO AS TO REQUIRE THAT MAGISTRATES AND MUNICIPAL COURT JUDGES RECEIVE AT LEAST TWO HOURS OF INSTRUCTIONS ON ISSUES CONCERNING ANIMAL CRUELTY EVERY FOUR YEARS; TO AMEND SECTION 47-3-10, RELATING TO DEFINITIONS APPLICABLE TO DOMESTIC PETS, SO AS TO DEFINE THE TERM "LITTER"; TO AMEND SECTION 47-3-60, RELATING TO THE DISPOSITION OF IMPOUNDED ANIMALS, SO AS TO AUTHORIZE AN ANIMAL SHELTER TO TURN OVER A LITTER OF UNIDENTIFIABLE DOGS OR CATS UNDER CERTAIN CIRCUMSTANCES; BY ADDING SECTION 47-1-145 SO AS TO PROVIDE FOR THE CUSTODY AND CARE OF AN ANIMAL AFTER THE ARREST OF THE ANIMAL'S OWNER FOR CHARGES RELATED TO ANIMAL CRUELTY; TO AMEND SECTION 56-3-9600, RELATING TO THE SPECIAL FUND TO SUPPORT LOCAL ANIMAL SPAYING AND NEUTERING PROGRAMS, SO AS TO ESTABLISH CERTAIN PROCEDURES FOR THE AWARD OF GRANTS TO SPAYING AND NEUTERING PROGRAMS; TO AMEND SECTION 40-69-30, RELATING TO A LICENSE TO PRACTICE VETERINARY MEDICINE, SO AS TO PROVIDE THAT A VETERINARIAN LICENSED IN ANOTHER JURISDICTION MAY OBTAIN AN EMERGENCY LIMITED LICENSE DURING AN EMERGENCY OR NATURAL DISASTER; TO AMEND SECTIONS 47-3-470, 47-3-480, AND 47-3-490, ALL RELATING TO THE STERILIZATION OF DOGS AND CATS, SO AS TO REMOVE REFERENCES TO "ANIMAL REFUGE" AND REPLACE IT WITH "RESCUE ORGANIZATION".

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

Animal cruelty instruction for certain judges

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

"Section 47-1-225. Every four years, at their mandatory continuing legal education programs, magistrates and municipal court judges must receive at least two hours of instruction on issues concerning animal cruelty. The content of the continuing legal education must be determined by the South Carolina Court Administration at the direction of the Chief Justice of the South Carolina Supreme Court."

"Litter" defined

SECTION 2. Section 47-3-10 of the 1976 Code is amended to read:

"Section 47-3-10. For the purpose of this article:

(1) 'Animal' is defined as provided for in Chapter 1.

(2) 'Animal shelter' includes any premises designated by the county or municipal governing body for the purpose of impounding, care, adoption, or euthanasia of dogs and cats held under authority of this article.

(3) 'Dog' includes all members of the canine family, including foxes and other canines.

(a) A dog is deemed to be 'running at large' if off the premises of the owner or keeper and not under the physical control of the owner or keeper by means of a leash or other similar restraining device.

(b) A dog is deemed to be 'under restraint' if on the premises of its owner or keeper or if accompanied by its owner or keeper and under the physical control of the owner or keeper by means of a leash or other similar restraining device.

(4) 'Cat' includes all members of the feline family.

(5) 'Litter' means multiple offspring that are born at one time from the same mother.

(6) 'Vicious dog' means any dog evidencing an abnormal inclination to attack persons or animals without provocation."

Impounded animals, litter of dogs or cats may be turned over for life-saving purposes

SECTION 3. Section 47-3-60 of the 1976 Code is amended to read:

"Section 47-3-60. (A) After any animal has been quarantined pursuant to South Carolina Rabies Control Act and is unclaimed by its owner, after the animal shelter employees have made a good faith effort to contact the identified owner as required by Section 47-3-540, the animal shelter employees, unless the animal must be kept pending

disposition of a criminal or civil trial involving the animal or unless a hearing on the disposition of the animal is held prior to the trial, may dispose of the animal by adoption or by euthanasia or the animal may be turned over to any organization established for the purpose of caring for animals, such as the Humane Society.

(B) Notwithstanding subsection (C), a litter of unidentifiable dogs or cats four months of age or younger may be turned over to any organization established for the purpose of caring for animals immediately, so long as the litter is turned over for life-saving purposes.

(C) After any animal has been impounded for five calendar days and is unclaimed by its owner, and after the animal shelter employees have made a good faith effort to contact the identified owner as required by Section 47-3-540, the animal shelter employees, unless the animal must be kept pending disposition of a criminal or civil trial involving the animal or unless a hearing on the disposition of the animal is held prior to the trial, may dispose of the animal by adoption or by euthanasia or the animal may be turned over to any organization established for the purpose of caring for animals, such as the Humane Society.

(D) Complete records must be kept by shelter officials as to the disposition of all animals impounded."

Animal cruelty, custody and care of animal after arrest

SECTION 4. Chapter 1, Title 47 of the 1976 Code is amended by adding:

"Section 47-1-145. (A) Any person, organization, or other entity that is awarded custody of an animal under the provisions of Section 47-1-150 because of the arrest of a defendant for a violation of any provision of Chapter 1, Title 47 or Chapter 27, Title 16 and that provides services to the animal without compensation may file a petition with the court requesting that the defendant, if found guilty, be ordered to deposit funds in an amount sufficient to secure payment of all the reasonable expenses incurred by the custodian in caring for and providing for the animal pending the disposition of the litigation. In the absence of a conviction, the county or municipality making the arrest shall pay the reasonable expenses of the custodian. For purposes of this section, 'court' refers to municipal or magistrates court, and 'reasonable expenses' includes the cost of providing food, water, shelter, and care, including medical care, but does not include extraordinary medical procedures.

(B) The court shall, at the time of adjudication, determine the actual cost of care for the animal that the custodian incurred pursuant to subsection (A). Either party may demand that the trial be given priority over other cases.

(C)(1) If the court makes a final determination of the charges or claims against the defendant in his favor, then the defendant may recover custody of his animal.

(2) If the defendant is found guilty, then the custodian of the animal may then determine if the animal is suitable for adoption and if adoption can be arranged for the animal. The animal may not be adopted by the defendant or by any person residing in the defendant's household if the defendant was found guilty. If no adoption can be arranged after the forfeiture or if the animal is unsuitable for adoption, then the custodian shall humanely euthanize the animal.

(D) Within thirty days of an animal's impoundment, the animal's custodian must provide a good faith estimate, pursuant to subsection (A), of the daily custodial cost of the impounded animal. Upon receipt of the good faith estimate, the court shall then issue a notice to the defendant about his impounded animal that includes:

(1) an estimate of the daily custodial costs required to care for the animal;

(2) a statement that the defendant, if found guilty, shall be required to pay for the animal's care during impoundment; and

(3) a statement that the defendant, at any time prior to final adjudication, has the right to forfeit ownership of the animal and avoid all future custodial costs related to the animal's care but not costs already accrued.

(E) The remedy provided for in this section is in addition to any other remedy provided by law."

Grants for spay and neuter programs

SECTION 5. Section 56-3-9600(B) of the 1976 Code is amended to read:

"(B)(1) Notwithstanding another provision of law, of the fees collected pursuant to this section, the Comptroller General shall place into the State Highway Fund as established by Section 57-11-20, to be distributed as provided in Section 11-43-167, an amount equal to the expenses of the Department of Motor Vehicles in producing and administering the special license plates. The remaining funds collected from the special motor vehicle license fee must be deposited in a special

account, separate and apart from the general fund, designated for use by the South Carolina Department of Agriculture to support local animal spaying and neutering programs. The South Carolina Department of Agriculture may use up to ten percent of the fees deposited in the special account for the administration of the program. Local private nonprofit tax exempt organizations offering animal spaying and neutering programs may apply for grants from this fund to further their tax exempt purposes.

(2) An agency may apply for up to two thousand dollars per grant application at the beginning of each fiscal year and may apply for multiple grants during a fiscal year. Total available grant funds shall be based on the amount of funds collected each previous fiscal year. Grants must specify how many surgeries will be performed and the species and gender of the animals undergoing surgery. Agencies may only apply for one grant at a time. Once a grant is fulfilled, an agency may apply for another grant, provided that funds are available. Grants must be fulfilled within six months of receiving funds. Once grants are completed, agencies must submit to No More Homeless Pets / South Carolina Animal Care and Control Association (SCACCA) a report identifying each person participating; the basis of eligibility for the program; whether animals are being spayed or neutered; dates of spaying or neutering and of rabies vaccines if applicable; descriptions of animals, including gender; and the appropriate amount charged toward the grant. Any unused funds must be returned. If a copay was charged to participating individuals, then that amount must also be included. The Department of Agriculture shall encourage participation from Tier 3 and Tier 4 counties.

(3) SCACCA or its successor organization, on behalf of the tax exempt organizations, shall coordinate the grant program, make the request for reimbursement from the Department of Agriculture, and distribute the individual grants to the participating tax exempt organizations."

Veterinarian, emergency limited license

SECTION 6. Section 40-69-30 of the 1976 Code is amended to read:

"Section 40-69-30. (A) A person may not practice veterinary medicine without a license issued in accordance with this chapter, except as provided in subsection (B). A person who uses in connection with his name the words or letters 'D.V.M.', 'V.M.D.', 'Doctor of Veterinary Medicine', 'Veterinary Medical Doctor', or other letters, words, or

insignia indicating or implying that one is engaged in the practice of veterinary medicine or who in any other way, orally or in writing or in print or by sign directly or by implication, represents oneself as engaged in the practice of veterinary medicine without being licensed by the board is subject to the penalties provided for in this chapter.

(B)(1) During an emergency or natural disaster, a veterinarian or veterinary technician who is not licensed in accordance with this chapter, but is licensed and in good standing in another jurisdiction, may obtain an emergency limited license to practice veterinary medicine related to the response efforts in locations in this State if:

(a) an official declaration of a state of emergency has been made by the Governor of this State or his delegated state official; and

(b) an official invitation has been extended to the veterinarian or veterinary technician for a specified time by the Governor during emergencies.

(2) An applicant for an emergency limited license must submit documentation as may be acceptable to the board under the circumstances to demonstrate eligibility for the limited license, including documentation of an existing license in good standing."

"Public or private rescue organization" defined

SECTION 7. Section 47-3-470(3) of the 1976 Code is amended to read:

"(3) 'Public or private rescue organization' means harborers of unwanted animals of any breed, including crossbreeds, who provide food, shelter, and confinement for a group of dogs, a group of cats, or a combination of dogs and cats."

Sterilization of dogs, public or private rescue organization

SECTION 8. Section 47-3-480 of the 1976 Code is amended to read:

"Section 47-3-480. (A) A public or private animal shelter, animal control agency operated by a political subdivision of this State, humane society, or public or private rescue organization shall make provisions for the sterilization of all dogs or cats acquired from the shelter, agency, society, or rescue organization by:

(1) providing sterilization by a licensed veterinarian before relinquishing custody of the animal; or

(2) entering into a written agreement with the person acquiring the animal guaranteeing that sterilization will be performed by a licensed

veterinarian within thirty days after acquisition of a sexually mature animal or no later than six months of age except upon a written statement issued by a licensed veterinarian stating that such surgery would threaten the life of the animal.

(B) This section does not apply to a privately owned animal which the shelter, agency, society, or rescue organization may have in its possession for any reason if the owner of the animal claims or presents evidence that the animal is his property.

(C) All costs of sterilization pursuant to this section are the responsibility of the person acquiring the animal and, if performed before acquisition, may be included in the fees charged by the shelter, agency, society, or rescue organization for the animal.

(D) A person acquiring an animal from a shelter, an agency, a society, or a rescue organization which is not sterile at the time of acquisition shall submit to the shelter, agency, society, or rescue organization a signed statement from the licensed veterinarian performing the sterilization required by subsection (A) within seven days after sterilization attesting that the sterilization has been performed."

Forfeiture of animal to a rescue organization

SECTION 9. Section 47-3-490 of the 1976 Code is amended to read:

"Section 47-3-490. A person who fails to comply with Section 47-3-480(A)(2) or 47-3-480(D) must forfeit ownership of the dog(s) or cat(s) acquired from the shelter, agency, society, or rescue organization which adopted the animal to the owner. In addition to forfeiting ownership, the person who acquired the animal must pay to the shelter, agency, society, or rescue organization the sum of two hundred dollars as liquidated damages. Such remedies shall be in addition to any other legal or equitable remedies as may be available to the shelter, agency, society, or rescue organization for breach of the written agreement as provided for in Section 47-3-480(A)(2) or failure to comply with Section 47-3-480(D)."

Findings

SECTION 10. The General Assembly finds it is the best practice for a shelter, public or private, to prepare and maintain records documenting the number of animals admitted to the facility and the method by which those animals exit the facility, whether by adoption, fostering, natural death, euthanasia, transfer to another state, or other means of discharge.

Time effective

SECTION 11. This act takes effect upon approval by the Governor.

Ratified the 13th day of May, 2019.

Approved the 16th day of May, 2019.

No. 44

(R64, S281)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTIONS 47-3-980 AND 47-3-990 SO AS TO PROVIDE THAT INTENTIONAL MISREPRESENTATION OF A SERVICE ANIMAL IS UNLAWFUL, TO ESTABLISH PENALTIES, AND FOR OTHER PURPOSES; TO AMEND SECTION 56-7-10, RELATING TO OFFENSES FOR WHICH UNIFORM TRAFFIC TICKETS MUST BE USED, SO AS TO ADD THE OFFENSE OF MISREPRESENTING SERVICE ANIMALS; TO AMEND SECTIONS 47-3-920 AND 47-3-970, RELATING TO TERMS DEFINED IN LAYLA'S LAW AND RESTITUTION REQUIREMENTS, RESPECTIVELY, SO AS TO MAKE CONFORMING CHANGES; AND TO AMEND SECTION 31-21-70, RELATING TO FAIR HOUSING APPLICATIONS, SO AS TO ALLOW LANDLORDS TO ASK CERTAIN QUESTIONS REGARDING A TENANT'S OR PROSPECTIVE TENANT'S ANIMAL FOR PURPOSES OF REASONABLE ACCOMMODATIONS.

Whereas, service animals that are properly trained to assist persons with disabilities play a vital role in establishing independence for such persons; and

Whereas, the term "service animal" has a distinct meaning in the law. A service animal means an animal that is trained for the purposes of assisting or accommodating the sensory, mental, or physical disability of a disabled person. Under the law, the provision of emotional support,

well-being, comfort, or companionship does not constitute the work or tasks of a service animal; and

Whereas, no vest, other marking, or documentation is required for an animal to qualify as a service animal, nor are such vests, markings, or documentation a reliable indication of whether an animal is, by law, a service animal. People sometimes erroneously think that a therapy animal, an emotional support animal, or any animal wearing a vest or having any other type of marking is a service animal as defined by law; and

Whereas, there is an increasing number of occurrences in which people exploit the confusion related to service animals and attempt to bring an animal into a place that it would otherwise not be allowed to enter by passing off the pet, therapy animal, or emotional support animal as a service animal, either by oral misrepresentation, placement of a vest or other marking on the animal, or presentation of a "certificate", despite knowing that it is not a service animal; and

Whereas, some companies mislead individuals into believing that they will be entitled to the rights or privileges for individuals with disabilities with service animals if they buy the company's vests or obtain some type of certificate. These misrepresentations, in some cases, are unlawful deceptive trade practices and compound the confusion around service animals; and

Whereas, commendably, federal and state laws require places of public accommodation, including airports, restaurants, theaters, stores, hospitals, and more, to allow any animal that is presented as a service animal into the place of public accommodation. These same places of public accommodation face a dilemma if someone enters the premises and intentionally misrepresents his animal as a service animal; and

Whereas, when people try to falsely represent a nonservice animal as a service animal, business owners and other places of public accommodation become increasingly distrustful that the animals being represented to them as service animals are, in fact, service animals. Misrepresentation of service animals delegitimizes the program and makes it harder for persons with disabilities to gain unquestioned acceptance of their legitimate, properly trained, and essential service animals. Now, therefore,

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

Intentional misrepresentation of a service animal

SECTION 1. Article 15, Chapter 3, Title 47 of the 1976 Code is amended by adding:

"Section 47-3-980. (A) It is unlawful for a person to intentionally misrepresent an animal in his possession as a service animal or service animal-in-training for the purpose of obtaining any right or privilege provided to a disabled person if the person knows that the animal in his possession is not a service animal or service animal-in-training.

(B) A person who is adjudicated to be in violation of the provisions of subsection (A) must be fined:

(1) for a first offense, an amount not more than two hundred fifty dollars;

(2) for a second offense, an amount not more than five hundred dollars; and

(3) for a third or subsequent offense, an amount not more than one thousand dollars.

(C) Inquiries made in order to investigate and enforce the provisions of this section are limited to those inquiries allowed by the Department of Justice pursuant to 28 C.F.R. Section 36.302.

(D) A custodial arrest for a violation of subsection (A) must not be made, except upon a warrant issued for failure to appear in court when summoned or for failure to pay an imposed fine. A violation of subsection (A) does not constitute a criminal offense.

Section 47-3-990. Places of public accommodation may establish rules and regulations related to access to such facilities by nonservice animals, including emotional support animals."

Use of uniform traffic tickets

SECTION 2. Section 56-7-10(A) of the 1976 Code is amended to read:

"(A) There will be a uniform traffic ticket used by all law enforcement officers in arrests for traffic offenses and for the following additional offenses:

(1) Interfering with Police Officer Serving Process Section 16-5-50;

(2) Dumping Trash on Highway/Private Property Section 16-11-700;

(3) Indecent Exposure Section 16-15-130;

(4) Disorderly Conduct Section 16-17-530;

(5) Damaging Highway Section 57-7-10;

(6) Place Glass, Nails, etc. on Highway Section 57-7-20;

(7) Obstruction of Highway by Railroad Cars, etc. Section 57-7-240;

(8) Signs Permitted on Interstate Section 57-25-140;

(9) Brown Bagging Section 61-5-20;

(10) Drinking Liquors in Public Conveyance Section 61-13-360;

(11) Poles Dragging on Highway Section 57-7-80;

(12) Open Container Section 61-9-87;

(13) Purchase or Possession of Beer or Wine by a Person Under Age Section 63-19-2440;

(14) Purchase or Possession of Alcoholic Liquor by a Person Under Age Twenty-One Section 63-19-2450;

(15) Unlawful Possession and Consumption of Alcoholic Liquors Section 61-5-30;

(16) Sale of Beer or Wine on Which Tax Has Not Been Paid Section 61-9-20;

(17) Falsification of Age to Purchase Beer or Wine Section 61-9-50;

(18) Unlawful Purchase of Beer or Wine for a Person Who Cannot Legally Buy Section 61-9-60;

(19) Unlawful Sale or Purchase of Beer or Wine, Giving False Information as to Age, Buying Beer or Wine Unlawfully for Another Section 61-9-85;

(20) Employment of a Person Under the Age of Twenty-One as an Employee in Retail or Wholesale or Manufacturing Liquor Business Section 61-13-340;

(21) Failure to Remove Doors from Abandoned Refrigerators Section 16-3-1010;

(22) Malicious Injury to Animals or Personal Property Section 16-11-510;

(23) Timber, Logs, or Lumber Cutting, Removing, Transporting Without Permission, Valued at Less Than Fifty Dollars Section 16-11-580;

(24) Littering Section 16-11-700;

(25) Larceny of a Bicycle Valued at Less Than One Hundred Dollars Section 16-13-80;

(26) Shoplifting Section 16-13-110;

(27) Cock Fighting Section 16-17-650;

(28) Ticket Scalping Section 16-17-710;

(29) Domestic Violence, second and third degree Section 16-25-20;

(30) Glue Sniffing Section 44-53-1110;

(31) Trespassing Section 16-11-755;

(32) Trespassing Section 16-11-600;

(33) Trespassing Section 16-11-610;

(34) Trespassing Section 16-11-620;

(35) Negligent Operation of Watercraft; Operation of Watercraft While Under Influence of Alcohol or Drugs Section 50-21-110;

(36) Negligence of Boat Livery to Provide Proper Equipment and Registration Section 50-21-120;

(37) Interference with Aids to Navigation or Regulatory Markers or Operation of Watercraft in Prohibited Area Section 50-21-170;

(38) Operation of Watercraft Without a Certificate of Title Section 50-23-190;

(39) Parking on Private Property without Permission Section 16-11-760;

(40) Certificate of Veterinary Inspection; Requirement for Out-of-State Livestock or Poultry Section 47-4-60;

(41) Inhibition of Livestock Inspection Section 47-4-120;

(42) Imported Swine Section 47-6-50;

(43) Operating Equine Sales Facility or Livestock Market Without Permit Section 47-11-20;

(44) Liability of Person Removing Livestock for Slaughter Section 47-11-120;

(45) Notice to Disinfect Section 47-13-310;

(46) Quarantine of Livestock or Poultry Section 47-4-70;

(47) Unlawful for Horse to Enter State Unless Tested Section 47-13-1350;

(48) Quarantine of Exposed Horses Section 47-13-1360;

(49) Proof of Test Required for Public Assembly of Horses Section 47-13-1370;

(50) False Certificates Section 47-13-1390;

(51) Unlawful to Feed Garbage to Swine Section 47-15-20;

(52) Notification Required from Certain Persons Disposing of Garbage Section 47-15-40;

(53) Sale of Uninspected Meat and Meat Products Section 47-17-60;

(54) Sale of Uninspected Poultry and Poultry Product Section 47-19-70;

(55) Misrepresenting Service Animals Section 47-3-980."

Definition, service animal-in-training

SECTION 3. Section 47-3-920(4) of the 1976 Code is amended to read:

"(4)(a) 'Service animal' or 'service animal-in-training' means an animal that is trained or that is being trained to do work or perform tasks for an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability. A service animal is not a pet and is limited to a dog or a miniature horse. The work done or tasks performed must be directly related to the individual's disability and may include, but are not limited to:

(i) guiding an individual who is visually impaired or blind;

(ii) alerting an individual who is deaf or hard of hearing;

(iii) pulling a wheelchair;

(iv) assisting with mobility or balance;

(v) alerting others and protecting an individual if the individual is having a seizure;

(vi) retrieving objects;

(vii) alerting an individual to the presence of allergens;

(viii) providing physical support and assistance with balance and stability to an individual with a mobility disability;

(ix) helping an individual with a psychiatric or neurological disability by preventing or interrupting impulsive or destructive behaviors;

(x) reminding an individual with a mental illness to take his prescribed medications;

(xi) calming an individual with post-traumatic stress disorder during an anxiety attack; or

(xii) doing other specific work or performing other special tasks.

(b) The crime-deterrent effect of an animal's presence and the provision of emotional support, well-being, comfort, or companionship do not constitute work or tasks for the purposes of this definition."

Definitions

SECTION 4. Section 47-3-920 of the 1976 Code is amended by adding appropriately numbered items to read:

"( ) 'Emotional support animal' means an animal intended to provide companionship and reassurance.

( ) 'Places of public accommodation' means airports, train stations, bus stations, and establishments defined in Section 45-9-10."

Restitution

SECTION 5. Section 47-3-970 of the 1976 Code is amended to read:

"Section 47-3-970. (A) A defendant convicted of a violation of Sections 47-3-930, 47-3-940, 47-3-950, or 47-3-960 may be ordered to make full restitution for damages including incidental and consequential expenses incurred by the guide dog or service animal and its user, which arise out of or are related to the criminal offense.

(B) Restitution ordered pursuant to this section includes, but is not limited to:

(1) the value of the replacement of an incapacitated or deceased guide dog or service animal, the training of a replacement guide dog or service animal, or retraining of the affected guide dog or service animal and related veterinary and care expenses; and

(2) medical expenses of the guide dog or service animal user, training of the guide dog or service animal user, and compensation for wages or earned income lost by the guide dog or service animal user.

(C) This article does not affect civil remedies available for conduct punishable under this article. Restitution paid pursuant to this article must be set off against damages awarded in a civil action arising out of the same conduct that resulted in the restitution payment."

Fair housing applications

SECTION 6. Section 31-21-70 of the 1976 Code is amended by adding an appropriately lettered subsection to read:

"( )(1) A landlord may ask a tenant or prospective tenant the following questions to determine whether an animal that is not a service animal should be deemed a reasonable accommodation:

(a) 'Does the person seeking to use and live with the animal have a disability that is a physical or mental impairment that substantially limits one or more major life activities?'

(b) 'Does the person seeking to use and live with the animal have a disability-related need for the animal?'

(2) Landlords may request documentation to verify the tenant's responses to the above questions. Such documentation shall be deemed sufficient if it establishes that an individual has a disability and that the

animal in question will provide some type of disability-related assistance or emotional support."

Time effective

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

Ratified the 13th day of May, 2019.

Approved the 16th day of May, 2019.

No. 45

(R65, S314)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 12-6-3800 SO AS TO ALLOW AN INCOME TAX CREDIT FOR EACH CLINICAL ROTATION SERVED BY A PHYSICIAN, ADVANCED PRACTICE NURSE, OR PHYSICIAN ASSISTANT AS A PRECEPTOR FOR CERTAIN PROGRAMS; AND TO AMEND SECTION 12-6-1140, AS AMENDED, RELATING TO INCOME TAX DEDUCTIONS, SO AS TO ALLOW A DEDUCTION FOR CERTAIN ROTATIONS FOR WHICH NO INCOME TAX CREDIT IS AVAILABLE.

Whereas, the pipeline for primary care medical, advanced practice nursing, and physician assistant providers in South Carolina is vital to the State; and

Whereas, South Carolina is a largely rural state with a population of 4.8 million and is ranked forty-second nationally in overall health rankings; and

Whereas, South Carolina is ranked thirty-ninth nationally regarding patient access to health care services and forty-third for its total supply of primary care practicing physicians; and

Whereas, such health statistics, along with the shortage and maldistribution of health care professionals, are alarming, resulting in a

grade of "F" in health care according to the South Carolina Department of Health and Environmental Control; and

Whereas, according to the South Carolina Department of Health and Environmental Control, all forty-six South Carolina counties are federally designated as being total or partial Medically Underserved Areas/Populations, forty-three counties as Health Professional Shortage Areas (HPSA), with twenty-nine categorized as low income HPSAs and fifteen fulfilling the criteria as geographic HPSAs, the designation used for the most underserved counties. Now, therefore,

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

Income tax credit for service as a preceptor

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

"Section 12-6-3800. (A) For the purposes of this section:

(1) 'Independent institution of higher learning' has the same meaning as provided in Section 59-113-50.

(2) 'Medical school-required clinical rotation', 'physician assistant program-required clinical rotation', or 'advanced practice nursing program-required clinical rotation' means a clinical rotation for a public teaching institution or independent institution of higher learning that:

(a) is established for a student who is enrolled in a South Carolina public teaching institution or an independent institution of higher learning, including:

(i) medical school;

(ii) a physician assistant program; and

(iii) an advanced practice nursing program; and

(b) includes a minimum of one hundred sixty hours of instruction in one of the following clinical settings:

(i) family medicine;

(ii) internal medicine;

(iii) pediatrics;

(iv) obstetrics and gynecology;

(v) emergency medicine;

(vi) psychiatry; or

(vii) general surgery under the guidance of a physician, advanced practice registered nurse, or physician assistant.

(3) 'Preceptor' means a physician, advanced practice nurse practitioner, or physician assistant who provides supervision and instruction during student clinical training experiences, is otherwise not compensated for doing so, and provides a minimum of two required clinical rotations within a calendar year.

(B)(1) There is allowed an income tax credit for each clinical rotation a physician serves as the preceptor for a medical school-required clinical rotation, advanced practice nursing program-required clinical rotation, and physician assistant program-required clinical rotation.

(2) If at least fifty percent of the physician's practice consists of a combined total of Medicaid insured, Medicare insured, and self-pay patients, then the credit is equal to one thousand dollars for each rotation served, not to exceed four thousand dollars a year.

(3) If at least thirty percent of the physician's practice consists of a combined total of Medicaid insured, Medicare insured, and self-pay patients, then the credit is equal to seven hundred fifty dollars for each rotation served, not to exceed three thousand dollars a year.

(4) If less than thirty percent of the physician's practice consists of a combined total of Medicaid insured, Medicare insured, and self-pay patients, then the credit is disallowed.

(5) The credits allowed by this subsection are not cumulative and may not be combined.

(C)(1) There is allowed an income tax credit for each clinical rotation an advanced practice registered nurse or physician assistant serves as the preceptor for an advanced practice nursing or physician assistant-required clinical rotation.

(2) If at least fifty percent of the advanced practice registered nurse's or physician assistant's practice consists of a combined total of Medicaid insured, Medicare insured, and self-pay patients, then the credit is equal to seven hundred fifty dollars for each rotation served, not to exceed three thousand dollars a year.

(3) If at least thirty percent of the advanced practice registered nurse's or physician assistant's practice consists of a combined total of Medicaid insured, Medicare insured, and self-pay patients, then the credit is equal to five hundred dollars for each rotation served, not to exceed two thousand dollars a year.

(4) If less than thirty percent of the advance practice registered nurse's or physician assistant's practice consists of a combined total of Medicaid insured, Medicare insured, and self-pay patients, then the credit is disallowed.

(5) The credits allowed by this subsection are not cumulative and may not be combined.

(D) A credit earned pursuant to this section is considered earned in the tax year in which the rotation is served. Fifty percent of the credit earned may be claimed in the tax year in which it is earned, and the remaining fifty percent may be claimed in the next tax year. However, the credit claimed in a tax year may not exceed fifty percent of the taxpayer's remaining tax liability after all other credits have been applied. Any unused credit may be carried over to the immediately succeeding taxable years, except that the credit carry-over may not be used for a taxable year that begins more than ten years from the year that the credit was earned.

(E) If a taxpayer earns the maximum annual credit amount allowed by this section and the taxpayer serves additional rotations that otherwise would have qualified for the credit, then the taxpayer may claim a deduction in an amount equal to the amount that the credit would have equaled. A taxpayer may earn the deduction allowed by this subsection up to six times a tax year.

(F) By March thirty-first of each year that the tax credit is allowed, the department shall report the number of taxpayers claiming the credit allowed by this section, the total amount of credits allowed, and the number of hours that the recipient taxpayers served as preceptors to the Senate Finance Committee, the House of Representatives Ways and Means Committee, and the Governor. The department must disaggregate taxpayers between physicians, advanced practice registered nurses, and physician assistants.

(G) The department may consult with a designated administrative entity to determine eligibility and may require any proof that it determines necessary to efficiently administer the credit allowed by this section. The department may promulgate regulations necessary to implement the provisions of this section."

Income tax deduction for service as a preceptor

SECTION 2. Section 12-6-1140 of the 1976 Code, as last amended by Act 266 of 2018, is further amended by adding an appropriately numbered item at the end to read:

"( )(a) amounts earned pursuant to Section 12-6-3800(E) for each clinical rotation a physician serves as the preceptor for a medical school-required clinical rotation, advanced practice nursing program-required clinical rotation, and physician assistant program-required clinical rotation; or

(b) amounts earned pursuant to Section 12-6-3800(E) for each clinical rotation an advanced practice registered nurse or physician assistant serves as the preceptor for an advanced practice nursing or physician assistant-required clinical rotation."

Phased-in benefits for service as a preceptor

SECTION 3. (A) Notwithstanding the credit amount for each rotation served and the annual credit limit set forth in Section 12-6-3800, as added by this act, the credit amounts and credit limits must be phased-in over five years in equal and cumulative installments. The first year of implementation is tax year 2020.

(B) In accordance with subsection (A), the amount of the deduction allowed for rotations served pursuant to Section 12-6-3800(E) and the item added to Section 12-6-1140 in this act, is subject to the phase-in and is equal to the amount the credit would have equaled in that particular tax year.

Time effective

SECTION 4. This act takes effect upon approval by the Governor and shall apply to tax years 2020 through 2025. Section 12-6-3800 and Section 12-6-1140( ) are repealed January 1, 2026.

Ratified the 13th day of May, 2019.

Approved the 16th day of May, 2019.

No. 46

(R66, S323)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 12-54-265 SO AS TO ALLOW THE DEPARTMENT OF REVENUE TO SUBMIT CERTAIN INFORMATION TO A FINANCIAL INSTITUTION REGARDING A DEBTOR THAT HAS BEEN NAMED ON A WARRANT FOR DISTRAINT, AND TO REQUIRE THE FINANCIAL INSTITUTION PROVIDE CERTAIN INFORMATION TO THE DEPARTMENT.

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

Information on debtor named on a warrant for distraint

SECTION 1. Chapter 54, Title 12 of the 1976 Code is amended by adding:

"Section 12-54-265. (A) Notwithstanding any other provision of law, the department may submit to a financial institution, as defined in Section 63-17-2310(A)(2), information that identifies a debtor named on a warrant for distraint that has been issued and filed by the department or whose debt has been submitted to the department for collection under the provisions of Section 12-4-580. For purposes of debts named on warrants for distraint, the debt must be at least one hundred eighty days old from the date of assessment. The department may submit the information to the financial institution on a quarterly basis or, with the agreement of the financial institution, on a more frequent basis. A financial institution that receives the information must conduct a data match. The financial institution must then provide to the department, in a manner and form prescribed by the department, information concerning the debtor for purposes of collecting outstanding debts. The information provided to the department must include, but is not limited to, the information required pursuant to Section 63-17-2320(A). The financial institution must be paid a reasonable fee out of the collected funds not to exceed actual cost.

(B) Notwithstanding any other provision of law, a financial institution is not liable to a person for disclosure of information to the department, its designee, or the department's or its designee's employees pursuant to subsection (A) or for encumbering or surrendering any deposits, credits, or other personal property in response to a notice of lien or levy by the department, or its designee, or for any other action taken in good faith to comply with the requirements of subsection (A)."

Time effective

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

Ratified the 13th day of May, 2019.

Approved the 16th day of May, 2019.

No. 47

(R67, S329)

AN ACT TO EXTEND THE TAX CREDITS FOR THE PURCHASE AND INSTALLATION OF GEOTHERMAL MACHINERY AND EQUIPMENT UNTIL JANUARY 1, 2022, BY RE-ENACTING PROVISIONS OF SECTION 12-6-3587.

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

Extension of tax credit on geothermal machinery and equipment

SECTION 1. SECTION 2.B. of Act 134 of 2016 is amended to read:

"B. The provisions contained in this section related to geothermal machinery and equipment are repealed January 1, 2022."

Time effective

SECTION 2. This act takes effect upon approval by the Governor and applies to tax years beginning after 2018. The provisions of Section 12-6-3587, as they existed on December 31, 2018, are re-enacted, and the tax credits earned pursuant to this act shall be earned and claimed under the same terms and conditions as they existed on December 31, 2018. This act shall continue to apply until such time as Section 12-6-3587, or parts thereof, are otherwise repealed, mutatis mutandis.

Ratified the 13th day of May, 2019.

Approved the 16th day of May, 2019.

No. 48

(R68, S359)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING ARTICLE 21 TO CHAPTER 71, TITLE 38 SO AS TO ESTABLISH A LICENSE REQUIREMENT FOR PHARMACY BENEFITS MANAGERS, TO PROHIBIT A PHARMACY BENEFITS MANAGER FROM RESTRICTING OR PENALIZING A PHARMACY FROM PERFORMING CERTAIN ACTIONS OR DISCLOSING CERTAIN INFORMATION, TO PROHIBIT A PHARMACY BENEFITS MANAGER FROM UNDERTAKING CERTAIN ACTIONS, TO SET CERTAIN REQUIREMENTS FOR A MAXIMUM ALLOWABLE COST LIST, AND TO AUTHORIZE THE DIRECTOR OF THE DEPARTMENT OF INSURANCE TO ENFORCE THE PROVISIONS OF THIS ARTICLE; TO AMEND SECTION 38-2-10, AS AMENDED, RELATING TO ADMINISTRATIVE PENALTIES, SO AS TO APPLY CERTAIN ADMINISTRATIVE PENALTIES TO PHARMACY BENEFITS MANAGERS; TO AMEND SECTION 38-71-1810, RELATING TO PHARMACY AUDIT RIGHTS, SO AS TO ALLOW A PHARMACY TO SUBMIT RECORDS IN AN ELECTRONIC FORMAT OR BY CERTIFIED MAIL AND TO PROHIBIT CERTAIN ERRORS FROM SERVING AS THE SOLE BASIS OF THE REJECTION OF A CLAIM; AND TO REPEAL ARTICLE 20 OF CHAPTER 71, TITLE 38 RELATING TO PHARMACY BENEFIT MANAGERS.

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

Pharmacy benefits managers

SECTION 1. Chapter 71, Title 38 of the 1976 Code is amended by adding:

"Article 21

Pharmacy Benefits Managers

Section 38-71-2200. As used in this article:

(1) 'Claim' means a request from a pharmacy or pharmacist to be reimbursed for the cost of administering, filling, or refilling a prescription for a drug or for providing a medical supply or device.

(2) 'Claims processing services' means the administrative services performed in connection with the processing and adjudicating of claims relating to pharmacist services that include:

(a) receiving payments for pharmacist services;

(b) making payments to pharmacists or pharmacies for pharmacist services; or

(c) both receiving and making payments.

(3) 'Health benefit plan' means any individual, blanket, or group plan, policy, or contract for health care services issued or delivered by a health care insurer in this State as defined in Section 38-71-670(6) and 38-71-840(14), including the state health plan as defined in Section 1-11-710. Notwithstanding this section, the state health plan is not subject to the provisions of this title unless specifically referenced.

(4) 'Health care insurer' means an entity that provides health insurance coverage in this State as defined in Section 38-71-670(7) and Section 38-71-840(16).

(5) 'Maximum Allowable Cost List' means a listing of generic drugs used by a pharmacy benefits manager to set the maximum allowable cost at which reimbursement to a pharmacy or pharmacist may be made.

(6) 'Other prescription drug or device services' means services other than claims processing services, provided directly or indirectly by a pharmacy benefits manager, whether in connection with or separate from claims processing services, including without limitation:

(a) negotiating rebates, discounts, or other financial incentives and arrangements with drug companies;

(b) disbursing or distributing rebates;

(c) managing or participating in incentive programs or arrangements for pharmacist services;

(d) negotiating or entering into contractual arrangements with pharmacists or pharmacies, or both;

(e) developing formularies;

(f) designing prescription benefit programs; or

(g) advertising or promoting services.

(7) 'Pharmacist' has the same meaning as provided in Section 40-43-30(65).

(8) 'Pharmacist services' means products, goods, and services, or any combination of products, goods, and services, provided as a part of the practice of pharmacy.

(9) 'Pharmacy' has the same meaning as provided in Section 40-43-30(67).

(10) 'Pharmacy benefits manager' means an entity that contracts with pharmacists or pharmacies on behalf of an insurer, third party administrator, or the South Carolina Public Employee Benefit Authority to:

(a) process claims for prescription drugs or medical supplies or provide retail network management for pharmacies or pharmacists;

(b) pay pharmacies or pharmacists for prescription drugs or medical supplies; or

(c) negotiate rebates with manufacturers for drugs paid for or procured as described in this article.

(11) 'Pharmacy benefits manager affiliate' means a pharmacy or pharmacist that directly or indirectly, through one or more intermediaries, owns or controls, is owned or controlled by, or is under common ownership or control with a pharmacy benefits manager.

Section 38-71-2210. (A)(1) A person or organization may not establish or operate as a pharmacy benefits manager in this State for health benefit plans without obtaining a license from the Director of the Department of Insurance.

(2) The director shall prescribe the application for a license to operate in this State as a pharmacy benefits manager and may charge an initial application fee of one thousand dollars and an annual renewal fee of five hundred dollars, provided the pharmacy benefits manager application form must collect the following information:

(a) the name, address, and telephone contact number of the pharmacy benefits manager;

(b) the name and address of the pharmacy benefits manager's agent for service of process in the State;

(c) the name and address of each person with management or control over the pharmacy benefits manager;

(d) the name and address of each person with a beneficial ownership interest in the pharmacy benefits manager;

(e) a signed statement indicating that, to the best of their knowledge, no officer with management or control of the pharmacy benefit manager has been convicted of a felony or has violated any of the requirements of state law applicable to pharmacy benefits managers, or, if the applicant cannot provide such a statement, a signed statement describing the relevant conviction or violation; and

(f) in the case of a pharmacy benefits manager applicant that is a partnership or other unincorporated association, limited liability

company, or corporation, and has five or more partners, members, or stockholders:

(i) the applicant shall specify its legal structure and the total number of its partners, members, or stockholders who, directly or indirectly, own, control, hold with the power to vote, or hold proxies representing ten percent or more of the voting securities of any other person; and

(ii) the applicant shall agree that, upon request by the department, it shall furnish the department with information regarding the name, address, usual occupation, and professional qualifications of any other partners, members, or stockholders who, directly or indirectly, own, control, hold with the power to vote, or hold proxies representing ten percent or more of the voting securities of any other person.

(3) An applicant or a pharmacy benefits manager that is licensed to conduct business in the State shall, unless otherwise provided for in this chapter, file a notice describing any material modification of this information.

(B) The director may promulgate regulations establishing the licensing and reporting requirements of pharmacy benefits managers consistent with the provisions of this article.

(C) The fees and penalties assessed pursuant to this article must be retained by the department for the administration of this chapter.

Section 38-71-2220. (A) In any participation contracts between pharmacy benefits managers and pharmacists or pharmacies providing prescription drug coverage for health benefit plans, no pharmacy or pharmacist may be prohibited, restricted, or penalized in any way from disclosing to any covered person any health care information that the pharmacy or pharmacist deems appropriate within their scope of practice.

(B) A pharmacy or pharmacist must not be proscribed by a pharmacy benefits manager from discussing information regarding the total cost for pharmacist services for a prescription drug or from selling a more affordable alternative to the insured if a more affordable alternative is available, but a pharmacy benefits manager may proscribe a pharmacy or pharmacist from sharing proprietary or confidential information.

(C) A pharmacy benefits manager contract with a participating pharmacist or pharmacy may not prohibit, restrict, or limit disclosure of information to the director investigating or examining a complaint or conducting a review of a pharmacy benefits manager's compliance with the requirements pursuant to this act. The information or data acquired during an examination or review pursuant to this section is considered

proprietary and confidential and is not subject to the South Carolina Freedom of Information Act.

Section 38-71-2230. (A) A pharmacy benefits manager or representative of a pharmacy benefits manager shall not:

(1) cause or knowingly permit the use of any advertisement, promotion, solicitation, representation, proposal, or offer that is untrue, deceptive, or misleading;

(2) charge a pharmacist or pharmacy a fee related to the adjudication of a claim other than a reasonable fee for the receipt and processing of a pharmacy claim;

(3) engage, with the express intent or purpose of driving out competition or financially injuring competitors, in a pattern or practice of reimbursing independent pharmacies or pharmacists in this State consistently less than the amount that the pharmacy benefits manager reimburses a pharmacy benefits manager affiliate for providing the same pharmacist services;

(4) collect or require a pharmacy or pharmacist to collect from an insured a copayment for a prescription drug at the point of sale in an amount that exceeds the lesser of:

(a) the contracted copayment amount;

(b) the amount an individual would pay for a prescription drug if that individual was paying cash; or

(c) the contracted amount for the drug.

(5) require the use of mail order for filling prescriptions unless required to do so by the health benefit plan or the health benefit plan design;

(6) charge a fee related to the adjudication of a claim without providing the cause for each adjustment or fee;

(7) penalize or retaliate against a pharmacist or pharmacy for exercising rights provided pursuant to the provisions of this chapter;

(8) prohibit a pharmacist or pharmacy from offering and providing direct and limited delivery services including incidental mailing services, to an insured as an ancillary service of the pharmacy; or

(9) any combination thereof.

(B) A claim for pharmacist services may not be retroactively denied or reduced after adjudication of the claim unless the:

(1) original claim was submitted fraudulently;

(2) original claim payment was incorrect because the pharmacy or pharmacist had already been paid for the pharmacist services;

(3) pharmacist services were not properly rendered by the pharmacy or pharmacist; or

(4) adjustment was agreed upon by the pharmacy prior to the denial or reduction.

(C) This subsection may not be construed to limit overpayment recovery efforts as set forth in Section 38-59-250.

A pharmacy may not be subject to a charge-back or recoupment for a clerical or recordkeeping error in a required document or record, including a typographical or computer error, unless the error resulted in overpayment to the pharmacy.

(D) Termination of a pharmacy or pharmacist from a pharmacy benefits manager network does not release the pharmacy benefits manager from the obligation to make any payment due to the pharmacy or pharmacist for pharmacist services properly rendered according to the contract.

(E) A pharmacy benefits manager may maintain more than one network for different pharmacy services. Each individual network may require different pharmacy accreditation standards or certification requirements for participating in the network provided that the pharmacy accreditation standards or certification requirements are applied without regard to a pharmacy's or pharmacist's status as an independent pharmacy or pharmacy benefits manager affiliate. Each individual pharmacy location as identified by its National Council for Prescription Drug Program identification number may have access to more than one network so long as the pharmacy location meets the pharmacy accreditation standards or certification requirements of each network.

(F) Nothing in this article abridges the right of a pharmacist to refuse to fill or refill a prescription as referenced in Section 40-43-86(E)(6) of the South Carolina Pharmacy Practice Act.

(G) Nothing in this article may be construed to require a pharmacy benefits manager to allow participation in a network that would not be required by Section 38-71-147.

Section 38-71-2240. (A) Before a pharmacy benefits manager places or continues to place a particular drug on a Maximum Allowable Cost List, the drug must:

(1) be listed as 'A' or 'B' rated in the most recent version of the Food and Drug Administration's Approved Drug Products with Therapeutic Equivalence Evaluations, also known as the Orange Book, or has an 'NR' or 'NA' rating, or a similar rating, by a nationally recognized reference;

(2) be available for purchase in the State from national or regional wholesalers operating in this State; and

(3) not be obsolete.

(B) A pharmacy benefits manager shall:

(1) provide a process for network pharmacy providers to readily access the maximum allowable cost specific to that provider;

(2) update its Maximum Allowable Cost List at least once every seven calendar days;

(3) provide a process for each pharmacy subject to the Maximum Allowable Cost List to access any updates to the Maximum Allowable Cost List;

(4) ensure that dispensing fees are not included in the calculation of maximum allowable cost; and

(5) establish a reasonable administrative appeal procedure by which a contracted pharmacy can appeal the provider's reimbursement for a drug subject to maximum allowable cost pricing if the reimbursement for the drug is less than the net amount that the network provider paid to the suppliers of the drug. The reasonable administrative appeal procedure must include:

(a) a dedicated telephone number and email address or website for the purpose of submitting administrative appeals; and

(b) the ability to submit an administrative appeal directly to the pharmacy benefits manager regarding the pharmacy benefits plan or program or through a pharmacy service administrative organization if the pharmacy service administrative organization has a contract with the pharmacy benefits manager that allows for the submission of such appeals.

(C) A pharmacy must be allowed no less than ten calendar days after the applicable fill date to file an administrative appeal.

(D) If an appeal is initiated, the pharmacy benefits manager shall within ten calendar days after receipt of notice of the appeal either:

(1) if the appeal is upheld:

(a) notify the pharmacy or pharmacist or his designee of the decision;

(b) make the change in the maximum allowable cost effective as of the date the appeal is resolved;

(c) permit the appealing pharmacy or pharmacist to reverse and rebill the claim in question; and

(d) make the change effective for each similarly situated pharmacy as defined by the payor subject to the Maximum Allowable Cost List effective as of the date the appeal is resolved; or

(2) if the appeal is denied, provide the appealing pharmacy or pharmacist the reason for the denial, the National Drug Code number, and the name of the national or regional pharmaceutical wholesalers operating in this State.

(E) The provisions of this section:

(1) do not apply to the Maximum Allowable Cost List maintained by the State Medicaid Program, the Medicaid managed care organizations under contract with the South Carolina Department of Health and Human Services or the South Carolina Public Employee Benefit Authority; and

(2) apply to the pharmacy benefits manager employed by the South Carolina Public Employee Benefit Authority if, at any time, the South Carolina Public Employee Benefit Authority engages the services of a pharmacy benefits manager to maintain the Maximum Allowable Cost List.

Section 38-71-2250. (A) The director shall enforce this article.

(B)(1) The director may examine or audit the books and records of a pharmacy benefits manager providing claims processing services or other prescription drug or device services for a health benefit plan that are relevant to determining if the pharmacy benefits manager is in compliance with this act. The pharmacy benefits manager shall pay the charges incurred in the examination, including the expenses of the director or his designee and the expenses and compensation of his examiners and assistants. The director or his designee promptly shall institute a civil action to recover the expenses of examination against a pharmacy benefits manager which refuses or fails to pay.

(2) The information or data acquired during an examination pursuant to this section is considered proprietary and confidential and is not subject to the South Carolina Freedom of Information Act.

(C) Violations of this article are subject to the penalties provided in Sections 38-2-10 through 38-2-30.

(D) The director may promulgate regulations regarding pharmacy benefits managers that are not inconsistent with this article.

Section 38-71-2260. (A) Nothing in this act is intended or may be construed to be in conflict with existing relevant federal law.

(B) This article does not apply to the South Carolina Department of Health and Human Services in the performance of its duties in administering Medicaid under Titles XIX and XXI of the Social Security Act or to the Medicaid managed care organizations under contract with the South Carolina Department of Health and Human Services."

Administrative penalties, pharmacy benefits managers

SECTION 2. Section 38-2-10 of the 1976 Code, as last amended by Act 219 of 2018, is further amended to read:

"Section 38-2-10. (A) Unless otherwise specifically provided by law, the following administrative penalties apply for each violation of the insurance laws of this State or federal insurance laws subject to enforcement by the Department of Insurance:

(1) If the violator is an insurer, pharmacy benefits manager, or a health maintenance organization licensed in this State, the director or his designee shall fine the violator in an amount not to exceed fifteen thousand dollars, suspend or revoke the violator's authority to do business in this State, or both. If the violation is wilful, the director or his designee shall fine the violator in an amount not to exceed thirty thousand dollars, suspend or revoke the violator's authority to do business in this State, or both.

(2) If the violator is a person, other than an insurer, pharmacy benefits manager, or a health maintenance organization, licensed by the director or his designee in this State, the director or his designee shall fine the person in an amount not to exceed two thousand five hundred dollars, suspend or revoke the license of the person, or both. If the violation is wilful, the director or his designee shall fine the person in an amount not to exceed five thousand dollars, suspend or revoke the license of the person, or both.

(B) The penalties in subsection (A) are in addition to any criminal penalties provided by law or any other remedies provided by law. The administrative proceedings in subsection (A) do not preclude civil or criminal proceedings from taking place before, during, or after the administrative proceeding."

Pharmacy audits, electronic records and documentation

SECTION 3. A.Section 38-71-1810(B) of the 1976 Code is amended to read:

"(B) If a managed care organization, insurer, third-party payor, or any entity that represents a responsible party conducts an audit of the records of a pharmacy, then, with respect to this audit, the pharmacy has a right to:

(1) have at least fourteen days' advance notice of the initial audit for each audit cycle with no audit to be initiated or scheduled during the

first five days of any month without the express consent of the pharmacy, which shall cooperate with the auditor to establish an alternate date if the audit would fall within the excluded days;

(2) have an audit that involves clinical judgment be conducted with a pharmacist who is licensed and employed by or working under contract with the auditing entity;

(3) not have clerical or record-keeping errors, including typographical errors, scrivener's errors, and computer errors, on a required document or record considered fraudulent in the absence of any other evidence or serve as the sole basis of rejection of a claim; however, the provisions of this item do not prohibit recoupment of fraudulent payments;

(4) have the auditing entity to provide the pharmacy, upon request, all records related to the audit in an electronic format or contained in digital media;

(5) submit records related to the audit in electronic format or by certified mail;

(6) have the properly documented records of a hospital or of a person authorized to prescribe controlled substances for the purpose of providing medical or pharmaceutical care for their patients transmitted by any means of communication approved by the auditing entity in order to validate a pharmacy record with respect to a prescription or refill for a controlled substance or narcotic drug pursuant to federal and state regulations;

(7) have a projection of an overpayment or underpayment based on either the number of patients served with a similar diagnosis or the number of similar prescription orders or refills for similar drugs; however, the provisions of this item do not prohibit recoupments of actual overpayments unless the projection for overpayment or underpayment is part of a settlement by the pharmacy;

(8) be free of recoupments based on either of the following subitems unless defined within the billing, submission, or audit requirements set forth in the pharmacy provider manual not inconsistent with current State Board of Pharmacy Regulations, except for cases of Food and Drug Administration regulation or drug manufacturer safety programs in accordance with federal or state regulations:

(a) documentation requirements in addition to, or exceeding requirements for, creating or maintaining documentation prescribed by the State Board of Pharmacy;

(b) a requirement that a pharmacy or pharmacist perform a professional duty in addition to, or exceeding, professional duties

prescribed by the State Board of Pharmacy unless otherwise agreed to by contract with the auditing entity;

(9) be subject, so long as a claim is made within the contractual claim submission time period, to recoupment only following the correction of a claim and to have recoupment limited to amounts paid in excess of amounts payable under the corrected claim unless a prescription error occurs. For purposes of this subsection, a prescription error includes, but is not limited to, wrong drug, wrong strength, wrong dose, or wrong patient;

(10) be subject to reversals of approval, except for Medicare claims, for drug, prescriber, or patient eligibility upon adjudication of a claim only in cases in which the pharmacy obtained the adjudication by fraud or misrepresentation of claim elements;

(11) be audited under the same standards and parameters as other similarly situated pharmacies audited by the same entity;

(12) have at least thirty days following receipt of the preliminary audit report to produce documentation to address any discrepancy found during an audit;

(13) have the option of providing documentation in electronic format or by certified mail;

(14) have the period covered by an audit limited to twenty-four months from the date a claim was submitted to, or adjudicated by, a managed care organization, an insurer, a third-party payor, or an entity that represents responsible parties, unless a longer period is permitted by or under federal law;

(15) have the preliminary audit report delivered to the pharmacy within one hundred twenty days after conclusion of the audit;

(16) have a final audit report delivered to the pharmacy within ninety days after the end of the appeals period; and

(17) not have the accounting practice of extrapolation used in calculating recoupments or penalties for audits, unless otherwise required by federal requirements or federal plans."

B. The provisions of this section are effective upon approval by the Governor.

Pharmacy benefits managers, article repealed

SECTION 4. Article 20 of Chapter 71, Title 38 is repealed.

Severability

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

Time effective

SECTION 6. Except for Section 38-71-2220 in SECTION 1 and SECTION 3, this act takes effect on January 1, 2021. The provisions of Section 38-71-2220 in SECTION 1 and SECTION 3 take effect upon approval by the Governor.

Ratified the 13th day of May, 2019.

Approved the 16th day of May, 2019.

No. 49

(R69, S408)

AN ACT TO AMEND SECTION 12-6-2295, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO ITEMS INCLUDED AND EXCLUDED FROM THE TERMS "SALES" AND "GROSS RECEIPTS", SO AS TO PROVIDE THAT RECEIPTS FROM THE OPERATION OF A CABLE SYSTEM AND A VIDEO SERVICE ARE ATTRIBUTABLE TO THIS STATE IN PRO RATA PROPORTION OF THE COSTS OF PERFORMING THE SERVICE.

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

Taxation from sales of a cable system and a video service

SECTION 1. Section 12-6-2295(A)(7) of the 1976 Code, as added by Act 265 of 2018, is amended to read:

"(7) receipts from the operation of a cable system, as defined in Section 58-12-300, including receipts from cable service and including receipts from services provided over the network that are associated with or classified as noncable or nonvideo services under federal law, receipts from video service as defined in Section 58-12-300, or receipts from the provision of direct broadcast satellite service that are attributable to this State in pro rata proportion of the costs of performing the service, including the costs of acquiring programming distribution rights and constructing and maintaining distribution infrastructure, that the service provider incurs within this State. For purposes of this subsection, if a pass-through business operates a cable system or a direct broadcast satellite service, or if it has receipts from video service, then a corporation that owns an interest in that pass-through business, either directly or indirectly, must be treated as operating a cable system or a direct broadcast satellite service, or as having receipts from video service. As used in this subsection, the term 'direct broadcast satellite service' means the distribution or broadcasting of programming or services by satellite directly to the subscriber's premises without the use of ground receiving or distribution equipment, except at the subscriber's premises or in the uplink process to the satellite."

Time effective

SECTION 2. This act takes effect upon approval by the Governor and applies to all open tax periods excluding assessments under judicial review as of the date of the Governor's approval.

Ratified the 13th day of May, 2019.

Approved the 16th day of May, 2019.

No. 50

(R70, S440)

AN ACT TO AMEND SECTION 12-65-20, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO DEFINITIONS FOR THE SOUTH CAROLINA TEXTILES COMMUNITIES REVITALIZATION ACT, SO AS TO PROVIDE THAT A CERTAIN CAP ON REHABILITATION EXPENSES ONLY APPLIES TO CERTAIN REHABILITATED BUILDINGS ON CONTIGUOUS PARCELS; AND BY ADDING SECTION 12-67-170 SO AS TO PROVIDE FOR AN EXTENSION OF THE PLACED IN SERVICE DATE FOR A REHABILITATED ABANDONED BUILDING UNDER CERTAIN CIRCUMSTANCES.

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

South Carolina Textiles Communities Revitalization Act definitions

SECTION 1. Section 12-65-20(4) and (8) of the 1976 Code, as last amended by Act 265 of 2018, is further amended to read:

"(4)(a) 'Textile mill site' means the textile mill together with the land and other improvements on it which were used directly for textile manufacturing operations or ancillary uses. However, the area of the site is limited to the land located within the boundaries where the textile manufacturing, dying, or finishing facility structure is located and does not include land located outside the boundaries of the structure or devoted to ancillary uses.

(b) Notwithstanding the provisions of item (4)(a), with respect to (i) any site acquired by a taxpayer before January 1, 2008, (ii) a site located on the Catawba River near Interstate 77, or (iii) a site which, on the date the notice of intent to rehabilitate is filed, is located in a distressed area of a county in this State, as designated by the applicable council of government, 'textile mill site' means the textile mill structure, together with all land and improvements which were used directly for textile manufacturing operations or ancillary uses, or were located on the same parcel or a contiguous parcel within one thousand feet of any textile mill structure or ancillary uses. For purposes of this subitem, 'contiguous parcel' means any separate tax parcel sharing a common

boundary with an adjacent parcel or separated only by a private or public road.

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

(b) Notwithstanding subitem (a), for the purpose of calculating the credit with regard to new or rehabilitated buildings on 'contiguous parcels' pursuant to item (4)(b), 'rehabilitation expenses' do not include expenses that increase the amount of square footage of the buildings that existed on that contiguous parcel immediately preceding the time at which the textile mill became abandoned by more than two hundred percent."

Placed in service date extension for rehabilitated abandoned buildings

SECTION 2. A. Notwithstanding Section 1 of Act 265 of 2018, and Section 1.B. of Act 57 of 2013, upon the repeal of Chapter 67, Title 12 of the 1976 Code, any carryforward credits shall continue to be allowed until the five or eight year time period in Section 12-67-140 is completed.

B. Chapter 67, Title 12 of the 1976 Code is amended by adding:

"Section 12-67-170. Notwithstanding any other provision of this chapter, if a taxpayer files a notice of intent to rehabilitate and has been rehabilitating an abandoned building continuously for the preceding year and is more than sixty percent complete, then the taxpayer must be allowed to extend the placed in service date until ninety days after completion of construction, provided construction continues diligently until that date. Nothing in this section may be construed to allow a taxpayer to earn a credit allowed by this chapter before the applicable phase or portion of the building site is placed in service."

Time effective

SECTION 3. This act takes effect upon approval by the Governor and first applies to tax years beginning after 2017.

Ratified the 13th day of May, 2019.

Approved the 16th day of May, 2019.

No. 51

(R71, S575)

AN ACT TO AMEND SECTION 50-11-544, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO WILD TURKEY HUNTING AND TRANSPORTATION TAGS, SO AS TO DELETE THE TERM "WILD TURKEY TRANSPORTATION TAGS" AND REPLACE IT WITH THE TERM "WILD TURKEY TAG", TO PROVIDE THE TAG WILL NO LONGER BE ISSUED AT NO COST, AND TO REVISE THE NUMBER OF TAGS RESIDENTS AND NONRESIDENTS MAY OBTAIN OR POSSESS; TO AMEND SECTION 50-11-580, RELATING TO THE SEASON FOR THE HUNTING AND TAKING OF MALE WILD TURKEY, THE ESTABLISHMENT OF YOUTH TURKEY HUNTING WEEKEND, BAG LIMITS, AND AN ANNUAL REPORT, SO AS TO REVISE THE SEASON FOR HUNTING AND TAKING A MALE WILD TURKEY, TO REVISE THE BAG LIMITS, TO DELETE THE PROVISION ESTABLISHING YOUTH TURKEY HUNTING WEEKEND, TO PROVIDE FOR THE TAKING OF FEMALE WILD TURKEYS, AND TO DELETE AN OBSOLETE PROVISION; BY ADDING SECTION 50-11-590 SO AS TO PROVIDE FOR YOUTH TURKEY HUNTING WEEKEND; TO AMEND SECTION 50-9-920, AS AMENDED, RELATING TO REVENUES FROM THE SALE OF PRIVILEGES, LICENSES, PERMITS, AND TAGS, SO AS TO PROVIDE THAT REVENUE GENERATED FROM RESIDENT AND NONRESIDENT WILD TURKEY TAGS SHALL BE USED FOR CERTAIN PURPOSES; BY ADDING SECTION 50-9-640 SO AS TO PROVIDE FEES FOR WILD TURKEY TAGS; BY ADDING SECTION 50-11-546 SO AS TO PROVIDE FOR AN

ELECTRONIC HARVEST REPORTING SYSTEM, AND REQUIREMENTS FOR REPORTING THE HARVEST OF A WILD TURKEY; TO AMEND SECTION 50-9-1120, RELATING TO THE POINT SYSTEM ESTABLISHED FOR VIOLATIONS OF CERTAIN PROVISIONS OF LAW, SO AS TO PROVIDE FAILING TO REPORT THE HARVEST OF WILD TURKEY IS A SIX POINT VIOLATION; TO REPEAL SECTION 50-11-520 RELATING TO WILD TURKEY SEASON AND THE DECLARATION OF OPEN OR CLOSED SEASONS; AND TO REPEAL SECTION 7 OF ACT 41 OF 2015 RELATING TO THE HUNTING AND TAKING OF WILD TURKEY.

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

Wild turkey tags

SECTION 1. Section 50-11-544 of the 1976 Code is amended to read:

"Section 50-11-544. A person who hunts wild turkeys is required to possess a wild turkey tag issued by the department. All turkeys taken must be tagged before being moved from the point of kill. All tags must be validated as prescribed by the department before a turkey is moved from the point of kill. No resident may obtain or possess more than three wild turkey tags, and no nonresident may obtain or possess more than two wild turkey tags."

Wild turkey hunting season

SECTION 2. Section 50-11-580 of the 1976 Code is amended to read:

"Section 50-11-580. (A) The season for hunting and taking a male wild turkey is:

(1) in Game Zones 1 and 2, April 1 through May 10; and

(2) in Game Zones 3 and 4, March 22 through April 30.

(B) The season bag limit for male wild turkeys is three statewide for residents and two statewide for nonresidents. The daily bag limit is one, provided that:

(1) only one male wild turkey may be taken from April 1 through April 10 from within Game Zones 1 and 2; and

(2) only one male wild turkey may be taken from March 22 through March 31 from within Game Zones 3 and 4.

(C) It is unlawful for a person to take a female wild turkey unless authorized by the department pursuant to Section 50-11-500(3).

(D) The department shall provide an annual report on wild turkey resources in South Carolina to the Chairman of the Senate Fish, Game and Forestry Committee and the Chairman of the House Agriculture and Natural Resources Committee."

Youth Turkey Hunting Weekend

SECTION 3. Article 3, Chapter 11, Title 50 of the 1976 Code is amended by adding:

"Section 50-11-590. (A) The Saturday and Sunday preceding the start of a game zone turkey season is declared to be 'Youth Turkey Hunting Weekend' within the game zone for youth turkey hunters under eighteen years of age.

(B) A license or tag requirement is waived for a youth turkey hunter during Youth Turkey Hunting Weekend.

(C) The bag limit during Youth Turkey Hunting Weekend is one male wild turkey for the weekend that shall count toward the season bag limit. A turkey harvest must be reported to the electronic harvest reporting system pursuant to the provisions of Section 50-11-546.

(D) Youth turkey hunters who have not completed the hunter education program pursuant to Section 50-9-310, and who hunt during Youth Turkey Hunting Weekend, must be accompanied by an adult who is at least twenty-one years of age. An adult may not harvest or attempt to harvest turkeys during Youth Turkey Hunting Weekend but is permitted to call turkeys for a youth turkey hunter."

Resident and nonresident wild turkey tags

SECTION 4. Section 50-9-920(B) of the 1976 Code is amended by adding a new item to read:

"(13) resident and nonresident wild turkey tags shall only be used for the following purposes:

(a) the funding of wild turkey scientific research on public lands and private lands with the consent of landowners;

(b) the improvement of the wild turkey habitat and hunting opportunities for wild turkeys on public lands;

(c) wild turkey predator control;

(d) the enforcement of the wild turkey hunting laws and regulations; and

(e) the printing and mailing of the wild turkey tags."

Wild turkey tag fees

SECTION 5. Article 6, Chapter 9, Title 50 of the 1976 Code is amended by adding:

"Section 50-9-640. (A) For the privilege of hunting wild turkey, in addition to the required hunting license and big game permit, a person must possess a wild turkey tag issued in the person's name. The fee for a:

(1) resident is five dollars for three tags, one dollar of which may be retained by the license sales vendor; and

(2) nonresident is one hundred dollars for two tags, one dollar of which may be retained by the license sales vendor.

(B) There is no cost for wild turkey tags for persons under the age of sixteen, lifetime licensees, and gratis licensees upon request to the department."

Electronic harvest reporting system

SECTION 6. Article 3, Chapter 11, Title 50 of the 1976 Code is amended by adding:

"Section 50-11-546. (A) In order to document the harvest of wild turkeys and to assist with the enforcement of seasons, methods of harvest, and bag limits, the department must implement an electronic harvest reporting system.

(B) A person who harvests a wild turkey must report the harvest to the electronic harvest reporting system as prescribed by the department. A harvest report must be submitted by midnight of the day a wild turkey is taken unless a person is incapable of accessing the reporting system, in which case a report must be submitted prior to the carcass leaving the person's possession.

(C) Upon completion of the harvest reporting process, a harvest report confirmation number will be provided by the department, which must be recorded by the person submitting the harvest report.

(D) The department must promulgate regulations to implement the provisions of this section, including the methods of telephonic and

electronic reporting, contents of the report, and recording and maintenance of the harvest report confirmation number.

(E) The department is prohibited from requesting or acquiring the geolocation data of a person submitting a harvest report through electronic means and from requesting a person to self-report location information to the harvest reporting system more specific than the county in which a turkey is harvested.

(F) There is no cost to a person for reporting a harvest, and the department may exempt the harvest reporting requirement for persons who harvest wild turkeys under specific conditions or department programs.

(G) A person who violates this section or provisions established by the department for electronic harvest reporting is guilty of a misdemeanor and, upon conviction, must be fined not more than twenty-five dollars."

Points assigned for failing to report wild turkey harvest

SECTION 7. Section 50-9-1120(2) of the 1976 Code is amended by adding an appropriately lettered item at the end to read:

"( ) failing to report the harvest of wild turkey as required by Section 50-11-546: 6."

Repeal

SECTION 8. Section 50-11-520 of the 1976 Code is repealed.

Repeal

SECTION 9. SECTION 7 of Act 41 of 2015 is repealed.

Time effective

SECTION 10. (A) SECTIONS 1, 2, 3, 4, 5, 8, and 9 take effect on July 1, 2019.

(B) SECTION 6 of this act takes effect on July 1, 2020.

(C) SECTION 7 of this act takes effect on July 1, 2021.

Ratified the 13th day of May, 2019.

Approved the 16th day of May, 2019.

No. 52

(R72, S595)

AN ACT TO AMEND SECTION 63-13-40, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO BACKGROUND CHECKS FOR CHILDCARE FACILITY EMPLOYMENT, SO AS TO PROVIDE THAT CHILDCARE FACILITIES AND FEDERALLY SUBSIDIZED CHILDCARE PROVIDERS MAY NOT EMPLOY A CAREGIVER OR OTHER STAFF IF THAT PERSON IS REGISTERED OR REQUIRED TO REGISTER ON THE NATIONAL SEX OFFENDER REGISTRY, STATE SEX OFFENDER REGISTRY, OR CENTRAL REGISTRY OF CHILD ABUSE AND NEGLECT, OR HAS BEEN CONVICTED OF CERTAIN OFFENSES, TO REQUIRE EMPLOYEES TO UNDERGO CERTAIN BACKGROUND CHECKS, TO AUTHORIZE THE SOUTH CAROLINA LAW ENFORCEMENT DIVISION AND THE FEDERAL BUREAU OF INVESTIGATION TO RETAIN, STORE, AND SHARE BACKGROUND CHECK RECORDS, TO PROVIDE A FEE FOR BACKGROUND CHECKS, AND FOR OTHER PURPOSES; TO AMEND SECTION 63-13-50, RELATING TO FINGERPRINT REVIEW EXEMPTIONS, SO AS TO CHANGE THE PERIOD OF TIME DURING WHICH THE EXEMPTION APPLIES; TO AMEND SECTIONS 63-13-420 AND 63-13-430, RELATING TO LICENSING OR RENEWAL REQUIREMENTS FOR PRIVATE CHILDCARE CENTERS AND GROUP CHILDCARE HOMES, SO AS TO MAKE CONFORMING CHANGES, TO REQUIRE CERTAIN BACKGROUND CHECKS FOR OLDER YOUTH RESIDING IN GROUP FAMILY CHILDCARE HOMES, AND FOR OTHER PURPOSES; TO AMEND SECTIONS 63-13-620 AND 63-13-630, RELATING TO ISSUANCE OR RENEWAL OF A STATEMENT OF APPROVAL FOR PUBLIC CHILDCARE CENTERS AND GROUP CHILDCARE HOMES, SO AS TO MAKE CONFORMING CHANGES; TO AMEND SECTIONS 63-13-810, 63-13-820, AND 63-13-830, ALL RELATING TO

FAMILY CHILDCARE HOME REGISTRATION ISSUANCE OR RENEWAL REQUIREMENTS, SO AS TO MAKE CONFORMING CHANGES AND TO REQUIRE CERTAIN BACKGROUND CHECKS FOR OLDER YOUTH RESIDING IN FAMILY CHILDCARE HOMES; TO AMEND SECTION 63-13-1010, RELATING TO CHURCH AND RELIGIOUS CENTER REGISTRATION ISSUANCE OR RENEWAL REQUIREMENTS, SO AS TO MAKE CONFORMING CHANGES; BY ADDING ARTICLE 10 TO CHAPTER 13, TITLE 63 SO AS TO PROHIBIT INDIVIDUALS ON THE SEX OFFENDER REGISTRY FROM WORKING, WITH OR WITHOUT COMPENSATION, WITH MINORS, WITH EXCEPTIONS; AND FOR OTHER PURPOSES.

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

Childcare facility employee background check requirements

SECTION 1. Section 63-13-40 of the 1976 Code is amended to read:

"Section 63-13-40. (A)(1) A licensed, approved, or registered childcare facility, or any childcare provider that delivers services for which Child Care and Development Fund financial assistance is provided, may not employ a childcare caregiver or other staff member if that person is required to register or is registered with the National Crime Information Center National Sex Offender Registry, the state sex offender registry pursuant to Section 23-3-430, or the Central Registry of Child Abuse and Neglect or has been convicted of:

(a) a crime listed in Chapter 3, Title 16, Offenses Against the Person;

(b) a crime listed in Chapter 15, Title 16, Offenses Against Morality and Decency;

(c) the crime of contributing to the delinquency of a minor, contained in Section 16-17-490;

(d) unlawful conduct toward a child, as provided for in Section 63-5-70;

(e) cruelty to children, as provided for in Section 63-5-80;

(f) child endangerment, as provided for in Section 56-5-2947;

(g)(i) the felonies classified in Section 16-1-10(A), except that this prohibition does not apply to Section 56-5-2930, the Class F felony of driving under the influence if the conviction occurred at least ten years

prior to the application for employment and the following conditions are met:

(A) the person has not been convicted in this State or any other state of an alcohol or drug violation during the previous ten-year period;

(B) the person has not been convicted of and has no charges pending in this State or any other state for a violation of driving while his license is canceled, suspended, or revoked during the previous ten-year period; and

(C) the person has completed successfully an alcohol or drug assessment and treatment program provided by the South Carolina Department of Alcohol and Other Drug Abuse Services or an equivalent program designated by that agency;

(ii) a person who has been convicted of a first-offense violation of Section 56-5-2930 must not drive a motor vehicle or provide transportation while in the official course of his duties as an employee of a childcare center, group childcare home, family childcare home, or church or religious childcare center;

(iii) if the person subsequently is convicted of, receives a sentence upon a plea of guilty or of nolo contendere, or forfeits bail posted for a violation of Section 56-5-2930 or for a violation of another law or ordinance of this State or any other state or of a municipality of this State or any other state that prohibits a person from operating a motor vehicle while under the influence of intoxicating liquor, drugs, or narcotics, the person's employment must be terminated;

(h) the offenses enumerated in Section 16-1-10(D) if the crime was a felony or if the victim was a minor;

(i) a violent crime listed in Section 16-1-60 if the crime was a felony or if the victim was a minor; or

(j) a criminal offense similar in nature to the crimes listed in this subsection committed in other jurisdictions or under federal law.

(2) This section does not prohibit employment or provision of caregiver services when a conviction or plea of guilty or nolo contendere for one of the crimes enumerated in this subsection has been pardoned. However, notwithstanding the entry of a pardon, an operator or the department may consider all information available, including the person's pardoned convictions or pleas and the circumstances surrounding them, to determine whether the applicant is unfit or otherwise unsuited for employment or to provide caregiver services.

(B) A person who has been convicted of a crime enumerated in subsection (A) who applies for employment with, is employed by, or is a caregiver at a childcare center, group childcare home, family childcare

home, or church or religious childcare center is guilty of a misdemeanor and, upon conviction, must be fined not more than five thousand dollars or imprisoned not more than one year, or both.

(C) Application forms for employment at childcare centers, group childcare homes, family childcare homes, or church or religious childcare centers must include, at the top of the form in large bold type, a statement indicating that a person who has been convicted of a crime enumerated in subsection (A) who applies for employment with, is employed by, or seeks to provide caregiver services or is a caregiver at a facility is guilty of a misdemeanor and, upon conviction, must be fined not more than five thousand dollars or imprisoned not more than one year, or both.

(D)(1) To be employed by or to provide caregiver services at a childcare facility licensed, registered, or approved under this subarticle, a person first shall undergo a state fingerprint-based background check to be conducted by the State Law Enforcement Division (SLED) to determine any state criminal history, a fingerprint-based background check to be conducted by the Federal Bureau of Investigation to determine any other criminal history, a Central Registry check to be conducted by the department to determine any abuse or neglect perpetrated by the person upon a child, and a search of the National Crime Information Center National Sex Offender Registry and the state sex offender registry pursuant to Section 23-3-430.

(2) The person shall be subject to a state criminal register or repository check, a state sex offender check, and a state child abuse and neglect registry and database check in each state where the person has lived in the previous five years.

(3) However, a person may be provisionally employed or may provisionally provide caregiver services after the favorable completion of the State Law Enforcement Division name and date of birth-based background check and the SLED or Federal Bureau of Investigation fingerprint-based background checks, until such time as the remaining fingerprint-based background check and the Central Registry check are completed if the person executes a sworn statement on a form provided by the department that he or she has not been convicted of any crime enumerated in this section and that he or she is not on the Central Registry for having perpetrated abuse or neglect upon a child. A person provisionally employed must be directly supervised by, and in the presence of a nonprovisionally employed person at all times when providing direct care to children.

(4) Provisional status will be repealed if the requests for the Central Registry check and SLED and FBI fingerprint-based background

checks are not sent by facsimile, mail, or another manner approved by the department by the end of the next business day after the person was employed.

(5) If the director of a childcare facility violates the terms of provisional employment, for a first offense, the facility may not employ a person provisionally for twelve months. For a second or subsequent offense, the facility may not employ a person provisionally for twenty-four months. The penalty shall apply to any facility that may employ the director of the facility during the period of suspension. A childcare facility owner with five or more facilities that sustains violations in twenty-five percent or more of facilities owned in the State during a period of two years may not employ a person provisionally in any facility for twenty-four months. The department shall have authority to determine that a violation has occurred and shall notify the owner and the director in writing of the violation and the penalty. The owner or director under penalty may appeal this determination through the process provided in this subarticle for appeal of the revocation or denial of a childcare license. Authority to employ persons in provisional status must remain suspended while the appeal is pending. Upon disposition of the appeal in favor of the appellant, authority to use provisional status must be restored.

(6) The results of the fingerprint-based background checks are valid and reviews are to be repeated every five years. The fingerprint checks must be repeated if a person is not employed by or does not provide caregiver services in a childcare center, group childcare home, family childcare home, church or religious childcare center, or childcare provider that delivers services for which Child Care and Development Fund financial assistance is provided for six months or longer.

(7) For provisional employment under this section, the department must complete the Central Registry check within two business days of receipt of the request. For other employment under this section, the department must complete the Central Registry check within five business days of receipt of the request. If the department notifies the provider that research into other records is required, these deadlines may be extended for up to ten additional business days.

(8) The South Carolina Law Enforcement Division and the Federal Bureau of Investigation are authorized to retain and store fingerprints for further use in the identification of persons, including, but not limited to, use in identifying unsolved latent prints.

(9) The South Carolina Law Enforcement Division and the Federal Bureau of Investigation are authorized to provide the department with current and future information regarding the fingerprints stored,

including arrests, convictions, dispositions, warrants, and other information available to the South Carolina Law Enforcement Division and the Federal Bureau of Investigation, such as civil and criminal information.

(10) The prospective employee or childcare facility shall be responsible for any fees associated with any and all required background checks. Fees shall not exceed the actual cost of processing and administration.

(E) Unless otherwise required by law, this section applies to:

(1) an employee who provides care to the child or children with or without the direct personal supervision of a person licensed, registered, or approved, or who delivers services for which Child Care and Development Fund financial assistance is provided under this chapter; and

(2) any other employee at a facility licensed, registered, or approved, or who delivers services for which Child Care and Development Fund financial assistance is provided under this chapter who has direct access to a child outside the immediate presence of a person who has undergone the fingerprint review required under this chapter."

Childcare facility employee fingerprint review exemptions

SECTION 2. Section 63-13-50 of the 1976 Code is amended to read:

"Section 63-13-50. The fingerprint reviews required by this chapter are not required of a certified education personnel who has undergone a fingerprint review pursuant to Section 59-26-40 or of a person licensed as a foster parent who has undergone a state and federal fingerprint review pursuant to Section 63-7-2340, and the results of these reviews have been submitted to the department and the person has remained employed since the review in certified education or licensed as a foster parent or the reviews have been conducted within the preceding six months."

License issuance requirements, certain childcare facilities

SECTION 3. Section 63-13-420 of the 1976 Code is amended to read:

"Section 63-13-420. (A) Application for license must be made on forms supplied by the department and in the manner it prescribes.

(B) Before issuing a license the department shall conduct an investigation of the applicant and the proposed plan of care for children and for operating a private childcare center or group childcare home. If the results of the investigation verify that the provisions of this chapter and the applicable regulations promulgated by the department are satisfied, a license must be issued. The applicant shall cooperate with the investigation and related inspections by providing access to the physical plant, records, excluding financial records, and staff. Failure to comply with the regulations promulgated by the department within the time period specified in this chapter, if adequate notification of deficiencies has been made, is a ground for denial of application. The investigation and inspections may involve consideration of any facts, conditions, or circumstances relevant to the operation of the childcare center or group childcare home, including references and other information about the character and quality of the personnel.

(C) Each license must be conditioned by stating clearly the name and address of the licensee, the address of the childcare center or group childcare home, and the number of children who may be served.

(D) Failure of the department, except as provided in Section 63-13-200, to approve or deny an application within ninety days results in the granting of a provisional license.

(E)(1) No license may be issued to an operator who has been convicted of any of the offenses included in Section 63-13-40(A)(1).

(2) This section does not prohibit licensing when a conviction or plea of guilty or nolo contendere for one of the crimes enumerated in this subsection has been pardoned. However, notwithstanding the entry of a pardon, the department may consider all information available, including the person's pardoned convictions or pleas and the circumstances surrounding them, to determine whether the person is unfit or otherwise unsuited to be an operator.

(F) Application forms for licenses issued under this section must include, at the top of the form in large bold type, a statement indicating that a person who has been convicted of a crime enumerated in Section 63-13-40(A)(1) who applies for a license as an operator is guilty of a misdemeanor and, upon conviction, must be fined not more than five thousand dollars or imprisoned not more than one year, or both.

(G) A person eighteen years of age or older living in a group family childcare home, and any person eighteen years of age or older who moves into a group family childcare home after an initial application for licensing is approved, shall undergo a state fingerprint review to be conducted by the State Law Enforcement Division to determine any state criminal history, a fingerprint review to be conducted by the Federal

Bureau of Investigation to determine any other criminal history, a Central Registry check to be conducted by the department to determine any abuse or neglect perpetrated by the person upon a child, and a search of the National Crime Information Center National Sex Offender Registry and the state sex offender registry pursuant to Section 23-3-430. The person shall be subject to a state criminal register or repository check, a state sex offender check, and a state child abuse and neglect registry and database check in each state where the person has lived in the previous five years. The fingerprint reviews required by this subsection are required to be repeated every five years.

(H) A person fifteen through seventeen years of age living in a group family childcare home, and any person fifteen through seventeen years of age who moves into a group family childcare home after an initial application for licensing is approved, shall undergo a state fingerprint review to be conducted by the State Law Enforcement Division to determine any state criminal history and a fingerprint review to be conducted by the Federal Bureau of Investigation to determine any other criminal history. The fingerprint reviews required by this subsection are required to be repeated every five years.

(I) A person applying for a license as an operator under this section shall undergo a state fingerprint review to be conducted by the State Law Enforcement Division to determine any state criminal history, a fingerprint review to be conducted by the Federal Bureau of Investigation to determine any other criminal history, a Central Registry check to be conducted by the department to determine any abuse or neglect perpetrated by the person upon a child, and a search of the National Crime Information Center National Sex Offender Registry and the state sex offender registry pursuant to Section 23-3-430. The person shall be subject to a state criminal register or repository check, a state sex offender check, and a state child abuse and neglect registry and database check in each state where the person has lived in the previous five years. If a person is not employed or does not provide caregiver services for six months or longer, then the fingerprint reviews must be repeated. The fingerprint reviews required by this subsection are required to be repeated every five years.

(J) A person applying for a license as an operator under this section or seeking employment or seeking to provide caregiver services at a facility licensed under this section shall undergo a state fingerprint review to be conducted by the State Law Enforcement Division to determine any state criminal history, a fingerprint review to be conducted by the Federal Bureau of Investigation to determine any other criminal history, a Central Registry check to be conducted by the

department to determine any abuse or neglect perpetrated by the person upon a child, and a search of the National Crime Information Center National Sex Offender Registry and the state sex offender registry pursuant to Section 23-3-430. The person shall be subject to a state criminal register or repository check, a state sex offender check, and a state child abuse and neglect registry and database check in each state where the person has lived in the previous five years. If a person is not employed or does not provide caregiver services for six months or longer, then the fingerprint reviews must be repeated. The fingerprint reviews required by this subsection are required to be repeated every five years.

(K) The South Carolina Law Enforcement Division and the Federal Bureau of Investigation are authorized to retain and store fingerprints for further use in the identification of persons, including, but not limited to, use in identifying unsolved latent prints. The South Carolina Law Enforcement Division and the Federal Bureau of Investigation are authorized to provide the department with current and future information regarding the fingerprints stored, including arrests, convictions, dispositions, warrants, and other information available to the South Carolina Law Enforcement Division and the Federal Bureau of Investigation, such as civil and criminal information. The prospective employee or childcare facility shall be responsible for any fees associated with any and all required background checks. Fees shall not exceed the actual cost of processing and administration."

License renewal requirements, certain childcare facilities

SECTION 4. Section 63-13-430 of the 1976 Code is amended to read:

"Section 63-13-430. (A) Regular licenses may be renewed upon application and approval. Notification of a childcare center or group childcare home regarding renewal is the responsibility of the department.

(B) Application for renewal must be made on forms supplied by the department in the manner it prescribes.

(C) Before renewing a license the department shall conduct an investigation of the childcare center or group childcare home. If the results of the investigation verify that the provisions of this chapter and the applicable regulations promulgated by the department are satisfied, the license must be renewed. The licensee shall cooperate with the investigation and related inspections by providing access to the physical plant, records, and staff. Failure to comply with the regulations promulgated by the department within the time period specified in this

chapter, if adequate notification of deficiencies has been made, is a ground for revocation of the license. The investigation and inspections may involve consideration of any facts, conditions, or circumstances relevant to the operation of the childcare center or group childcare home.

(D)(1) No license may be renewed for any operator who has been convicted of any of the offenses included in Section 63-13-40(A)(1).

(2) This section does not prohibit renewal when a conviction or plea of guilty or nolo contendere for one of the crimes enumerated in this subsection has been pardoned. However, notwithstanding the entry of a pardon, the department may consider all information available, including the person's pardoned convictions or pleas and the circumstances surrounding them, to determine whether the person is unfit or otherwise unsuited to be an operator.

(E) Application forms for license renewals issued under this section must include, at the top of the form in large bold type, a statement indicating that a person who has been convicted of a crime enumerated in Section 63-13-40(A)(1) who applies for a license renewal as operator is guilty of a misdemeanor and, upon conviction, must be fined not more than five thousand dollars or imprisoned not more than one year, or both.

(F) A licensee seeking license renewal under this section, its employees, and its caregivers, who have not done so previously, on the first renewal after June 30, 1995, shall undergo a state fingerprint review to be conducted by the State Law Enforcement Division to determine any state criminal history, a fingerprint review to be conducted by the Federal Bureau of Investigation to determine any other criminal history, a Central Registry check to be conducted by the department to determine any abuse or neglect perpetrated by the person upon a child, and a search of the National Crime Information Center National Sex Offender Registry and the state sex offender registry pursuant to Section 23-3-430. The person shall be subject to a state criminal register or repository check, a state sex offender check, and a state child abuse and neglect registry and database check in each state where the person has lived in the previous five years.

(G) No facility may employ or engage the services of an employee or caregiver who has been convicted of one of the crimes included in Section 63-13-40(A)(1).

(H) The South Carolina Law Enforcement Division and the Federal Bureau of Investigation are authorized to retain and store fingerprints for further use in the identification of persons, including, but not limited to, use in identifying unsolved latent prints. The South Carolina Law Enforcement Division and the Federal Bureau of Investigation are authorized to provide the department with current and future information

regarding the fingerprints stored, including arrests, convictions, dispositions, warrants, and other information available to the South Carolina Law Enforcement Division and the Federal Bureau of Investigation, such as civil and criminal information. The prospective employee or childcare facility shall be responsible for any fees associated with any and all required background checks. Fees shall not exceed the actual cost of processing and administration."

Statement of approval requirements, certain childcare facilities

SECTION 5. Section 63-13-620 of the 1976 Code is amended to read:

"Section 63-13-620. (A) Application for a statement of standard conformity or approval must be made on forms supplied by the department and in the manner it prescribes.

(B) Before issuing approval the department shall conduct an investigation of the applicant and the proposed plan of care for children and for operating a public childcare center or group childcare home. If the results of the investigation verify that the provisions of the chapter and the applicable regulations promulgated by the department are satisfied, approval must be issued. The applicant shall cooperate with the investigation and inspections by providing access to the physical plant, records, and staff. The investigation and related inspections may involve consideration of any facts, conditions, or circumstances relevant to the operation of the childcare center or group childcare home, including references and other information about the character and quality of the personnel. If the childcare center or group childcare home fails to comply with the regulations promulgated by the department within the time period specified in this chapter, if adequate notification regarding deficiencies has been given, the appropriate public officials of the state and local government must be notified.

(C) A person applying for approval under this section shall undergo a state fingerprint review to be conducted by the State Law Enforcement Division to determine any state criminal history, a fingerprint review to be conducted by the Federal Bureau of Investigation to determine any other criminal history, a Central Registry check to be conducted by the department to determine any abuse or neglect perpetrated by the person upon a child, and a search of the National Crime Information Center National Sex Offender Registry and the state sex offender registry pursuant to Section 23-3-430. The person shall be subject to a state criminal register or repository check, a state sex offender check, and a state child abuse and neglect registry and database check in each state

where the person has lived in the previous five years. The fingerprint reviews required by this subsection are required to be repeated every five years.

(D)(1) No approval may be granted under this section if the person applying for approval or the operator, an employee, or a caregiver of the facility has been convicted of any of the offenses included in Section 63-13-40(A)(1).

(2) This section does not prohibit approval when a conviction or plea of guilty or nolo contendere for one of the crimes enumerated in this subsection has been pardoned. However, notwithstanding the entry of a pardon, the department may consider all information available, including the person's pardoned convictions or pleas and the circumstances surrounding them, to determine whether the person is unfit or otherwise unsuited as an applicant or to be an operator, caregiver, or employee.

(E) Application forms for a statement of standard conformity or approval issued under this section must include, at the top of the form in large bold type, a statement indicating that a person who has been convicted of a crime enumerated in Section 63-13-40(A)(1) who applies for approval is guilty of a misdemeanor and, upon conviction, must be fined not more than five thousand dollars or imprisoned not more than one year, or both.

(F) Application forms for a statement of standard conformity or approval issued under this chapter by the department and application forms for employment at individual public childcare centers or group childcare homes must include, at the top of the form in large bold type, a statement indicating that a person who has been convicted of one of the offenses included in Section 63-13-40(A)(1) who applies for a license as operator, applies for employment with, is employed by, seeks to provide caregiver services with, or is a caregiver at a facility is guilty of a misdemeanor and, upon conviction, must be fined not more than five thousand dollars or imprisoned not more than one year, or both.

(G) The South Carolina Law Enforcement Division and the Federal Bureau of Investigation are authorized to retain and store fingerprints for further use in the identification of persons, including, but not limited to, use in identifying unsolved latent prints. The South Carolina Law Enforcement Division and the Federal Bureau of Investigation are authorized to provide the department with current and future information regarding the fingerprints stored, including arrests, convictions, dispositions, warrants, and other information available to the South Carolina Law Enforcement Division and the Federal Bureau of Investigation, such as civil and criminal information. The prospective employee or childcare facility shall be responsible for any fees

associated with any and all required background checks. Fees shall not exceed the actual cost of processing and administration."

Statement of approval renewal requirements, certain childcare facilities

SECTION 6. A. Section 63-13-630(D), (E), (F), and (G) of the 1976 Code is amended to read:

"(D)(1) A person applying for approval renewal under this section, a person who will operate the facility, and its employees and caregivers, who have not done so previously, on the first approval renewal after June 30, 1995, shall undergo a state fingerprint review to be conducted by the State Law Enforcement Division to determine any state criminal history, a fingerprint review to be conducted by the Federal Bureau of Investigation to determine any other criminal history, a Central Registry check to be conducted by the department to determine any abuse or neglect perpetrated by the person upon a child, and a search of the National Crime Information Center National Sex Offender Registry and the state sex offender registry pursuant to Section 23-3-430. The person shall be subject to a state criminal register or repository check, a state sex offender check, and a state child abuse and neglect registry and database check in each state where the person has lived in the previous five years.

(2) No approval may be renewed under this section if the person applying for renewal, the operator of the facility, or an employee or a caregiver has been convicted of any of the offenses included in Section 63-13-40(A)(1).

(3) This section does not prohibit renewal when a conviction or plea of guilty or nolo contendere for one of the crimes enumerated in this subsection has been pardoned. However, notwithstanding the entry of a pardon, the department may consider all information available, including the person's pardoned convictions or pleas and the circumstances surrounding them, to determine whether the person is unfit or otherwise unsuited as an applicant or to be an operator, caregiver, or employee.

(E) Application forms for renewal of a statement of standard conformity or approval issued under this section must include, at the top of the form in large bold type, a statement indicating that a person who has been convicted of a crime enumerated in Section 63-13-40(A)(1) who applies for approval renewal is guilty of a misdemeanor and, upon conviction, must be fined not more than five thousand dollars or imprisoned not more than one year, or both.

(F) No facility may employ or engage the services of an employee or a caregiver who has been convicted of one of the crimes listed in Section 63-13-40(A)(1).

(G) Application forms for renewal of a statement of standard conformity or approval issued under this article by the department for individual public childcare centers or group childcare homes must include, at the top of the form in large bold type, a statement indicating that a person who has been convicted of one of the crimes listed in Section 63-13-40(A)(1) who applies for a license as operator, applies for employment with, is employed by, seeks to provide caregiver services with, or is a caregiver at a facility is guilty of a misdemeanor and, upon conviction, must be fined not more than five thousand dollars or imprisoned not more than one year, or both."

B. Section 63-13-630 of the 1976 Code is amended by adding an appropriately lettered new subsection to read:

"( ) The South Carolina Law Enforcement Division and the Federal Bureau of Investigation are authorized to retain and store fingerprints for further use in the identification of persons, including, but not limited to, use in identifying unsolved latent prints. The South Carolina Law Enforcement Division and the Federal Bureau of Investigation are authorized to provide the department with current and future information regarding the fingerprints stored, including arrests, convictions, dispositions, warrants, and other information available to the South Carolina Law Enforcement Division and the Federal Bureau of Investigation, such as civil and criminal information. The prospective employee or childcare facility shall be responsible for any fees associated with any and all required background checks. Fees shall not exceed the actual cost of processing and administration."

Registration requirements, certain childcare facilities

SECTION 7. Section 63-13-810(C) of the 1976 Code is amended to read:

"(C)(1)A family childcare home which elects to participate in a federal program which requires licensing as a prerequisite to participation may elect to be licensed under the procedures in Section 63-13-820. A family childcare home electing licensing shall demonstrate compliance with the suggested standards developed by the department under Section 63-13-180 and shall comply with provisions of Sections 63-13-420 and

63-13-430 relating to criminal history conviction records checks, a Central Registry check to be conducted by the department to determine any abuse or neglect perpetrated by the person upon a child, and a search of the National Crime Information Center National Sex Offender Registry and the state sex offender registry pursuant to Section 23-3-430 upon original licensing and upon renewal. The person shall be subject to a state criminal register or repository check, a state sex offender check, and a state child abuse and neglect registry and database check in each state where the person has lived in the previous five years.

(2) Operators and caregivers of licensed family childcare homes are held to the standards in Sections 63-13-420 and 63-13-430 regarding criminal convictions and Central Registry and sex offender checks."

Registration requirements, certain childcare facilities

SECTION 8. Section 63-13-820 of the 1976 Code is amended to read:

"Section 63-13-820. (A) Registration must be completed on forms supplied by the department and in the manner it prescribes.

(B) Before becoming a registered operator the applicant shall:

(1) sign a statement that he has read the suggested standards developed by the department under Section 63-13-180;

(2) furnish the department with a signed statement by each consumer parent verifying that the operator has provided each consumer parent with a copy of the suggested standards for family childcare homes and the procedures for filing complaints;

(3) upon request, provide the department with any facts, conditions, or circumstances relevant to the operation of the family childcare home, including references and other information regarding the character of the family childcare home operator.

(C) A person applying to become a registered operator of a family childcare home under this section, a person eighteen years of age or older living in the family childcare home, and any person eighteen years of age or older who moves into the family childcare home after the initial application for registration is approved shall undergo a state fingerprint review to be conducted by the State Law Enforcement Division to determine any state criminal history, a fingerprint review to be conducted by the Federal Bureau of Investigation to determine any other criminal history, a Central Registry check to be conducted by the department to determine any abuse or neglect perpetrated by the person upon a child, and a search of the National Crime Information Center National Sex Offender Registry and the state sex offender registry

pursuant to Section 23-3-430. The fingerprint reviews required by this subsection are required to be repeated every five years.

(D) A person applying to become the registered operator of a family childcare home under this section, a person fifteen through seventeen years of age living in a family childcare home, and any person fifteen through seventeen years of age who moves into a family childcare home after an initial application for registration is approved shall undergo a state fingerprint review to be conducted by the State Law Enforcement Division to determine any state criminal history and a fingerprint review to be conducted by the Federal Bureau of Investigation to determine any other criminal history. The fingerprint reviews required by this subsection are required to be repeated every five years.

(E)(1) No applicant may be registered as an operator if the person, an employee, a caregiver, or a person fifteen years of age or older living in the family childcare home has been convicted of an offense included in Section 63-13-40(A)(1).

(2) This section does not operate to prohibit registration or renewal when a conviction or plea of guilty or nolo contendere for one of the crimes enumerated in this subsection has been pardoned. However, notwithstanding the entry of a pardon, the department may consider all information available, including the person's pardoned convictions or pleas and the circumstances surrounding them, to determine whether the person is unfit or otherwise unsuited to be an operator, caregiver, employee, or to be living in the family daycare home.

(F) Application forms for registration issued under this section must include, at the top of the form in large bold type, a statement indicating that a person who has been convicted of a crime included in Section 63-13-40(A)(1) who applies for registration as operator or a person who applies for registration as an operator who has a person fifteen years of age or older living in the family childcare home who has been convicted of a crime included in Section 63-13-40(A)(1) is guilty of a misdemeanor and, upon conviction, must be fined not more than five thousand dollars or imprisoned not more than one year, or both.

(G) Application forms for registration issued under this chapter by the department and application forms for employment at a family childcare home must include, at the top of the form in large bold type, a statement indicating that a person who has been convicted of one of the crimes listed in Section 63-13-40(A)(1) who applies for a license as operator, applies for employment with, is employed by, seeks to provide caregiver services with, or is a caregiver at a facility is guilty of a

misdemeanor and, upon conviction, must be fined not more than five thousand dollars or imprisoned not more than one year, or both.

(H) The South Carolina Law Enforcement Division and the Federal Bureau of Investigation are authorized to retain and store fingerprints for further use in the identification of persons, including, but not limited to, use in identifying unsolved latent prints. The South Carolina Law Enforcement Division and the Federal Bureau of Investigation are authorized to provide the department with current and future information regarding the fingerprints stored, including arrests, convictions, dispositions, warrants, and other information available to the South Carolina Law Enforcement Division and the Federal Bureau of Investigation, such as civil and criminal information. The prospective employee or childcare facility shall be responsible for any fees associated with any and all required background checks. Fees shall not exceed the actual cost of processing and administration."

Statement of registration requirements, certain childcare facilities

SECTION 9. Section 63-13-830(C) and (D) of the 1976 Code is amended to read:

"(C)(1) A person applying for renewal of registration as an operator of a family childcare home registered under this article and a person employed or providing caregiver services at a family childcare home registered under this article, who has not done so previously, on the first renewal after June 30, 1996, shall undergo a state fingerprint review to be conducted by the State Law Enforcement Division to determine any state criminal history, a fingerprint review to be conducted by the Federal Bureau of Investigation to determine any other criminal history, a Central Registry check to be conducted by the department to determine any abuse or neglect perpetrated by the person upon a child, and a search of the National Crime Information Center National Sex Offender Registry and the state sex offender registry pursuant to Section 23-3-430. The person shall be subject to a state criminal register or repository check, a state sex offender check, and a state child abuse and neglect registry and database check in each state where the person has lived in the previous five years.

(2) Application forms for registration renewal issued under this section must include, at the top of the form in large bold type, a statement indicating that a person who has been convicted of a crime enumerated in Section 63-13-40(A)(1) who applies for registration as an operator or a person who applies for registration as an operator who has a person

fifteen years of age or older living in the home who has been convicted of a crime enumerated in Section 63-13-40(A)(1) is guilty of a misdemeanor and, upon conviction, must be fined not more than five thousand dollars or imprisoned not more than one year, or both.

(D) Application forms for registration renewal issued under this chapter by the department for a family childcare home must include, at the top of the form in large bold type, a statement indicating that a person who has been convicted of one of the crimes listed in Section 63-13-40(A)(1) who applies for a license as operator, applies for employment with, is employed by, seeks to provide caregiver services with, or is a caregiver at a facility is guilty of a misdemeanor and, upon conviction, must be fined not more than five thousand dollars or imprisoned not more than one year, or both."

Registration requirements, certain childcare facilities

SECTION 10. Section 63-13-1010 of the 1976 Code is amended to read:

"Section 63-13-1010. (A) No church congregation or established religious denomination or religious college or university which does not receive state or federal financial assistance for childcare services may operate a childcare center or group childcare home unless it complies with the requirements for registration and inspection and the regulations for health and fire safety as set forth in this chapter and Section 63-13-110 and requirements applicable to private and public childcare centers and group childcare homes for floor space, child-staff ratios, and staff training. Application for registration must be made on forms supplied by the department and in the manner it prescribes. Registration expires two years from the date of issuance of the statement of registration. Registration may be renewed according to the procedures developed by the department.

(B) Before issuing a registration, the department shall conduct an investigation of the applicant. This investigation is limited to:

(1) the results of the criminal history review required by subsection (G);

(2) the requirements for registration and inspection and the regulations for health and fire safety provided for in this chapter and Section 63-13-110; and

(3) requirements applicable to private and public childcare centers and group childcare homes for floor space, child-staff ratios, and staff training.

(C)(1) No license or registration may be issued to a church congregation, established religious denomination, or religious college or university if a person who provides service as an operator, caregiver, or employee at the childcare facility has been convicted of any of the offenses included in Section 63-13-40(A)(1).

(2) This section does not prohibit licensing, registration, or the renewal of a license or registration when a conviction or plea of guilty or nolo contendere for one of the crimes enumerated in this subsection has been pardoned. However, notwithstanding the entry of a pardon, the department may consider all information available, including the person's pardoned convictions or pleas and the circumstances surrounding them, to determine whether the person is unfit or otherwise unsuited to be an operator, caregiver, or employee.

(D) Application forms for licensure or registration issued under this chapter must include, at the top of the form in large bold type, a statement indicating that a person who has been convicted of a crime enumerated in Section 63-13-40(A)(1) who applies for a license or registration as operator is guilty of a misdemeanor and, upon conviction, must be fined not more than five thousand dollars or imprisoned not more than one year, or both.

(E) A person applying for a license or registration as an operator of a church or religious childcare center shall undergo a state fingerprint review to be conducted by the State Law Enforcement Division to determine any state criminal history, a fingerprint review to be conducted by the Federal Bureau of Investigation to determine any other criminal history, a Central Registry check to be conducted by the department to determine any abuse or neglect perpetrated by the person upon a child, and a search of the National Crime Information Center National Sex Offender Registry and the state sex offender registry pursuant to Section 23-3-430. The person shall be subject to a state criminal register or repository check, a state sex offender check, and a state child abuse and neglect registry and database check in each state where the person has lived in the previous five years. If a person is not employed or does not provide caregiver services for six months or longer, then the fingerprint reviews must be repeated. The fingerprint reviews required by this subsection are required to be repeated every five years.

(F) Application forms for licensure or registration issued under this chapter by the department and application forms for employment at a facility operated by a church congregation, established religious denomination, or religious college or university must include, at the top of the form in large bold type, a statement indicating that a person who

has been convicted of one of the crimes listed in Section 63-13-40(A)(1) who applies for a license as operator, applies for employment with, is employed by, seeks to provide caregiver services with, or is a caregiver at a facility is guilty of a misdemeanor and, upon conviction, must be fined not more than five thousand dollars or imprisoned not more than one year, or both.

(G) A person applying for a license or registration as an operator of a church or religious childcare center or seeking employment or seeking to provide caregiver services at a church or religious childcare center shall undergo a state fingerprint review to be conducted by the State Law Enforcement Division to determine any state criminal history, a fingerprint review to be conducted by the Federal Bureau of Investigation to determine any other criminal history, a Central Registry check to be conducted by the department to determine any abuse or neglect perpetrated by the person upon a child, and a search of the National Crime Information Center National Sex Offender Registry and the state sex offender registry pursuant to Section 23-3-430. The person shall be subject to a state criminal register or repository check, a state sex offender check, and a state child abuse and neglect registry and database check in each state where the person has lived in the previous five years. The fingerprint reviews required by this subsection are required to be repeated every five years.

(H) A person applying for renewal of a license or registration as an operator of a church or religious childcare center licensed or registered under this chapter and a person employed or registered under this chapter, who has not done so previously, on the first renewal after June 30, 1996, shall undergo a state fingerprint review to be conducted by the State Law Enforcement Division to determine any state criminal history, a fingerprint review to be conducted by the Federal Bureau of Investigation to determine any other criminal history, a Central Registry check to be conducted by the department to determine any abuse or neglect perpetrated by the person upon a child, and a search of the National Crime Information Center National Sex Offender Registry and the state sex offender registry pursuant to Section 23-3-430. The person shall be subject to a state criminal register or repository check, a state sex offender check, and a state child abuse and neglect registry and database check in each state where the person has lived in the previous five years.

(I) The South Carolina Law Enforcement Division and the Federal Bureau of Investigation are authorized to retain and store fingerprints for further use in the identification of persons, including, but not limited to, use in identifying unsolved latent prints. The South Carolina Law

Enforcement Division and the Federal Bureau of Investigation are authorized to provide the department with current and future information regarding the fingerprints stored, including arrests, convictions, dispositions, warrants, and other information available to the South Carolina Law Enforcement Division and the Federal Bureau of Investigation, such as civil and criminal information. The prospective employee or childcare facility shall be responsible for any fees associated with any and all required background checks. Fees shall not exceed the actual cost of processing and administration."

Sex offender employment prohibitions

SECTION 11. Chapter 13, Title 63 of the 1976 Code is amended by adding:

"Article 10

Miscellaneous Care Providers

Section 63-13-1110. (A) Notwithstanding another provision of law to the contrary, it is unlawful for a person required to register pursuant to Article 7, Chapter 3, Title 23 to work for any person or as a sole proprietor, with or without compensation, at any location where a minor is present and the person's responsibilities or activities would include instruction, supervision, or care of a minor or minors, unless his employment or volunteer service is approved by a circuit court order and recorded in his sex offender registry file.

(B) All court costs and fees associated with the provisions contained in subsection (A) must be paid by the offender.

(C) A person who violates this provision is guilty of a felony and, upon conviction, must be imprisoned not more than five years."

Time effective

SECTION 12. This act takes effect upon approval by the Governor.

Ratified the 13th day of May, 2019.

Approved the 16th day of May, 2019.

No. 53

(R73, S621)

AN ACT TO AMEND SECTION 41-43-100, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE ISSUANCE OF BONDS BY THE SOUTH CAROLINA JOBS-ECONOMIC DEVELOPMENT AUTHORITY, SO AS TO PROVIDE FOR CERTAIN NOTICE REQUIREMENTS BEFORE THE BONDS MAY BE ISSUED.

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

Public hearing on SC-JEDA bond issue

SECTION 1. Section 41-43-100 of the 1976 Code is amended to read:

"Section 41-43-100. In addition to other powers vested in the authority by existing laws, the authority has all powers granted the counties and municipalities of this State pursuant to the provisions of Chapter 29, Title 4, including the issuance of bonds by the authority and the refunding of bonds issued under that chapter. The authority may issue bonds pursuant to this section after a public hearing is held as required by federal law to enable interest on such bonds to be excluded from gross income for federal tax purposes. Notice of any required public hearing must be provided to the public and to the clerk of the county council or clerk of the municipal council in the county or municipality in which the project is or will be located at the times and in the manner permitted or required by federal tax law. Additionally, a copy of the public hearing notice must be published by the authority in a newspaper of general circulation in the county in which the project is located before the date of the public hearing, if such public hearing is required by federal law; provided, however, the notice posted by the authority as required by federal law shall control for the purpose of compliance with any federal law and not the notice published in the newspaper where the project is located. The authority may combine for the purposes of a single offering bonds to finance more than one project. The interest rate of bonds issued pursuant to this section is not subject to approval by the South Carolina Coordinating Council for Economic Development."

Time effective

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

Ratified the 13th day of May, 2019.

Approved the 16th day of May, 2019.

No. 54

(R74, H3035)

AN ACT TO AMEND SECTION 7-13-72, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO MANAGERS OF ELECTION, SO AS TO PROVIDE THAT A CLERK APPOINTED FROM AMONG THE MANAGERS FOR EACH POLLING PLACE MUST BE A RESIDENT AND REGISTERED ELECTOR OF THE RESPECTIVE COUNTY IN WHICH HE IS APPOINTED TO WORK OR IN AN ADJOINING COUNTY; TO AMEND SECTION 7-13-80, RELATING TO THE ORGANIZATION OF BOARDS OF VOTER REGISTRATION AND ELECTIONS AND MANAGERS AND CLERKS, SO AS TO PROVIDE THAT A CHAIRMAN OF A BOARD OF MANAGERS MUST BE A RESIDENT AND REGISTERED ELECTOR OF THE RESPECTIVE COUNTY IN WHICH HE IS APPOINTED TO WORK OR IN AN ADJOINING COUNTY; AND TO AMEND SECTION 7-13-110, RELATING TO POLL MANAGERS AND THEIR ASSISTANTS, SO AS TO PROVIDE THAT A CHAIRMAN OR CLERK APPOINTED FROM AMONG THE MANAGERS FOR THE VARIOUS POLLING PLACES MUST BE A RESIDENT AND REGISTERED ELECTOR OF THE RESPECTIVE COUNTY IN WHICH HE IS APPOINTED TO WORK OR IN AN ADJOINING COUNTY, TO PROVIDE THAT A MANAGER WHO IS NOT APPOINTED TO SERVE AS A CHAIRMAN OR CLERK MUST BE A RESIDENT AND A REGISTERED ELECTOR OF THE STATE OF SOUTH CAROLINA, AND TO REQUIRE THAT ANY PERSON QUALIFIED TO SERVE AS A MANAGER WHO REQUESTS TO WORK IN HIS RESIDENT COUNTY OR IN AN ADJOINING COUNTY MUST BE GIVEN PRIORITY OVER QUALIFIED

PERSONS FROM OTHER COUNTIES FOR APPOINTMENT TO WORK IN THE RESIDENT COUNTY OR IN AN ADJOINING COUNTY.

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

Managers of election

SECTION 1. Section 7-13-72 of the 1976 Code is amended to read:

"Section 7-13-72. For the general election held on the first Tuesday following the first Monday in November in each even-numbered year, the members of the county board of voter registration and elections must appoint three managers of election for each polling place in the county for which they must respectively be appointed for each five hundred electors, or portion of each five hundred electors, registered to vote at the polling place.

For primary elections held on the second Tuesday in June of each general election year, the members of the county board of voter registration and elections must appoint three managers of election for each polling place in the county for which they must respectively be appointed for the first five hundred electors registered to vote in each precinct in the county, and may appoint three additional managers for each five hundred electors registered to vote in the precinct above the first five hundred electors, or portion thereof. The members of the county board of voter registration and elections must also appoint from among the managers a clerk for each polling place in the county, and none of the officers may be removed from office except for incompetence or misconduct. All clerks appointed from among the managers must be residents and registered electors of the respective counties in which they are appointed to work or in an adjoining county.

For all other primary, special, or municipal elections, the authority charged by law with conducting the primary, special, or municipal elections must appoint three managers of election for the first five hundred electors registered to vote in each precinct in the county, municipality, or other election district and one additional manager for each five hundred electors registered to vote in the precinct above the first five hundred electors. The authority responsible by law for conducting the election must also appoint from among the managers a clerk for each polling place in a primary, special, or municipal election. All clerks appointed from among the managers must be residents and

registered electors of the respective counties in which they are appointed to work or in an adjoining county.

Forty-five days prior to any primary, except municipal primaries, each political party holding a primary may submit to the county board of voter registration and elections a list of prospective managers for each precinct. The county board of voter registration and elections must appoint at least one manager for each precinct from the list of names submitted by each political party holding a primary. However, the county board of voter registration and elections may refuse to appoint any prospective manager for good cause.

No person may be appointed as a manager in a primary, general, or special election who has not completed a training program approved by the State Election Commission concerning his duties and responsibilities as a poll manager and who has not received certification of having completed the training program. The training program and the issuance of certification must be carried out by the county board of voter registration and elections. After their appointment, the managers and clerks must take and subscribe, before any officer authorized to administer oaths, the following oath of office prescribed by Section 26 of Article III of the Constitution: 'I do solemnly swear (or affirm) that I am duly qualified, according to the Constitution of this State, to exercise the duties of the office to which I have been appointed, and that I will, to the best of my ability, discharge the duties thereof, and preserve, protect and defend the Constitution of this State and of the United States. So help me God'.

The oath must be immediately filed in the office of the clerk of court of common pleas of the county in which the managers and clerks are appointed, or if there is no clerk of court, in the office of the Secretary of State. Before opening the polls, the managers of election must take and subscribe the oath provided for in Section 7-13-100. Upon the completion of the canvassing of votes, this oath must be filed with the members of the county board of voter registration and elections along with the ballots from that election precinct."

Organization of voter registration and elections, managers and clerks, oaths

SECTION 2. Section 7-13-80 of the 1976 Code is amended to read:

"Section 7-13-80. The board members, managers, and clerks at their first meeting, respectively, must proceed to organize as a board. The county board of voter registration and elections must appoint the

chairman of the board of managers. The chairman must be a resident and registered elector of the respective county in which he is appointed to work or in an adjoining county. The chairman, in each instance, may administer oaths."

Residency requirements of chairmen, clerks, and managers of elections

SECTION 3. Section 7-13-110 of the 1976 Code is amended to read:

"Section 7-13-110. Each chairman and clerk appointed from among the managers of election for the various polling places must be a resident and registered elector of the respective county in which he is appointed to work or in an adjoining county. All managers of election who are not appointed to serve as chairmen or clerks for the various polling places in the State must be residents and registered electors of the State of South Carolina. Any person qualified to serve as a manager who requests to work in his resident county or an adjoining county must be given priority over qualified persons from other counties for appointment to work in the resident county or an adjoining county. Any person at least sixteen years of age who has completed the training required by Section 7-13-72 and who is not otherwise disqualified by law may be appointed as a poll manager's assistant by the appropriate county board of voter registration and elections. A sixteen- or seventeen-year-old appointed as a poll manager's assistant may not serve as chairman of the managers or clerk in the polling place to which he or she is appointed. Sixteen- and seventeen-year-olds must serve under supervision of the chairman of the managers of the polling place, and their specific duties must be prescribed by the county board of voter registration and elections. One sixteen- or seventeen-year-old assistant poll manager may be appointed for every two regular poll managers appointed to work in a precinct."

Time effective

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

Ratified the 13th day of May, 2019.

Approved the 16th day of May, 2019.

No. 55

(R75, H3036)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 44-37-35 SO AS TO REQUIRE NEONATAL TESTING FOR CERTAIN GENETIC DISORDERS AND DISEASES AND FOR OTHER PURPOSES; AND TO AMEND SECTION 44-37-30, RELATING TO NEONATAL TESTING OF CHILDREN, SO AS TO REQUIRE THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL TO ESTABLISH A NEWBORN SCREENING ADVISORY COMMITTEE TO REVIEW THE DESIRABILITY AND ADVISABILITY OF INCLUDING ADDITIONAL METABOLIC, GENETIC, AND CONGENITAL DISORDERS IN CERTAIN NEONATAL TESTING.

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

Required neonatal genetic testing

SECTION 1. Chapter 37, Title 44 of the 1976 Code is amended by adding:

"Section 44-37-35. (A) Neonatal testing conducted pursuant to Section 44-37-30 must include testing for the following:

(1) Krabbe disease;

(2) Pompe disease; and

(3) Hurler syndrome.

(B) The department shall require additional lysosomal storage disorders to be tested upon the recommendations of the Newborn Screening Advisory Committee and in accordance with Section 44-37-30 pursuant to a duly promulgated regulation as testing for such disorders becomes available."

Newborn Screening Advisory Committee, creation and duties

SECTION 2. Section 44-37-30 of the 1976 Code is amended by adding an appropriately lettered subsection at the end to read:

"( ) The department shall establish the Newborn Screening Advisory Committee to review the feasibility and advisability of including

additional metabolic, genetic, and congenital disorders in the neonatal testing conducted pursuant to this section. The committee must be multidisciplinary and composed of members deemed appropriate by the department."

Time effective

SECTION 3. This act takes effect upon approval by the Governor. Implementation of the act is contingent upon available funding from public sources.

Ratified the 13th day of May, 2019.

Approved the 16th day of May, 2019.

No. 56

(R76, H3145)

AN ACT TO AMEND SECTION 33-49-50, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE EXEMPTION OF COOPERATIVES AND FOREIGN CORPORATIONS FROM THE JURISDICTION AND CONTROL OF THE PUBLIC SERVICE COMMISSION, SO AS TO MODIFY THIS EXEMPTION; BY ADDING SECTION 33-49-150 SO AS TO VEST THE OFFICE OF REGULATORY STAFF WITH AUTHORITY AND JURISDICTION TO MAKE INSPECTIONS, AUDITS, AND EXAMINATIONS OF SPECIFIED ELECTRIC COOPERATIVES AND TO PROVIDE EXCEPTIONS AND A PROCESS RESOLVING DISPUTED ISSUES; TO AMEND SECTION 33-49-255, RELATING TO RESTRICTIONS ON THE INTERRUPTION OF ELECTRIC SERVICE TO RESIDENTIAL CUSTOMERS OF ELECTRIC COOPERATIVES AND COMPLAINTS BY CUSTOMERS FOR VIOLATION OF THESE PROVISIONS, SO AS TO PROVIDE THAT THESE COMPLAINTS MUST BE MADE TO THE OFFICE OF REGULATORY STAFF AND THEN, IF NECESSARY, TO COURTS OF APPROPRIATE JURISDICTION; TO AMEND SECTION 33-49-420, RELATING TO ANNUAL MEETINGS OF MEMBERS OF AN ELECTRIC COOPERATIVE, SO AS TO

REVISE THE NOTICE REQUIREMENTS FOR CERTAIN MEETINGS; TO AMEND SECTION 33-49-430, RELATING TO A QUORUM AT MEETINGS OF ELECTRIC COOPERATIVES, SO AS TO ALLOW PERSONS CASTING EARLY VOTING BALLOTS WHERE AN ELECTION IS TO BE HELD TO BE COUNTED FOR PURPOSES OF DETERMINING A QUORUM AT THE MEETING, AND TO PROHIBIT VOTING BY PROXY; TO AMEND SECTION 33-49-440, RELATING TO VOTING BY MEMBERS AND SECTION 33-49-620, RELATING TO VOTING DISTRICTS FROM WHICH SOME MEMBERS OF THE BOARD OF TRUSTEES MAY BE ELECTED, SO AS TO REQUIRE POLLING LOCATIONS TO BE OPEN FOR A MINIMUM OF FOUR HOURS AND TO PERMIT EARLY VOTING FOR MEETINGS AT WHICH TRUSTEES ARE TO BE ELECTED AND THE PROCEDURES FOR EARLY VOTING; TO AMEND SECTION 33-49-610, RELATING TO THE BOARD OF TRUSTEES OF A COOPERATIVE, SO AS TO PROVIDE THAT A TRUSTEE'S PRINCIPAL RESIDENCE MUST BE SERVED BY THE COOPERATIVE AND REVISE THE MANNER IN WHICH VACANCIES OCCURRING FOR ANY REASON OTHER THAN EXPIRATION OF A TERM ARE FILLED; BY ADDING SECTION 33-49-615 SO AS TO REQUIRE DISCLOSURE OF COMPENSATION AND BENEFITS OF MEMBERS OF THE BOARD OF TRUSTEES AND THE DATE WHEN THESE PROVISIONS ARE EFFECTIVE; BY ADDING SECTION 33-49-621 SO AS TO PROVIDE THAT WITHIN EIGHTEEN MONTHS OF THE EFFECTIVE DATE OF THIS SECTION, EACH DISTRIBUTION COOPERATIVE MUST PUT THE QUESTION OF SINGLE-MEMBER VOTING DISTRICTS TO ITS MEMBERSHIP AT AN ANNUAL MEETING; BY ADDING SECTION 33-49-625 SO AS TO REQUIRE SPECIFIED NOTICE OF CERTAIN MEETINGS TO THE COOPERATIVE MEMBERSHIP, TO REQUIRE VOTES OF TRUSTEES TO BE TAKEN IN OPEN SESSION WITH CERTAIN EXCEPTIONS, TO REQUIRE VOTES TAKEN IN EXECUTIVE SESSION TO BE RATIFIED IN OPEN SESSION, AND TO REQUIRE MINUTES OF ALL MEETINGS TO BE PROVIDED TO COOPERATIVE MEMBERS; TO AMEND SECTION 33-49-630, RELATING TO COMPENSATION OR EMPLOYMENT OF TRUSTEES, SO AS TO PROHIBIT CERTAIN ACTIONS OR CONDUCT BY TRUSTEES WITH SPECIFIED EXCEPTIONS; TO AMEND SECTION 33-49-640, RELATING TO THE ANNUAL ELECTION

AND TERMS OF TRUSTEES, SO AS TO PROVIDE THAT INCUMBENT TRUSTEES SEEKING REELECTION SHALL NOT DIRECTLY OR INDIRECTLY INFLUENCE THE NOMINATION OR CREDENTIALS PROCESS; BY ADDING SECTION 33-49-645 SO AS TO FURTHER PROVIDE FOR THE MANNER IN WHICH TRUSTEE AND OTHER ELECTIONS MUST BE CONDUCTED; TO AMEND SECTION 58-4-50, RELATING TO THE DUTIES AND RESPONSIBILITIES OF THE OFFICE OF REGULATORY STAFF, SO AS TO PROVIDE THAT WHEN CONSIDERED NECESSARY BY THE EXECUTIVE DIRECTOR OF THE OFFICE OF REGULATORY STAFF AND IN THE PUBLIC INTEREST, THE OFFICE OF REGULATORY STAFF SHALL CONDUCT INSPECTIONS AND AUDITS OF, AND EXAMINATIONS OF COMPLIANCE BY ELECTRIC COOPERATIVES; TO AMEND SECTION 58-4-55, RELATING TO THE PRODUCTION OF RECORDS TO THE OFFICE OF REGULATORY STAFF WHEN CONDUCTING INSPECTIONS, AUDITS, AND EXAMINATIONS, SO AS TO INCLUDE ELECTRIC COOPERATIVES WITHIN THE SECTION, AND TO PROVIDE FOR HOW THE EXPENSES OF THE OFFICE OF REGULATORY STAFF MUST BE CERTIFIED AND ASSESSED TO AUDITED ELECTRIC COOPERATIVES; TO AMEND SECTION 58-27-840, RELATING TO PREFERENCES AND UNREASONABLE DIFFERENCES IN RATES, SO AS TO PROVIDE FOR THE MANNER IN WHICH THIS PROHIBITION APPLIES TO DISTRIBUTION ELECTRIC COOPERATIVES; BY ADDING SECTION 33-49-160 SO AS TO PROVIDE THAT AN ASSOCIATION FORMED BY A GROUP OF ELECTRIC COOPERATIVES THAT MEETS THE REQUIREMENTS OF SECTION 501(C)(6) OF THE INTERNAL REVENUE CODE, IS ORGANIZED UNDER THE LAWS OF THIS STATE AND HAS AS ITS PURPOSE THE REPRESENTATION OF THE INTERESTS OF ELECTRIC COOPERATIVES IN THIS STATE, IS SUBJECT TO CERTAIN REQUIREMENTS, TO REQUIRE CERTAIN DISCLOSURES BY THE ASSOCIATION, TO AUTHORIZE THE ASSOCIATION TO COMPENSATE ITS BOARD OF TRUSTEES AND PROVIDE FOR SPECIFIC REQUIREMENTS IN REGARD TO THIS COMPENSATION, AND TO PROVIDE FOR SPECIFIED ETHICAL AND OTHER RULES OF CONDUCT, INCLUDING PROHIBITED ACTIONS BY TRUSTEES AND OFFICERS OF THE ASSOCIATION.

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

Exemption modified

SECTION 1. Section 33-49-50 of the 1976 Code is amended to read:

"Section 33-49-50. Cooperatives and foreign corporations transacting business in this State pursuant to this chapter, except for the provisions of Sections 58-27-40, 58-27-610 through 58-27-670, 58-27-820, 58-27-840, 58-27-1210, 58-27-1270, 58-27-1280, 58-27-210, and 33-49-150 are exempt from the jurisdiction and control of the Public Service Commission of this State."

Authority vested

SECTION 2. Article 1, Chapter 49, Title 33 of the 1976 Code is amended by adding:

"Section 33-49-150. The Office of Regulatory Staff under the provisions of this section is hereby vested with the authority and jurisdiction to make inspections, audits, and examinations of electric cooperatives pursuant to the provisions of Chapter 4, Title 58 relating to the compliance of electric cooperatives with the provisions of Sections 33-49-255, 33-49-280, 33-49-420, 33-49-430, 33-49-440, 33-49-450, 33-49-610, 33-49-615, 33-49-620, 33-49-625, 33-49-630, 33-49-640, 33-49-645, 33-49-1410, 33-49-1420, 33-49-1430, 33-49-1440, 58-27-820, and 58-27-840. The Office of Regulatory Staff is granted authority and jurisdiction over electric cooperatives that provide only wholesale services with regard to any of the foregoing statutory provisions to the extent that those provisions are applicable to the wholesale electric cooperatives. The Office of Regulatory Staff does not have the authority or jurisdiction to make inspections, audits, or examinations of subsidiaries of an electric cooperative provided that the subsidiary is not subsidized by, or any financial credit risk to, electric cooperative ratepayers and that the subsidiary has not taken action, on behalf of the electric cooperative, on any of the electric cooperative's duties as provided in the sections listed above. Where an electric cooperative board of trustees has exercised its business judgment in accordance with sound business and management practices and consistent with the long-term financial stability of the cooperative and the benefit of its members, the Office of Regulatory Staff is not

authorized to disturb the resulting decisions of the electric cooperative board of trustees. Upon completion of an authorized inspection, audit, or examination, the Office of Regulatory Staff must report its findings to the management and board of the electric cooperative and attempt to resolve with the management and board any compliance issues that are identified. The Public Service Commission is vested with the authority and jurisdiction to resolve any disputed issues arising from the inspections, audits, or examinations."

Complaints

SECTION 3. Section 33-49-255 of the 1976 Code is amended to read:

"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 in this section must be construed so as to relieve an electric cooperative of the requirements of Act 313 of 2006.

(D) A person aggrieved by a violation of this section must make a complaint to the Office of Regulatory Staff for redress in accordance with applicable law. If the matter is not resolved after making a complaint to the Office of Regulatory Staff, the person may petition the courts of this State for redress."

Notice requirements revised

SECTION 4. Section 33-49-420 of the 1976 Code is amended to read:

"Section 33-49-420. An annual meeting of the members must be held at a time as provided in the bylaws. Special meetings of the members may be called by the board of trustees, by any three trustees, by not less than ten per cent of the members or by the president. Meetings of members must be held at a place as provided in the bylaws. In the absence of any such provision, all meetings must be held in the city or town in which the principal office of the cooperative is located.

Except as otherwise provided, written or printed notice stating the time and place of each meeting of members and, in the case of a special meeting, the purpose or purposes for which the meeting is called, must be given to each member, either personally or by mail, not less than ten nor more than forty-five days before the date of the meeting. However, for the annual meeting and for a special meeting where the stated purpose includes an election to be voted on by the general membership, at least thirty days notice of the meeting is required in order to permit early voting in the manner required by Section 33-49-440. For the purposes of calculating when notice should be given, the day of the meeting should not be included in the count."

Quorum, no proxy voting, early voting

SECTION 5. A. Section 33-49-430 of the 1976 Code is amended to read:

"Section 33-49-430. Five percent of all members present in person shall constitute a quorum for the transaction of business at all meetings of the members unless the bylaws prescribe the presence of a greater percentage of the members for a quorum. If less than a quorum is present at any meeting a majority of those present in person may adjourn the meeting from time to time without further notice. A vote cast by a member at an early voting site counts for purposes of determining the presence of a quorum at the meeting where the election is to be held. Voting by proxy for any purpose is prohibited."

B. Section 33-49-440 of the 1976 Code is amended to read:

"Section 33-49-440. A member is entitled to one vote on each matter submitted to a vote at a meeting. Voting must be in person. For meetings that include the election of cooperative trustees, polling locations must be open for a minimum of four hours.

When at least one of the races for cooperative trustee is contested prior to the annual meeting, each cooperative must provide a method by which members of the cooperative may cast a ballot in an election for trustees on a day other than, and before, the annual meeting day. The method for this alternative early voting should allow for voting by cooperative members from the hours of 7 a.m. to 7 p.m. and should include reasonable accommodations for elderly, disabled, or infirmed members as permitted by this section."

C. Section 33-49-620 of the 1976 Code is amended to read:

"Section 33-49-620. Notwithstanding any other provision of this chapter, the bylaws may provide that the territory in which a cooperative supplies electric energy to its members shall be divided into two or more voting districts and that, in respect of each voting district:

(1) a designated number of trustees must be elected by the members residing therein;

(2) a designated number of delegates must be elected by the members; or

(3) both trustees and delegates must be elected by the members.

The bylaws shall prescribe the manner in which such voting districts, the members of them and the delegates and trustees, if any, elected from them shall function and the powers of the delegates, which may include the power to elect trustees. A member at a voting district meeting and a delegate at a meeting shall vote in person, at the meeting or an alternative early voting site."

Principal residence, vacancies

SECTION 6. Section 33-49-610 of the 1976 Code is amended to read:

"Section 33-49-610. (A) The business and affairs of a cooperative must be managed by a board of not less than five trustees, each of whom must be a member of the cooperative or of another cooperative which is a member of the cooperative. Unless otherwise provided in the bylaws, each trustee's principal residence, as determined by South Carolina voter registration law, must be served by the cooperative. The bylaws must prescribe the number of trustees, their qualifications, other than those

provided for in this chapter, the manner of holding meetings of the board, and the filling of vacancies on the board.

(B) The bylaws also may provide for the removal of trustees from office and for the election of their successors as follows:

(1)(a) A temporary suspension of a trustee for cause may occur upon the affirmative vote of at least two-thirds of the members of the board until the next annual or special meeting. At that meeting the membership may remove the suspended trustee for cause from the board by an affirmative vote of a majority of the members present and voting. In the event the membership refuses to vote to remove the trustee, he must be reinstated immediately with all the powers of his office and continue to serve for the remainder of his elected term.

(b) 'Cause' for removal of a trustee under this section means fraudulent or dishonest acts, or gross abuse of authority in the discharge of duties to the cooperative and must be established after written notice of specific charges and opportunity to meet and refute charges.

(2) A successor may be elected as provided by the bylaws of the cooperative.

This subsection does not apply to a cooperative when a majority of its members are other cooperatives. Cooperatives which are excluded from the removal provisions of this subsection may provide any terms and conditions for removal of trustees as may be authorized in their bylaws.

(C) If a husband and wife hold a joint membership in a cooperative, one, but not both, may be elected a trustee.

(D) The board of trustees may exercise all of the powers of a cooperative except those powers conferred upon the members by this chapter, its articles of incorporation, or bylaws.

(E) Notwithstanding any provisions in the bylaws to the contrary, a vacancy in the office of trustee occurring for any reason other than expiration of a term may be filled only for the remainder of the unexpired term by a vote of the membership at the next annual meeting.

(F) If a vacancy in the office of trustee occurs more than six months from the date of the next annual meeting, a new trustee may be appointed to fill the vacancy on an interim basis by the nominations committee of the cooperative provided:

(1) the new trustee is not a 'family member', as defined in Section 8-13-100(15), of the trustee whose departure created the vacancy;

(2) the new trustee is not 'an individual with whom he is associated', as defined in Section 8-13-100(21), of the trustee whose departure created the vacancy;

(3) the new trustee cannot continue to serve as a trustee past the date of the next annual meeting occurring after his appointment, subject

to annual meeting notice requirements, without being duly elected by the membership to fill the remainder of the unexpired term."

Disclosure of compensation and benefits

SECTION 7. Article 7, Chapter 49, Title 33 of the 1976 Code is amended by adding:

"Section 33-49-615. (A) The board of trustees must disclose at a location accessible and visible to the cooperative membership on its website by May fifteenth of each year, all compensation or benefits by category paid to or provided for board members during the previous calendar year. For purposes of this section, categories include, but are not limited to:

(1) daily per diem amount;

(2) total per diem compensation for attendance at regular meetings of the board of trustees;

(3) total per diem compensation for attendance at special meetings of the board, including board of trustee committee meetings;

(4) total per diem compensation for attendance at meetings of cooperative service organizations;

(5) total per diem compensation for trustee training and certification;

(6) total expenses paid or reimbursed, including mileage, subsistence, entertainment or travel expenses paid in conjunction with subsection (A)(2) through (5);

(7) the total value of and a description of any other fringe benefits provided; and

(8) the total value of and a description of any goods or services required to be disclosed by Section 33-49-630(C)(3).

(B) The provisions of this section first apply to the 2019 calendar year with the unaudited disclosures required by this section to be made no later than May 15, 2020."

Single-member voting districts

SECTION 8. Article 7, Chapter 49, Title 33 of the 1976 Code is amended by adding:

"Section 33-49-621. Within eighteen months of the effective date of this section, each distribution cooperative must put the question of single-member voting districts to its membership at an annual meeting."

Notice, votes, and minutes

SECTION 9. Article 7, Chapter 49, Title 33 of the 1976 Code is amended by adding:

"Section 33-49-625. (A) Notwithstanding all other notice requirements, written notice of all nonemergency meetings of the board of trustees or the membership of the cooperative, including membership meetings pursuant to the provisions of Section 33-49-620, must be posted at a location accessible and visible to the cooperative membership on the cooperative's website and at the cooperative's principal place of business at least ten days before the meeting. The notice must state the time, place, location, and purpose of the meeting.

(B) Written notice of emergency meetings of the board of trustees must be posted at a location accessible and visible to the cooperative membership on the cooperative's website and at the cooperative's principal place of business at least twenty-four hours before the meeting. Emergency meetings of the board may be called when appropriate to deal with extraordinary circumstances, but the board of trustees must not make decisions regarding rates, fees, charges, board of trustees composition or board of trustees compensation at an emergency meeting.

(C) All votes cast by trustees at these meetings must be taken in open session except where discussions include:

(1) matters related to employees of the cooperative;

(2) matters related to contracts or agreements with vendors or suppliers;

(3) matters related to particular cooperative members that involve account or personal information;

(4) matters related to economic development that involve the discussion of potentially identifiable information about businesses or industries that might be locating or expanding in or near the cooperative's service territory;

(5) matters related to information or physical security measures;

(6) matters related to legal advice; and

(7) matters not specifically listed but determined by the board, on the advice of counsel, to constitute a reasonable risk of damage to the cooperative membership due to the release of proprietary, personnel, member, or account information.

(D) Where votes are taken in executive session, the vote then must be ratified in open session in a manner that does not compromise the purpose of the executive session.

(E) Approved board minutes detailing the actions taken at these meetings must be provided within ten days of their approval to cooperative members in the same manner that notice of the meeting was provided."

Actions and conduct prohibited

SECTION 10. Section 33-49-630 of the 1976 Code is amended to read:

"Section 33-49-630. (A) The bylaws may make provision for the compensation of trustees; provided, however, that compensation shall not be paid except for actual attendance upon activities authorized by the board. The bylaws may also provide for the travel, expenses and other benefits of trustees, as set by the board. A trustee must not be employed by the cooperative in any other capacity involving compensation.

(B) A member of an electric cooperative's board of trustees may not:

(1) knowingly use his position as a trustee to obtain an economic interest in addition to his compensation, if any, for serving as a member of the board of trustees for himself, a family member, an individual with whom he is associated, or a business with which he is associated;

(2) have a business relationship with the electric cooperative that is distinct from or in addition to the trustee's mandatory cooperative membership pursuant to Section 33-49-610(A) or his service on the board of trustees; or

(3) appoint, direct, or cause a family member to become a member of a committee or an employee of the cooperative.

(C) A member of an electric cooperative board of trustees is not prohibited by this section from accepting goods or services such as lodging, transportation, entertainment, food, meals, beverages, or any other thing of value provided that:

(1) the value of the good or service is reasonable and the purpose relates to his duties as a trustee;

(2) the good or service is furnished on the same terms or at the same expense to a member of the general public or to general attendees of functions considered reasonable by the board for the fulfillment of his duties as a trustee; or

(3) if the good or service is of more than twenty-five dollars in value and is furnished to the trustee by a company that the trustee knows, has, or seeks a business relationship other than a cooperative membership with the cooperative, on whose board the trustee serves and

the cooperative is not an owner or a member of that company, the trustee must disclose the acceptance of the good or service to the board.

(D) For purposes of this section, 'an individual with whom he is associated' has the same meaning as provided in Section 8-13-100(21) and 'family member' has the same meaning as provided in Section 8-13-100(15)."

Incumbent trustees

SECTION 11. Section 33-49-640 of the 1976 Code is amended to read:

"Section 33-49-640. The trustees of a cooperative named in any articles of incorporation, consolidation, merger or conversion, as the case may be, shall hold office until the next following annual meeting of the members or until their successors have been elected and qualified. Incumbent trustees seeking reelection shall not directly or indirectly influence the nomination or credentials process. At each annual meeting or, in case of failure to hold the annual meeting as specified in the bylaws, at a special meeting called for that purpose, the members shall elect trustees to hold office until the next following annual meeting of the members, except as otherwise provided. Each trustee shall hold office for the term for which he is elected or until his successor is elected and qualified."

Conduct of elections

SECTION 12. Article 7, Chapter 49, Title 33 of the 1976 Code is amended by adding:

"Section 33-49-645. (A) In the conduct of an election authorized by this chapter or in the bylaws of the cooperative, including the annual election of trustees, a cooperative must prohibit advocacy or campaigning within a distance of the polling place that reasonably ensures that cooperative members are able to vote without harassment, intimidation, or interference. The polling place, for purposes of this section, is the location where votes are collected for tabulation.

(B)(1) In the conduct of the annual election of trustees, to the extent that a cooperative's bylaws provide for members to become candidates for the board of trustees by petition, the number of signatures required must not exceed one percent of the total cooperative membership.

(2) If the cooperative's bylaws providing for members to become candidates for the board of trustees by petition require the collection of more than 50 signatures of cooperative members, the cooperative bylaws must also provide for a process allowing those signatures to be collected electronically.

(C) In the conduct of the annual election of trustees, any member or district information provided to an incumbent trustee for use in campaigning for the board of trustees must be provided to all candidates for the board of trustees on the same terms and conditions."

Office of Regulatory Staff examinations and audits

SECTION 13. Section 58-4-50(A) of the 1976 Code is amended by adding an appropriately numbered item to read:

"( ) when considered necessary by the Executive Director of the Office of Regulatory Staff and in the public interest, make inspections, audits, and examination of the compliance by electric cooperatives with the provisions of law specified in Section 33-49-150."

Electric cooperatives included, expenses of Office of Regulatory Staff

SECTION 14. Section 58-4-55 of the 1976 Code, as last amended by Act 258 of 2018, is further amended to read:

"Section 58-4-55. (A) The regulatory staff, in accomplishing its responsibilities under Section 58-4-50, may require the production of books, records, and other information to be produced at the regulatory staff's office, that, upon request of the regulatory staff, must be submitted under oath and without the requirement of a confidentiality agreement or protective order being first executed or sought. The regulatory staff must treat the information as confidential or proprietary unless or until the commission rules such information is not entitled to protection from public disclosure or the public utility or electric cooperative agrees that such information is no longer confidential or proprietary. Unless the commission's order contains a finding to the contrary, all documents or information designated as confidential or proprietary pursuant to this subsection are exempt from public disclosure under Sections 30-4-10, et seq., and the regulatory staff shall not disclose such documents and information, or the contents thereof, to any member of the commission or to any other person or entity; provided, however,

that, if the commission determines that it is necessary to view such documents or information, it shall order the regulatory staff to file the documents or information with the commission under seal, and such documents or information shall not be available for public inspection unless otherwise ordered by the commission.

If the books, records, or other information provided do not appear to disclose full and accurate information and, if such apparent deficiencies are not cured after reasonable notice, the regulatory staff may require the attendance and testimony under oath of the officers, accountants, or other agents of the parties having knowledge thereof at such place as the regulatory staff may designate and the expense of making the necessary examination or inspection for the procuring of the information must be paid by the party examined or inspected, to be collected by the regulatory staff by suit or action, if necessary. If, however, the examination and inspection and the reports thereof disclose that full and accurate information had previously been made, the expense of making the examination and inspection must be paid out of the funds of the regulatory staff.

(B) If the regulatory staff initiates an inspection, audit, or examination of a public utility or electric cooperative, the public utility or electric cooperative that is the subject of the inspection, audit, or examination may petition the commission to terminate or limit the scope of such inspection, audit, or examination. The commission must grant such petition if it finds that such inspection, audit, or examination is arbitrary, capricious, unnecessary, unduly burdensome, or unrelated to the regulated operations of the public utility or electric cooperative.

(1) If such an inspection, audit, or examination is not part of a contested case proceeding, the public utility or electric cooperative may also raise objections or seek relief available under the South Carolina Rules of Civil Procedure to a party upon whom discovery is served or to a person upon whom a subpoena is served. The commission shall provide the regulatory staff reasonable notice to respond to any such objection or request. Absent the consent of the public utility or electric cooperative raising such an objection or request and the Office of Regulatory Staff, the commission must rule on such an objection or request within sixty days of the date it was filed. During the pendency of the commission's ruling, the public utility or electric cooperative making such an objection or request is not required to produce or provide access to any documents or information that is the subject of the objection or request.

(2) If such an inspection, audit, or examination is part of a contested case proceeding, the commission shall address objections to

information sought by the regulatory staff in the same manner in which it addresses objections to discovery issued by the parties to the contested case proceeding.

(C) Any public utility or electric cooperative that provides the regulatory staff with copies of or access to documents or information in the course of an inspection, audit, or examination that is not part of a contested case proceeding may designate any such documents or information as confidential or proprietary if it believes in good faith that such documents or information would be entitled to protection from public disclosure under the South Carolina Rules of Civil Procedure or any provision of South Carolina or federal law. The regulatory staff may petition the commission for an order that some or all of the documents so designated are not entitled to protection from public disclosure and it shall be incumbent on the utility to prove that such documents are entitled to protection from public disclosure under the South Carolina Rules of Civil Procedure or any provision of South Carolina or federal law. The commission shall rule on such petition after providing the regulatory staff and the utility an opportunity to be heard. Unless the commission's order on such a petition contains a finding to the contrary, all documents or information designated as confidential or proprietary pursuant to this subsection are exempt from public disclosure under Sections 30-4-10, et seq., and the regulatory staff shall not disclose such documents and information, or the contents thereof, to any member of the commission or to any other person or entity; provided, however, that, if the commission determines that it is necessary to view such documents or information in order to rule on such a petition, it shall order the regulatory staff to file the documents or information with the commission under seal, and such documents or information shall not be available for public inspection during the pendency of the petition.

(D) Nothing in this section restricts the regulatory staff's ability to serve discovery in a contested case proceeding that seeks the type of documents or information the regulatory staff has obtained in the course of any review, investigation, inspection, audit, or examination, nor does anything in this section restrict the ability of any public utility or electric cooperative to object to such discovery or to seek relief regarding such discovery, including without limitation, the entry of a protective order. The regulatory staff shall not be required to execute a confidentiality agreement or seek a protective order prior to accessing the documents or information of a public utility or electric cooperative, and such information or documents must be treated as confidential or proprietary unless or until the commission rules such information is not entitled to protection from public disclosure or the public utility or electric

cooperative agrees that such information is no longer confidential or proprietary. Unless the commission's order contains a finding to the contrary, all documents or information designated as confidential or proprietary pursuant to this subsection are exempt from public disclosure under Section 30-4-10, et seq., and the regulatory staff shall not disclose such documents and information, or the contents thereof, to any member of the commission or to any other person or entity. However, if the commission determines that it is necessary to view such documents or information, it shall order the regulatory staff to file the documents or information with the commission under seal, and such documents or information shall not be available for public inspection unless otherwise ordered by the commission.

(E) The Office of Regulatory Staff, in order to accomplish any of the responsibilities assigned to it by Chapter 4, Title 58 or any other provision of law, may apply to the circuit court for subpoenas to be issued to entities over which the Public Service Commission does not have jurisdiction. Such subpoenas will be issued by the circuit court in the same manner as subpoenas are issued to parties to proceedings before that court, and all rules applicable to the issuance of such subpoenas, including enforcement and penalties, shall apply to subpoenas issued at the request of the regulatory staff.

(F) The actual expenses of the Office of Regulatory Staff incurred in carrying out its duties under Section 58-4-50(A)(12) must be certified annually to the Public Utilities Review Committee in an itemized statement by the Office of Regulatory Staff, shown as a line item in the Office of Regulatory Staff budget, to be assessed directly to an audited electric cooperative by the Office of Regulatory Staff, and deposited with the State Treasurer to the credit of the Office of Regulatory Staff."

Rate requirements applicable to electric cooperatives

SECTION 15. Section 58-27-840 of the 1976 Code is amended to read:

"Section 58-27-840. (A) No electrical utility, or consolidated political subdivision shall, as to rates or services, make or grant any unreasonable preference or advantage to any person, corporation, municipality or consolidated political subdivision to its unreasonable prejudice or disadvantage. No electrical utility, or consolidated political subdivision shall establish or maintain any unreasonable difference as to rates or service as between localities or as between classes of service. Subject to the approval of the Commission, however, electrical utilities,

and consolidated political subdivisions may establish classifications of rates and services and such classifications may take into account the conditions and circumstances surrounding the service, such as the time when used, the purpose for which used, the demand upon plant facilities, the value of the service rendered and any other reasonable consideration. The Commission may determine any question of fact arising under this section. The Commission shall not fix any rates charged by electric cooperatives or consolidated political subdivisions.

(B) No distribution electric cooperative shall, as to rates or services, make or grant any unreasonable preference or advantage to any person, corporation, municipality or consolidated political subdivision to its unreasonable prejudice or disadvantage. No distribution electric cooperative shall establish or maintain any unreasonable difference as to rates or service as between localities or as between classes of service. The Office of Regulatory Staff is granted the authority to audit, on its own initiative or in response to complaints, issues arising under this subsection, including the authority to review and examine whether the distribution electric cooperatives are maintaining any unreasonable differences as to rates or service as between localities or as between classes of service. Rate classifications established by distribution electric cooperatives may take into account the conditions and circumstances surrounding the service, such as the time when used, the purpose for which used, the demand upon plant facilities, the value of the service rendered, and any other reasonable consideration. Upon completion of an audit, review, or examination as provided in this section, the Office of Regulatory Staff must report its findings to the board of the distribution electric cooperative and attempt to resolve any compliance issues identified in the audit.

(C) The Commission is granted authority to resolve any disputed issues arising from the audit, review, or examination by the Office of Regulatory Staff of matters arising under subsection (B) of this section. The Commission shall not fix any rates charged by electric cooperatives."

Provisions control

SECTION 16. Where the provisions of new or revised 1976 Code sections or subsections contained in this act conflict with provisions of the bylaws of an electric cooperative, the provisions of this act control and the cooperative, as permitted by Section 33-49-280, shall amend and conform its bylaw provisions accordingly.

Association requirements and conduct

SECTION 17. Article 1, Chapter 49, Title 33 of the 1976 Code is amended by adding:

"Section 33-49-160. (A) An association formed by a group of electric cooperatives that meets the requirements of Section 501(c)(6) of the Internal Revenue Code, is organized under the laws of this State and has as its purpose the representation of the interests of electric cooperatives in this State, must be subject to the requirements contained in this section.

(B) The board of trustees of the association must disclose at a location accessible and visible to its member cooperatives on its website by May fifteenth of each year, all compensation or benefits by category paid to or provided for board members during the previous calendar year. For purposes of this section, categories include, but are not limited to:

(1) daily per diem amount;

(2) total per diem compensation paid for attendance at regular meetings of the board of trustees;

(3) total per diem compensation for attendance at special meetings of the board, including board of trustee committee meetings;

(4) total per diem compensation for attendance at meetings of cooperative service organizations;

(5) total per diem compensation for trustee training and certification;

(6) total expenses paid or reimbursed, including mileage, subsistence, entertainment, or travel expenses paid in conjunction with subsection (B)(2) through (5);

(7) the total value of and a description of any other fringe benefits provided; and

(8) the total value of and a description of any goods or services required to be disclosed by subsection (D)(3)(c).

(C) The association must include on its annual IRS Form 990 filing, information on its revenue and expenses including, but not limited to, the total revenue and spending of the association by each of its departments.

(D)(1) The bylaws of the association may make provision for the compensation of trustees; provided, however, that compensation must not be paid except for actual attendance upon activities authorized by the board. The bylaws also may provide for the travel, expenses, and other benefits of trustees, as set by the board. A trustee of the association must

not be employed by the entity in any other capacity involving compensation.

(2) A member of the association's board of trustees, or one of the association's officers, may not:

(a) knowingly use his position as a trustee or an officer of the association to obtain an economic interest in addition to his compensation, if any, for serving as a member of the board of trustees or as an officer for himself, a family member, an individual with whom he is associated, or a business with which he is associated;

(b) have a business relationship with the association that is distinct from or in addition to his service on the board of trustees or as an officer; or

(c) appoint, direct, or cause a family member to become an employee of the association.

(3) A member of the association's board of trustees or an officer of the association is not prohibited by this section from accepting goods or services such as lodging, transportation, entertainment, food, meals, beverages, or any other thing of value from the association provided that:

(a) the value of the good or service is reasonable and the purpose relates to his duties as a trustee or an officer;

(b) the good or service is furnished on the same terms or at the same expense to a member of the general public or to general attendees of functions considered reasonable for the fulfillment of his duties as a trustee or as an officer of the association; or

(c) if the good or service is of more than twenty-five dollars in value and is furnished to the trustee or the officer of the association by a company that the trustee or officer knows, has, or seeks a business relationship with the association, and the company is not a member of the association, the trustee or officer must disclose the acceptance of the good or service to the board. These restrictions do not apply to the extent a cooperative has or seeks membership in the association.

(4) For purposes of this section, 'an individual with whom he is associated' has the same meaning as provided in Section 8-13-100(21) and 'family member' has the same meaning as provided in Section 8-13-100(15).

(E) The Office of Regulatory Staff under the provisions of this subsection is vested with the authority and jurisdiction to make inspections, audits, and examinations of the association pursuant to the provisions of Chapter 4, Title 58, relating to the compliance of the association with the provisions of this section and its bylaws. Where the board of trustees of the association has exercised its business judgment in accordance with sound business and management practices and

consistent with the long-term financial stability of the association and the benefit of its members, the Office of Regulatory Staff is not authorized to disturb the resulting decisions of board of trustees. Upon completion of an authorized inspection, audit, or examination, the Office of Regulatory Staff must report its findings to the management and board of the association and attempt to resolve with the management and board any compliance issues that are identified. The Public Service Commission is vested with the authority and jurisdiction to resolve any disputed issues arising from the inspections, audits, or examinations."

Severability

SECTION 18. 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 19. The provisions of this act take effect upon approval by the Governor, except that:

(1) Sections 1, 2, 3, 13, 14, and 15 take effect January 1, 2020.

(2) Section 7 takes effect May 1, 2020.

(3) Sections 4, 5, 6, 9, and 11 take effect on the first day of the fifteenth calendar month after the month of signature by the Governor.

Ratified the 13th day of May, 2019.

Approved the 16th day of May, 2019.

No. 57

(R77, H3205)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 27-16-150 SO AS TO PROVIDE THAT THE TRIBE IS NOT REQUIRED TO PAY ANY FEE IN LIEU OF SCHOOL TAXES BEGINNING WITH SCHOOL YEARS AFTER 2007-2008; AND TO AMEND SECTION 27-16-130, RELATING TO THE TAXATION OF THE TRIBE, SO AS TO DELETE A CONTRARY PROVISION.

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

Tribe not required to pay fee in lieu of school taxes

SECTION 1. Chapter 16, Title 27 of the 1976 Code is amended by adding:

"Section 27-16-150. Notwithstanding any other provisions of law, the Tribe is not required to pay any fee in lieu of school taxes beginning with school years after 2007-2008."

Deletion of fee in lieu of school taxes

SECTION 2. Section 27-16-130(I) of the 1976 Code is amended to read:

"(I) Reserved."

Time effective

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

Ratified the 13th day of May, 2019.

Approved the 16th day of May, 2019.

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No. 58

(R78, H3243)

AN ACT TO AMEND SECTION 8-21-310, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO A SCHEDULE OF SPECIFIED FILING AND RECORDING FEES, SO AS TO REVISE AND FURTHER PROVIDE FOR VARIOUS FILING FEES, INCLUDING A FLAT FEE FOR VARIOUS DOCUMENTS.

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

Fees revised

SECTION 1. Section 8-21-310 of the 1976 Code is amended to read:

"Section 8-21-310. (A) Except as otherwise expressly provided, the clerks of court, registers of deeds, or county treasurers, as may be determined by the governing body of a county, shall collect the following uniform filing fees:

(1) fifteen dollars for a deed to real estate; and

(2) twenty-five dollars for the following documents:

(a) a mortgage;

(b) a land sale installment contract;

(c) a real estate sales contract;

(d) any document required to be recorded pursuant to the Uniform Commercial Code;

(e) a plat or survey not part of or attached to another document to be recorded;

(f) a lease for real estate;

(g) an order for partition of real estate;

(h) an easement agreement or other document affecting title or possession of real property not otherwise provided for in this section;

(i) a power of attorney, provided, however, that 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;

(j) a notice of a mechanic's lien; or

(k) any other document affecting a title or the possession of real estate that is required by law to be recorded or filed, except judicial records, including restrictive covenants, bylaws, and amendments to restrictive covenants and bylaws.

(B) Except as otherwise expressly provided, the clerks of court, registers of deeds, or county treasurers, as may be determined by the governing body of a county, shall collect a uniform filing fee of ten dollars, unless otherwise stated, for the following documents or actions:

(1) a revocation of power of attorney, provided, however, that the filing fee is waived if it is filed by or on behalf of a member of the armed forces of the United States if the revocation is filed within three years from the date of filing the power of attorney and a copy of the deployment orders to a combat zone is presented. For the 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;

(2) an assignment of leases and rents or the cancellation or release of an assignment of leases and rents;

(3) separate probates, acknowledgements, affidavits, or certificates that are not part of or attached to another document to be recorded;

(4) a mortgage satisfaction or release, including a partial release or entry in a public record;

(5) the recording of an instrument that assigns, transfers, or affects a single real estate mortgage or other instrument affecting a title to real property or a lien for the payment of money, unless it is part of the original instrument when initially filed, except if the instrument assigns, transfers, or affects more than one real estate mortgage, instrument, or lien, in which case the filing fee is seven dollars for each mortgage, instrument, or lien assigned, transferred, or affected and referred to in the instrument;

(6) taking and filing bond or security costs;

(7) filing a trustee qualification, memorandum of trust, or certification of trust;

(8) filing a notice of meter conservation charge as permitted by Section 58-37-50;

(9) the filing, enrolling, satisfaction, or expungement of state or federal liens. The clerk shall mark 'satisfied' upon receipt of the fees provided in this item for any lien or warrant for distraint issued by any agency of this State or of the United States upon receipt of a certificate duly signed by an authorized officer of any agency of this State or of the United States to the effect that the lien or warrant of distraint has been paid;

(10) the filing or recording of any commission of a notary public or other public office or any license or permit to practice a profession or

trade required to be filed in the county where the individual permanently resides;

(11) the filing of the charter of any public or private corporation or association required by law to be recorded;

(12) the filing or recording of the dissolution of any partnership or corporate document required to be filed in the county;

(13) the filing and enrolling of a judgment by confession;

(14) the taking and filing of an order for bail with or without bond;

(15) the filing of a notice of discharge in bankruptcy;

(16) the filing, recording, and indexing of a lis pendens if not accompanied by a summons and complaint. For cancellation of a lis pendens, a fee may be required as provided in Section 15-11-40;

(17) the recording of a release or discharge of a mechanic's lien, or notice of pendency of an action of suit to enforce a mechanic's lien in accordance with Chapter 5, Title 29; or

(18) the filing of a document relating to a title of an interest in a vacation time sharing plan organized under Chapter 32, Title 27, provided, however, that the document must include clear notice on the first page and be titled 'Vacation Time Sharing Ownership Deed', indicating that the document relates to a deeded interest in a vacation time share plan.

(C) Except as otherwise expressly provided, the clerks of court or county treasurers, as may be determined by the governing body of the county, shall:

(1) in addition to the fee imposed by Section 14-1-204(B)(1), collect one hundred dollars for filing a first complaint or petition, including an application for a remedial and prerogative writ and bond in a civil action or proceeding. There is no further fee for filing an amended or supplemental complaint or petition or for filing any other paper in the same action of the proceeding, with the exception of motions. An original application for post-conviction relief may be filed without a fee, upon the permission of the court to which the application is addressed. There is no further fee for entering and filing a verdict, judgment, final decree, or order of dismissal and enrolling judgment thereon; for the signing, sealing, and issuance of execution; or for entering satisfaction or partial satisfaction on a judgment;

(2) collect one hundred dollars for filing, indexing, enrolling, and entering a foreign judgment and an affidavit pursuant to Article 11, Chapter 35, Title 15;

(3) collect an amount set by the Chief Justice of the South Carolina Supreme Court for filing court documents by electronic means from an integrated electronic filing or e-filing system owned and operated by the

South Carolina Judicial Department. All fees must be remitted to the South Carolina Judicial Department to be dedicated to the support of court technology;

(4) collect thirty-five dollars for filing and processing an order for the Destruction of Arrest Records, and the fee must be for each order, regardless of the number of cases contained in the order. The fee under the provisions of this item does not apply to cases in which the defendant is found not guilty or in which the underlying charge is dismissed or nol prossed unless that dismissal or nol prosse is the result of the successful completion of a pretrial intervention program;

(5) collect thirty-five dollars for receiving and enrolling transcripts of judgment from magistrate courts and federal district courts;

(6) collect ten dollars for taking and filing an order for bail, whether or not surety must be justified;

(7) collect ten dollars for taking and filing bond or security costs, whether or not surety must be justified;

(8) collect ten dollars for issuing an official certificate under the seal of the court not otherwise specified in this section; or

(9) collect fifteen dollars as set forth in Section 29-5-23 for a Notice of Project Commencement.

(D) No fee may be charged to a defendant or respondent for filing an answer, return, or other papers in any civil action or proceeding in a court of record."

Time effective

SECTION 2. This act takes effect August 1, 2019.

Ratified the 13th day of May, 2019.

Approved the 16th day of May, 2019.

No. 59

(R79, H3383)

AN ACT TO AMEND SECTION 48-23-260, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO SHARING STATE FOREST LAND REVENUES WITH COUNTIES, SO AS TO

EXCLUDE THE PROCEEDS FROM LAND RENTALS FROM THE PROCEEDS TO BE SHARED WITH THE COUNTIES.

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

Exclusion of proceeds of land rentals

SECTION 1. Section 48-23-260 of the 1976 Code is amended to read:

"Section 48-23-260. The State Treasurer must pay to a county containing state forest lands an amount equal to twenty-five percent of the gross proceeds received by the State in each fiscal year from the sale of timber, pulpwood, poles, gravel, and other privileges on state forest lands within the county, except for the gross proceeds from land rentals. The provisions of this section are applicable to all state forest lands managed or operated by the State Commission of Forestry, whether they be owned in fee by the State or leased from the United States, but do not apply to state parks. The funds herein provided for must be spent for general school purposes. Where a particular state forest lies in more than one county or school district, the funds derived from the state forest and to be paid by the State Treasurer must be apportioned on the basis of land acreage involved. All funds distributed under the provisions of this section must be spent upon the approval of a majority of the county legislative delegation."

Time effective

SECTION 2. This act takes effect July 1, 2019.

Ratified the 13th day of May, 2019.

Approved the 16th day of May, 2019.

No. 60

(R80, H3586)

AN ACT TO AMEND SECTION 23-47-10, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO CERTAIN TERMS AND THEIR DEFINITIONS REGARDING THE PUBLIC

SAFETY COMMUNICATIONS CENTER, SO AS TO PROVIDE ADDITIONAL TERMS AND THEIR DEFINITIONS; TO AMEND SECTION 23-47-20, RELATING TO REQUIREMENTS THAT PERTAIN TO A 911 SYSTEM, SO AS TO PROVIDE THAT THE REVENUE AND FISCAL AFFAIRS OFFICE IS RESPONSIBLE FOR CREATING AND UPDATING A COMPREHENSIVE STRATEGIC 911 AND NEXTGEN 9-1-1 (NG9-1-1) SYSTEM, AND TO REVISE THE STANDARDS THAT GOVERN THE OPERATION OF 911 AND NG9-1-1 SYSTEMS; TO AMEND SECTION 23-47-40, RELATING TO 911 CHARGES THAT MAY BE IMPOSED UPON EACH LOCAL EXCHANGE ACCESS FACILITY SUBSCRIBED TO BY TELEPHONE SUBSCRIBERS WHOSE LOCAL EXCHANGE ACCESS LINES ARE IN THE AREA SERVED OR WHICH WOULD BE SERVED BY THE 911 SERVICE, SO AS TO REVISE THE LIST OF ITEMS THAT MAY BE FUNDED WITH THESE CHARGES; TO AMEND SECTION 23-47-50, RELATING TO SUBSCRIBER BILLING FOR THE PROVISION OF 911 SERVICE, SO AS TO MAKE TECHNICAL CHANGES, TO PROVIDE THAT THE "EMERGENCY TELEPHONE SYSTEM" FUND MUST BE INCLUDED IN THE ANNUAL AUDIT OF THE LOCAL GOVERNMENT, TO PROVIDE THAT UPON THE FINDING OF INAPPROPRIATE USE OF 911 FUNDS PURSUANT TO AN AUDIT, THE LOCAL GOVERNMENT MUST RESTORE THOSE FUNDS WITHIN NINETY DAYS, TO PROVIDE THAT THE LOCAL GOVERNMENT MUST PROVIDE THE REVENUE AND FISCAL AFFAIRS OFFICE A COPY OF THE AUDITED REPORT, TO PROVIDE THAT FUNDS MAY BE WITHHELD FROM A LOCAL GOVERNMENT THAT FAILS TO COMPLY WITH THE AUDIT PROVISIONS, AND TO REVISE THE PURPOSE FOR LEVYING A CMRS 911 CHARGE; TO AMEND SECTION 23-47-60, RELATING TO A LOCAL GOVERNMENT PROVIDING STANDARD ADDRESSES FOR THEIR RESIDENTS BEFORE ENHANCED 911 IS PLACED IN SERVICE, SO AS TO PROVIDE THAT THE REVENUE AND FISCAL AFFAIRS OFFICE SHALL DESIGNATE ONE OFFICE WITHIN EACH COUNTY AS THE ADDRESSING OFFICIAL; TO AMEND SECTION 23-47-65, AS AMENDED, RELATING TO THE CREATION AND RESPONSIBILITIES OF THE SOUTH CAROLINA 911 ADVISORY COMMITTEE, SO AS TO INCREASE ITS RESPONSIBILITIES, TO INCREASE THE SIZE OF ITS MEMBERSHIP, TO REVISE THE PROCESS OF

APPOINTING MEMBERS, TO PROVIDE ITS MEMBERS COMPENSATION FOR CERTAIN EXPENSES, TO INCREASE AND REVISE THE RESPONSIBILITIES OF THE REVENUE AND FISCAL AFFAIRS OFFICE AND TO MAKE TECHNICAL CHANGES; TO AMEND SECTION 23-47-75, RELATING TO CERTAIN 911 INFORMATION THAT IS NOT SUBJECT TO THE FREEDOM OF INFORMATION ACT OR DISCLOSURE, SO AS TO PROVIDE A LOCAL GOVERNMENT MAY EXEMPT CERTAIN INFORMATION FROM DISCLOSURE AND TO DEFINE THE TERM "IDENTIFYING INFORMATION"; AND TO AMEND SECTION 23-47-80, RELATING TO PENALTIES ASSOCIATED WITH UNLAWFULLY PLACING A 911 CALL, SO AS MAKE TECHNICAL CHANGES.

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

Definitions

SECTION 1. Section 23-47-10 of the 1976 Code, is amended by adding the following appropriately numbered items at the end to read:

"( ) 'Board' means the board of the Revenue and Fiscal Affairs Office.

( ) 'Call' means any information, written communication, video, data, or voice that is delivered to the PSAP initiating an emergency response.

( )'IP-Enabled Services' means services and applications making use of Internet Protocol (IP) including, but not limited to, voice over IP and other services and applications provided through wireline, cable, wireless and satellite facilities, and any other facility that is capable of connecting users dialing or entering the digits 911 to public safety answering points.

( )'NextGen 9-1-1 (NG9-1-1)' includes the delivery of 911 calls over an IP-based network and provides multimedia data capabilities for PSAPs and other emergency service organizations.

( )'Communications service' means a service capable of accessing, connecting with, or interfacing with a 911 system by dialing, initializing, or otherwise activating the system exclusively through the digits 911 by means of a local telephone device or wireless communications device.

( )'Communications service provider' means a service provider, public or private, that transports information electronically via landline, wireless, Internet, cable, or satellite, including, but not limited to,

wireless communications service providers, personal communications service, telematics, and Voice over Internet Protocol (VoIP).

( )'Wireless communications service' means commercial mobile radio service. 'Wireless communications service' includes any wireless two-way communications used in cellular telephone service, a personal communications service, or a network access line. 'Wireless communications service' does not include a service whose customers do not have access to 911 or 911-like services.

( )'Wireless communications provider' means a company that offers wireless communication service to users of wireless devices including, but not limited to, cellular, personal communications services, mobile satellite services, and enhanced specialized mobile radio.

( )'ESInet' means an Emergency Services IP Network. An ESInet can be one or many networks, including local, regional, statewide, nationwide, or international.

( )'VoIP Network' or 'Voice over Internet Protocol Network' means a method in which voice communications are delivered via digital Internet connections.

( )'Legacy systems' means any 911 system, whether basic or enhanced, operating in South Carolina prior to the board establishing an NG9-1-1 or subsequent systems.

( )'Strategic plan' means the defined strategy of South Carolina's 911 goals and objectives and the steps necessary to achieve those goals and objectives."

Statewide 911 system

SECTION 2. Section 23-47-20 of the 1976 Code is amended to read:

"Section 23-47-20. (A)(1) The Revenue and Fiscal Affairs Office shall be responsible for creating, updating, and implementing a comprehensive strategic plan, including operating standards for a coordinated statewide 911 system to address changing technology, services, and operating efficiency and effectiveness. The standards must be developed and updated with comments and recommendations from the South Carolina 911 Advisory Committee, local officials, service providers, and the public. The plan must be approved by the board and may be amended as necessary.

Service available through a local 911 system includes law enforcement, fire, and emergency medical services. Other emergency and emergency personnel services may be incorporated into the 911 system at the discretion of the local government being served by the

system. Public safety agencies within a local government 911 system, in all cases, must be notified by the PSAP of a request for service in their area. Written guidelines must be established to govern the assignment of calls for assistance to the appropriate public safety agency. There must be written agreements among state, county, and local public safety agencies with concurrent jurisdiction for a clear understanding of which specific calls for assistance will be referred to individual public safety agencies.

(2) The Revenue and Fiscal Affairs Office may request written verification from PSAPs regarding compliance with current or updated standards and may develop policies to address noncompliance.

(B)(1) A 911 system must include all of the territory of the local government, either county, municipality, or multi-jurisdictional government. A 911 system may be an enhanced 911 system until the board establishes NG9-1-1 or another subsequent system.

(2) Public safety agencies that provide emergency service within the territory of a 911 system shall participate in the countywide system. Each PSAP must be operated twenty-four hours a day, seven days a week.

(C) At a minimum, the legacy 911 or NG9-1-1 systems implemented in South Carolina must include:

(1) for legacy, a minimum of two lines from each serving telephone central office to the enhanced 911 tandem (controlling central office) and a minimum of two lines from the enhanced 911 tandem to the PSAP. For both legacy and NG9-1-1, the grade of service must have sufficient lines to ensure no more than one busy signal per one hundred calls;

(2) for both legacy and NG9-1-1, equipment within the PSAP to connect the PSAP to all law enforcement, fire protection, and emergency medical or rescue agencies, as well as to emergency responders;

(3) for both legacy and NG9-1-1, first priority to answering 911 calls;

(4) for both legacy and NG9-1-1, electronic recording of all 911 calls that are retained for a minimum of sixty days;

(5) for both legacy and NG9-1-1, immediate playback capability of all 911 calls;

(6) for legacy, equipment connected by dedicated telephone lines to all adjacent PSAPs where there is a telephone exchange not covered by selective routing;

(7) for both legacy and NG9-1-1, necessary physical security to minimize the possibility of intentional disruption of the operation. This includes equipment safeguards such as key fobs and biometrics as well

as cyber security safeguards to prevent Denial of Service attacks and general 'hacking' of systems;

(8) for both legacy and NG9-1-1, standby emergency power to operate the PSAP during power failures;

(9) for both legacy and NG9-1-1, written operational procedures;

(10) for legacy and NG9-1-1, a minimum of one telecommunication device for the deaf (TDD) available in each PSAP;

(11) for both legacy and NG9-1-1, capability to answer ninety-five percent of calls within fifteen seconds and ninety-nine percent in forty seconds;

(12) for both legacy and NG9-1-1, coin-free dialing. Pay or coin telephones classified as such by a class of service code will be identified on the automatic location identification display in enhanced 911 systems;

(13) for both legacy and NG9-1-1, contingency plans for rerouting or relocating the PSAP in the event of a disaster or equipment failures;

(14) for both legacy and NG9-1-1, routing and capabilities to receive and process CMRS service and VoIP service capable of making 911 calls;

(15) for both legacy and NG9-1-1, telecommunication operators or dispatchers trained, or certified by the Law Enforcement Training Council (Criminal Justice Academy). The Law Enforcement Training Council shall promulgate regulations to provide for this training and/or certification. Expense of the training must be paid by the local government by which that person is employed. The Law Enforcement Training Council is authorized to establish, collect, and retain a fee not to exceed actual costs for this training or certification, or both;

(16) for both legacy and NG9-1-1, all 911 lines have both audio and visual indicators on incoming calls;

(17) for both legacy and NG9-1-1, a public safety agency whose services are available on the 911 system must maintain a separate secondary backup number for emergency calls and a separate number for nonemergency telephone calls;

(18) for both legacy and NG9-1-1, the primary published emergency number will be 911. The PSAP must have additional local telephone exchange service in addition to the 911 service. This nonemergency telephone number should be published directly below the 'emergency dial 911' listing;

(19) for both legacy and NG9-1-1, 911 is furnished for emergency reporting only. Nonemergency calls, whether by the general public or agency employees, should not be made to the 911 system;

(20) for both legacy and NG9-1-1, a designated person or 911 office staffed by a sufficient number of personnel to maintain databases and 911 network;

(21) for both legacy and NG9-1-1, an initial and continual plan for public education, which must include:

(a) making the public aware 911 is available;

(b) making the majority of emergency calls received on 911 rather than the seven-digit emergency number;

(c) making the public aware of the definition of an emergency;

(d) making the public aware of what is a nonemergency;

(e) texting to 911 and other aspects of NG9-1-1 as they become available to the public; and

(22) for NG9-1-1, the requirements contained in this section shall apply to all manner of devices capable of communicating requests for emergency assistance to PSAPs.

(D) Enhanced 911 shall incorporate the following features:

(1) for legacy, automatic location identification (ALI) - automatically displays the addresses of the calling telephone during the course of the emergency call at the PSAP;

(2) for legacy, automatic number identification (ANI) - automatically displays the number of the caller's telephone at the PSAP;

(3) for legacy, central office identification - when a PSAP serves more than one central office, dedicated lines or trunks are used to identify each central office;

(4) for both legacy and NG9-1-1, called party hold - enables the PSAP to control the connection for confirmation and tracing of the call;

(5) for both legacy and NG9-1-1, distinct tone - tone generated by equipment which alerts the PSAP personnel that the calling party has disconnected;

(6) for legacy, selective routing - will automatically route calls from a predetermined geographical area to a PSAP serving that area regardless of municipal and wire center boundary alignments; and

(7) for legacy, all enhanced 911 systems must be configured so as to disallow subsequent search of the address database.

(E) All systems also must include applicable services identified in the strategic plan to ensure comprehensive and coordinated statewide operations in accordance with Section 23-47-20(A), including, but not limited to:

(1) integration and standardization of local mapping data; and

(2) aerial imagery services that will support the strategic plan and public safety on an on-going basis. Aerial imagery also may be shared

for other local and state governmental purposes including, but not limited to, South Carolina Code of Regulations R117-1740.2.C.5."

Monthly 911 landline charge

SECTION 3. Section 23-47-40 of the 1976 Code is amended to read:

"Section 23-47-40. (A) The local government is authorized to adopt an ordinance to impose a monthly 911 landline charge upon each local exchange access facility subscribed to by telephone subscribers whose local exchange access lines are in the area served or which would be served by the 911 service. The 911 landline charge must be uniform and may not vary according to the type of local exchange access facility used.

The ordinance must be adopted in the same fashion as ordinances that levy taxes under South Carolina law. No collection of charges may be commenced before adoption of the ordinance.

(B) Landline funding must be used only to pay for the following enumerated items:

(1) the lease, purchase, lease-purchase, or maintenance of emergency telephone equipment, including necessary recording equipment, computer hardware, software and database provisioning, addressing, mapping, and nonrecurring costs of establishing a 911 system;

(2) the rates associated with the service supplier's 911 service and other suppliers' recurring charges;

(3) the cost of establishing and maintaining a county 911 office or maintaining as currently staffed a county 911 office for the purpose of operating and maintaining the database of the 911 system. Costs are limited to salaries and compensations and those items necessary in the operation of the 911 office and normal operating costs;

(4) items enumerated may be subscriber billed for a period not to exceed thirty months before activation of the 911 service;

(5) items necessary to meet the standards outlined in this chapter, specifically in Section 23-47-20(C);

(6) enhancements either currently available or available in the future offered by service suppliers and approved by the Public Service Commission;

(7) a local government may contract to implement and establish a 911 system as set forth in this chapter.

(C) Landline funding must not be used for:

(1) purchasing or leasing of real estate, cosmetic or remodeling of communications centers, except those building modifications necessary to maintain the security and environmental integrity of the PSAP;

(2) hiring or compensating dispatchers or call takers other than initial and in-service training;

(3) mobile communications vehicles, fire engines, law enforcement vehicles, ambulances, or other emergency vehicles, or other vehicles;

(4) communications, or other equipment used by first responders or other public safety agents, such as radios, radio towers, and computers; and

(5) consultants or consultant fees for studies of implementation not related to NG9-1-1.

(D) A local government may contract with a service supplier for any term negotiated by the service supplier and the local government and may make payments through subscriber billing to provide any payments required by the contract."

Landline charges

SECTION 4. Section 23-47-50 of the 1976 Code is amended to read:

"Section 23-47-50. (A) The maximum 911 landline charge that a subscriber may be billed for an individual local exchange access facility must be in accordance with the following scale:

Tier I—1,000 to 40,999 access lines— $1.50 for start-up costs, $1.00 for on-going costs.

Tier II—41,000 to 99,999 access lines— $1.00 for start-up costs, $.60 for on-going costs.

Tier III—more than 100,000 access lines— $.75 for start-up costs, $.50 for on-going costs.

Start-up includes a combination of recurring and nonrecurring costs and up to a maximum of fifty local exchange lines per account. For bills rendered on or after the effective date of this act, for any individual local exchange access facility that is capable of simultaneously carrying multiple voice and data transmissions, a subscriber must be billed a number of 911 charges equal to: (a) the number of outward voice transmission paths activated on such a facility in cases where the number of activated outward voice transmission paths can be modified by the subscriber only with the assistance of the service supplier; or (b) five, where the number of activated outward voice transmission paths can be modified by the subscriber without the assistance of the service supplier.

The total number of 911 charges remains subject to the maximum of fifty 911 charges per account set forth above.

(B) Every local telephone subscriber served by the 911 system is liable for the 911 landline charge imposed. A service supplier has no obligation to take any legal action to enforce the collection of the 911 charges for which a subscriber is billed. However, a collection action may be initiated by the local government that imposed the charges. Reasonable costs and attorneys' fees associated with that collection action may be awarded to the local government collecting the 911 landline charges.

(C) The local government subscribing to 911 service is ultimately responsible to the service supplier for all 911 installation, service, equipment, operation, and maintenance charges owed to the service supplier. Upon request by the local government, the service supplier shall provide a list of amounts uncollected along with the names and addresses of telephone subscribers who have identified themselves as refusing to pay the 911 landline charges. Taxes due on a 911 system service provided by the service supplier must be billed to the local government subscribing to the service. State and local taxes do not apply to the 911 charge billed to the telephone subscriber.

(D) Service suppliers that collect 911 landline charges on behalf of the local government are entitled to retain two percent of the gross 911 landline charges remitted to the local government as an administrative fee. The service supplier shall remit the remainder of charges collected during the month to the fiscal offices of the local government. The 911 landline charges collected by the service supplier must be remitted to the local government within forty-five days of the end of the month during which such charges were collected and must be deposited by and accounted for by the local government in a separate restricted fund known as the 'emergency telephone system fund' maintained by the local government. The local government may invest the money in the fund in the same manner that other monies of the local government are invested and income earned from the investment must be deposited into the fund. Monies from this fund are totally restricted to use in the 911 system.

(E)(1) In order to ensure compliance with the provisions of this chapter and with generally accepted accounting standards, the 'emergency telephone system' fund must be included in the annual audit of the local government. The audit must include a review of the accounting controls over the collection, reporting, and disbursement of 911 funds and a supplementary schedule detailing revenue and expenses by category as authorized in this chapter. If the annual audit contains a

finding of any inappropriate use of 911 funds, the local government must restore these funds within ninety days of the completion of the audit.

(2) The local government must provide the Revenue and Fiscal Affairs Office a copy of the audit report regarding this compliance within sixty days of the completion of the audit. The Revenue and Fiscal Affairs Office shall review these audits on a regular basis and report to the board any findings or concerns. In conducting this review, the Revenue and Fiscal Affairs Office may request additional information from the local government. If a local government fails to provide a copy of the audit or any requested additional information, or correct any findings identified in the audit, the board may withhold funding pursuant to subsection (G).

(F) Fees collected by the service supplier pursuant to this section are not subject to any tax, fee, or assessment, nor are they considered revenue of the service supplier.

A monthly 911 charge is levied for each Commercial Mobile Radio Service (CMRS) connection with a place of primary use in South Carolina as defined by the Federal Mobile Telecommunications Sourcing Act (4 U.S.C. 124C8), to include: (a) the residential street address or the primary business street address of the customer, and (b) within the licensed service area of the home service provider. The amount of the levy must be approved annually by the Revenue and Fiscal Affairs Office at a level not to exceed the average monthly landline telephone (local exchange access facility) 911 charges paid in South Carolina. The Revenue and Fiscal Affairs Office and the committee may calculate the CMRS 911 charge based upon a review of one or more months during the year preceding the calculation of landline telephone (local exchange access facility) charges paid in South Carolina. The CMRS 911 wireless charge must have uniform application and must be imposed throughout the State; however, trunks or service lines used to supply service to CMRS providers shall not be subject to a CMRS 911 levy. Prepaid wireless telecommunications service is subject to the 911 charge set forth in Section 23-47-68 and not to the CMRS 911 wireless charge set forth in this subsection. On or before the twentieth day of the second month succeeding each monthly collection of the CMRS 911 wireless charges, every CMRS provider shall file with the Department of Revenue a return under oath, in a form prescribed by the department, showing the total amount of fees collected for the month and, at the same time, shall remit to the department the fees collected for that month. The department shall place the collected fees on deposit with the State Treasurer. The funds collected pursuant to this subsection are not general fund revenue of the State and must be kept by the State Treasurer in a

fund separate and apart from the general fund to be expended as provided in Section 23-47-65.

(G)(1) Fees collected by the service supplier pursuant to this section are not subject to any tax, fee, or assessment, nor are they considered revenue of the service supplier.

(2) Except as provided in Section 23-47-68(B), a 911 charge imposed under this chapter shall be added to the billing by the service supplier to the service subscriber and must be stated separately.

(3) A billed subscriber shall be liable for any 911 charge imposed under this chapter until it has been paid to the service supplier."

Addressing official

SECTION 5. Section 23-47-60 of the 1976 Code is amended by adding the following appropriately lettered subsection at the end to read:

"( ) To help ensure these standards are implemented successfully throughout an entire county, the Revenue and Fiscal Affairs Office shall designate one office within each county as the addressing official."

South Carolina 911 Advisory Committee

SECTION 6. Section 23-47-65 of the 1976 Code, as last amended by Act 246 of 2018, is further amended to read:

"Section 23-47-65. (A)(1) The South Carolina 911 Advisory Committee is created to assist the Revenue and Fiscal Affairs Office in carrying out its responsibilities in implementing, maintaining, and updating an efficient wireless 911 system. The committee must be comprised of twelve members and appointed as follows: eight members appointed by the Governor of which two must be employees of a local 911 system recommended by the South Carolina Association of Public Safety Communication Officials, two must be employees of a local 911 system recommended by the South Carolina National Emergency Number Association, two must be employees of CMRS providers licensed to do business in the State, one must be an employee of a telephone (local exchange access facility) service supplier licensed to do business in the State, and one consumer; and four members appointed by the Executive Director of the Revenue and Fiscal Affairs Office of which one must be its executive director or his designee, one must be an individual with GIS expertise, one must be an individual with knowledge of communication operations or technology, and one county

administrator recommended by the South Carolina Association of Counties. There is no expense reimbursement or per diem payment made to members of the committee for attendance in committee or subcommittee meetings. However, upon prior approval by the Executive Director of the Revenue and Fiscal Affairs Office, members of the committee may be reimbursed by the Revenue and Fiscal Affairs Office, pursuant to state travel guidelines, for travel associated with their service on the committee.

(2) All committee members, except the executive director or his designee, must be appointed for a three-year term. These eleven committee members may be appointed to one consecutive term. A member may not be reappointed in a different capacity in order to circumvent the two consecutive term limitation. A member who has served the maximum consecutive terms is eligible for reappointment to a subsequent term after three years absence from the committee.

(3) In the event a vacancy arises, it must be filled for the remainder of the term in the manner of the original appointment. A partial term does not count toward the term limits; however, service for three-fourths or more of a term constitutes service for a term.

(4) Any committee member who terminates his holding of the office or employment which qualified him for appointment shall cease immediately to be a member of the committee; the person appointed to fill the vacancy shall do so for the unexpired term of the member whom he succeeds.

(5) The committee shall establish its own procedures with respect to the selection of officers, quorum, place, and conduct of meetings. The committee may create special committees or subcommittees as it deems necessary and may invite other knowledgeable individuals to participate on these special committees or subcommittees. However, the committee may not delegate any statutory duty to such other committees.

(B) The responsibilities of the committee with respect to CMRS emergency telephone services are to:

(1) advise the Revenue and Fiscal Affairs Office on technical, operational, and training issues regarding the development, implementation, and continuing evolution of a comprehensive wireless 911 system, especially matters concerning appropriate systems and equipment to be acquired by CMRS providers and PSAPs to assure the compatibility of the systems and equipment and the ability of the systems and equipment to comply with the strategic plan and operating model approved by the board;

(2) recommend systems and equipment for which reimbursement may be allowed to CMRS providers and PSAPs under the provisions of

this chapter, which are compatible with each other as needed for the public's safety, and will not result in wasteful spending on inappropriate or redundant technology; and

(3) review and approve continuing education training courses for which reimbursement may be allowed to CMRS providers and PSAPs under the provisions of this chapter.

(C) The responsibilities of the Revenue and Fiscal Affairs Office with respect to CMRS emergency telephone services are to:

(1) develop and oversee a strategic plan and manage or contract up to ten years for a 911 operating system in accordance with the provisions of the strategic plan as outlined in this chapter and as approved by the board. In order to effectively manage the plan and system, the office in accordance with state procurement guidelines is authorized to:

(a) hire employees or contract for services and equipment to achieve all or parts of the model; and

(b) provide for statewide contracts for equipment and services identified in the plan for PSAPs to utilize;

(2) manage and disburse funds in and from an interest-bearing account in the following manner:

(a) hold and distribute not more than thirty-nine and eight-tenths percent of the total monthly revenues in the interest-bearing account to PSAP administrators based on CMRS 911 wireless call volume for expenses incurred for the answering, routing, and proper disposition of CMRS 911 calls;

(b) hold and distribute not more than fifty-eight and two-tenths percent of the total monthly revenues in the interest-bearing account solely for the purposes of complying with the provisions of this chapter and the strategic plan. These funds may be utilized by the office, the PSAPs, and the CMRS providers licensed to do business in this State for the following purposes in connection with compliance with this chapter and the strategic plan including, but not limited to: acquiring, upgrading, maintaining, programming, and installing necessary data, networks, services, hardware, and software. Invoices detailing specific expenses for these purposes must be presented for approval to the Revenue and Fiscal Affairs Office in connection with any request for reimbursement, and the request must be approved by the Revenue and Fiscal Affairs Office, upon recommendation of the committee. Any invoices presented to the Revenue and Fiscal Affairs Office for reimbursements of costs not described by this section may be considered by the board, but only upon unanimous approval of the committee, but in no event shall

reimbursement be made for costs inconsistent with the strategic plan; and

(c) hold and distribute not more than two percent of the total monthly revenues in the interest-bearing account to compensate the independent auditor provided for herein and for expenses which the Revenue and Fiscal Affairs Office is authorized to incur by contract, or otherwise, for provision of any administrative, legal, support, or other services to assist the Revenue and Fiscal Affairs Office in fulfilling its responsibilities under this act;

(3) prepare annual reports outlining fees collected and monies disbursed to PSAP and CMRS providers, and monies disbursed for operations of the Revenue and Fiscal Affairs Office, and submit annual reports to the South Carolina 911 Advisory Committee and the State Treasurer's Office;

(4) retain an independent, private auditor, as necessary in carrying out its responsibilities and as provided in the Consolidated Procurement Code, such as for the purposes of receiving, maintaining, and verifying the accuracy of proprietary information submitted to the Revenue and Fiscal Affairs Office by CMRS providers or PSAPs, and assisting the committee in its duties including its annual calculation of the average 911 charges pursuant to Section 23-47-50(F) and in cost studies it may conduct. Due to the confidential and proprietary nature of the information submitted by CMRS providers, the information may not be released to a party other than the independent private auditor and is expressly exempt from disclosure pursuant to Chapter 4, Title 30. The information collected by the auditor may be released only in aggregate amounts that do not identify or allow identification of numbers of subscribers or revenues attributable to an individual CMRS provider;

(5) conduct a cost study to be submitted to the House Ways and Means Committee and Senate Finance Committee one year from the effective date of this section and thereafter at the Revenue and Fiscal Affairs Office's discretion. The Revenue and Fiscal Affairs Office may include any information it considers appropriate to assist the General Assembly in determining whether future legislation is necessary or appropriate, but the report must include information to assist in determining whether to adjust the CMRS 911 charge to reflect actual costs incurred by PSAPs or CMRS providers for compliance with applicable requirements of the strategic plan;

(6) convene the committee and consult with it concerning the performance of the responsibilities assigned to the Revenue and Fiscal Affairs Office and to the committee in this chapter, and the development

and maintenance of the state's CMRS emergency telephone services and system;

(7) report as required or suggested by this chapter, promulgate any regulations, and take further actions as are appropriate in implementing it;

(8) work with the Department of Revenue to ensure all reporting requirements are being met; and

(9) act as the State 911 Coordinator for the purposes of any relevant state or federal law or program requirements.

(D) The Revenue and Fiscal Affairs Office and committee must:

(1) annually calculate the average 911 charge as provided in Section 23-47-50(F); and

(2) take appropriate measures to maintain the confidentiality of the proprietary information described in this section. This information may be disclosed to Revenue and Fiscal Affairs Office and committee members only in the event a dispute arises with respect to the Revenue and Fiscal Affairs Office's and committee's discharge of their responsibilities under Section 23-47-65(B)(2) which necessitates such disclosure. The information also shall be exempt from disclosure pursuant to Chapter 4, Title 30. Members of the Revenue and Fiscal Affairs Office may not disclose the information to any third parties, including their employers.

(E) CMRS providers are entitled to retain two percent of the fees collected as reimbursement for collection and handling of the CMRS 911 charge."

CMRS location information

SECTION 7. Section 23-47-75 of the 1976 Code is amended to read:

"Section 23-47-75. (A) CMRS location information obtained by safety personnel or for public safety personnel for public safety purposes is not public information under the Freedom of Information Act.

(B) A person may not disclose or use, for any purpose other than for the 911 or other emergency calling system, information contained in the database of the telephone network portion of a 911 or other emergency calling system established pursuant to this chapter.

(C) For all information not covered by subsections (A) and (B), a local government may exempt from disclosure:

(1) individual identifying information of an individual calling a 911 center, individual identifying information of a victim, or individual identifying information of a witness; or

(2) images or video from a place where the 911 caller would have a reasonable expectation of privacy as defined in Section 16-17-470(D)(1).

The local government is responsible for the release of its information.

(D) This section shall not apply if the local government or a court order determines that the public interest in disclosure outweighs the interest in nondisclosure.

(E) As used in this section, the term 'identifying information' includes name, telephone number, and home address. The term does not include:

(1) the location of the incident, unless the location is the caller's, victim's, or witness' home address or the disclosure of the location would compromise the identity of the caller, victim, or witness; or

(2) the street block identifier, the cross street, or the mile marker nearest the scene of the incident, which shall be public."

Unlawful conduct

SECTION 8. Section 23-47-80 of the 1976 Code is amended to read:

"Section 23-47-80. It is unlawful for a person anonymously or otherwise to:

(1) use any words or language of a profane, vulgar, lewd, lascivious, or indecent nature on an emergency 911 number with the intent to intimidate or harass a dispatcher;

(2) contact the emergency 911 number, whether or not conversation ensues for the purpose of annoying or harassing the dispatcher or interfering with or disrupting emergency 911 service;

(3) make contact with a 911 dispatcher and intentionally fail to hang up or disengage the connection for the purpose of interfering with or disrupting emergency service;

(4) contact the emergency 911 number and intentionally make a false report.

A person who violates the provisions of this section is guilty of a misdemeanor and, upon conviction, must be imprisoned not more than six months or fined not more than two hundred dollars, or both."

Time effective

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

Ratified the 13th day of May, 2019.

Approved the 16th day of May, 2019.

No. 61

(R81, H3621)

AN ACT TO AMEND SECTION 44-75-20, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO TERMS DEFINED IN THE ATHLETIC TRAINERS' ACT OF SOUTH CAROLINA, SO AS TO CHANGE THE DEFINITION OF "ATHLETIC TRAINER"; TO AMEND SECTION 44-75-50, RELATING TO CERTIFICATION OF ATHLETIC TRAINERS, SO AS TO REVISE THE NAME OF THE REQUIRED EXAMINATION; TO AMEND SECTION 44-75-100, RELATING TO EMPLOYEES OF ORGANIZATIONS THAT ARE CONSIDERED ATHLETIC TRAINERS, SO AS TO ADD CERTAIN ORGANIZATIONS; AND TO AMEND SECTION 44-75-120, RELATING TO PENALTIES FOR VIOLATING A PROVISION OF THE ACT, SO AS TO AUTHORIZE THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL TO TAKE CERTAIN DISCIPLINARY ACTIONS, INCLUDING THE IMPOSITION OF MONETARY PENALTIES.

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

Definition, athletic trainer

SECTION 1. Section 44-75-20(a) of the 1976 Code is amended to read:

"(a) 'Athletic trainer' means an allied health professional with specific qualifications as set forth in Section 44-75-50 who, upon the advice and consent of a licensed physician, carries out the practice of care, prevention, and physical rehabilitation of athletic injuries, and who, in carrying out these functions, may use physical modalities, including, but not limited to, heat, light, sound, cold, electricity, or mechanical devices related to rehabilitation and treatment."

Certification requirements

SECTION 2. Section 44-75-50 of the 1976 Code is amended to read:

"Section 44-75-50. An applicant for an athletic trainer certification must pass the Board of Certification, Inc., (BOC) examination and have met the athletic training curriculum requirements of a college or university and give proof by means of a certified transcript."

Certain organizations' employees who constitute an athletic trainer

SECTION 3. Section 44-75-100 of the 1976 Code is amended to read:

"Section 44-75-100. For purposes of this chapter, a person is engaged as an athletic trainer if the person is employed on a salary or contractual basis by an educational institution, a hospital, a rehabilitation clinic, a physician's office, an industry, a performing arts group, a professional athletic organization, the military, a governmental agency, or other bona fide organization which employs or serves a physically active population and performs the duties of athletic trainer as a major responsibility of this employment."

Penalties

SECTION 4. Section 44-75-120 of the 1976 Code is amended to read:

"Section 44-75-120. The department is authorized to suspend, deny, or revoke an athletic trainer's certificate, and impose a civil monetary penalty, against any person for a violation of a regulation promulgated pursuant to this chapter. Any person violating the provisions of this chapter is guilty of a misdemeanor and, upon conviction, must be punished by a fine of not less than twenty-five nor more than two hundred dollars."

Time effective

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

Ratified the 13th day of May, 2019.

Approved the 16th day of May, 2019.

No. 62

(R82, H3659)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING CHAPTER 41 TO TITLE 58 ENTITLED "RENEWABLE ENERGY PROGRAMS" SO AS TO DEFINE RELEVANT TERMS, TO PROVIDE REVIEW AND APPROVAL PROCEEDINGS BY THE PUBLIC SERVICE COMMISSION FOR ELECTRICAL UTILITIES' AVOIDED COST METHODOLOGIES, STANDARD OFFERS, FORM CONTRACTS, AND COMMITMENT TO SELL FORMS, AND TO ESTABLISH VOLUNTARY RENEWABLE ENERGY PROGRAMS; BY ADDING SECTION 58-27-845 SO AS TO ENUMERATE SPECIFIC RIGHTS OWED TO EVERY ELECTRICAL UTILITY CUSTOMER IN SOUTH CAROLINA; TO AMEND SECTION 58-40-10, RELATING TO DEFINITIONS APPLICABLE TO NET ENERGY METERING, SO AS TO REVISE THE DEFINITION OF "CUSTOMER-GENERATOR", AND TO DEFINE "SOLAR CHOICE METERING MEASUREMENT"; TO AMEND SECTION 58-40-20, RELATING TO NET ENERGY METERING RATES, SO AS TO DECLARE THE INTENT OF THE GENERAL ASSEMBLY, TO REQUIRE NET ENERGY METERING, AND TO ESTABLISH ADDITIONAL REQUIREMENTS FOR THE PUBLIC SERVICE COMMISSION; TO AMEND SECTION 58-27-2610, RELATING TO LEASES OF RENEWABLE ELECTRIC GENERATION FACILITIES, SO AS TO, AMONG OTHER THINGS, REMOVE THE SOLAR LEASING CAP; TO AMEND SECTION 58-37-40, RELATING TO INTEGRATED RESOURCE PLANS, SO AS TO, AMONG OTHER THINGS, ESTABLISH MANDATORY CONTENTS OF INTEGRATED RESOURCE PLANS AND PROVIDE FOR CERTAIN REPORTING REQUIREMENTS; BY ADDING SECTION 58-37-60 SO AS TO AUTHORIZE AN INDEPENDENT STUDY TO EVALUATE THE INTEGRATION OF RENEWABLE ENERGY AND EMERGING ENERGY

TECHNOLOGIES INTO THE ELECTRIC GRID; TO AMEND SECTION 58-33-110, RELATING TO REQUIRED PRECONSTRUCTION CERTIFICATIONS FOR MAJOR UTILITY FACILITIES, SO AS TO PROVIDE THAT A PERSON MAY NOT BEGIN CONSTRUCTION OF A MAJOR UTILITY FACILITY WITHOUT FIRST HAVING MADE A DEMONSTRATION THAT THE FACILITY TO BE BUILT HAS BEEN COMPARED TO OTHER GENERATION OPTIONS IN TERMS OF COST, RELIABILITY, AND OTHER REGULATORY IMPLICATIONS DEEMED LEGALLY OR REASONABLY NECESSARY FOR CONSIDERATION BY THE COMMISSION; TO AMEND SECTION 58-27-460, RELATING TO THE PROMULGATION OF STANDARDS FOR INTERCONNECTION OF RENEWABLE ENERGY, SO AS TO, AMONG OTHER THINGS, REQUIRE THE PUBLIC SERVICE COMMISSION TO PERIODICALLY REVIEW THE STANDARDS FOR INTERCONNECTION AND PARALLEL OPERATION OF GENERATING FACILITIES TO AN ELECTRICAL UTILITY'S DISTRIBUTION AND TRANSMISSION SYSTEM; BY ADDING SECTION 58-27-2660 SO AS TO REQUIRE THE OFFICE OF REGULATORY STAFF AND THE DEPARTMENT OF CONSUMER AFFAIRS TO DEVELOP CONSUMER PROTECTION REGULATIONS REGARDING THE SALE OR LEASE OF RENEWABLE ENERGY GENERATION FACILITIES; TO AMEND SECTION 58-4-10, AS AMENDED, RELATING TO THE OFFICE OF REGULATORY STAFF, SO AS TO PROVIDE THAT THE OFFICE OF REGULATORY STAFF MUST BE CONSIDERED A PARTY OF RECORD IN ALL FILINGS, APPLICATIONS, OR PROCEEDINGS BEFORE THE PUBLIC SERVICE COMMISSION; AND TO AMEND SECTION 58-4-100, RELATING TO THE EMPLOYMENT OF EXPERT WITNESSES, SO AS TO EXEMPT THE OFFICE OF REGULATORY STAFF FROM THE STATE PROCUREMENT CODE IN THE SELECTION AND EMPLOYMENT OF CERTAIN EXPERT WITNESSES AND THIRD-PARTY CONSULTANTS.

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

Renewable energy programs

SECTION 1. Title 58 of the 1976 Code is amended by adding:

"CHAPTER 41

Renewable Energy Programs

Section 58-41-05. The commission is directed to address all renewable energy issues in a fair and balanced manner, considering the costs and benefits to all customers of all programs and tariffs that relate to renewable energy and energy storage, both as part of the utility's power system and as direct investments by customers for their own energy needs and renewable goals. The commission also is directed to ensure that the revenue recovery, cost allocation, and rate design of utilities that it regulates are just and reasonable and properly reflect changes in the industry as a whole, the benefits of customer renewable energy, energy efficiency, and demand response, as well as any utility or state-specific impacts unique to South Carolina which are brought about by the consequences of this act.

Section 58-41-10. As used in this chapter:

(1) 'AC' means alternating current as measured at the point of interconnection of the small power producer's facility to the interconnecting electrical utility's transmission or distribution system.

(2) 'Avoided costs' means the incremental costs to an electric utility of electric energy or capacity or both which, but for the purchase from the qualifying facility or qualifying facilities, such utility would generate itself or purchase from another source.

(3) 'Commission' means the South Carolina Public Service Commission.

(4) 'Electrical utility' is defined as set forth in Section 58-27-10(7), provided, however, that electrical utilities serving less than one hundred thousand customer accounts must be exempt from the provisions of this chapter. A renewable energy supplier participating in an electrical utility's voluntary renewable energy program pursuant to this chapter must not be considered an electrical utility for purposes of this chapter.

(5) 'Eligible customer' means a retail customer with a new or existing contract demand greater than or equal to one megawatt at a single-metered location or aggregated across multiple-metered locations.

(6) 'Generation credit' means a credit applied by an electrical utility to the bill of a participating customer that is equal to the value of the energy and capacity avoided by the electrical utility as a result of procuring energy and capacity from a renewable energy facility.

(7) 'Participating customer' means an eligible customer that elects to have a portion or all of its electricity needs supplied by a voluntary renewable energy program.

(8) 'Participating customer agreement' means an agreement between a participating customer, its electrical utility, and the renewable energy supplier establishing each party's rights and obligations under the electrical utility's voluntary renewable energy program.

(9) 'Power purchase agreement' means an agreement between an electrical utility and a small power producer for the purchase and sale of energy, capacity, and ancillary services from the small power producer's qualifying small power production facility.

(10) 'PURPA' means the Public Utility Regulatory Policies Act of 1978, as amended.

(11) 'Renewable energy contract' means a power purchase agreement between an electrical utility and a renewable energy supplier that commits the parties to participating in an electrical utility's voluntary renewable energy program for the purchase and sale of energy and capacity.

(12) 'Renewable energy facility' means a facility for the production of electrical energy that utilizes a renewable generation resource as defined in Section 58-39-120(F), that is placed in service after the effective date of this chapter, and for which costs are not included in an electrical utility's rates.

(13) 'Renewable energy supplier' means the owner or operator of a renewable energy facility, including the affiliate of an electrical utility that contracts with a participating customer.

(14) 'Small power producer' means a person or corporation owning or operating a 'qualifying small power production facility' as defined in 16 U.S.C. Section 796, as amended.

(15) 'Standard offer' means the avoided cost rates, power purchase agreement, and terms and conditions approved by the commission and applicable to purchases of energy and capacity by electrical utilities as provided in this chapter from small power producers up to two megawatts AC in size.

(16) 'Voluntary renewable energy program' means a tariff filed with the commission by an electrical utility that enables a participating commercial or industrial customer to receive and pay for electric service, that reflects the program cost, and that includes the environmental

attributes specified in the participating customer agreement and renewable energy contract, including a generation credit for such renewable energy, from the electrical utility pursuant to the terms of the tariff.

Section 58-41-20. (A) As soon as is practicable after the effective date of this chapter, the commission shall open a docket for the purpose of establishing each electrical utility's standard offer, avoided cost methodologies, form contract power purchase agreements, commitment to sell forms, and any other terms or conditions necessary to implement this section. Within six months after the effective date of this chapter, and at least once every twenty-four months thereafter, the commission shall approve each electrical utility's standard offer, avoided cost methodologies, form contract power purchase agreements, commitment to sell forms, and any other terms or conditions necessary to implement this section. Within such proceeding the commission shall approve one or more standard form power purchase agreements for use for qualifying small power production facilities not eligible for the standard offer. Such power purchase agreements shall contain provisions, including, but not limited to, provisions for force majeure, indemnification, choice of venue, and confidentiality provisions and other such terms, but shall not be determinative of price or length of the power purchase agreement. The commission may approve multiple form power purchase agreements to accommodate various generation technologies and other project-specific characteristics. This provision shall not restrict the right of parties to enter into power purchase agreements with terms that differ from the commission-approved form(s). Any decisions by the commission shall be just and reasonable to the ratepayers of the electrical utility, in the public interest, consistent with PURPA and the Federal Energy Regulatory Commission's implementing regulations and orders, and nondiscriminatory to small power producers; and shall strive to reduce the risk placed on the using and consuming public.

(1) Proceedings conducted pursuant to this section shall be separate from the electrical utilities' annual fuel cost proceedings conducted pursuant to Section 58-27-865.

(2) Proceedings shall include an opportunity for intervention, discovery, filed comments or testimony, and an evidentiary hearing.

(B) In implementing this chapter, the commission shall treat small power producers on a fair and equal footing with electrical utility-owned resources by ensuring that:

(1) rates for the purchase of energy and capacity fully and accurately reflect the electrical utility's avoided costs;

(2) power purchase agreements, including terms and conditions, are commercially reasonable and consistent with regulations and orders promulgated by the Federal Energy Regulatory Commission implementing PURPA; and

(3) each electrical utility's avoided cost methodology fairly accounts for costs avoided by the electrical utility or incurred by the electrical utility, including, but not limited to, energy, capacity, and ancillary services provided by or consumed by small power producers including those utilizing energy storage equipment. Avoided cost methodologies approved by the commission may account for differences in costs avoided based on the geographic location and resource type of a small power producer's qualifying small power production facility.

(C) The avoided cost rates offered by an electrical utility to a small power producer not eligible for the standard offer must be calculated based on the avoided cost methodology most recently approved by the commission. In the event that a small power producer and an electrical utility are unable to mutually agree on an avoided cost rate, the small power producer shall have the right to have any disputed issues resolved by the commission in a formal complaint proceeding. The commission may require mediation prior to a formal complaint proceeding.

(D) A small power producer shall have the right to sell the output of its facility to the electrical utility at the avoided cost rates and pursuant to the power purchase agreement then in effect by delivering an executed notice of commitment to sell form to the electrical utility. The commission shall approve a standard notice of commitment to sell form to be used for this purpose that provides the small power producer a reasonable period of time from its submittal of the form to execute a power purchase agreement. In no event, however, shall the small power producer, as a condition of preserving the pricing and terms and conditions established by its submittal of an executed commitment to sell form to the electrical utility, be required to execute a power purchase agreement prior to receipt of a final interconnection agreement from the electrical utility.

(E)(1) Electrical utilities shall file with the commission power purchase agreements entered into pursuant to PURPA, resulting from voluntary negotiation of contracts between an electrical utility and a small power producer not eligible for the standard offer.

(2) The commission is authorized to open a generic docket for the purposes of creating programs for the competitive procurement of energy and capacity from renewable energy facilities by an electrical utility within the utility's balancing authority area if the commission determines such action to be in the public interest.

(3) In establishing standard offer and form contract power purchase agreements, the commission shall consider whether such power purchase agreements should prohibit any of the following:

(a) termination of the power purchase agreement, collection of damages from small power producers, or commencement of the term of a power purchase agreement prior to commercial operation, if delays in achieving commercial operation of the small power producer's facility are due to the electrical utility's interconnection delays; or

(b) the electrical utility reducing the price paid to the small power producer based on costs incurred by the electrical utility to respond to the intermittent nature of electrical generation by the small power producer.

(F)(1) Electrical utilities, subject to approval of the commission, shall offer to enter into fixed price power purchase agreements with small power producers for the purchase of energy and capacity at avoided cost, with commercially reasonable terms and a duration of ten years. The commission may also approve commercially reasonable fixed price power purchase agreements with a duration longer than ten years, which must contain additional terms, conditions, and/or rate structures as proposed by intervening parties and approved by the commission, including, but not limited to, a reduction in the contract price relative to the ten year avoided cost. Notwithstanding any other language to the contrary, the commission will make such a determination in proceedings conducted pursuant to subsection (A). The avoided cost rates applicable to fixed price power purchase agreements entered into pursuant to this item shall be based on the avoided cost rates and methodologies as determined by the commission pursuant to this section. The terms of this subsection apply only to those small power producers whose qualifying small power production facilities have active interconnection requests on file with the electrical utility prior to the effective date of this act. The commission may determine any other necessary terms and conditions deemed to be in the best interest of the ratepayers. This item is not intended, and shall not be construed, to abrogate small power producers' rights under PURPA that existed prior to the effective date of the act.

(2) Once an electrical utility has executed interconnection agreements and power purchase agreements with qualifying small power production facilities located in South Carolina with an aggregate nameplate capacity equal to twenty percent of the previous five-year average of the electrical utility's South Carolina retail peak load, that electrical utility shall offer to enter into fixed price power purchase agreements with small power producers for the purchase of energy and capacity at avoided cost, with the terms, conditions, rates, and terms of

length for contracts as determined by the commission in a separate docket or in a proceeding conducted pursuant to subsection (A). The commission is expressly directed to consider the potential benefits of terms with a longer duration to promote the state's policy of encouraging renewable energy.

(G) Nothing in this section prohibits the commission from adopting various avoided cost methodologies or amending those methodologies in the public interest.

(H) Unless otherwise agreed to between the electrical utility and the small power producer, a power purchase agreement entered into pursuant to PURPA may not allow curtailment of qualifying facilities in any manner that is inconsistent with PURPA or implementing regulations and orders promulgated by the Federal Energy Regulatory Commission.

(I) The commission is authorized to employ, through contract or otherwise, third-party consultants and experts in carrying out its duties under this section, including, but not limited to, evaluating avoided cost rates, methodologies, terms, calculations, and conditions under this section. The commission is exempt from complying with the State Procurement Code in the selection and hiring of a third-party consultant or expert authorized by this subsection. The commission shall engage, for each utility, a qualified independent third party to submit a report that includes the third party's independently derived conclusions as to that third party's opinion of each utility's calculation of avoided costs for purposes of proceedings conducted pursuant to this section. The qualified independent third party is subject to the same ex parte prohibitions contained in Chapter 3, Title 58 as all other parties. The qualified independent third party shall submit all requests for documents and information necessary to their analysis under the authority of the commission and the commission shall have full authority to compel response to the requests. The qualified independent third party's duty will be to the commission. Any conclusions based on the evidence in the record and included in the report are intended to be used by the commission along with all other evidence submitted during the proceeding to inform its ultimate decision setting the avoided costs for each electrical utility. The utilities may require confidentiality agreements with the independent third party that do not impede the third-party analysis. The utilities shall be responsive in providing all documents, information, and items necessary for the completion of the report. The independent third party shall also include in the report a statement assessing the level of cooperation received from the utility during the development of the report and whether there were any

material information requests that were not adequately fulfilled by the electrical utility. Any party to this proceeding shall be able to review the report including the confidential portions of the report upon entering into an appropriate confidentiality agreement. The commission and the Office of Regulatory Staff may not hire the same third-party consultant or expert in the same proceeding or to address the same or similar issues in different proceedings.

(J) Each electrical utility's avoided cost filing must be reasonably transparent so that underlying assumptions, data, and results can be independently reviewed and verified by the parties and the commission. The commission may approve any confidentiality protections necessary to allow for independent review and verification of the avoided cost filing.

Section 58-41-30. (A) Within one hundred and twenty days of the effective date of this chapter, subject to subsection (F), each electrical utility shall file a proposed voluntary renewable energy program for review and approval by the commission. The commission shall conduct a proceeding to review the program and establish reasonable terms and conditions for the program. Interested parties shall have the right to participate in the proceeding. The commission may periodically hold additional proceedings to update the program. At a minimum, the program shall provide that:

(1) the participating customer shall have the right to select the renewable energy facility and negotiate with the renewable energy supplier on the price to be paid by the participating customer for the energy, capacity, and environmental attributes of the renewable energy facility and the term of such agreement so long as such terms are consistent with the voluntary renewable program service agreement as approved by the commission;

(2) the renewable energy contract and the participating customer agreement must be of equal duration;

(3) in addition to paying a retail bill calculated pursuant to the rates and tariffs that otherwise would apply to the participating customer, reduced by the amount of the generation credit, a participating customer shall reimburse the electrical utility on a monthly basis for the amount paid by the electrical utility to the renewable energy supplier pursuant to the participating customer agreement and renewable energy contract, plus an administrative fee approved by the commission; and

(4) eligible customers must be allowed to bundle their demand under a single participating customer agreement and renewable energy

contract and must be eligible annually to procure an amount of capacity as approved by the commission.

(B) The commission may approve a program that provides for options that include, but are not limited to, both variable and fixed generation credit options.

(C) The commission may limit the total portion of each electrical utility's voluntary renewable energy program that is eligible for the program at a level consistent with the public interest and shall provide standard terms and conditions for the participating customer agreement and the renewable energy contract, subject to commission review and approval.

(D) A participating customer shall bear the burden of any reasonable costs associated with participating in a voluntary renewable energy program. An electrical utility may not charge any nonparticipating customers for any costs incurred pursuant to the provisions of this section.

(E) A renewable energy facility may be located anywhere in the electrical utility's service territory within the utility's balancing authority.

(F) If the commission determines that an electrical utility has a voluntary renewable energy program on file with the commission as of the effective date of this chapter, that conforms with the requirements of this section, the utility is not required to make a new filing to meet the requirements of subsection (A).

Section 58-41-40. (A) It is the intent of the General Assembly to expand the opportunity to support solar energy and support access to solar energy options for all South Carolinians, including those who lack the income to afford the upfront investment in solar panels or those who do not own their homes or have suitable rooftops. The General Assembly encourages all electric service providers in this State to consider offering neighborhood community solar programs.

(B)(1) Within sixty days after the effective date of this chapter, the commission shall open a docket for each electrical utility to review the community solar programs established pursuant to Act 236 of 2014 and to solicit status information on existing programs from the electrical utilities.

(2) Within one hundred and eighty days after the commission opens the docket pursuant to item (1), the electrical utilities shall update their report on their existing programs and may propose new programs.

(C) Subject to review by the commission, a public utility must be entitled to full and timely cost recovery for all reasonable and prudent

costs incurred in implementing and complying with this section. Participating customers shall bear the burden of any reasonable and prudent costs associated with participating in a neighborhood community solar program; however, the commission shall nonetheless promote access to solar energy projects for low and moderate income customers. An electrical utility may not charge any nonparticipating customers for any costs incurred pursuant to the provisions of this section."

Findings and enumeration of electrical utility customer rights

SECTION 2. Article 7, Chapter 27, Title 58 of the 1976 Code is amended by adding:

"Section 58-27-845. (A) The General Assembly finds that there is a critical need to:

(1) protect customers from rising utility costs;

(2) provide opportunities for customer measures to reduce or manage electrical consumption from electrical utilities in a manner that contributes to reductions in utility peak electrical demand and other drivers of electrical utility costs; and

(3) equip customers with the information and ability to manage their electric bills.

(B) Every customer of an electrical utility has the right to a rate schedule that offers the customer a reasonable opportunity to employ such energy and cost-saving measures as energy efficiency, demand response, or onsite distributed energy resources in order to reduce consumption of electricity from the electrical utility's grid and to reduce electrical utility costs.

(C) In fixing just and reasonable utility rates pursuant to Section 58-3-140 and Section 58-27-810, the commission shall consider whether rates are designed to discourage the wasteful use of public utility services while promoting all use that is economically justified in view of the relationships between costs incurred and benefits received, and that no one class of customers are unduly burdening another, and that each customer class pays, as close as practicable, the cost of providing service to them.

(D) For each class of service, the commission must ensure that each electrical utility offers to each class of service a minimum of one reasonable rate option that aligns the customer's ability to achieve bill savings with long-term reductions in the overall cost the electrical utility

will incur in providing electric service, including, but not limited to, time-variant pricing structures.

(E) Every customer of an electrical utility has a right to obtain their own electric usage data in a machine-readable, accessible format to the extent such is readily available. Electrical utilities shall allow customers an electronic means to assent to share the customer's energy usage data with a third-party vendor designated by the customer."

Definition of "customer-generator"

SECTION 3. Section 58-40-10(C) of the 1976 Code is amended to read:

"(C) 'Customer-generator' means the owner, operator, lessee, or customer-generator lessee of an electric energy generation unit which:

(1) generates or discharges electricity from a renewable energy resource, including an energy storage device configured to receive electrical charge solely from an onsite renewable energy resource;

(2) has an electrical generating system with a capacity of:

(a) not more than the lesser of one thousand kilowatts (1,000 kW AC) or one hundred percent of contract demand if a nonresidential customer; or

(b) not more than twenty kilowatts (20 kW AC) if a residential customer;

(3) is located on a single premises owned, operated, leased, or otherwise controlled by the customer;

(4) is interconnected and operates in parallel phase and synchronization with an electrical utility and complies with the applicable interconnection standards;

(5) is intended primarily to offset part or all of the customer-generator's own electrical energy requirements; and

(6) meets all applicable safety, performance, interconnection, and reliability standards established by the commission, the National Electrical Code, the National Electrical Safety Code, the Institute of Electrical and Electronics Engineers, Underwriters Laboratories, the federal Energy Regulatory Commission, and any local governing authorities."

Definition of "solar choice metering measurement"

SECTION 4. Section 58-40-10 of the 1976 Code is amended by adding an appropriately lettered subsection at the end to read:

"( ) 'Solar choice metering measurement' means the process, method, or calculation used for purposes of billing and crediting at the commission determined value."

Legislative intent and instructions

SECTION 5. Section 58-40-20 of the 1976 Code is amended to read:

"Section 58-40-20. (A) It is the intent of the General Assembly to:

(1) build upon the successful deployment of solar generating capacity through Act 236 of 2014 to continue enabling market-driven, private investment in distributed energy resources across the State by reducing regulatory and administrative burdens to customer installation and utilization of onsite distributed energy resources;

(2) avoid disruption to the growing market for customer-scale distributed energy resources; and

(3) require the commission to establish solar choice metering requirements that fairly allocate costs and benefits to eliminate any cost shift or subsidization associated with net metering to the greatest extent practicable.

(B) An electrical utility shall make net energy metering available to all customer-generators who apply before June 1, 2021, according to the terms and conditions provided to all parties in Commission Order No. 2015-194. Customer-generators who apply for net metering after the effective date of this act but before June 1, 2021, including subsequent owners of the customer-generator facility or premises, may continue net energy metering service as provided for in Commission Order No. 2015-194 until May 31, 2029.

(C) No later than January 1, 2020, the commission shall open a generic docket to:

(1) investigate and determine the costs and benefits of the current net energy metering program; and

(2) establish a methodology for calculating the value of the energy produced by customer-generators.

(D) In evaluating the costs and benefits of the net energy metering program, the commission shall consider:

(1) the aggregate impact of customer-generators on the electrical utility's long-run marginal costs of generation, distribution, and transmission;

(2) the cost of service implications of customer-generators on other customers within the same class, including an evaluation of

whether customer-generators provide an adequate rate of return to the electrical utility compared to the otherwise applicable rate class when, for analytical purposes only, examined as a separate class within a cost of service study;

(3) the value of distributed energy resource generation according to the methodology approved by the commission in Commission Order No. 2015-194;

(4) the direct and indirect economic impact of the net energy metering program to the State; and

(5) any other information the commission deems relevant.

(E) The value of the energy produced by customer-generators must be updated annually and the methodology revisited every five years.

(F)(1) After notice and opportunity for public comment and public hearing, the commission shall establish a 'solar choice metering tariff' for customer-generators to go into effect for applications received after May 31, 2021.

(2) In establishing any successor solar choice metering tariffs, and in approving any future modifications, the commission shall determine how meter information is used for calculating the solar choice metering measurement that is just and reasonable in light of the costs and benefits of the solar choice metering program.

(3) A solar choice metering tariff shall include a methodology to compensate customer-generators for the benefits provided by their generation to the power system. In determining the appropriate billing mechanism and energy measurement interval, the commission shall consider:

(a) current metering capability and the cost of upgrading hardware and billing systems to accomplish the provisions of the tariff;

(b) the interaction of the tariff with time-variant rate schedules available to customer-generators and whether different measurement intervals are justified for customer-generators taking service on a time-variant rate schedule;

(c) whether additional mitigation measures are warranted to transition existing customer-generators; and

(d) any other information the commission deems relevant.

(G) In establishing a successor solar choice metering tariff, the commission is directed to:

(1) eliminate any cost shift to the greatest extent practicable on customers who do not have customer-sited generation while also ensuring access to customer-generator options for customers who choose to enroll in customer-generator programs; and

(2) permit solar choice customer-generators to use customer-generated energy behind the meter without penalty.

(H) The commission shall establish a minimum guaranteed number of years to which solar choice metering customers are entitled pursuant to the commission approved energy measurement interval and other terms of their agreement with the electrical utility.

(I) Nothing in this section, however, prohibits an electrical utility from continuing to recover distributed energy resource program costs in the manner and amount approved by Commission Order No. 2015-194 for customer-generators applying before June 1, 2021. Such recovery shall remain in place until full cost recovery is realized. Electrical utilities are prohibited from recovering lost revenues associated with customer-generators who apply for customer-generator programs on or after June 1, 2021.

(J) Nothing in the section prohibits the commission from considering and establishing tariffs for another renewable energy resource.”

Lease of renewable electric generation facility

SECTION 6. Section 58-27-2610 of the 1976 Code is amended to read:

“Section 58-27-2610. (A) An entity that owns a renewable electric generation facility, located on a premises or residence owned or leased by an eligible customer-generator lessee to serve the electric energy requirements of that particular premises or residence or to enable the customer-generator lessee to obtain a credit for or engage in the sale of energy from the renewable electric generation facility to that customer-generator lessee’s retail electric provider or its designee, shall be permitted to lease such facility exclusively to a customer-generator lessee under a lease, provided that the entity complies with the terms, conditions, and restrictions set forth within this article and holds a valid certificate issued by the Office of Regulatory Staff. An entity owning renewable electric generation facilities in compliance with the terms of this article shall not be considered an ‘electrical utility’ under Section 58-27-10 if the renewable electric generation facilities are only made available to a customer-generator lessee for the customer-generator lessee’s use on the customer-generator lessee’s premises or the residence where the renewable electric generation facilities are located, or for the sale of energy to that customer-generator lessee’s retail electric provider or its designee, and pursuant to a lease.

(B) All customer-generator lessees that interconnect renewable electric generation facilities to a retail electric provider's transmission or distribution system must enroll in the applicable rate schedules made available by that retail electric provider and the customer-generator lessee shall otherwise comply with all requirements of Section 58-40-10, et seq., or the policy adopted by the retail electric provider not subject to Section 58-40-10, et seq.

(C) To comply with the terms of this article, each customer-generator lessee renewable electric generation facility shall serve only one premises or residence, and shall not serve multiple customer-generator lessees or multiple premises or residences.

(D) Any lease of a renewable electric generation facility not entered into pursuant to this article is prohibited. The owner of a renewable electric generation facility subject to any lease entered into outside of this program shall be considered an 'electrical utility' under Section 58-27-10.

(E) This section shall not be construed as allowing any sales of electricity from renewable electric generation facilities directly to any customer of any retail electric provider by the owner. This article shall not be construed as abridging or impairing any existing rights or obligations, established by contract or statute, of retail electric providers to serve South Carolina customers. The electrical output from any renewable electric generation unit leased pursuant to this program shall be the sole and exclusive property of the customer-generator lessee.

(F) An entity and its affiliates that lawfully provide retail electric service to the public may offer leases of renewable generation facilities in those areas or territories where it provides retail electric service. No such provider or affiliate shall offer or enter into leases of renewable generation facilities in areas served by another retail electric provider.

(G) The costs an electrical utility incurs in marketing, installing, owning, or maintaining solar leases through its own leasing programs as a lessor shall not be recovered from other nonparticipating electrical utility customers through rates, provided, however, that an electrical utility and the customer-generator lessees which lease facilities from it may participate on an equal basis with other lessors and lessees in any applicable programs provided pursuant to Chapter 39 of this title and nothing in this section shall prevent the reasonable and prudent costs of a utility's distributed energy resource programs, including the provision of incentives to its own lessees and other allowable costs, from being reflected in a utility's rates as provided for in Chapter 39 or as otherwise permitted under generally applicable regulatory principles.

(H)(1) The provisions of this Article 23 related to leased generation facilities shall not apply to:

(a) facilities serving a single premises that are not interconnected with a retail electric provider;

(b) facilities owned by customer-generators but financed by a third party; or

(c) facilities used exclusively for standby emergency service or participation in an approved standby generation program operated by a retail electric provider.

(2) The commission may promulgate regulations consistent with this section interpreting the scope of these exemptions as to electrical utilities."

Integrated resource plans

SECTION 7. Section 58-37-40 of the 1976 Code is amended to read:

"Section 58-37-40. (A) Electrical utilities, electric cooperatives, municipally owned electric utilities, and the South Carolina Public Service Authority must each prepare an integrated resource plan. An integrated resource plan must be prepared and submitted at least every three years. Nothing in this section may be construed as requiring interstate natural gas companies whose rates and services are regulated only by the federal government or gas utilities subject to the jurisdiction of the commission to prepare and submit an integrated resource plan.

(1) Each electrical utility must submit its integrated resource plan to the commission. The integrated resource plan must be posted on the electrical utility's website and on the commission's website.

(2) Electric cooperatives and municipally owned electric utilities shall each submit an integrated resource plan to the State Energy Office. Each integrated resource plan must be posted on the State Energy Office's website. If an electric cooperative or municipally owned utility has a website, its integrated resource plan must also be posted on its website. For distribution, electric cooperatives that are members of a cooperative that provides wholesale service, the integrated resource plan may be coordinated and consolidated into a single plan provided that nonshared resources or programs of individual distribution cooperatives are highlighted. Where plan components listed in subsection (B)(1) and (2) of this section do not apply to a distribution or wholesale cooperative or a municipally owned electric utility as a result of the cooperative or the municipally owned electric utility not owning or operating generation resources, the plan may state that fact or refer to the plan of

the wholesale power generator. For purposes of this section, a wholesale power generator does not include a municipally created joint agency if that joint agency receives at least seventy-five percent of its electricity from a generating facility owned in partnership with an electrical utility and that electrical utility:

(a) generally serves the area in which the joint agency's members are located; and

(b) is responsible for dispatching the capacity and output of the generated electricity.

(3) The South Carolina Public Service Authority shall submit its integrated resource plan to the State Energy Office. The integrated resource plan must be developed in consultation with the electric cooperatives and municipally owned electric utilities purchasing power and energy from the Public Service Authority and consider any feedback provided by retail customers and shall include the effect of demand-side management activities of the electric cooperatives and municipally owned electric utilities that directly purchase power and energy from the Public Service Authority or sell power and energy generated by the Public Service Authority. The integrated resource plan must be posted on the State Energy Office's website and on the Public Service Authority's website.

(B)(1) An integrated resource plan shall include all of the following:

(a) a long-term forecast of the utility's sales and peak demand under various reasonable scenarios;

(b) the type of generation technology proposed for a generation facility contained in the plan and the proposed capacity of the generation facility, including fuel cost sensitivities under various reasonable scenarios;

(c) projected energy purchased or produced by the utility from a renewable energy resource;

(d) a summary of the electrical transmission investments planned by the utility;

(e) several resource portfolios developed with the purpose of fairly evaluating the range of demand-side, supply-side, storage, and other technologies and services available to meet the utility's service obligations. Such portfolios and evaluations must include an evaluation of low, medium, and high cases for the adoption of renewable energy and cogeneration, energy efficiency, and demand response measures, including consideration of the following:

(i) customer energy efficiency and demand response programs;

(ii) facility retirement assumptions; and

(iii) sensitivity analyses related to fuel costs, environmental regulations, and other uncertainties or risks;

(f) data regarding the utility's current generation portfolio, including the age, licensing status, and remaining estimated life of operation for each facility in the portfolio;

(g) plans for meeting current and future capacity needs with the cost estimates for all proposed resource portfolios in the plan;

(h) an analysis of the cost and reliability impacts of all reasonable options available to meet projected energy and capacity needs; and

(i) a forecast of the utility's peak demand, details regarding the amount of peak demand reduction the utility expects to achieve, and the actions the utility proposes to take in order to achieve that peak demand reduction.

(2) An integrated resource plan may include distribution resource plans or integrated system operation plans.

(C)(1) The commission shall have a proceeding to review each electrical utility's integrated resource plan. As part of the integrated resource plan filing, the commission shall allow intervention by interested parties. The commission shall establish a procedural schedule to permit reasonable discovery after an integrated resource plan is filed in order to assist parties in obtaining evidence concerning the integrated resource plan, including the reasonableness and prudence of the plan and alternatives to the plan raised by intervening parties. No later than three hundred days after an electrical utility files an integrated resource plan, the commission shall issue a final order approving, modifying, or denying the plan filed by the electrical utility.

(2) The commission shall approve an electrical utility's integrated resource plan if the commission determines that the proposed integrated resource plan represents the most reasonable and prudent means of meeting the electrical utility's energy and capacity needs as of the time the plan is reviewed. To determine whether the integrated resource plan is the most reasonable and prudent means of meeting energy and capacity needs, the commission, in its discretion, shall consider whether the plan appropriately balances the following factors:

(a) resource adequacy and capacity to serve anticipated peak electrical load, and applicable planning reserve margins;

(b) consumer affordability and least cost;

(c) compliance with applicable state and federal environmental regulations;

(d) power supply reliability;

(e) commodity price risks;

(f) diversity of generation supply; and

(g) other foreseeable conditions that the commission determines to be for the public interest.

(3) If the commission modifies or rejects an electrical utility's integrated resource plan, the electrical utility, within sixty days after the date of the final order, shall submit a revised plan addressing concerns identified by the commission and incorporating commission-mandated revisions to the integrated resource plan to the commission for approval. Within sixty days of the electrical utility's revised filing, the Office of Regulatory Staff shall review the electrical utility's revised plan and submit a report to the commission assessing the sufficiency of the revised filing. Other parties to the integrated resource plan proceeding also may submit comments. No later than sixty days after the Office of Regulatory Staff report is filed with the commission, the commission at its discretion may determine whether to accept the revised integrated resource plan or to mandate further remedies that the commission deems appropriate.

(4) The submission, review, and acceptance of an integrated resource plan by the commission, or the inclusion of any specific resource or experience in an accepted integrated resource plan, shall not be determinative of the reasonableness or prudence of the acquisition or construction of any resource or the making of any expenditure. The electrical utility shall retain the burden of proof to show that all of its investments and expenditures are reasonable and prudent when seeking cost recovery in rates.

(D)(1) An electrical utility shall submit annual updates to its integrated resource plan to the commission. An annual update must include an update to the electric utility's base planning assumptions relative to its most recently accepted integrated resource plan, including, but not limited to: energy and demand forecast, commodity fuel price inputs, renewable energy forecast, energy efficiency and demand-side management forecasts, changes to projected retirement dates of existing units, along with other inputs the commission deems to be for the public interest. The electrical utility's annual update must describe the impact of the updated base planning assumptions on the selected resource plan.

(2) The Office of Regulatory Staff shall review each electric utility's annual update and submit a report to the commission providing a recommendation concerning the reasonableness of the annual update. After reviewing the annual update and the Office of Regulatory Staff report, the commission may accept the annual update or direct the electrical utility to make changes to the annual update that the commission determines to be in the public interest.

(E) The commission is authorized to promulgate regulations to carry out the provisions of this section."

Independent study to evaluate integration of emerging energy technologies

SECTION 8. Chapter 37, Title 58 of the 1976 Code is amended by adding:

"Section 58-37-60. (A) The commission and the Office of Regulatory Staff are authorized to initiate an independent study to evaluate the integration of renewable energy and emerging energy technologies into the electric grid for the public interest. An integration study conducted pursuant to this section shall evaluate what is required for electrical utilities to integrate increased levels of renewable energy and emerging energy technologies while maintaining economic, reliable, and safe operation of the electricity grid in a manner consistent with the public interest. Studies shall be based on the balancing areas of each electrical utility. The commission shall provide an opportunity for interested parties to provide input on the appropriate scope of the study and also to provide comments on a draft report before it is finalized. All data and information relied on by the independent consultant in preparation of the draft study shall be made available to interested parties, subject to appropriate confidentiality protections, during the public comment period. The results of the independent study shall be reported to the General Assembly.

(B) The commission may require regular updates from utilities regarding the implementation of the state's renewable energy policies.

(C) The commission may hire or retain a consultant to assist with the independent study authorized by this section. The commission is exempt from complying with the State Procurement Code in the selection and hiring of the consultant authorized by this subsection."

Mandatory demonstration before commencing construction of major utility facility

SECTION 9. Section 58-33-110 of the 1976 Code is amended by adding an item at the end to read:

"( )(a) Notwithstanding the provisions of item (7), and not limiting the provisions above, a person may not commence construction of a major utility facility for generation in the State of South Carolina without

first having made a demonstration that the facility to be built has been compared to other generation options in terms of cost, reliability, and any other regulatory implications deemed legally or reasonably necessary for consideration by the commission. The commission is authorized to adopt rules for such evaluation of other generation options.

(b) The commission may, upon a showing of a need, require a commission-approved process that includes:

(i) the assessment of an unbiased independent evaluator retained by the Office of Regulatory Staff as to reasonableness of any certificate sought under this section for new generation;

(ii) a report from the independent evaluator to the commission regarding the transparency, completeness, and integrity of bidding processes, if any;

(iii) a reasonable period for interested parties to review and comment on proposed requests for proposals, bid instructions, and bid evaluation criteria, if any, prior to finalization and issuance, subject to any trade secrets that could hamper future negotiations; however, the independent evaluator may access all such information;

(iv) independent evaluator access and review of final bid evaluation criteria and pricing information for any and all projects to be evaluated in comparison to the request for proposal bids received;

(v) access through discovery, subject to appropriate confidentiality, attorney-client privilege or trade secret restrictions, for parties to this proceeding to documents developed in preparing the certificate of public convenience and necessity application;

(vi) a demonstration that the facility is consistent with an integrated resource plan approved by the commission; and

(vii) treatment of utility affiliates in the same manner as nonaffiliates participating in the request for proposal process."

Promulgation and review of standards for interconnection of renewable energy facilities

SECTION 10. Section 58-27-460 of the 1976 Code is amended to read:

"Section 58-27-460. (A)(1) The commission shall promulgate and periodically review standards for interconnection and parallel operation of generating facilities to an electrical utility's distribution and transmission system, where such interconnection is under the jurisdiction of the commission pursuant to Title 16, Chapter 12, Subchapter II of the United States Code, as amended, regulations and

orders of the Federal Energy Regulatory Commission, and the laws of South Carolina. Each electrical utility shall implement such standards in a fair, nondiscriminatory manner.

(2) The commission shall, within six months of the effective date of the amendments to this section, establish proceedings for the purpose of considering revisions to the standards promulgated pursuant to this section. In developing such revisions, the commission may consider any issue, which, in the exercise of its discretion, the commission deems relevant to improving the fairness and effectiveness of the procedures.

(3) In implementing item (1), the commission shall ensure such standards provide for efficient and timely processing of interconnection requests and take into account the impact of generator interconnection on electrical utility system assets, service reliability, and power quality. Such standards shall address the impact of the addition of energy storage and the interconnection processes for amending existing interconnection requests to include energy storage. The commission shall enact standards that are fair, reasonable, and nondiscriminatory with respect to interconnection applicants, other utility customers, and electrical utilities, and the standards shall serve the public interest in terms of overall cost and system reliability.

(B) No generating facility shall connect or operate in parallel phase and synchronization with any electrical utility without written approval by the electrical utility that all of the commission's requirements have been met. For a generating facility that violates this provision, an electrical utility immediately may and without notice disconnect the generating facility's electric service.

(C) In the event of a dispute between an interconnection customer and the electrical utility on an issue relating to interconnection service, the parties first shall attempt to resolve the claim or dispute using any dispute resolution procedures provided for pursuant to the applicable interconnection standards promulgated by the commission. If the parties are unable to resolve such claim or dispute using those procedures, then either party may petition the commission for resolution of the dispute including, but not limited to, a determination of the appropriate terms and conditions for interconnection. The commission shall resolve such disputes within six months from the filing of the petition in accordance with the terms of applicable state and federal law.

(D) Each electrical utility shall comply with the South Carolina generator interconnection procedures and all commission-approved agreements regarding interconnection practices and reporting requirements. The commission shall establish reasonable guidelines to ensure reasonable interconnection timelines, including time

requirements to deliver a final system impact study to all interconnection customers that execute a system impact study agreement prior to three months after the effective date of this act. The commission shall consider implementation of additional performance incentives and enforcement mechanisms for electrical utilities to ensure compliance with this requirement.

(E) The commission shall, as part of implementing subsection (A)(1), consider whether a comprehensive independent review of interconnection should be performed and consider whether to require each electrical utility to:

(1) conduct a study to determine the scope and cost of necessary transmission upgrades to support development of renewable energy resources in a manner that does not impact reliability;

(2) evaluate the cost of developing and maintaining hosting capacity maps to allow power producers to identify areas of the distribution grid that are more amenable to building and interconnecting their generation facilities and to avoid areas that are already saturated with distributed generation; and

(3) file a list of interconnected facilities with the commission each quarter, to include interconnections that are under the jurisdiction of the Federal Energy Regulatory Commission."

Development of consumer protection regulations

SECTION 11. Article 23, Chapter 27, Title 58 of the 1976 Code is amended by adding:

"Section 58-27-2660. (A)(1) The Office of Regulatory Staff and the Department of Consumer Affairs are directed to develop consumer protection regulations regarding the sale or lease of renewable energy generation facilities pursuant to the distributed energy resource program in Chapter 40 of this title. These regulations shall provide for the appropriate disclosure provided by sellers and lessors. Sellers must comply with Title 37. Nothing herein alters existing protections afforded by Title 37.

(2) To fulfill the duties and responsibilities provided for in this section, the Office of Regulatory Staff shall develop a formal complaint process as part of the consumer protection regulations.

(B) The Office of Regulatory Staff is authorized to enforce any applicable consumer protection provision set forth in this title by:

(1) conducting an investigation into an alleged violation;

(2) issuing a cease and desist order against a further violation;

(3) imposing an administrative fine not to exceed two thousand five hundred dollars per violation on a solar company that materially fails to comply with the consumer protection requirements; and

(4) voiding the agreement if necessary to remedy the violation or violations."

Office of Regulatory Staff, party of record in all commission filings, applications, or proceedings

SECTION 12. Section 58-4-10(B) of the 1976 Code, as last amended by Act 258 of 2018, is further amended to read:

"(B) Unless and until it chooses not to participate, the Office of Regulatory Staff must be considered a party of record in all filings, applications, or proceedings before the commission. The regulatory staff must represent the public interest of South Carolina before the commission. For purposes of this chapter only, 'public interest' means the concerns of the using and consuming public with respect to public utility services, regardless of the class of customer, and preservation of continued investment in and maintenance of utility facilities so as to provide reliable and high quality utility services."

Employment of certain expert witnesses and third-party consultants exempted from State Procurement Code

SECTION 13. Section 58-4-100 of the 1976 Code is amended to read:

"Section 58-4-100. (A) To the extent necessary to carry out regulatory staff responsibilities, the executive director is authorized to employ expert witnesses and other professional expertise as the executive director may consider necessary to assist the regulatory staff in its participation in commission proceedings. The compensation paid to these persons may not exceed compensation generally paid by the regulated industry for such specialists. The compensation and expenses therefor must be paid by the public utility or utilities participating in the proceedings upon agreement between the public utility or utilities participating in the proceedings and the Office of Regulatory Staff or upon approval by the Review Committee or from the regulatory staff's budget. If paid by the public utility or utilities, the compensation and expenses must be treated by the commission, for ratemaking purposes, in a manner generally consistent with its treatment of similar expenditures incurred by utilities in the presentation of their cases before

the commission. An accounting of compensation and expenses must be reported annually to the review committee, the Speaker of the House of Representatives, and the Chairman of the Senate Judiciary Committee.

(B) The Office of Regulatory Staff is exempt from the State Procurement Code in the selection and hiring of an expert or third-party consultant to conduct an independent study described in Section 58-37-60 and Section 58-41-20(H). However, the Office of Regulatory Staff and the commission may not hire the same expert or third-party consultant in the same proceeding or to address the same or similar issues in different proceedings."

Interpretation and construction of certain provisions

SECTION 14. The provisions of Section 58-41-20 shall not be interpreted to supersede the conditions of any settlement entered into by an electrical utility and filed with the commission prior to the adoption of this act.

Recovery of certain costs

SECTION 15. All costs incurred by the utility necessary to effectuate this act, that are not precluded from recovery by other provisions of this act and that do not have a recovery mechanism otherwise specified in other provisions of the act or established by state law, shall be deferred for commission consideration of recovery in any proceeding initiated under Section 58-27-870, if deemed reasonable and prudent.

Certain costs and expenses must be excluded from electrical utility rates

SECTION 16. Notwithstanding another provision of this act, or another provision of law, no costs or expenses incurred nor any payments made by the electrical utility in compliance or in accordance with this act must be included in the electrical utility's rates or otherwise be borne by the general body of South Carolina retail customers of the electrical utility without an affirmative finding supported by the preponderance of evidence of record and conclusion in a written order by the Public Service Commission that such expense, cost, or payment was reasonable and prudent and made in the best interest of the electrical utility's general body of customers.

Severability

SECTION 17. The provisions of this act are severable. If any section, subsection, paragraph, subparagraph, item, subitem, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of the act, the General Assembly hereby declaring that it would have passed each and every section, subsection, paragraph, subparagraph, item, subitem, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, items, subitems, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

Time effective

SECTION 18. This act takes effect upon approval by the Governor.

Ratified the 13th day of May, 2019.

Approved the 16th day of May, 2019.

No. 63

(R83, H3662)

AN ACT TO ADOPT REVISED CODE VOLUMES 3 AND 4 OF THE CODE OF LAWS OF SOUTH CAROLINA, 1976, TO THE EXTENT OF THEIR CONTENTS, AS THE ONLY GENERAL PERMANENT STATUTORY LAW OF THE STATE AS OF JANUARY 1, 2019.

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

Revised Code volumes, authorization

SECTION 1. (A) Section 2-13-90 of the 1976 Code authorizes the Legislative Council and the Code Commissioner to contract to be prepared and published under their supervision and direction revised volumes of the Code of Laws.

(B) The Legislative Council and the Code Commissioner have determined that Volumes 3 and 4 are appropriate for revision.

(C) Section 2-13-90 of the 1976 Code also provides that the revised volumes must be submitted to the General Assembly for its consideration.

Revised Code volumes, adopted

SECTION 2. (A) Revised Volume 3 containing Title 7, Code of Laws of South Carolina, 1976, is substituted for original Volume 3 which contained Title 7.

(B) Revised Volume 4 containing Titles 8 and 9, Code of Laws of South Carolina, 1976, is substituted for original Volume 4 which contained Titles 8 and 9.

(C) Revised Volumes 3 and 4 are adopted as part of the Code of Laws and, to the extent of their contents, are the only general permanent statutory law of the State as of January 1, 2019.

Time effective

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

Ratified the 13th day of May, 2019.

Approved the 16th day of May, 2019.

No. 64

(R84, H3703)

AN ACT TO AMEND SECTION 40-45-230, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE EXAMINATION REQUIRED FOR LICENSURE BY THE BOARD OF PHYSICAL THERAPY EXAMINERS, SO AS TO INCREASE THE MAXIMUM NUMBER OF TIMES A PERSON MAY ATTEMPT TO PASS THE EXAMINATION FROM THREE TO SIX, TO PROVIDE A PERSON WHO FAILS THE EXAMINATION A FIFTH TIME FIRST MUST TAKE COURSES THE BOARD MAY REQUIRE AND FURNISH EVIDENCE OF COMPLETING THESE COURSES BEFORE TAKING THE

EXAMINATION A SIXTH TIME, AND TO PROVIDE A PERSON WHO FAILS THE EXAMINATION SIX OR MORE TIMES MAY NOT BE LICENSED BY THE BOARD; AND TO AMEND SECTION 40-45-260, RELATING TO THE PROHIBITION OF THE BOARD FROM GRANTING LICENSURE TO APPLICANTS WHO FAIL THE EXAMINATION THREE OR MORE TIMES, SO AS INCREASE THE NUMBER OF ALLOWED ATTEMPTS TO SIX.

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

Examination passage requirements

SECTION 1. Section 40-45-230(G) and (H) of the 1976 Code is amended to read:

"(G) If an applicant fails the examination, whether or not taken in South Carolina, the applicant may take the examination up to six times, each time upon payment of the examination fee and completion of an official application. If the applicant fails the examination for a fifth time, the applicant must take courses the board may require and furnish evidence of completing these courses before taking the examination for the sixth time.

(H) No person may be licensed under this chapter if the person has failed the examination six or more times, whether or not the exam was taken in South Carolina."

Issue of licenses, conforming change

SECTION 2. Section 40-45-260(D) of the 1976 Code is amended to read:

"(D) The board must not issue a physical therapist or physical therapist assistant license to an applicant who has failed to achieve a passing score six or more times on a board-approved licensure examination."

Time effective

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

Ratified the 13th day of May, 2019.

Approved the 16th day of May, 2019.

No. 65

(R85, H3728)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 44-130-80 SO AS TO REQUIRE HEALTH CARE FACILITIES TO SUBMIT CERTAIN INFORMATION TO THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL (DHEC) FOR INCLUSION IN THE PRESCRIPTION MONITORING PROGRAM WHEN A PERSON IS ADMINISTERED AN OPIOID ANTIDOTE; TO AMEND SECTION 44-130-60, RELATING TO THE AUTHORITY OF FIRST RESPONDERS TO ADMINISTER OPIOID ANTIDOTES, SO AS TO REQUIRE FIRST RESPONDERS TO SUBMIT CERTAIN INFORMATION TO DHEC FOR INCLUSION IN THE PRESCRIPTION MONITORING PROGRAM; TO AMEND SECTION 44-53-1640, RELATING TO THE PRESCRIPTION MONITORING PROGRAM, SO AS TO REQUIRE THE PROGRAM TO MONITOR THE ADMINISTERING OF OPIOID ANTIDOTES BY FIRST RESPONDERS AND IN EMERGENCY HEALTH CARE SETTINGS; TO AMEND SECTION 44-53-1645, RELATING TO THE REQUIREMENT OF PRACTITIONERS TO REVIEW A PATIENT'S CONTROLLED SUBSTANCE PRESCRIPTION HISTORY BEFORE PRESCRIBING A SCHEDULE II CONTROLLED SUBSTANCE, SO AS TO ALSO REQUIRE A REVIEW OF ANY INCIDENTS IN WHICH THE PATIENT HAS BEEN ADMINISTERED AN OPIOID ANTIDOTE BY A FIRST RESPONDER OR IN AN EMERGENCY HEALTH CARE SETTING; AND TO AMEND SECTION 44-53-360, AS AMENDED, RELATING TO PRESCRIPTIONS, SO AS TO PROVIDE FOR THE USE OF ELECTRONIC PRESCRIPTIONS.

Whereas, the South Carolina General Assembly is committed to combatting the opioid epidemic occurring within this State; and

Whereas, the South Carolina General Assembly has enacted and is working to enact legislation aimed at stemming the misuse of opioids in South Carolina; and

Whereas, collecting information related to opioid use and misuse helps those working to better understand the complexities of substance abuse disorders and enables those working with patients suffering from this disease to develop strategies for treatment, education, and care; and

Whereas, the purpose of this legislation is to provide data to health care professionals treating patients who have been diagnosed with an opioid overdose and received an antidote in response to that overdose; and

Whereas, the South Carolina General Assembly intends for the information collected pursuant to this law to be used by health care professionals to assist patients in getting appropriate treatment including, but not limited to, treatment for substance abuse disorder; and

Whereas, the General Assembly intends further that the information collected pursuant to this law should not be used as the sole determining factor in a decision regarding whether to treat or refuse to treat a patient suffering from an opioid misuse. Now, therefore,

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

Reporting, health care facility of administered opioid antidote

SECTION 1. Chapter 130, Title 44 of the 1976 Code is amended by adding:

"Section 44-130-80. (A) If a person is administered an opioid antidote in a hospital emergency department or other health care facility and the supervising physician diagnoses the patient as having experienced an opioid overdose, the health care facility, as defined in Section 44-7-130, shall report to the department's Bureau of Drug Control information regarding the opioid antidote administered for inclusion in the prescription monitoring program. The information submitted must include:

(1) date the opioid antidote was administered; and

(2) name, address, and date of birth of the person to whom the opioid antidote was administered.

(B) The health care facility, as defined in Section 44-7-130, shall submit the information required pursuant to subsection (A) electronically or by facsimile to Drug Control within thirty days after a discharge diagnosis of an opioid overdose and administration of an opioid antidote.

(C)(1) After a health care facility, as defined in Section 44-7-130, submits the name, address, and date of birth of a person to whom an opioid antidote was administered as required by subsection (A), Drug Control shall verify whether any prescription history of the person appears in the prescription monitoring program and, if prescription history exists, shall document for review by a practitioner or an authorized delegate the date on which the opioid antidote was administered to the person.

(2) Drug Control also shall maintain data on the administering of opioid antidotes as required by this section including, but not limited to, the frequency with which opioid antidotes are administered in hospital emergency departments as required pursuant to subsection (A) and other health care facilities by geographic location."

Reporting, first responder of administered opioid antidote

SECTION 2. Section 44-130-60 of the 1976 Code is amended by adding an appropriately lettered subsection at the end to read:

"( )(1) A first responder who administers an opioid antidote as provided in this section shall report to the department's Bureau of Emergency Medical Services information regarding the opioid antidote administered for inclusion in the prescription monitoring program. The information submitted must include:

(a) date the opioid antidote was administered; and

(b) name, address, and date of birth of the person to whom the opioid antidote was administered, if available.

(2) A first responder shall submit the information required pursuant to item (1) electronically or by facsimile to the Bureau of Emergency Services within thirty days of administration. The Bureau of Emergency Medical Services shall transmit the information to the department's Bureau of Drug Control.

(3)(a) If a first responder submits the name, address, and date of birth of a person to whom an opioid antidote was administered, Drug Control shall verify whether any prescription history of the person appears in the prescription monitoring program and, if prescription history exists, shall document for review by a practitioner or an

authorized delegate the date on which the opioid antidote was administered to the person. If no history exists, then Drug Control shall confirm that the antidote was administered in response to a verified opioid overdose. If the antidote was administered in error, then Drug Control shall document the error.

(b) Drug Control also shall maintain data on the administering of opioid antidotes by first responders including, but not limited to, the frequency with which first responders administer opioid antidotes by geographic location, first responder, and dispenser."

Prescription monitoring program

SECTION 3. Section 44-53-1640(A) of the 1976 Code is amended to read:

"(A) The Department of Health and Environmental Control, Bureau of Drug Control shall establish and maintain a program to monitor the prescribing and dispensing of all Schedule II, III, and IV controlled substances by professionals licensed to prescribe or dispense these substances in this State and the administering of opioid antidotes pursuant to Sections 44-130-60 and 44-130-80."

Required review of patient's opioid antidote history

SECTION 4. Section 44-53-1645(A) of the 1976 Code is amended to read:

"(A) A practitioner, or the practitioner's authorized delegate, shall review a patient's controlled substance prescription history and history of the administering of an opioid antidote to the patient pursuant to Section 44-130-60 or 44-130-80, as maintained in the prescription monitoring program, before the practitioner issues a prescription for a Schedule II controlled substance. If an authorized delegate reviews a patient's controlled substance prescription history and history of the administering of an opioid antidote to the patient as provided in this subsection, the practitioner must consult with the authorized delegate regarding the prescription and opioid antidote administering history before issuing a prescription for a Schedule II controlled substance. The consultation must be documented in the patient's medical record."

Prescriptions

SECTION 5. Section 44-53-360(a), (b), and (d) of the 1976 Code is amended to read:

"(a) Except when dispensed directly by a practitioner, other than a pharmacist, to an ultimate user, or in emergency situations as prescribed by the department by regulation, no controlled substance included in Schedule II may be dispensed without the written or electronic prescription of a practitioner. Prescriptions shall be retained in conformity with the requirements of Section 44-53-340. No prescription for a controlled substance in Schedule II may be refilled.

(b) A pharmacist may dispense a controlled substance included in Schedule III, IV, or V pursuant to either a written or electronic prescription signed by a practitioner, or a facsimile of a written, signed prescription, transmitted by the practitioner or the practitioner's agent to the pharmacy, or pursuant to an oral prescription, reduced promptly to writing and filed by the pharmacist. A prescription transmitted by facsimile must be received at the pharmacy as it was originally transmitted by facsimile and must include the name and address of the practitioner, the phone number for verbal confirmation, the time and date of transmission, and the name of the pharmacy intended to receive the transmission, as well as any other information required by federal or state law. Such prescription, when authorized, may not be refilled more than five times or later than six months after the date of the prescription unless renewed by the practitioner.

(d) Unless specifically indicated in writing on the face of the prescription or noted in the electronic prescription that it is to be refilled, and the number of times specifically indicated, no prescription may be refilled. The indication of 'PRN' or 'ad lib' or phrases, abbreviations, or symbols of like meaning shall not be construed as to exceed five refills or six months, whichever shall first occur. Preprinted refill instructions on the face of a prescription shall be disregarded by the dispenser unless an affirmative marking or other indication is made by the prescriber."

Prescriptions

SECTION 6. Section 44-53-360(j) of the 1976 Code, as added by Act 201 of 2018, is amended by adding an appropriately numbered item at the end to read:

"( )(A) Unless otherwise exempted by this subsection, a practitioner shall electronically prescribe any controlled substance included in Schedules II, III, IV, and V. This subsection does not apply to prescriptions for a controlled substance included in Schedules II through V issued by any of the following:

(i) a practitioner, other than a pharmacist, who dispenses directly to the ultimate user;

(ii) a practitioner who orders a controlled substance included in Schedules II through V to be administered in a hospital, nursing home, hospice facility, outpatient dialysis facility, or residential care facility;

(iii) a practitioner who experiences temporary technological or electrical failure or other extenuating technical circumstances that prevent a prescription from being transmitted electronically; however, the practitioner must document the reason for this exception in the patient's medical record;

(iv) a practitioner who writes a prescription for a controlled substance included in Schedules II through V to be dispensed by a pharmacy located on federal property; however, the practitioner must document the reason for this exception in the patient's medical record;

(v) a person licensed to practice veterinary medicine pursuant to Chapter 69, Title 40; or

(vi) a practitioner who writes a prescription for a controlled substance included in Schedules II through V for a patient who is being discharged from a hospital, emergency department, or urgent care.

(B) A prescription for a controlled substance included in Schedules II, III, IV, and V that includes elements that are not supported by the most recently implemented version of the National Council for Prescription Drug Programs Prescriber/Pharmacist Interface SCRIPT Standard is exempt from this subsection.

(C) A dispenser is not required to verify that a practitioner properly falls under one of the exceptions specified in subsection (a) or (b) before dispensing a controlled substance included in Schedules II through V. A dispenser may continue to dispense a controlled substance included in Schedules II through V from valid written, oral, faxed, or electronic prescriptions that are otherwise consistent with applicable laws.

(D) A dispenser is immune from any civil or criminal liability or disciplinary action from the State Board of Pharmacy for dispensing a prescription written by a prescriber that is in violation of this subsection."

Time effective

SECTION 7. This act takes effect January 1, 2021.

Ratified the 13th day of May, 2019.

Approved the 16th day of May, 2019.

No. 66

(R86, H3754)

AN ACT TO AMEND SECTION 27-32-10, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO DEFINITIONS IN REGARD TO VACATION TIME SHARING PLANS, SO AS TO DEFINE THE TERM "TIMESHARE DECLARATION"; TO AMEND SECTION 27-32-410, RELATING TO TIMESHARE CLOSINGS, PROCEDURES, AND RELATED PROVISIONS, SO AS TO FURTHER PROVIDE FOR WHEN A TIMESHARE CLOSING IS CONSIDERED TO HAVE OCCURRED IN THE CASE OF AN INSTALLMENT SALES CONTRACT, AND OTHER REQUIREMENTS IN REGARD TO THE CLOSING; BY ADDING ARTICLE 5 TO CHAPTER 32, TITLE 27 SO AS TO ENACT THE "VACATION TIME SHARING PLAN EXTENSION AND TERMINATION ACT", INCLUDING PROVISIONS TO CLARIFY AND SUPPLEMENT THE PROCEDURES AND REQUIREMENTS AS TO HOW OWNERS OF VACATION TIME SHARING INTERESTS MAY TERMINATE VACATION TIME SHARING PLANS OR EXTEND THE TERMS OF THESE PLANS, WITH THE PROVISIONS OF ARTICLE 5 TO APPLY BOTH PROSPECTIVELY AND RETROACTIVELY; AND TO AMEND SECTION 27-30-120, AS AMENDED, RELATING TO DEFINITIONS IN REGARD TO HOMEOWNERS ASSOCIATIONS, SO AS TO REVISE THE DEFINITION OF "HOMEOWNERS ASSOCIATION".

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

Definition added

SECTION 1. Section 27-32-10 of the 1976 Code is amended by adding an appropriately numbered item to read:

"( ) 'Timeshare declaration' means the document or documents which provide the legal framework for the establishment of the method of interval ownership and which is or are recorded at the office of the Clerk of Court, Register of Mesne Conveyance, or the Register of Deeds as may be determined by the county in which the vacation time sharing property is located."

Timeshare closings

SECTION 2. Section 27-32-410(A) of the 1976 Code is amended to read:

"(A)(1) The timeshare closing is considered to occur after the last of the following events:

(i) the deed and other applicable instruments are submitted for recordation, or

(ii) the closing date specified in the executed documents. Notwithstanding the above, in the case of an installment sales contract, the timeshare closing is considered to occur or have occurred on the closing date specified in the executed documents or six months after the execution of an installment sales contract in the event no closing date is specified in the executed documents.

(2) Simultaneously with the closing, a seller shall record each timeshare installment sales contract or evidence of each contract, if the installment sales contract promises the purchaser a deed evidencing ownership of a timeshare interest in real property. In the event the installment sales contract is fully performed, the recorded contract or evidence of it, is considered to have merged into the deed conveying the timeshare interest upon recording of the deed.

(3) The documents conveying rights and interests in timeshare real property must not be presented to a timeshare purchaser before the closing of an interest in a vacation time sharing plan in this State unless the form of the document is prepared under the supervision of an attorney licensed in this State who is not an employee of the seller of the timeshare interest. An attorney licensed in this State who is not an employee of the seller of the timeshare interest shall supervise the

timeshare closing of a sale of an interest in a vacation time sharing plan located in this State by:

(i) supervising the examination of title to the interest;

(ii) physically reviewing before closing the executed transaction documents including, but not limited to, the following, as applicable: the deed, installment sales contract, mortgage, and promissory note; and

(iii) supervising the recording of all instruments involved in the timeshare closing."

Extension or termination of vacation time sharing plans

SECTION 3. Chapter 32, Title 27 of the 1976 Code is amended by adding:

"Article 5

Extension or Termination of Vacation Time Sharing Plans

Section 27-32-500. This article may be cited as the 'Vacation Time Sharing Plan Extension and Termination Act'.

Section 27-32-505. The General Assembly declares that the purposes of this article are to recognize that:

(A) Vacation time sharing plans are created as authorized by statute with most of the older vacation time sharing properties based on a horizontal property regime structure, and many of these older vacation time sharing properties are approaching the termination dates set forth in their governing documents, some of which governing documents address termination or extension of the vacation time sharing property and some of which do not address termination or extension.

(B) In order to provide the owners of vacation time sharing interests with the right to terminate vacation time sharing plans or to extend the terms of vacation time sharing plans and preserve the continued use, enjoyment, and tax values of these time sharing properties, the General Assembly further declares that the public policy of this State requires the creation of a statutory method to enable the owners of these vacation time sharing properties to either terminate their vacation time sharing plans or extend the terms of their vacation time sharing plans, notwithstanding contrary provisions in their governing documents which may create uncertainty for purchasers, prospective purchasers, owners, and lenders, and which may discourage the ongoing maintenance,

refurbishment, and improvement of these vacation time sharing properties.

Section 27-32-510. (A) Unless the timeshare declaration provides a lower percentage, the vote or written consent, or both, of sixty percent of all eligible voting interests in a vacation time sharing plan may extend the term of the vacation time sharing plan at any time. If the term of a vacation time sharing plan is extended pursuant to this section, all rights, privileges, duties, and obligations created under applicable law or the timeshare declaration continue in full force to the same extent as if the extended termination date of the vacation time sharing plan were the original termination date of the vacation time sharing plan.

(B) Unless the timeshare declaration specifically provides for a lower quorum, the quorum for a vacation time sharing association meeting to consider extension of the term of the vacation time sharing plan is fifty percent of all eligible voting interests in the vacation time sharing plan.

(C) A vacation time sharing association meeting held to consider extension of the term of the vacation time sharing plan may be held at any time before the termination of the vacation time sharing plan.

(D) The board of directors of the vacation time sharing association may determine that a voting interest that is delinquent in the payment of more than two years of assessments is ineligible to consent to or vote on an extension of the vacation time sharing plan unless the delinquency is paid in full before the consent or vote. A voting interest determined to be ineligible by the board of directors must be subtracted from the total percentage or number of all voting interests required to consent to or vote to approve the extension of the vacation time sharing plan and must not be considered for any purpose, including the percentage or number of voting interests necessary to constitute a quorum.

(E) A proxy for a vote to extend a vacation time sharing plan pursuant to this section is valid for up to three years and is revocable unless the proxy states it is irrevocable.

Section 27-32-520. (A) Unless the timeshare declaration provides a lower percentage, the vote or written consent, or both, of sixty percent of all eligible voting interests in a vacation time sharing plan may terminate the term of the vacation time sharing plan at any time. If a vacation time sharing plan is terminated pursuant to this section, the termination has immediate effect as if the effective date of the termination were the original date of termination.

(B) If the vacation time sharing property is managed by a vacation time sharing association that is separate from any underlying owners'

association, the termination of a vacation time sharing plan does not change the corporate status of the vacation time sharing association. The vacation time sharing association continues to exist only for the purposes of concluding its affairs, prosecuting and defending actions by or against it, collecting and discharging obligations, disposing of and conveying its property, collecting and dividing its assets, and otherwise complying with this section.

(C) After termination of a vacation time sharing plan, the board of directors of the vacation time sharing association shall serve as the termination trustee, as the entity empowered to implement the termination of the vacation time sharing plan, and in this fiduciary capacity may bring an action in partition on behalf of the tenants in common in each former vacation time sharing property or sell the former vacation time sharing property in a manner and to a person who is approved by a majority of all tenants in common. The termination trustee also has all other powers reasonably necessary to effect the partition or sale of the former vacation time sharing property, including the power to maintain the property during the pendency of a partition action or sale.

(D) All reasonable expenses incurred by the termination trustee relating to the performance of its duties pursuant to this section, including the reasonable fees of attorneys and other professionals, must be paid by the tenants in common of the former vacation time sharing property subject to partition or sale, proportionate to their respective ownership interests.

(E) The termination trustee shall adopt reasonable procedures to implement the partition or sale of the former vacation time sharing property and comply with the requirements of this section.

(F) If the terminated vacation time sharing plan is in an underlying subdivision that is not simultaneously terminated, a majority of the tenants in common in each former accommodation present and voting in person or by proxy at a meeting of the tenants in common conducted by the termination trustee, or conducted by the board of directors of the underlying owners' association, if the underlying owners' association managed the former vacation time sharing property, shall designate a voting representative for the former accommodation and file a voting certificate with the underlying owners' association. The voting representative may vote on all matters at meetings of the underlying owners' association, including termination of the underlying subdivision.

(G) Unless the timeshare declaration specifically provides for a lower quorum, the quorum for a vacation time sharing association meeting to

consider termination of the vacation time sharing plan is fifty percent of all eligible voting interests in the vacation time sharing plan.

(H) The board of directors of the vacation time sharing association may determine that a voting interest that is delinquent in the payment of more than two years of assessments is ineligible to consent to or vote on any termination of the vacation time sharing plan unless the delinquency is paid in full before the consent or vote. A voting interest determined to be ineligible by the board of directors must be subtracted from the total percentage or number of all voting interests required to consent to or vote to approve the termination of the vacation time sharing plan and must not be considered for any purpose, including the percentage or number of voting interests necessary to constitute a quorum.

(I) A proxy for a vote to terminate a vacation time sharing plan pursuant to this section is valid for up to three years and is revocable unless the proxy states it is irrevocable.

Section 27-32-530. The provisions of this article apply to all vacation time sharing plans in this State in existence on or after the effective date of this article and apply retroactively."

Definition revised

SECTION 4. Section 27-30-120(6) of the 1976 Code, as added by Act 245 of 2018, is amended to read:

"(6) 'Homeowners association' or 'association' means an entity developed to manage and maintain a planned community or horizontal property regime for which there is a declaration requiring a person, by virtue of his ownership of a separate property within the planned community or horizontal property regime, to pay assessments for a share of real estate taxes, insurance premiums, maintenance, or improvement of, or services or other expenses related to, common elements and other real estate described in that declaration. A 'homeowners association' or 'association' does not include a vacation time sharing plan organized and subject to the provisions of Chapter 32."

Time effective

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

Ratified the 13th day of May, 2019.

Approved the 16th day of May, 2019.

No. 67

(R87, H3760)

AN ACT TO AMEND ARTICLE 3, CHAPTER 79, TITLE 38, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE SOUTH CAROLINA MEDICAL MALPRACTICE LIABILITY JOINT UNDERWRITING ASSOCIATION, SO AS TO MERGE THE JOINT UNDERWRITING ASSOCIATION WITH THE PATIENTS' COMPENSATION FUND AND TO RENAME THE SURVIVING ENTITY THE SOUTH CAROLINA MEDICAL MALPRACTICE ASSOCIATION, TO DEFINE NECESSARY TERMS, TO ALTER THE MEMBERSHIP OF THE ASSOCIATION, TO ESTABLISH CERTAIN REQUIREMENTS FOR THE INITIAL FILING OF POLICY FORMS, TO REQUIRE THE MEMBERS OF THE ASSOCIATION TO PAY AN ASSESSMENT EQUAL TO THE MEMBER'S PROPORTIONAL SHARE OF THE ACCUMULATED DEFICIT OF THE ASSOCIATION, TO INCREASE POLICY LIMITS FOR POLICIES ISSUED BY THE ASSOCIATION ON BEHALF OF ITS MEMBERS, TO REQUIRE THE ASSOCIATION TO SUBMIT ALL POLICY FORMS, CLASSIFICATIONS, RATES, RATING PLANS, OR RULES TO THE DIRECTOR OF THE DEPARTMENT OF INSURANCE, TO ESTABLISH A UNIFORM ASSESSMENT ON THE MEMBERSHIP OF THE ASSOCIATION AND PROVIDE FOR AN ADDITIONAL SURCHARGE ON PREMIUMS THAT MUST BE ASSESSED ON ASSOCIATION POLICYHOLDERS, TO ESTABLISH CERTAIN OBLIGATIONS FOR TERMINATED MEMBERS OF THE ASSOCIATION, TO ESTABLISH CERTAIN CONDITIONS REGARDING THE ASSOCIATION'S ANNUAL FINANCIAL STATEMENT AND THE EXAMINATION OF THE ASSOCIATION BY THE DIRECTOR OF THE DEPARTMENT OF INSURANCE, TO PROVIDE THE EFFECTIVE DATE OF THE MERGER OF THE PATIENTS' COMPENSATION FUND AND THE JOINT UNDERWRITING ASSOCIATION, TO PROVIDE FOR THE WINDING DOWN OF THE PATIENTS' COMPENSATION FUND, AND TO PROVIDE FOR THE

COMPOSITION OF THE BOARD AND THE DUTIES OF THE ASSOCIATION; AND BY ADDING SECTION 38-79-400 SO AS TO REPEAL ARTICLE 5, CHAPTER 79, TITLE 38 RELATING TO THE PATIENTS' COMPENSATION FUND, UPON THE MERGER OF THE PATIENTS' COMPENSATION FUND INTO THE JOINT UNDERWRITING ASSOCIATION.

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

Medical Malpractice Association created, Patients' Compensation Fund and Joint Underwriting Association merged

SECTION 1. Article 3, Chapter 79, Title 38 of the 1976 Code is amended to read:

"Article 3

South Carolina Medical Malpractice Liability
Joint Underwriting Association

Section 38-79-110. As used in this article:

(1) 'Accumulated deficit' means the amount that the association's and the fund's liabilities exceed their assets, as reported in the association's and fund's respective most recently reported financial statements on June 30, 2019.

(2) 'Association' means any joint underwriting association established by the General Assembly in 1987 and managed and operated pursuant to the provisions of this article.

(3) 'Fund' means the Patients' Compensation Fund.

(4) 'Future deficit' means any deficit accumulated by the association and fund after the most recently reported financial statements as of June 30, 2019.

(5) 'Licensed health care providers' means physicians and surgeons, nurses, oral surgeons, dentists, pharmacists, podiatrists, hospitals, nursing homes, or any similar major category of licensed health care providers. The term 'licensed health care provider' also includes blood centers which collect, process, and distribute blood to hospitals and physicians for the care of patients if these blood centers as of July 1, 1997, were insured with the Joint Underwriting Association.

(6) 'Medical malpractice insurance' means medical professional liability insurance or insurance protection against the legal liability of the insured and against loss, damage, or expense incident to a claim arising out of the death or injury of any person as the result of negligence

or malpractice in rendering or failing to render professional service by any licensed physician, licensed health care provider, or hospital.

(7) 'Net-direct premiums' means gross-direct premiums written on medical malpractice insurance, medical professional liability insurance, hospital professional liability insurance, and any other type of professional liability insurance covering risks of licensed health care providers and facilities as determined and computed by the director or his designee, less return premiums or the unused or unabsorbed portions of premium deposits. The net-direct premium calculation does not include premiums written by the fund.

Section 38-79-120. (1) A joint underwriting association (association) is created, containing as members all insurers authorized to write and report net-direct written premiums for medical malpractice insurance, medical professional liability insurance, hospital professional liability insurance, or any other type of professional liability insurance in this State covering the professional liability risks of licensed health care providers. Membership also includes foreign and domestic risk retention groups and captive insurers authorized to write and report net-direct premiums for medical malpractice insurance, medical professional liability insurance, hospital professional liability insurance, or any other type of professional liability insurance in this State covering the professional liability risk of licensed health care providers, and authorized to do business in accordance with the provisions of this title. The South Carolina Insurance Reserve Fund is not a member of the association. Each insurer described above is and must remain a member of the association as a condition of the authorization to transact the sale of insurance in this State. The membership of the association shall continue as members in the South Carolina Medical Malpractice Association upon its creation as provided in Section 38-79-300.

(2) The purpose of the association is to ensure the availability of medical malpractice and other types of professional liability insurance for health care providers on a self-supporting basis to the fullest extent possible. The intent of the General Assembly in enacting this section is to eliminate the accumulated deficit of the association and of the fund and to transition the association over time to a market of last resort so that it is no longer in competition with the private market. Specifically, the General Assembly does not intend that the South Carolina Joint Underwriting Association offer rates that are competitive to the private market.

Section 38-79-125. (1) As of January 1, 2020, all insurers authorized to write on a direct basis bodily injury liability insurance, other than automobile bodily injury insurance, homeowners liability insurance, an insurer which insures only churches and their property, and farmowners liability insurance including monoline farm liability insurance, including insurers covering such peril in multiple peril package policies and bodily injury insurance, must pay an assessment equal to their proportional share of twenty percent of the accumulated deficit of the association as contained in their most recently reported financial statements as of June 30, 2019, as determined by the director. Each insurer's share of the assessment must be calculated based upon the net-direct written premiums for the insurer's liability lines as identified in this subsection on the most recent year preceding the effective date of this section. All money collected from this assessment must be applied to the accumulated deficit of the association. Each insurer may pay the assessment in one lump sum or, at the insurer's option, in equal installments over a period not to exceed five years. The assessment may be incorporated into the rate filings of the insurer. Upon satisfaction of the assessment, each insurer may withdraw as members of the association upon submission of:

(a) an application for withdrawal in the format prescribed by the director or his designee;

(b) evidence that it has not written any medical malpractice insurance, medical professional liability insurance, hospital professional liability insurance, or any other type of professional liability insurance in this State covering the professional liability risks of licensed health care providers in the consecutive five years preceding the insurer's withdrawal application; and

(c) certification by the association and the director or his designee that all obligations to the association have been fully satisfied.

Section 38-79-130. The association, pursuant to the provisions of this article and the approved plan of operation in respect to medical malpractice insurance, has the power on behalf of its members to:

(1) issue, or cause to be issued, policies of insurance to applicants including incidental coverages including, but not limited to, premises or operations liability coverage on the premises where services are rendered, all subject to limits of liability as specified in the plan of operation but not to exceed one million dollars for each claim under one policy and three million dollars for all claims under one policy in any one year; provided, however, that the association may offer higher limits per claim and for all claims under one policy in any one year only upon

approval of the board of the association and with the written approval of the director;

(2) underwrite medical malpractice insurance and to adjust and pay losses with respect to it or to appoint service companies to perform those functions; and

(3) cede and assume reinsurance.

Section 38-79-140. (1) The association must operate pursuant to a plan of operation which shall provide for economic, fair, and nondiscriminatory administration and for the prompt and efficient provision of medical malpractice insurance and may contain other provisions including, but not limited to, preliminary assessment of all members for initial expenses necessary to commence operations, establishment of necessary facilities, management of the association, assessment of the members to defray losses and expenses, commissions arrangements, reasonable and objective underwriting standards, acceptance and cession of reinsurance, appointment of servicing carriers, and procedures for determining amounts of insurance to be provided by the association. The plan of operation must be amended within thirty days following the merger provided for in Section 38-79-300. The amended plan must address the orderly and expeditious winding down of the Patients' Compensation Fund.

(2) The plan of operation shall provide that any profit achieved by the association must be added to the reserves of the association or returned to the policyholders as a dividend. If there is no accumulated deficit, any profit achieved by the association must be added to the reserves of the association.

(3) The approved plan of operation may make provisions for combining insurers under common ownership or management into groups for voting, assessment, and all other purposes and may provide that no more than one of the officers or employees of a group may serve as a director at any one time.

(4) Amendments to the plan of operation may be made by the directors of the association with the approval of the director or his designee or must be made at the direction of the director or his designee after due notice and public hearing.

Section 38-79-150. Any licensed health care provider is entitled to apply to the association for coverage. The application may be made on behalf of the applicant by a licensed agent or broker authorized in writing by the applicant. If the association determines that the applicant meets the underwriting standards of the association as set forth in the approved

plan of operation and there is no unpaid, uncontested premium due from the applicant for any prior insurance of the same kind, the association, upon receipt of the premium, or a portion thereof as prescribed by the plan of operation, shall cause to be issued a policy of medical malpractice liability insurance for a term of one year.

The rates, rating plans, rating rules, rating classifications, territories, and policy forms applicable to insurance written by the association and the statistical and experience data relating thereto are subject to this article and to those provisions of Chapter 73 of this title which are not inconsistent with the purposes and provisions of this article.

Section 38-79-160. Reserved.

Section 38-79-170. In respect to the structuring of rates for medical malpractice liability insurance and the determination of the profit or loss of the association in respect to that insurance, due consideration must be given by the director or his designee to all investment income.

Section 38-79-180. The association shall submit, for the approval of the director or his designee, all policy forms, classifications, rates, rating plans, or rules applicable to its insurance product offerings to customers in this State. Such filings must be submitted for approval to the director no less than sixty days prior to their intended effective date. The director may extend the time for his review by an additional sixty days to allow the department sufficient time to evaluate the proposed form, classification, rate, rating plan, or rule to be used by the association. Rates must be actuarially sound, self supporting, and may not be excessive, inadequate, or unfairly discriminatory.

Section 38-79-190. (1) The board of directors shall specify whether policy forms and the rate structure must be on a ‘claims-made’ or ‘occurrence’ basis and coverage may be provided by the association only on the basis specified by the board of directors. The board of directors shall specify the ‘claims-made’ basis only if the contract makes provision for residual ‘occurrence’ coverage upon the retirement, death, disability, or removal from the State of the insured. Provision may be made for a premium charge allocable to any such residual ‘occurrence’ coverage and the premium charges for the residual coverage must be segregated and separately maintained for such purpose which may include the reinsurance of all or a part of that portion of the risk.

(2) The policy may not contain any limitation in relation to the existing law in tort as provided by the statute of limitations of the State of South Carolina.

(3) The policy form whether on a 'claims-made' or 'occurrence' basis may not require as a condition precedent to settlement or compromise of any claim the consent or acquiescence of the insured. However, such settlement or compromise may never be held or considered to be an admission of fault or wrongdoing by the insured.

(4) The premium rate charged for either or both 'claims-made' or 'occurrence' coverage must be at rates established on an actuarially sound basis, including consideration of trends in the frequency and severity of losses. After the accumulated deficit has been eliminated, the association must function as a residual market mechanism. After that time, the association may not offer rates competitive with the admitted market but the rates for policies issued by the association must be adequate and established at a level that permits the association to operate as a self-sustaining mechanism.

Section 38-79-200. The association is authorized to provide a rate increase or assessment on policyholders which is subject to the approval of the director or his designee.

Section 38-79-210. (1) Any future deficit must be recouped, pursuant to the plan of operation and the rating plan then in effect, by a rate increase applicable prospectively approved by the director or his designee pursuant to the provisions of Section 38-79-180.

Section 38-79-220. (1) All members of the association, excluding companies who have withdrawn from the association pursuant to Section 38-79-125, must contribute to the elimination of the association's and fund's accumulated deficit. Beginning on January 1, 2020, a uniform assessment of not less than two percent and not more than six percent of the net-direct written premium must be assessed against each member of the association in order to eliminate the accumulated deficits of the association and the fund. Association members must be notified of the assessment at least sixty days prior to each year end. After each quarter during the year following notification of the assessment, each member of the association must remit an amount equal to the assessment percentage of the previous quarter's direct written premiums. Monies derived from this assessment and collected must be distributed by the association to the accumulated deficits of the association and fund as determined appropriate by the director. Every member must directly

recover from each policyholder one percent of the assessment and is authorized to recoup up to the remaining amount if they so choose. Amounts recouped under this section are not premium and are not subject to premium taxes, fees, or commissions. If one deficit is eliminated before the other, all subsequent monies collected must be distributed to the remaining deficit until it is eliminated. Assessments must cease when both accumulated deficits have been fully eliminated or on December 31, 2035, or whichever occurs first. Funds received by the association under this section will not be considered revenue or considered part of their operating income and will only be used to reduce the accumulated deficit.

(2) Beginning on January 1, 2020, a surcharge on premium shall be assessed on association policyholders equal to the assessment percentage amount on members in any given year pursuant to the provisions of Section 38-79-220. Association policyholders will be notified of the surcharge percentage at least sixty days prior to each year end. Surcharges levied under this section are not premiums and are not subject to premium tax, any fees, or any commissions. Monies derived from this assessment and collected under this section must be distributed by the association to the accumulated deficits of the association and fund as determined appropriate by the director. Should one deficit be eliminated before the other deficit, all subsequent monies collected shall be distributed to the remaining deficit until it is eliminated. This surcharge shall cease when the accumulated deficits of both the association and the fund have been fully eliminated or on December 31, 2035, whichever occurs first. Funds received by the association under this section will not be considered revenue or considered part of their operating income and will only be used to reduce the accumulated deficit.

(3) Each member shall remit to the association payment in full of its assessed amount under this section within thirty days of the end of each quarter. If a member fails to remit its assessed amount by the deadline, the association shall report the failure to the director or designee who may immediately take action to suspend or revoke such insurer's certificate of authority to transact the business of insurance in the State of South Carolina or issue a fine on that member until such time as the association certifies to the director or his designee that such assessment has been paid in full. The issuance of a fine, suspension, or revocation of an insurer's certificate of authority to transact business in the State of South Carolina shall not affect the right of the association to proceed against such insurer in any court for any remedy provided by law or contract to the association, including the right to collect such insurer's

assessment. In addition to any other remedy, the association may offset assessments due from an insurer against any amounts in any account of such delinquent insurer. By mailing payment of its allocated amount of assessment, as provided herein, a member shall not waive any right it may have to contest the computation of its allocated amount of assessment. Such contest shall not, however, toll the time within which assessments must be paid or the report to be made to the director or his designee or affect or impede any action to be taken by the director or his designee upon receipt of such report.

(4) Beginning January 1, 2020, all surplus lines insurance producers or brokers placing insurance through nonadmitted insurers shall collect from the insured and remit to the department to be distributed to the association and fund a nonadmitted policy surcharge on all premiums for all insurance written by such surplus lines insurance producer or broker for a policy from a nonadmitted insurer for any and all medical malpractice risks in this State. By procuring or selling medical malpractice insurance in this State from a nonadmitted insurer, each surplus lines insurance producer or broker placing insurance through a nonadmitted insurer agrees to be bound by the provisions of this chapter and to collect and remit the nonadmitted policy surcharge provided for herein.

(a) The nonadmitted policy surcharge must be a percentage of the total policy premium, but the nonadmitted policy surcharge shall not be considered premium and is not subject to premium taxes or commissions. However, failure to pay the nonadmitted policy surcharge must be treated the same as failure to pay premium. 'Total policy premium' includes taxes and commissions.

(b) The nonadmitted policy surcharge percentage must be the same percentage as the assessment that has been approved by the board and director as applied to the insurers writing medical malpractice insurance, medical professional liability insurance, hospital professional liability insurance, or any other type of professional liability insurance in this State covering the professional liability risks of licensed health care providers as described in Section 38-79-220.

(5) Within thirty days of the end of the quarter, surplus lines insurance producers or brokers placing insurance through nonadmitted insurers shall remit to the department all nonadmitted policy surcharges collected in the preceding quarter. Surplus lines insurance producers or brokers placing insurance through nonadmitted insurers may designate another surplus lines insurance producer or broker that actually procured the insurance from the nonadmitted carrier to collect and remit the nonadmitted policy surcharges.

(6) Each insured in this State who directly procures or renews insurance with a nonadmitted insurer on medical malpractice insurance other than insurance procured through a surplus lines licensee, must be subject to the nonadmitted policy surcharge which must be paid by the insured according to the procedures provided for premium taxes in Chapter 45 of this title.

Monies derived from the nonadmitted policy surcharge collected under this section must exclusively be used to reduce the accumulated deficits of the association and fund by equal amounts unless the director or his designee determines that different proportions are appropriate. Once the accumulated deficit of the association or the fund is eliminated, whichever occurs first, all subsequent monies collected through the assessment shall exclusively be used to reduce the remaining deficit until it has also been eliminated. The nonadmitted policy surcharge must continue until the surcharge provided in subsection (1) is eliminated.

(7) The accumulated deficits of the association and the fund have accrued and persisted over a period of decades and being partially attributable to state agencies or institutions or their employees, until the director determines that the accumulated deficits of the association and the fund have been eliminated, he may receive appropriations that are explicitly provided for purposes of reducing the accumulated deficits of the association and fund.

Section 38-79-230. Beginning on January 1, 2021, an additional one percent surcharge on the premium must be assessed on association policyholders. The premium surcharge must increase by one additional percentage point annually until it reaches ten percent and does not sunset. Surcharges levied under this section are not premium and therefore not subject to premium taxes, fees, or commissions. Surcharges may not be considered when evaluating whether rates are excessive, adequate, or unfairly discriminatory.

Section 38-79-240. Every member of the association is bound by the approved plan of operation of the association, including any amendments made, and by any other rules the board of directors of the association lawfully prescribes.

Section 38-79-250. (1) If any member insurer ceases writing business in this State, voluntarily or involuntarily, or by order or authority of the director, the insurer shall continue to be a member of the association until all of its obligations have been satisfied and the director has certified the satisfaction to the association’s board.

(2) If a member insurer merges into, acquires, or consolidates with another insurer transacting business subject to this article or if any other insurer or entity has reinsured or assumed a member insurer's entire liability business in this State, the surviving insurer, acquiring insurer, its legal successor, or its assuming reinsurer nonetheless remains liable for the member insurer's obligations in respect to the association.

(3) Any unsatisfied net liability of any insolvent member of the association must be assumed by and apportioned among the remaining members in the same manner in which assessments or gain and loss are apportioned and the association shall thereupon acquire and have all rights and remedies allowed by law on behalf of the remaining members against the estate or funds of the insolvent insurer for funds due the association.

(4) The State is not responsible for any costs, expenses, liabilities, judgments, or other obligations of the association.

Section 38-79-260. (1) The provisions of this section only apply until January 1, 2020.

(2) The association is governed by a board of thirteen directors, all of whom must be appointed by the Governor. The Governor shall appoint five health care providers after consultation with the South Carolina Medical Association, the South Carolina Dental Association, and the South Carolina Health Alliance; four insurance representatives after consultation with the insurance industry; one consumer representative who is unaffiliated with the insurance or health care industries or the medical or legal professions; and two licensed insurance agents or brokers. The professional associations listed and the insurance industry may nominate qualified individuals to the Governor for his consideration. The Governor may also receive nominations for appointments to the board from any other individual, group, or association. Notices of vacancies on the board must be published in newspapers of general statewide circulation. The director or his designee shall serve as an ex officio member of the board. The board shall develop a plan of operation which is subject to the approval of the director or his designee as provided in this article. The plan of operation shall provide for staggered terms of the members of the board. The approved plan of operation of the association may make provision for combining insurers under common ownership or management into groups for voting, assessment, and all other purposes and may provide that not more than one of the officers or employees of a group may serve as a director at any one time. The board shall elect a chairman and other necessary officers for two-year terms. A vacancy must be filled for the unexpired

portion of the term only. The Governor may receive recommendations from any individual, group, or association for any vacancy on the board. The board must meet at the call of the chairman or a majority of the members of the board, but in any event it must meet at least once a year.

Section 38-79-280. The association shall file a financial statement with the department by March first of each year detailing its transactions, financial condition, operations, and affairs during the previous calendar year. In addition, the director may require the association to file quarterly financial statements with the department on the fifteenth of May, August, and November of each year. The statement shall contain such matters and information as are prescribed by the director or his designee and must be prepared in the format the director prescribes. The director or his designee may require the association to furnish additional information with respect to its transactions, condition, or any matter connected therewith considered to be material and of assistance in evaluating the scope, operation, and experience of the association.

Section 38-79-290. The director or his designee shall conduct an examination into the financial condition and affairs of the association at least annually and shall file a report thereon with the department, the Governor, and the General Assembly. The expenses of the examination must be paid by the association. The director or his designee may accept an audit of the association performed by a qualified public accounting firm in lieu of conducting his own examination.

Section 38-79-300. (A) Effective on January 1, 2020, the Patients' Compensation Fund provided for in Article 5 of this chapter shall merge into the South Carolina Medical Malpractice Association as created by this article. The surviving entity is the Joint Underwriting Association and referred to herein as the South Carolina Medical Malpractice Association. The South Carolina Medical Malpractice Association shall assume all obligations and responsibilities of the Patients' Compensation Fund, while retaining all obligations and responsibilities of the Joint Underwriting Association. However, the accumulated deficits of the former Joint Underwriting Association and the Patients' Compensation Fund must be separately accounted for until such time as the director determines each of them is fully eliminated.

(B) On January 1, 2020, the Board of the Patients' Compensation Fund shall, with oversight of the Department of Insurance, exercise due diligence in providing for the orderly and expeditious winding down of the Patients' Compensation Fund. All outstanding affairs and existing

contractual obligations of the Patients' Compensation Fund shall contemporaneously become the responsibility of the South Carolina Medical Malpractice Association on January 1, 2020. After January 1, 2020, the Patients' Compensation Fund shall cease to exist except as required by law for purposes of winding down its affairs.

(C) The Board of Directors of the South Carolina Medical Malpractice Association must:

(1) be appointed on or before January 1, 2020, and is authorized to enter into contracts for the management of the South Carolina Joint Underwriting Association in accordance with governing law;

(2) have the right to attend any regular or special meeting of the Board of Directors of the Joint Underwriting Association or the Board of Governors of the Patients' Compensation Fund, but shall have no vote at these meetings;

(3) replace the existing Board of the Joint Underwriting Association as provided for in Section 38-79-260;

(4) consist of eleven members all appointed by the Governor, as follows:

(a) four medical providers after consultation with the South Carolina Medical Association, the South Carolina Hospital Association, the South Carolina Nurses Association, and the South Carolina Dental Association;

(b) four representatives from the medical malpractice insurance industry representing member companies of the association after consultation with the three largest members;

(c) two consumer representatives;

(d) one independent insurance agent or broker not affiliated with one of the three medical malpractice insurance companies already represented on the board; and

(e) the Director of the Department of Insurance, who serves ex-officio and does not have any voting privileges.

(5) elect other necessary officers for two-year terms after the accumulated deficits of the South Carolina Joint Underwriting Association and the Patients' Compensation Fund are eliminated. The director or his designee shall serve as chairman of the board.

(D) Upon consultation with and consent of the director, the Board of the South Carolina Medical Malpractice Association:

(1) must select a person or firm for the administration and management of the South Carolina Joint Underwriting Association using a competitive bidding process;

(2) is responsible for the negotiation of the administrator's contract including, without limitation, compensation, fees, and the length of the contract; and

(3) shall have the authority to terminate or retain the administrator.

(E) Each member of the Board of the South Carolina Medical Malpractice Association shall serve a term of four years; however, any board member may be reappointed for up to two additional four-year terms. The professional associations listed and the insurance industry may nominate qualified individuals to the Governor for his consideration. The Governor also may receive nominations for appointments to the board from any other individual, group, or association. The South Carolina Medical Malpractice Association and director must publicize all board vacancies to the general public. A vacancy must be filled for the unexpired portion of the term only. The Board of the South Carolina Medical Malpractice Association must meet at the call of the chairman or a majority of the members of the board, but in any event it must meet at least once a year. Any board members of the Joint Underwriting Association or the Patients' Compensation Fund serving at the time of this enactment may be reappointed by the Governor to the Board of the South Carolina Joint Underwriting Association. The prior service of a board member on the Board of the Joint Underwriting Association or Patients' Compensation Fund does not count toward the term limits on members of the Board of the South Carolina Medical Malpractice Association.

(F) Each member of the Board of the South Carolina Medical Malpractice Association has a fiduciary relationship to the organization and must discharge his duties accordingly."

Patients' Compensation Fund repealed

SECTION 2. Article 5, Chapter 79, Title 38 of the 1976 Code is amended by adding:

"Section 38-79-400. This article must be repealed upon the merger of the Patients' Compensation Fund for benefit of licensed health care providers into the South Carolina Joint Underwriting Association as provided for in Section 38-79-300 on January 1, 2020."

Time effective

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

Ratified the 13th day of May, 2019.

Approved the 16th day of May, 2019.

No. 68

(R88, H3785)

AN ACT TO AMEND SECTION 40-2-10, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO PURPOSES FOR WHICH MEETINGS OF THE BOARD OF ACCOUNTANCY MAY BE CLOSED TO THE PUBLIC, SO AS TO PROVIDE MEETINGS MAY BE CLOSED TO PROTECT CERTAIN CONFIDENTIAL INFORMATION; TO AMEND SECTION 40-2-20, RELATING TO DEFINITIONS CONCERNING THE REGULATION OF CERTIFIED PUBLIC ACCOUNTANTS AND PUBLIC ACCOUNTANTS, SO AS TO REVISE A DEFINITION; TO AMEND SECTION 40-2-35, RELATING TO EXAMINATION REQUIREMENTS FOR LICENSURE BY THE BOARD, SO AS TO REMOVE THE REQUIREMENT THAT CERTAIN EXAMINATIONS BE COMPUTER BASED; TO AMEND SECTION 40-2-40, RELATING TO CONTINUING EDUCATION REQUIREMENTS FOR NONCERTIFIED PUBLIC ACCOUNTANT OWNERS OF CERTIFIED PUBLIC ACCOUNTING FIRMS, SO AS TO INCLUDE CERTAIN ETHICS REQUIREMENTS; TO AMEND SECTION 40-2-80, RELATING TO THE CONFIDENTIAL TREATMENT OF CERTAIN EVIDENCE OBTAINED DURING INVESTIGATIONS BY THE BOARD, SO AS TO PROVIDE ALL PROCEEDINGS AND INQUIRIES RELATED TO THE INVESTIGATIONS ARE CONFIDENTIAL EXCEPT WHEN THE SUBJECT OF AN INVESTIGATION WAIVES CONFIDENTIALITY OF THE EXISTENCE OF THE COMPLAINT; TO AMEND SECTION 40-2-90, RELATING TO INVESTIGATIONS BY THE BOARD, SO AS TO PROVIDE DISCIPLINARY HEARINGS BY THE BOARD MUST BE OPEN TO THE PUBLIC EXCEPT IN CERTAIN CIRCUMSTANCES AND ALL EVIDENCE MUST BE MADE PART OF THE RECORD IN THE PROCEEDINGS; TO AMEND SECTION 40-2-240, RELATING TO LICENSURE OF OUT-OF-STATE

PERSONS BY THE BOARD, SO AS TO PROVIDE ALTERNATIVE CRITERIA FOR SUCH LICENSURE; AND TO AMEND SECTION 40-2-340, RELATING TO DISCLAIMERS THAT ACCOUNTING PRACTITIONERS AND ACCOUNTING PRACTITIONER FIRMS MUST USE WHEN ASSOCIATING THEIR NAMES WITH CERTAIN COMPILED FINANCIAL STATEMENTS, SO AS TO REMOVE THE EXISTING BOILERPLATE LANGUAGE REQUIRED AND INSTEAD PROVIDE SUCH DISCLAIMERS MUST COMPLY WITH CERTAIN NATIONAL STANDARDS.

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

Closure of board meetings to public

SECTION 1. Section 40-2-10(B) of the 1976 Code is amended to read:

"(B) The board shall elect annually from among its members a chairman, a vice chairman, and a secretary. The board shall meet at least two times a year at places fixed by the chairman. Meetings of the board must be open to the public except those concerned with investigations under Section 40-2-80 and except as necessary to protect confidential information in accordance with board regulations, federal law, state law, or Section 40-2-90(C). A majority of the board members in office constitutes a quorum at any meeting of the board. A board member shall attend meetings or provide proper notice and justification of inability to attend. Unexcused absences from meetings may result in removal from the board as provided for in Section 1-3-240."

Definitions

SECTION 2. Section 40-2-20(5) of the 1976 Code is amended to read:

"(5) 'Compilation' means providing a service to be performed in accordance with Statements on Standards for Accounting and Review Services (SSARS) in which the objective of the accountant is to apply accounting and financial reporting expertise to assist management in the presentation of financial statements and reports in accordance with this section without undertaking to obtain or provide any assurance that there are no material modifications that should be made to the financial statements in order for them to be in accordance with the applicable financial reporting framework."

Examinations, mandatory computer-based format removed

SECTION 3. Section 40-2-35 (F)(1) of the 1976 Code is amended to read:

"(1) A candidate may take the required test sections individually and in any order. Credit for any test section passed is valid for eighteen months from the actual date the candidate took that test section, without having to attain a minimum score on any failed test section and without regard to whether the candidate has taken other test sections.

(a) A candidate must pass all four test sections of the Uniform CPA Examination within a rolling eighteen-month period, which begins on the date that the first test section is passed. The board by regulation may provide additional time to an applicant on active military service. The board also may accommodate any hardship which results from the conditions of administration of the examination.

(b) A candidate cannot retake a failed test section in the same examination window. An examination window refers to a three-month period in which candidates have an opportunity to take the CPA examination. If all four test sections of the Uniform CPA Examination are not passed within the rolling eighteen-month period, credit for any test section passed outside the eighteen-month period expires and that test section must be retaken.

(c) A candidate who applies for a license more than three years after the date upon which the candidate passed the last section of the Uniform CPA Examination must document one hundred twenty hours of acceptable continuing professional education in order to qualify, in addition to all other requirements imposed by this section."

Continuing education

SECTION 4. Section 40-2-40(C)(7)(b) of the 1976 Code is amended to read:

"(b) Noncertified public accountant owners must complete the same number of hours of continuing professional education as licensed certified public accountants in this State. However, in each three-year period, as established by the board, six of the hours must be in ethics, and at least two of these hours must be a board-approved South Carolina Accountancy Rules and Regulations course."

Confidentiality of investigations, waivers

SECTION 5. Section 40-2-80(E) of the 1976 Code is amended to read:

"(E) The testimony and documents submitted in support of the complaint or gathered in the investigation must be treated as confidential information and must not be disclosed to any person except law enforcement authorities and, to the extent necessary in order to conduct the investigation, the subject of the investigation, persons whose complaints are being investigated, and witnesses questioned in the course of the investigation. All proceedings related to the investigations and inquiries during the investigation process undertaken pursuant to this chapter are confidential, unless the licensee or registrant who is the subject of the investigation or inquiry waives the confidentiality of the existence of the complaint."

Disciplinary hearings, evidence

SECTION 6. Section 40-2-90(C) of the 1976 Code is amended to read:

"(C) If a hearing is to be held, the licensee or registrant has the right to be present, to present evidence and argument on all issues involved, to present and to cross-examine witnesses, and to be represented by counsel at the licensee's or registrant's expense. For the purpose of these hearings, the board may require by subpoena the attendance of witnesses, the production of documents and other evidence, and may administer oaths and hear testimony, either oral or documentary, for and against the accused licensee. All evidence, including the records that the board or the board's hearing panel considers, must be made part of the record in the proceedings. These hearings must be open to the public, except:

(1) as necessary to protect confidential information in accordance with federal or state law; and

(2) as necessary to protect confidential information provided by a client for whom a licensee performs services, or the heirs, successors, or personal representatives of the client."

Out-of-state licensure applicants, criteria

SECTION 7. Section 40-2-240(A) of the 1976 Code is amended to read:

"(A) The board may issue a license to a holder of a certificate, license, or permit issued under the laws of any state or territory of the United States or the District of Columbia or any authority outside the United States upon a showing of substantially equivalent education, examination, and experience upon the condition that the applicant:

(1)(a) received the designation, based on educational and examination standards substantially equivalent to those in effect in this State, at the time the designation was granted; and

(b) completed an experience requirement, substantially equivalent to the requirement provided for in Section 40-2-35(F), in the jurisdiction which granted the designation or has engaged in four years of professional practice, outside of this State, as a certified public accountant within the ten years immediately preceding the application; and

(c) passed a uniform qualifying examination in national standards and an examination on the laws, regulations, and code of ethical conduct in effect in this State acceptable to the board; and

(d) listed all jurisdictions, foreign and domestic, in which the applicant has applied for or holds a designation to practice public accountancy or in which any applications have been denied; and

(e) demonstrated completion of eighty hours of qualified CPE within the last two years; and

(f) filed an application and pays an annual fee sufficient to cover the cost of administering this section.

(2)(a) satisfies the requirements of item (1)(c), (d), (e), and (f);

(b) holds a valid license issued by any other state before January 1, 2012; and

(c) has engaged in four years of professional practice, outside of this State, as a certified public accountant within the ten years immediately preceding the application."

Financial statement disclaimers

SECTION 8. Section 40-2-340 of the 1976 Code is amended to read:

"Section 40-2-340. An accounting practitioner or firm of accounting practitioners is permitted to associate his or the firm's name with compiled financial statements as defined by Professional Standards for Accounting and Review Services, provided a disclaimer is used that complies with the most recent version of the statement on Standards for Accounting and Review Services issued by the American Institute of Certified Public Accountants and a statement in the report that provides:

'I (we) have not audited or reviewed the accompanying financial statements and I am (we are) prohibited by law from expressing an opinion on them'."

Time effective

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

Ratified the 13th day of May, 2019.

Approved the 16th day of May, 2019.

No. 69

(R89, H3916)

AN ACT TO AMEND SECTION 12-37-2615, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO PENALTIES FOR FAILURE TO REGISTER A MOTOR VEHICLE, SO AS TO PROVIDE THAT A PERSON WHO FAILS TO REGISTER A MOTOR VEHICLE IS GUILTY OF A MISDEMEANOR AND, UPON CONVICTION, MUST BE FINED NOT MORE THAN FIVE HUNDRED DOLLARS OR IMPRISONED FOR A PERIOD NOT TO EXCEED THIRTY DAYS, OR BOTH.

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

Failure to register a motor vehicle fine

SECTION 1. Section 12-37-2615 of the 1976 Code is amended to read:

"Section 12-37-2615. Any person who violates the provisions of Section 12-37-2610 is guilty of a misdemeanor and, upon conviction, shall be fined not more than five hundred dollars or imprisoned for a period not to exceed thirty days, or both."

Time effective

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

Ratified the 13th day of May, 2019.

Approved the 16th day of May, 2019.

No. 70

(R90, H3951)

AN ACT TO AMEND SECTION 23-11-110, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE QUALIFICATIONS THAT A SHERIFF MUST POSSESS, SO AS TO PROVIDE THESE QUALIFICATIONS ALSO APPLY TO CANDIDATES FOR SHERIFF, TO MAKE TECHNICAL CHANGES, TO PROVIDE A SHERIFF HOLDING OFFICE ON THE EFFECTIVE DATE OF THIS SECTION IS NOT REQUIRED TO BE AN EXPERIENCED CERTIFIED LAW ENFORCEMENT OFFICER OR BE ELIGIBLE TO OBTAIN A CLASS 1 LAW ENFORCEMENT OFFICER CERTIFICATE UPON THE COMMENCEMENT OF HIS TERM OF OFFICE, AND TO PROVIDE ADDITIONAL QUALIFICATIONS.

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

Sheriff and candidates for sheriff qualifications

SECTION 1. Section 23-11-110(A) of the 1976 Code is amended to read:

"(A) All sheriffs and candidates for sheriff in this State must have the following qualifications:

(1) be a citizen of the United States;

(2) be a resident of the county in which he seeks the office of sheriff for at least one year immediately preceding the date of the election for sheriff;

(3) be a registered voter;

(4) have attained the age of at least twenty-one years prior to the date of his qualifying for election to the office;

(5) have:

(a) obtained a high school diploma, its recognized equivalent in educational training as established by the State Department of

Education, and have at least five years experience as a Class 1 certified law enforcement officer; or

(b) obtained a two-year associate degree and three years experience as a Class 1 certified law enforcement officer; or

(c) obtained a four-year baccalaureate degree and one year experience as a Class 1 certified law enforcement officer; or

(d) served as a summary court judge for at least ten years.

For purposes of this section, a 'Class 1 certified law enforcement officer' is a person who has been issued a certificate as a Class 1 law enforcement officer by the South Carolina Law Enforcement Training Council. A sheriff holding office on the effective date of this section is not required to have obtained the necessary experience as a certified law enforcement officer in this State;

(6) have not been convicted of or pled guilty to a violation of Section 56-1-460 or 56-5-2930, or both, within the past ten years or a felony in this State or another state;

(7) have not been convicted of or pled guilty to a felony or a crime of moral turpitude in this State or another state;

(8) be fingerprinted and have the State Law Enforcement Division make a search of local, state, and federal fingerprint files for any criminal record. Fingerprints are to be taken under the direction of any law enforcement agency and must be made available to SLED no later than one hundred thirty days prior to the general election. The results of the records search are to be filed with the county executive committee of the person's political party. A person seeking nomination by petition must file the records search with the county election commission in the county of his residence; and

(9) be eligible to be issued a certificate as a Class 1 law enforcement officer by the South Carolina Law Enforcement Training Council upon the commencement of the term of office. A sheriff holding office on the effective date of this section is exempt from the provisions in this item."

Time effective

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

Ratified the 13th day of May, 2019.

Approved the 16th day of May, 2019.

No. 71

(R91, H3973)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING ARTICLE 20 TO CHAPTER 3, TITLE 16 SO AS TO PROHIBIT GENITAL MUTILATION OF A FEMALE WHO IS UNDER THE AGE OF EIGHTEEN YEARS OR WHO IS UNABLE TO CONSENT, TO CREATE A FELONY OFFENSE OF FEMALE GENITAL MUTILATION, WITH EXCEPTIONS, AND FOR OTHER PURPOSES; AND TO AMEND SECTION 63-7-20, AS AMENDED, RELATING TO TERMS DEFINED IN THE CHILDREN'S CODE, SO AS TO ADD FEMALE GENITAL MUTILATION OF A MINOR TO THE DEFINITION OF "CHILD ABUSE OR NEGLECT" OR "HARM".

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

Female genital mutilation, prohibition and penalties

SECTION 1. Chapter 3, Title 16 of the 1976 Code is amended by adding:

"Article 20

Female Genital Mutilation

Section 16-3-2210. For purposes of this article:

(1) 'Facilitate' means to raise, solicit, collect, or provide material support or resources with intent that such will be used, in whole or in part, to plan, prepare, carry out, or aid in any act of female genital mutilation or hindering the prosecution of an act of female genital mutilation, or the concealment of an act of female genital mutilation.

(2) 'Female genital mutilation' or 'mutilation' means:

(a) the partial or total removal of the clitoris, prepuce, or labia minora, with or without excision of the labia majora; or

(b) the narrowing of the vaginal opening through the creation of a covering seal formed by cutting and repositioning the inner or outer labia, with or without the removal of the clitoris.

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

(4) 'Hindering the prosecution of female genital mutilation' means actions to include, but not be limited to:

(a) harboring or concealing a person who is known or believed to be planning to commit an act of female genital mutilation;

(b) warning a person who is known or believed to be planning to commit an act of female genital mutilation of impending discovery or apprehension; or

(c) suppressing any physical evidence that might aid in the discovery or apprehension of a person who is known or believed to be planning to commit an act of female genital mutilation.

(5) 'Material support or resources' means currency or other financial securities, financial services, instruments of value, lodging, training, false documentation or identification, medical equipment, computer equipment, software, facilities, personnel, transportation, or other physical assets.

(6) 'Mutilate' means to commit female genital mutilation or mutilation.

(7) 'Unable to consent' means unable to appreciate the nature and implications of the patient's condition and proposed health care, to make a reasoned decision concerning the proposed health care, or to communicate that decision in an unambiguous manner. A patient's inability to consent must be certified by two licensed physicians, each of whom has examined the patient. However, in an emergency the patient's inability to consent may be certified by a health care professional responsible for the care of the patient if the health care professional states in writing in the patient's record that the delay occasioned by obtaining certification from two licensed physicians would be detrimental to the patient's health. A certifying physician or other health care professional shall give an opinion regarding the cause and nature of the inability to consent, its extent, and its probable duration. If a patient unable to consent is being admitted to hospice care pursuant to a physician certification of a terminal illness required by Medicare, that certification meets the certification requirements of this item.

Section 16-3-2220. (A) It is unlawful for a person to:

(1) knowingly mutilate or attempt to mutilate a female who is under eighteen years of age or who is unable to consent;

(2) knowingly facilitate the mutilation of a female who is under eighteen years of age or who is unable to consent; or

(3) knowingly transport or facilitate the transportation of a female who is under eighteen years of age or who is unable to consent from this State for the purpose of mutilation.

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

(C) Section 63-5-330 does not apply to this chapter.

Section 16-3-2230. (A) It is not a defense to prosecution for a violation of this article that a female genital mutilation procedure is:

(1) required as a matter of belief, custom, or ritual;

(2) consented to by the minor or female who is unable to consent on whom the procedure is performed; or

(3) consented to by the parent or legal guardian of the minor or female who is unable to consent on whom the procedure is performed.

(B) A procedure involving female genital mutilation is not a violation of this article if it is:

(1) necessary to the physical health of the minor or female who is unable to consent on whom it is performed; or

(2) performed on a minor or female who is unable to consent who is in labor or who has just given birth for medical purposes connected with that labor or birth.

(C) A physician, physician-in-training, nurse, certified nurse-midwife, or any other medical professional who performs, participates in, or facilitates a female genital mutilation procedure which does not fall under one of the exceptions listed in subsection (B), in addition to the criminal penalties provided in this article, shall have his professional license or certification permanently revoked.

Section 16-3-2240. The provisions of this article do not prohibit a person from being charged with, convicted of, or punished for any other violation of law arising out of the same transaction or occurrence as the violation of this article."

Definition, child abuse or neglect

SECTION 2. Section 63-7-20(6)(a)(v) and (vi) of the 1976 Code, as last amended by Act 146 of 2018, is further amended to read:

"(v) encourages, condones, or approves the commission of delinquent acts by the child including, but not limited to, sexual

trafficking or exploitation, and the commission of the acts are shown to be the result of the encouragement, condonation, or approval;

(vi) commits or allows to be committed against the child female genital mutilation as defined in Section 16-3-2210 or engages in acts or omissions that present a substantial risk that the crime of female genital mutilation would be committed against the child; or

(vii) has committed abuse or neglect as described in subsubitems (i) through (vi) such that a child who subsequently becomes part of the person's household is at substantial risk of one of those forms of abuse or neglect; or"

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 13th day of May, 2019.

Approved the 16th day of May, 2019.

No. 72

(R92, H4010)

AN ACT TO AMEND SECTION 51-17-140, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE MAXIMUM

ACREAGE THAT MAY BE ACQUIRED UNDER THE HERITAGE TRUST PROGRAM, SO AS TO REMOVE THE MAXIMUM ACREAGE LIMITATION.

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

Heritage Trust Program, maximum acreage allowance removed

SECTION 1. Section 51-17-140 of the 1976 Code is amended to read:

"Section 51-17-140. No acquisition may be made under this chapter in any county without written approval of a majority of the county delegation in the county where Heritage Trust properties are to be acquired."

Time effective

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

Ratified the 13th day of May, 2019.

Approved the 16th day of May, 2019.

No. 73

(R93, H4011)

AN ACT TO AMEND SECTION 49-3-40, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE DEPARTMENT OF NATURAL RESOURCES' DUTIES IN REGARDS TO WATER RESOURCE PLANNING AND COORDINATION, SO AS TO MAKE STATUTORY CHANGES TO REFLECT THE DUTIES OF THE DEPARTMENT; AND TO AMEND SECTION 49-3-50, RELATING TO MATTERS TO BE CONSIDERED BY THE DEPARTMENT IN EXERCISING ITS AUTHORITY UNDER THE WATER RESOURCES PLANNING AND COORDINATION ACT, SO AS TO REVISE THESE MATTERS.

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

Department of Natural Resources duties

SECTION 1. Section 49-3-40(a), (d) and (f) of the 1976 Code is amended to read:

"(a) The department shall advise and assist the Governor and the General Assembly in:

(1) formulating and establishing a comprehensive water resources policy for the State, such as a State Water Plan, including coordination of policies and activities among the state departments and agencies;

(2) developing and establishing policies and proposals designed to meet and resolve special problems of water resource use and control within or affecting the State, including consideration of the requirements and problems of urban and rural areas;

(3) reviewing the actions and policies of state agencies with water resource responsibilities to determine the consistency of such actions and policies with the comprehensive water policy of the State and to recommend appropriate action where deemed necessary;

(4) reviewing any project, plan or program of federal aid affecting the use or control of any waters within the State and to recommend appropriate action where deemed necessary;

(5) developing policies and recommendations to assure that the long range interests of all groups, urban, suburban, and rural, are provided for in the state's representation on interstate water issues;

(6) recommending to the General Assembly any changes of law or regulation required to implement the policy declared in this chapter; and

(7) such other water resources planning, policy formulation and coordinating functions as the Governor and the General Assembly may designate.

(d) The department shall encourage, assist and advise regional, metropolitan, and local governmental agencies, officials or bodies responsible for planning in relation to water aspects of their programs, and shall assist in coordinating local and regional water resources activities, programs, and plans.

(f) The department may receive and expend grants, gifts, and monies donated or given by any state, federal, or private agency, person, corporation, water or sewer authority, or political subdivision in connection with water resource investigations in which the results of such investigations will be made publicly available."

Department of Natural Resources considerations

SECTION 2. Section 49-3-50 of the 1976 Code is amended to read:

"Section 49-3-50. In exercising its responsibilities under this chapter, the department shall take into consideration the need for:

(a) Adequate supplies of surface and groundwaters of suitable quality for all uses, including domestic, municipal, agricultural, and industrial.

(b) Water of suitable quality for all purposes.

(c) Water availability for recreational and commercial needs.

(d) Hydroelectric power.

(e) Flood damage control or prevention measures including zoning to protect people, property, and productive lands from flood losses.

(f) Land stabilization measures.

(g) Drainage measures, including salinity control.

(h) Watershed protection and management measures.

(i) Outdoor recreational and fish and wildlife opportunities.

(j) Studies on saltwater intrusion into groundwater and surface water.

(k) Measures to protect the state's fisheries and other aquatic resources.

(l) Any other means by which development of water and related land resources can contribute to economic growth and development, the long-term preservation of water resources, and the general well-being of all the people of the State."

Time effective

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

Ratified the 13th day of May, 2019.

Approved the 16th day of May, 2019.

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No. 74

(R94, H4012)

AN ACT TO AMEND SECTIONS 48-9-15 AND 48-9-30, CODE OF LAWS OF SOUTH CAROLINA, 1976, BOTH RELATING TO DEFINITIONS APPLICABLE TO CHAPTER 9, TITLE 48, SO AS TO REDEFINE THE TERM "DIVISION", DEFINE THE TERM "BOARD", AND EXPAND THE DEFINITION OF "THE UNITED STATES"; TO AMEND SECTION 48-9-45, RELATING TO THE LAND, RESOURCES, AND CONSERVATION DISTRICTS DIVISION, SO AS TO UPDATE THE NAME OF THE DIVISION; TO AMEND SECTION 48-9-50, RELATING TO AGENCIES OPERATING PUBLIC LANDS, SO AS TO DELETE A REFERENCE TO CERTAIN LAND USE REGULATIONS; TO AMEND SECTION 48-9-220, RELATING TO GEOGRAPHIC AREAS FOR THE STATE LAND RESOURCES CONSERVATION COMMISSION, SO AS TO REFORMAT THE STATE LAND RESOURCES CONSERVATION COMMISSION INTO THE LAND, WATER, AND CONSERVATION DIVISION ADVISORY COMMITTEE; TO AMEND SECTION 48-9-310, RELATING TO ESTIMATES OF FINANCIAL NEEDS FOR SOIL AND WATER CONSERVATION DISTRICTS, SO AS TO REMOVE UNNECESSARY STATUTORY REQUIREMENTS THAT ARE NOW ACCOMPLISHED THROUGH THE BUDGETING PROCESS; TO AMEND SECTION 48-9-1220, RELATING TO THE NOMINATION AND ELECTION OF COMMISSIONERS, SO AS TO UPDATE AN EXISTING REFERENCE TO REFLECT THE ROLE OF THE STATE ELECTION COMMISSION TO DETERMINE ELECTORS; TO AMEND SECTION 48-9-1250, RELATING TO THE USE OF COUNTY AGRICULTURAL AGENTS, SO AS TO REMOVE REFERENCES TO DISCONTINUED PRACTICES; TO AMEND SECTION 48-11-10, RELATING TO DEFINITIONS APPLICABLE TO WATERSHED CONSERVATION DISTRICTS, SO AS TO ALTER THE DEFINITION OF THE TERM "DIVISION"; TO REPEAL SECTION 48-9-40 RELATING TO THE RENAMING OF THE STATE LAND RESOURCES CONSERVATION COMMISSION; TO REPEAL SECTION 48-9-230 RELATING TO ADVISORS TO THE LAND RESOURCES AND CONSERVATION DISTRICTS DIVISION OF THE DEPARTMENT OF NATURAL RESOURCES; TO

REPEAL ARTICLE 13 OF CHAPTER 9, TITLE 48 RELATING TO LAND USE REGULATIONS; AND TO REPEAL ARTICLE 15 OF CHAPTER 9, TITLE 48 RELATING TO THE BOARD OF ADJUSTMENT FOR A NEWLY ORGANIZED SOIL AND WATER CONSERVATION DISTRICT.

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

Soil and Water Conservation Districts, definitions

SECTION 1. A. Section 48-9-15(2) of the 1976 Code is amended to read:

"(2) 'Division' means the Land, Water, and Conservation Division of the Department of Natural Resources."

B. Section 48-9-30(8) of the 1976 Code is amended to read:

"(8) 'United States' or 'agencies of the United States' includes the United States of America, the Natural Resources Conservation Service of the United States Department of Agriculture and its successors, and any other agency or instrumentality, corporate or otherwise, of the United States of America;"

C. Section 48-9-30 of the 1976 Code is amended by adding an appropriately numbered item at the end to read:

"( ) 'Board' means the governing body of the Department of Natural Resources."

Land Resources and Conservation Districts renamed Land, Water, and Conservation Division

SECTION 2. Section 48-9-45 of the 1976 Code is amended to read:

"Section 48-9-45. The Land, Water, and Conservation Division, shall be directly accountable to and subject to the director of the department."

Conforming amendment

SECTION 3. Section 48-9-50 of the 1976 Code is amended to read:

"Section 48-9-50. Agencies of this State which shall have jurisdiction over or be charged with the administration of any state-owned lands and agencies of any county or other governmental subdivision of the State which shall have jurisdiction over or be charged with the administration of any county owned or other publicly owned lands, lying within the boundaries of any district organized under this chapter, shall cooperate to the fullest extent with the commissioners of such districts in the effectuation of programs and operations undertaken by the commissioners under the provisions of this chapter. The commissioners of such districts shall be given free access to enter and perform work upon such publicly owned lands. "

Conforming amendment, Advisory Committee

SECTION 4. A. Section 48-9-220 of the 1976 Code is amended to read:

"Section 48-9-220. For the purpose of selecting the five soil and water conservation district commissioners to serve as members of the Land, Water, and Conservation Division Advisory Committee, the State is divided into five areas, to wit:

(1) Area 1, the counties of Abbeville, Anderson, Cherokee, Greenville, Laurens, Oconee, Pickens, Spartanburg and Union;

(2) Area 2, the counties of Aiken, Calhoun, Edgefield, Greenwood, Lexington, McCormick, Newberry, Richland and Saluda;

(3) Area 3, the counties of Chester, Chesterfield, Darlington, Fairfield, Kershaw, Lancaster, Lee, Marlboro and York;

(4) Area 4, the counties of Berkeley, Clarendon, Dillon, Florence, Georgetown, Horry, Marion, Sumter and Williamsburg; and

(5) Area 5, the counties of Allendale, Bamberg, Barnwell, Beaufort, Charleston, Colleton, Dorchester, Hampton, Jasper and Orangeburg."

B. Article 3, Chapter 9, Title 48 is redesignated as 'Land, Water, and Conservation Division Advisory Committee'.

Reporting of financial needs to the Governor eliminated

SECTION 5. Section 48-9-310 of the 1976 Code is amended to read:

"Section 48-9-310. The department may require the commissioners of the respective soil and water conservation districts to submit to it such

statements, estimates, budgets and other information as it may deem necessary."

Nomination and election of Commissioners, updated dates

SECTION 6. Section 48-9-1220 of the 1976 Code is amended to read:

"Section 48-9-1220. Effective November, 1982, and in November of the appropriate years thereafter, three commissioners from each district must be elected. The election must be nonpartisan and must be conducted by the county election commission at the same time as other county officers are elected in the general election.

To be placed on the ballot for county offices, each candidate shall submit to the county election commission a nominating petition with the signatures of one hundred qualified registered electors or one percent of the qualified registered electors of the district, whichever is lesser.

The nominees in the petition must be placed on the appropriate official ballot for the election if the petition is submitted to the county election commission not later than twelve noon on July fifteenth or, if July fifteenth falls on Sunday, no later than twelve noon on the following Monday. The form of the petition must comply with the requirements in Section 7-11-80 pertaining to the conduct of general elections not conflicting with this section. Candidates must be qualified registered electors and residents of the district in which elected.

The three candidates who receive the largest number of votes cast in the election are elected and shall assume office the following February first.

This election must be conducted pursuant to Title 7, mutatis mutandis, except as otherwise provided for in this section.

Effective with the 1990 election, the two candidates who receive the highest number of votes shall serve for terms of four years each and the other candidate who receives the next highest number of votes shall serve for a term of two years. Thereafter, their successors must be elected in a nonpartisan election to be held at the same time as the general election for terms of four years each."

County agricultural agents, deleted discontinued practices

SECTION 7. Section 48-9-1250 of the 1976 Code is amended to read:

"Section 48-9-1250. The commissioners may employ such additional employees and agents, permanent and temporary, as they may require

and shall determine their qualifications, duties and compensation. The commissioners may delegate to their chairman or to one or more agents, or employees such powers and duties as they may deem proper. The commissioners may call upon the Attorney General of the State for such legal services as they may require or may employ their own counsel and legal staff."

Conforming amendments

SECTION 8. Section 48-11-10(13) of the 1976 Code is amended to read:

"(13) 'Division' means Land, Water, and Conservation Division."

Repeal

SECTION 9. Sections 48-9-40 and 48-9-230 of the 1976 Code are repealed. Articles 13 and 15 of Chapter 9, Title 48 of the 1976 Code are repealed.

Time effective

SECTION 10. This act takes effect upon approval by the Governor.

Ratified the 13th day of May, 2019.

Approved the 16th day of May, 2019.

No. 75

(R95, H4013)

AN ACT TO AMEND SECTION 48-22-10, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE CREATION OF THE STATE GEOLOGICAL SURVEY UNIT, SO AS TO CHANGE CERTAIN REQUIREMENTS FOR THE STATE GEOLOGIST; TO AMEND SECTION 48-22-30, RELATING TO THE POWERS AND DUTIES OF THE STATE GEOLOGIST, SO AS TO REQUIRE THAT THE STATE GEOLOGIST BECOME FAMILIAR WITH GEOLOGIC HAZARDS THROUGHOUT

THE STATE; AND TO AMEND SECTION 48-22-40, RELATING TO THE DUTIES OF THE STATE GEOLOGICAL SURVEY UNIT, SO AS TO ESTABLISH NEW DUTIES FOR THE UNIT AND REMOVE CERTAIN MAPPING DUTIES.

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

State Geologist, requirements

SECTION 1. Section 48-22-10 of the 1976 Code is amended to read:

"Section 48-22-10. The South Carolina Geological Survey Unit is established under the Department of Natural Resources. The State Geologist must be hired by the Director of the Department of Natural Resources. He must have graduated from an accredited college or university with a full curriculum in geology and had at least eight years of practical work experience, academic, governmental, or industrial, in geology."

State Geologist, powers and duties

SECTION 2. Section 48-22-30(A)(1) of the 1976 Code is amended to read:

"(1) travel throughout the State so as to make himself familiar with the geology, geologic hazards, and mineral resources of each section;"

Unit duties

SECTION 3. Section 48-22-40 of the 1976 Code is amended to read:

"Section 48-22-40. In addition to other duties assigned to it, the unit:

(1) shall conduct field and laboratory studies in geologic reconnaissance, mapping, evaluating mineral resources, and related gathering of surface and subsurface data. Investigative areas include offshore and onshore lands in this State;

(2) shall make surface and subsurface data available to governmental agencies, private business, and the public by disseminating published geologic information as bulletins, maps, economic reports, and related series and open-file reports;

(3) shall provide geologic advice and assistance to other state and local governmental agencies engaged in environmental protection or in

industrial or economic development projects. In addition, the unit must be involved actively in geologic aspects of regional planning and effective land use in the State;

(4) shall encourage economic development in the State by disseminating published geologic information as bulletins, maps, economic reports, and related series and open-file reports to appropriate governmental agencies and private industry. The unit is encouraged further to initiate and maintain appropriate industrial contacts to promote the extraction and conservation of South Carolina's earth raw materials and their manufacture to the economic improvement of the State;

(5) shall provide unsolicited advice, when appropriate, to the Mining Council and its associated state regulatory agency, on geologic and related mining matters in keeping with the intent of the South Carolina Mining Act;

(6) shall operate and maintain a central, statewide repository for rock cores, well cuttings and related subsurface samples, and all associated supplemental data. Private firms and public agencies are encouraged to notify the unit before exploratory or developmental drilling and coring;

(7) may conduct cooperative work with appropriate agencies of the United States Government in its geologic activities and investigations;

(8) shall provide a minerals research laboratory related to the identification, extraction, and processing of industrial minerals and minerals of economic potential wherever found throughout the onshore and offshore areas of the State. The minerals research laboratory is encouraged to accept mineral research projects from South Carolina businesses or citizens on a per cost, per unit basis and to encourage expended use of the raw materials of the State. The minerals research laboratory may accept public and private gifts or funds and may enter into cooperative agreements for the purpose of applied research in the metallic and nonmetallic minerals of this State;

(9) when appropriate, shall provide unsolicited advice to other state and governmental agencies concerning geologic hazards including, but not limited to, earthquakes, ground liquefaction, sinkhole development and collapse, landslide development, and coastal vulnerability."

Time effective

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

Ratified the 13th day of May, 2019.

Approved the 16th day of May, 2019.

No. 76

(R96, H4020)

AN ACT TO AMEND SECTION 51-1-60, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE POWERS AND DUTIES OF THE DEPARTMENT OF PARKS, RECREATION AND TOURISM, SO AS TO PROVIDE NEW DUTIES FOR THE DEPARTMENT; AND TO REPEAL ARTICLE 3 OF CHAPTER 1, TITLE 51 RELATING TO THE DIVISION OF COMMUNITY DEVELOPMENT.

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

Department of Parks, Recreation and Tourism, new duties added

SECTION 1. Section 51-1-60 of the 1976 Code is amended to read:

"Section 51-1-60. The department may contract, be contracted with, use a common seal, and make and adopt regulations. No regulation may be promulgated affecting hunting and fishing except as provided in Section 51-3-145. The department may accept gifts and acquire by gift, purchase, or otherwise real estate and other property, but no real estate may be purchased or disposed of by the department except on approval of the State Budget and Control Board. The department shall keep accurate records showing in full the receipts and disbursements and the records must be open at any reasonable time to inspection by the public. The department shall submit annually to the General Assembly and the Budget and Control Board reports the board requires. The department shall have the following duties and responsibilities in addition to such other functions as may, from time to time, be assigned by legislative action or by the State Budget and Control Board:

(a) to promote, publicize, and advertise the state's tourist attractions;

(b) to promote the general health and welfare of the people of the State by developing and expanding new and existing recreational areas, including the existing State Park System;

(c) to develop a coordinated plan utilizing to best advantage the natural facilities and resources of the State as a tourist attraction, recognizing that the State has within its boundaries mountainous areas and coastal plains, each of unsurpassed beauty, which with the easy accessibility now existing and being provided, has the potential of attracting many visitors in all seasons to take advantage of the natural scenery, the outdoor sports, including hunting, fishing, and swimming, together with other recreational activities such as golfing, boating, and sightseeing;

(d) to include in its plan the preservation and perpetuation of our state's rich historical heritage by acquiring and owning, recognizing, marking, and publicizing areas, sites, buildings, and other landmarks and items of national and statewide historical interest and significance to the history of our State. No area, site, building, or other landmark shall be acquired for its historical significance without the approval of the Commission of Archives and History;

(e) to use all available services of the several agencies in the management of timber and game and such agencies when requested by the director shall render such cooperation and assistance as may be necessary; provided, that the State Forestry Commission shall continue the forestry program authorized under the provisions of Section 48-23-270;

(f) to lease or convey portions of lands under its jurisdiction to municipalities and other political subdivisions charged with the responsibility of providing parks and recreation facilities; provided, that all such leases shall contain a clause to the effect that if such property ceases to be used as a recreation or park facility, the lease shall be void and in the event of a conveyance, the deed shall contain a clause providing that if such property ceases to be used as a recreation or park facility, the title to such property shall revert to the department. All plans for the development of such lands shall be subject to the approval of the department and it shall retain the right to inspect such lands at such times as it considers necessary to determine if such lands are being used for parks and recreation;

(g) to borrow from time to time from any source available such sums of money as the department at its discretion deems advisable at interest rates approved by the State Fiscal Accountability Authority for the purposes of acquisition, construction, development, and maintenance of such lands and facilities as the director is empowered to operate and issue evidences of such indebtedness thereof in the form of notes or bonds as may be determined by the director. The department may secure any sums borrowed under the terms hereof by mortgage of any property

or facilities owned by it and it may pledge any and all income from any of its properties or facilities. The State is in no manner liable for any debt incurred under the terms hereof but all such obligations shall be met by the department out of monies coming into its hands from the property and facilities so pledged;

(h) to enter into contracts with the United States Government, its various departments, and agencies for the purpose of obtaining funds, property, or any other purpose which will assist the department in carrying out the provisions for which it has been created;

(i) to allocate funds made available to the department, other than funds specifically allocated to it by legislative appropriation or bond authorization, for development and improvement of park properties in the state system and historic sites approved by the Director of the Department of Parks, Recreation and Tourism and the South Carolina Archives and History Commission;

(j) to promote economic diversity in all areas of the State by extending to them the full benefits of tourism and recreational development; and

(k) to coordinate and act as a liaison with regional tourism organizations, local chambers of commerce, and development agencies.

The Department of Parks, Recreation and Tourism shall study and ascertain the state's present park, parkway, and outdoor recreational resources and facilities, the need for such resources and facilities, and the extent to which these needs are now being met. A survey shall be included to determine the land suitable and desirable to be acquired as a part of the state park and outdoor recreational system, due consideration being given to the scenic, recreational, archaeological, and other special features attractive to out-of-state visitors and to the people of the State. The results of this survey and study should be reported to the Governor and the General Assembly at the earliest practicable time."

Repeal

SECTION 2. Article 3 of Chapter 1, Title 51 of the 1976 Code is repealed.

Time effective

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

Ratified the 13th day of May, 2019.

Approved the 16th day of May, 2019.

No. 77

(R97, H4133)

AN ACT TO AMEND SECTION 12-6-3530, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO COMMUNITY DEVELOPMENT TAX CREDITS, SO AS TO ALLOW A TAX CREDIT OF FIFTY PERCENT OF ANY CASH DONATION TO COMMUNITY DEVELOPMENT CORPORATIONS OR COMMUNITY DEVELOPMENT FINANCIAL INSTITUTIONS, TO INCREASE AN AGGREGATE CREDIT PROVISION, TO ESTABLISH TAX CREDIT RESERVE ACCOUNTS FOR THE FIRST THREE QUARTERS OF EACH TAX YEAR SO AS TO AVOID THE DEPLETION OF CREDITS BY AN INDIVIDUAL TAXPAYER, TO DELETE THE PRO-RATA DISTRIBUTION OF TAX CREDITS, TO ALLOW FINANCIAL INSTITUTIONS WITH TAX LIABILITIES IN THIS STATE TO INVEST IN COMMUNITY DEVELOPMENT CORPORATIONS FOR THE PURPOSE OF RECEIVING A TAX CREDIT, AND TO PROVIDE THAT RETURNS ON INVESTMENTS IN CERTIFIED COMMUNITY DEVELOPMENT CORPORATIONS AND CERTIFIED COMMUNITY DEVELOPMENT FINANCIAL INSTITUTIONS MAY NOT EXCEED THE TOTAL AMOUNT OF THE INITIAL INVESTMENT; TO AMEND SECTION 4 OF ACT 314 OF 2000, AS AMENDED, RELATING TO COMMUNITY DEVELOPMENT CORPORATIONS AND FINANCIAL INSTITUTIONS, SO AS TO EXTEND THE PROVISIONS OF THE SOUTH CAROLINA COMMUNITY ECONOMIC DEVELOPMENT ACT UNTIL JUNE 30, 2023; AND BY ADDING SECTION 12-6-3775 SO AS TO PROVIDE FOR AN INCOME TAX CREDIT TO AN INDIVIDUAL OR BUSINESS THAT CONSTRUCTS, PURCHASES, OR LEASES CERTAIN SOLAR ENERGY PROPERTY AND THAT PLACES IT IN SERVICE IN CERTAIN PLACES IN THIS STATE, AND TO DEFINE NECESSARY TERMS.

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

Community development tax credit

SECTION 1. Section 12-6-3530(A), (B), (C), (D), (E), (F), and (L) of the 1976 Code is amended to read:

"(A) A taxpayer may claim as a credit against his state income tax, bank tax, or premium tax liability thirty-three percent of all equity investments in a certified community development corporation or in a community development financial institution, as defined in Section 34-43-20(2) or (3). A taxpayer that makes a cash donation to a certified community development corporation or community development financial institution may claim a credit equal to fifty percent of the donation.

To qualify for this credit the taxpayer must obtain a certificate from the South Carolina Department of Commerce certifying that the entity into which the funds are invested is a community development corporation or a community development financial institution within the meaning of Section 34-43-20(2) or (3) and certifying that the credit taken or available to that taxpayer will not exceed the annual aggregate dollar limitation provided in subsection (B). A taxpayer who invested in good faith in a certified corporation or institution may claim the credit provided in this section, notwithstanding the fact that the certification is later revoked or not renewed by the department.

(B)(1) The total amount of credits allowed pursuant to this section may not exceed in the aggregate five million dollars for all taxpayers and all calendar years and one million dollars for all taxpayers in one calendar year.

(2) Notwithstanding item (1), the aggregate limit for all taxpayers in all tax years set forth in item (1) is increased by one million dollars. This additional one million dollars may only be used for credits earned and certificates issued in tax years beginning after 2018.

(C) The Department of Commerce shall authorize the tax credits each year on a first-come, first-served basis. A single community development corporation or community development financial institution may not receive more than twenty-five percent of the total annual tax credits authorized pursuant to this section. Twenty-five percent of annual tax credits must be held in a reserve account during the first three quarters of each tax year and made available exclusively to small, rural-based, community development corporations. During the first three quarters of any tax year, an individual community

development corporation or a community development financial institution must not be authorized to receive more than fifteen percent of the statewide total annual credits. During the fourth quarter of each tax year, all remaining tax credits are available to all certified community development corporations or community development financial institutions.

(D) The department shall monitor the investments made by taxpayers in community development corporations and community development financial institutions as permitted by this section and shall perform the functions as provided in subsections (A) and (C).

(E) If the amount of the credit determined, pursuant to subsection (A), exceeds the taxpayer's state tax liability for the applicable taxable year, the taxpayer may carry over the excess to the immediately succeeding taxable years. However, the credit carry-over may not be used for a taxable year that begins on or after three years from the date of the acquisition of stock or other equity interest that is the basis for a credit pursuant to this section. The amount of the credit carry-over from a taxable year must be reduced to the extent that the carry-over is used by the taxpayer to obtain a credit provided for in this section for a later taxable year.

(F) The department must not authorize any tax credits after the annual aggregate limitation set forth in subsection (B) has been reached.

(L) Banks and financial institutions with tax liabilities in this State may invest in community development corporations and community development financial institutions incorporated pursuant to the laws of this State, up to a maximum of ten percent of a chartered bank or financial institution's total capital and surplus."

Return on investments in community developments

SECTION 2. Section 12-6-3530 of the 1976 Code is amended by adding an appropriately lettered subsection at the end to read:

"( ) Returns on investments in certified community development corporations and certified community development financial institutions, including the value of any tax credits authorized pursuant to this section, may not exceed the total amount of initial investment in certified community development corporations and community development financial institutions."

Extension of community development tax credits

SECTION 3. Section 4 of Act 314 of 2000, as last amended by Act 46 of 2015, is further amended to read:

"SECTION 4. Unless reauthorized by the General Assembly, the provisions of this act shall terminate on June 30, 2023, 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."

Solar energy tax credit

SECTION 4.A. Article 25, Chapter 6, Title 12 of the 1976 Code is amended by adding:

"Section 12-6-3775. (A) For the purposes of this section, 'solar energy property' means any nonresidential solar energy equipment with a nameplate capacity of at least one thousand nine hundred kilowatts (1,900 kw AC) that uses solar radiation as a substitute for traditional energy for water heating, active space heating and cooling, passive heating, daylighting, generating electricity, distillation, desalination, detoxification, or the production of industrial or commercial process heat. The term also includes related devices necessary for collecting, storing, exchanging, conditioning, or converting solar energy to other useful forms of energy.

(B)(1) A taxpayer is allowed an income tax credit equal to twenty-five percent of the cost, including the cost of installation, of a solar energy property if he constructs, purchases, or leases a solar energy property that is located in the State of South Carolina and if:

(a) the property is located on:

(i) the Environmental Protection Agency's National Priority List;

(ii) the Environmental Protection Agency's National Priority List Equivalent Sites;

(iii) a list of related removal actions, as certified by the Department of Health and Environmental Control;

(iv) land that is subject to a Voluntary Cleanup Contract with the Department of Health and Environmental Control as of December 31, 2017 or to corrective action under the Federal Resource Conservation and Recovery Act of 1976; or

(v) land that is owned by the Pinewood Site Custodial Trust; and

(b) he places it in service in this State during the taxable year.

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

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

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

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

(F) The department may promulgate regulations necessary to implement the provisions of this section."

B. Upon approval by the Governor, this SECTION takes effect in income tax years beginning after 2018. The provisions of this SECTION are repealed on December 31, 2021, except that if the credit allowed by Section 12-6-3775, as added by this SECTION, is earned before the repeal, then the provisions of Section 12-6-3775 continue to apply until the credits have been fully claimed.

Time effective

SECTION 5. This act takes effect upon approval by the Governor and first applies to credits earned and certificates issued, and the administration thereof, after 2018. Any credits earned and certificates issued, and the administration thereof, before 2019 must be claimed in accordance with the provisions of Section 12-6-3530 as it existed on December 31, 2018. However, any credits earned and certificates issued before 2019 must count toward the aggregate credit limit for all taxpayers in all calendar years set forth in Section 12-6-3530(B).

Ratified the 13th day of May, 2019.

Approved the 16th day of May, 2019.

No. 78

(R98, H4239)

AN ACT TO AMEND SECTION 50-5-715, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO TRAWLING RESTRICTION AREAS WITHIN THE GENERAL TRAWLING ZONE, SO AS TO PROVIDE THAT A CERTAIN AREA IS CLOSED TO TRAWLING FROM MAY FIRST THROUGH SEPTEMBER FIFTEENTH AND TO REMOVE LANGUAGE CONCERNING THIS AREA.

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

General trawling zone

SECTION 1. Section 50-5-715(B) and (C) of the 1976 Code is amended to read:

"(B) Those areas described in subsections (A)(1) through (11) are closed to trawling from May 1 through September 15, inclusive.

(C) Reserved."

Time effective

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

Ratified the 13th day of May, 2019.

Approved the 16th day of May, 2019.

No. 79

(R99, H4245)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING ARTICLE 5 TO CHAPTER 17, TITLE 47 SO AS TO PROVIDE IT IS UNLAWFUL TO ADVERTISE, SELL, LABEL, OR MISREPRESENT AS "MEAT" OR "CLEAN MEAT" ALL OR PART OF A CARCASS THAT IS CELL-CULTURED MEAT/PROTEIN, OR IS NOT DERIVED FROM HARVESTED PRODUCTION LIVESTOCK, POULTRY, FISH, OR CRUSTACEANS, TO PROVIDE THAT THIS PROVISION DOES NOT APPLY TO PLANT-BASED MEAT SUBSTITUTES, AND TO PROVIDE A PENALTY.

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

Cell-cultured meat

SECTION 1. Chapter 17, Title 47 of the 1976 Code is amended by adding:

"Article 5

Cell-Cultured Meat

Section 47-17-510. A person who advertises, offers for sale, or sells all or part of a carcass shall not engage in any misleading or deceptive practices, labeling, or misrepresenting a product as 'meat' or 'clean meat' that is cell-cultured meat/protein, or is not derived from harvested production livestock, poultry, fish, or crustaceans.

Section 47-17-520. The provisions of this article do not apply to plant-based meat substitutes.

Section 47-17-530. A person who violates this article is guilty of a misdemeanor and, upon conviction, must be imprisoned not more than one year, or fined not more than one thousand dollars, or both."

Time effective

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

Ratified the 13th day of May, 2019.

Approved the 16th day of May, 2019.

No. 80

(R100, H4276)

AN ACT TO AMEND SECTION 7-7-220, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE DESIGNATION OF VOTING PRECINCTS IN DILLON COUNTY, SO AS TO ELIMINATE THE GADDY'S MILL PRECINCT AND TO REDESIGNATE THE MAP NUMBER ON WHICH THE NAMES OF THESE PRECINCTS MAY BE FOUND AND MAINTAINED BY THE REVENUE AND FISCAL AFFAIRS OFFICE.

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

Designation of Dillon County voting precincts

SECTION 1. Section 7-7-220 of the 1976 Code is amended to read:

"Section 7-7-220. (A) In Dillon County there are the following voting precincts: Bermuda; Carolina; East Dillon; South Dillon; West Dillon; Floydale; Fork; Hamer; Kemper; Lake View; Latta; Little Rock; Manning; Minturn; Mt. Calvary; New Holly; Oak Grove; Oakland; and Pleasant Hill.

(B) The precinct lines defining these precincts are as shown on maps filed with the clerk of court of the county and also on file with the State

Election Commission as provided and maintained by the Revenue and Fiscal Affairs Office and designated as document P-33-19.

(C) Polling places for the precincts provided in this section must be determined by the Board of Voter Registration and Elections of Dillon County with the approval of a majority of the Senators and a majority of the members of the House of Representatives representing Dillon County."

Time effective

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

Ratified the 13th day of May, 2019.

Approved the 16th day of May, 2019.

No. 81

(R101, H4330)

AN ACT TO AMEND SECTION 7-7-290, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE DESIGNATION OF VOTING PRECINCTS IN GREENWOOD COUNTY, SO AS TO REDESIGNATE THE MAP NUMBER ON WHICH THE NAMES OF THESE PRECINCTS MAY BE FOUND AND MAINTAINED BY THE REVENUE AND FISCAL AFFAIRS OFFICE.

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

Greenwood County voting precincts map number redesignated

SECTION 1. Section 7-7-290(B) of the 1976 Code, as last amended by Act 136 of 2018, is further amended to read:

"(B) The precinct lines defining the precincts in subsection (A) are as shown on the official map designated as document P-47-19A on file with the Revenue and Fiscal Affairs Office and as shown on copies provided to the Board of Voter Registration and Elections of Greenwood County.

The official map may not be changed except by act of the General Assembly."

Time effective

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

Ratified the 13th day of May, 2019.

Approved the 16th day of May, 2019.

No. 82

(R102, H4380)

AN ACT TO AMEND SECTION 58-23-1640, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE SAFETY INSPECTION OF TRANSPORTATION NETWORK COMPANY (TNC) VEHICLES, SO AS TO REQUIRE TNC VEHICLES IN THIS STATE TO DISPLAY LICENSE PLATE NUMBERS FROM THE FRONT, TO ESTABLISH ADDITIONAL REQUIREMENTS REGARDING THE FRONT-DISPLAYED LICENSE PLATE NUMBERS, AND TO ESTABLISH MISDEMEANOR OFFENSES FOR MISREPRESENTING ONESELF AS AN AUTHORIZED TNC DRIVER AND KNOWINGLY USING TNC TRADE DRESS OR TNC RIDESHARING APPLICATIONS IN THE FURTHERANCE OF CRIMINAL ACTIVITY.

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

TNC vehicle must display license plate number from vehicle's front, penalties

SECTION 1. Section 58-23-1640 of the 1976 Code is amended by adding appropriately lettered subsections at the end to read:

"( ) At the time of a pick up of a TNC passenger, a TNC vehicle must display the vehicle's license plate number, which must be printed in a legible font of no less than two inches in height and displayed from the front of the TNC vehicle. The display of the license plate number shall

not be required to be permanent and shall not be required to be issued or approved by a TNC or the State, including the Department of Motor Vehicles or the Office of Regulatory Staff.

( ) A person who misrepresents himself as an authorized TNC driver is guilty of a misdemeanor and shall be fined not more than five hundred dollars, imprisoned not more than thirty days, or both.

( ) A person who knowingly engages in the use of a TNC trade dress or a TNC ridesharing application in the furtherance of a criminal activity is guilty of a misdemeanor and shall be fined not more than one thousand dollars, imprisoned for not more than two years, or both."

Time effective

SECTION 2. This act takes effect thirty days after approval by the Governor.

Ratified the 13th day of May, 2019.

Approved the 16th day of May, 2019.

No. 83

(R103, H4243)

AN ACT TO AMEND SECTION 12-6-3360, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE JOB TAX CREDIT, SO AS TO PROVIDE FOR A PROFESSIONAL SPORTS TEAM AND TO PROVIDE REQUIREMENTS THAT SPECIFICALLY APPLY TO A PROFESSIONAL SPORTS TEAM, AND TO INCREASE JOBS TAX CREDIT AMOUNTS IN TIER IV AND TIER III COUNTIES; TO AMEND SECTION 4-9-30, RELATING TO THE DESIGNATION OF POWERS UNDER THE ALTERNATE FORMS OF GOVERNMENT, SO AS TO PROHIBIT THE LEVY OF COUNTY LICENSE FEES AND TAXES ON A PROFESSIONAL SPORTS TEAM; TO AMEND SECTION 5-7-30, RELATING TO POWERS OF A MUNICIPALITY, SO AS TO PROHIBIT THE LEVY OF A BUSINESS LICENSE TAX ON A PROFESSIONAL SPORTS TEAM; BY ADDING SECTION 5-3-20 SO AS TO PROVIDE THAT THE REAL PROPERTY OWNED BY A PROFESSIONAL

SPORTS TEAM MAY NOT BE ANNEXED BY A MUNICIPALITY WITHOUT PRIOR WRITTEN CONSENT OF THE PROFESSIONAL SPORTS TEAM; TO AMEND SECTIONS 11-9-805 AND 11-9-830, AS AMENDED, BOTH RELATING TO THE REVENUE AND FISCAL AFFAIRS OFFICE, SO AS TO REQUIRE THE OFFICE ANNUALLY TO SUBMIT TAX EXPENDITURE REPORTS TO THE GENERAL ASSEMBLY AND TO DEFINE "TAX EXPENDITURE"; AND BY ADDING SECTION 12-10-120 SO AS TO SPECIFY CERTAIN JOB DEVELOPMENT CREDIT REQUIREMENTS THAT APPLY TO A PROFESSIONAL SPORTS TEAM.

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

Tax credits for jobs definitions

SECTION 1. Section 12-6-3360(A) and (M) of the 1976 Code is amended to read:

"(A) Taxpayers that operate manufacturing, tourism, processing, agricultural packaging, warehousing, distribution, research and development, corporate office, qualifying service-related facilities, agribusiness operations, extraordinary retail establishment, professional sports teams, 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.

(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. However, for a professional sports team, 'new job' means all jobs located at the professional sports team park regardless of whether an employee previously worked at an existing location in this State before 2019 as an employee of the same professional sports team. 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 members of a professional sports team, 'full-time' means a job requiring a minimum of one hundred eighty days of an employee's time a year of which at least eighty percent of such days must be spent at a professional sports team park located in South Carolina. For the purposes of this section, two half-time jobs are considered one full-time job. A 'half-time job' is a job requiring a minimum of twenty hours of an employee's time a week for the entire normal year of the company's operations or a job requiring a minimum of twenty hours of an employee's time a week for a year in which the employee was hired initially for or transferred to the South Carolina facility. For agricultural packaging and agribusiness operations, seasonal workers may be considered a full-time employee; however, a seasonal employee only counts as a fraction of a full-time worker, with the numerator being the number of hours worked a week multiplied by the number of weeks worked, and the denominator being the number one thousand eight hundred twenty.

(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 Sector 4881, subsector 488190; or

(b) a business, other than a business engaged in legal, accounting, banking, or investment services (including a business identified under NAICS Section 55) or retail sales, which has a net increase of at least:

(i) one hundred seventy-five jobs at a single location;

(ii) one hundred fifty jobs at a single location comprised of a building or portion of building that has been vacant for at least twelve consecutive months prior to the taxpayer's investment;

(iii) one hundred 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;

(iv) fifty 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

(v) twenty-five 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 Codes, NAICS, 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) 541711 research and development in biotechnology; 2007 NAICS;

(vii) 541712 research and development in physical, engineering, and life sciences; 2007 NAICS;

(viii) 518210 data processing, hosting, and related services;

(ix) 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.

(16) 'Agricultural packaging' means the technology of enclosing or protecting or preserving agricultural products for distribution, storage, sale, and use. Packaging also refers to the process of design, evaluation,

and production of packages used for agricultural products. Packaging can be described as a coordinated system of preparing agricultural goods for transport, warehousing, logistics, sale, and end use.

(17) 'Professional sports team' means a professional sports team or club included in a professional league, such as the National Football League, National Association for Stock Car Racing, or the National Basketball Association, primarily engaged in participating in live sporting events before a paying audience with an annual payroll for federal tax purposes of not less than one hundred ninety million dollars and not less than one hundred fifty full-time employees in this State.

(18) 'Professional sports team park' means a sports facility designed for use primarily as a professional park or stadium. Such a facility may include, without limitation, practice fields and features such as parking areas and facilities, office facilities for team use or other users of the facility as authorized by the professional sports team, and other ancillary facilities necessary for the sports facility. Such a facility also includes the landscaped grounds surrounding the park, stadium, and ancillary facilities.

(19) 'Members of a professional sports team' means active players, players on the disabled list, and any other persons required to travel and who do travel with and perform services on behalf of the professional sports team on a regular basis. This includes coaches, managers, and trainers."

County license tax

SECTION 2. Section 4-9-30(12) of the 1976 Code is amended to read:

"(12) to levy uniform license taxes upon persons and businesses engaged in or intending to engage in a business, occupation, or profession, in whole or in part, within the county but outside the corporate limits of a municipality except those persons who are engaged in the profession of teaching or who are ministers of the gospel and rabbis, except persons and businesses acting in the capacity of telephone, telegraph, gas and electric utilities, suppliers, or other utility regulated by the Public Service Commission and except an entity which is exempt from license tax under another law or a subsidiary or affiliate of any such exempt entity. No county license fee or tax may be levied on insurance companies. No county license fee or tax may be levied on a professional sports team as defined in Section 12-6-3360(M)(17). The license tax must be graduated according to the gross income of the person or business taxed. A business engaged in making loans secured by real

estate is subject to the license tax only if it has premises located in the county but outside the corporate limits of a municipality. If the person or business taxed pays a license tax to another county or to a municipality, the gross income for the purpose of computing the tax must be reduced by the amount of gross income taxed in the other county or municipality."

Municipal license tax

SECTION 3. Section 5-7-30 of the 1976 Code is amended to read:

"Section 5-7-30. Each municipality of the State, in addition to the powers conferred to its specific form of government, may enact regulations, resolutions, and ordinances, not inconsistent with the Constitution and general law of this State, including the exercise of powers in relation to roads, streets, markets, law enforcement, health, and order in the municipality or respecting any subject which appears to it necessary and proper for the security, general welfare, and convenience of the municipality or for preserving health, peace, order, and good government in it, including the authority to levy and collect taxes on real and personal property and as otherwise authorized in this section, make assessments, and establish uniform service charges relating to them; the authority to abate nuisances; the authority to provide police protection in contiguous municipalities and in unincorporated areas located not more than three miles from the municipal limits upon the request and agreement of the governing body of such contiguous municipality or the county, including agreement as to the boundaries of such police jurisdictional areas, in which case the municipal law enforcement officers shall have the full jurisdiction, authority, rights, privileges, and immunities, including coverage under the workers' compensation law, which they have in the municipality, including the authority to make arrests, and to execute criminal process within the extended jurisdictional area; provided, however, that this shall not extend the effect of the laws of the municipality beyond its corporate boundaries; grant franchises for the use of public streets and make charges for them; grant franchises and make charges for the use of public beaches; engage in the recreation function; levy a business license tax on gross income, but a wholesaler delivering goods to retailers in a municipality is not subject to the business license tax unless he maintains within the corporate limits of the municipality a warehouse or mercantile establishment for the distribution of wholesale goods; and a business engaged in making loans secured by real estate is not subject to the

business license tax unless it has premises located within the corporate limits of the municipality and no entity which is exempt from the license tax under another law nor a subsidiary or affiliate of an exempt entity is subject to the business license tax; and a business engaged in operating a professional sports team as defined in Section 12-6-3360(M)(17) is not subject to the business license tax; borrow in anticipation of taxes; and pledge revenues to be collected and the full faith and credit of the municipality against its note and conduct advisory referenda. The municipal governing body may fix fines and penalties for the violation of municipal ordinances and regulations not exceeding five hundred dollars or imprisonment not exceeding thirty days, or both. If the person or business taxed pays a business license tax to a county or to another municipality where the income is earned, the gross income for the purpose of computing the tax must be reduced by the amount of gross income taxed in the other county or municipality.

For the purpose of providing and maintaining parking for the benefit of a downtown commercial area, a municipality may levy a surtax upon the business license of a person doing business in a designated area in an amount not to exceed fifty percent of the current yearly business license tax upon terms and conditions fixed by ordinance of the municipal council. The area must be designated by council only after a petition is submitted by not less than two-thirds of the persons paying a business license tax in the area and who paid not less than one-half of the total business license tax collected for the preceding calendar year requesting the designation of the area. The business within the designated area which is providing twenty-five or more parking spaces for customer use is required to pay not more than twenty-five percent of a surtax levied pursuant to the provisions of this paragraph."

Annexation

SECTION 4. Chapter 3, Title 5 of the 1976 Code is amended by adding:

"Section 5-3-20. No municipality may annex, under the provisions of this chapter, any real property owned by a professional sports team as defined in Section 12-6-3360(M)(17) without prior written consent of the professional sports team."

Tax credits for jobs

SECTION 5. Section 12-6-3360 of the 1976 Code is amended by adding an appropriately lettered subsection at the end to read:

"( ) If a professional sports team claims the credit allowed by this section, then the Department of Revenue shall report the net number of new full-time jobs created in this State by the professional sports team, the average cash compensation of the new full-time jobs created by the professional sports team, and the aggregated residency status of the employee or employees filling the new full-time jobs created by the professional sports team. The department shall provide the report to the Chairman of the Senate Finance Committee, the Chairman of the House Ways and Means Committee, and the Governor beginning on May first of the year immediately following the year in which the first new full-time job is created by the professional sports team, and on May first each year thereafter. In reporting statistics pursuant to this subitem, the department must comply with the requirements of Section 12-54-240(B)(1)."

Definition

SECTION 6. Section 11-9-805 of the 1976 Code, as amended by Act 246 of 2018, is further amended by adding an appropriately numbered item to read:

"( ) 'Tax expenditure' means an amount of state revenue unavailable for general fund appropriation when the loss of revenue is attributable to a provision of the South Carolina Code of Laws which allow a special exclusion, exemption, or deduction from gross income, which provide a special credit, a preferential rate of tax, or a deferral of tax liability or which allocate or distribute state funds pursuant to an incentive program or fund."

Tax expenditure report

SECTION 7. Section 11-9-830 of the 1976 Code, as last amended by Act 246 of 2018, is further amended by adding an appropriately numbered item to read:

"( ) compile and report to the General Assembly, not later than the first day of March each year, a list of each individual tax expenditure from the prior fiscal year and the estimated tax expenditure for the current fiscal year. The report must indicate the specific enactment and program which authorized the expenditure and apply to all tax expenditures in excess of one hundred thousand dollars."

Tax credits for jobs

SECTION 8. Section 12-6-3360(C) of the 1976 Code is amended to read:

"(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) twenty-five thousand dollars for each new full-time job created in 'Tier IV' counties.

(b) twenty 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 reduced by fifty percent."

Tax credits for jobs

SECTION 9. A.Section 12-6-3360 of the 1976 Code is amended by adding a subsection at the end to read:

"(O) The provisions of this section that specifically apply to a professional sports team only apply if that specific professional sports team creates the new full-time jobs in this State as specified in subsection (M)(17) by July 1, 2022, and the professional sports team otherwise meets the requirements to claim the credit allowed by this section. However, this subsection does not apply to a professional sports team that entered into a revitalization agreement with the South Carolina Coordinating Council for Economic Development before July 1, 2022."

B.The provisions of Sections 4-9-30 and 5-7-30 relating to a professional sports team, and the provisions of Section 5-3-20 only apply so long as the job and payroll provisions of Section 12-6-3360(M)(17) and (O) continue to be met by the professional sports team.

Tax credits for jobs

SECTION 10. Chapter 10, Title 12 of the 1976 Code is amended by adding:

"Section 12-10-120. No credit may be awarded pursuant to this chapter until the minimum job requirement set forth in Section 12-6-3360(M)(17) has been fully met. Further, the council may not award any partial credit if the same minimum job requirement is not fully met. The provisions of this section only apply to a professional sports team pursuant to Section 12-6-3360."

Severability

SECTION 11. 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 12. This act takes effect upon approval by the Governor.

Ratified the 21st day of May, 2019.

Approved the 22nd day of May, 2019.

No. 84

(R104, H3137)

AN ACT TO AMEND CHAPTER 27, TITLE 6, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE STATE AID TO SUBDIVISIONS ACT, SO AS TO DELETE THE REQUIREMENT THAT THE FUND RECEIVE NO LESS THAN FOUR AND ONE-HALF PERCENT OF THE GENERAL FUND REVENUES OF THE LATEST COMPLETED FISCAL YEAR, TO DELETE A PROVISION REGARDING MIDYEAR CUTS, TO PROVIDE THAT THE APPROPRIATION TO THE FUND MUST BE ADJUSTED BY THE SAME PERCENTAGE THAT GENERAL FUND REVENUES ARE PROJECTED TO INCREASE OR DECREASE, IF APPLICABLE, BUT NOT TO EXCEED FIVE PERCENT, TO REQUIRE THAT THE ADJUSTMENT, IF APPLICABLE, BE INCLUDED IN ALL STAGES OF THE BUDGET PROCESS, AND TO DELETE A PROVISION REQUIRING AMENDMENTS TO THE STATE AID TO SUBDIVISIONS ACT BE INCLUDED IN SEPARATE LEGISLATION.

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

State aid to subdivisions

SECTION 1. Chapter 27, Title 6 of the 1976 Code is amended to read:

"CHAPTER 27

State Aid to Subdivisions Act

Section 6-27-10. This chapter may be cited as the 'State Aid to Subdivisions Act'.

Section 6-27-20. There is created the Local Government Fund administered by the State Treasurer. This fund is part of the general fund of the State. The Local Government Fund must be financed as provided in this chapter.

Section 6-27-30. (A) In the annual general appropriations act, the General Assembly must appropriate funds to the Local Government Fund.

(B)(1) In any fiscal year in which general fund revenues are projected to increase or decrease, the appropriation to the Local Government Fund for the upcoming fiscal year must be adjusted by the same projected percentage change, but not to exceed five percent, when compared to the appropriation in the current fiscal year. For purposes of this subsection, beginning with the initial forecast required pursuant to Section 11-9-1130, the percentage adjustment in general fund revenues must be determined by the Revenue and Fiscal Affairs Office by comparing the current fiscal year's recurring general fund expenditure base with the Board of Economic Advisors' most recent projection of recurring general fund revenue for the upcoming fiscal year. Upon the issuance of the initial forecast, the Executive Director of the Revenue and Fiscal Affairs Office, or his designee, shall notify the Chairman of the Senate Finance Committee, the Chairman of the House Ways and Means Committee, and the Governor of the projected percentage adjustment. The executive director, or his designee, shall provide similar notice if subsequent modifications to the forecast change the projected percentage adjustment. However, the forecast in effect on February fifteenth of the current fiscal year is the final forecast for which the percentage adjustment is determined, and no subsequent forecast modifications shall have any effect on that determination.

(2) The Governor shall include the appropriation required by this chapter to the Local Government Fund in the Executive Budget.

(3) The Revenue and Fiscal Affairs Office shall determine the current fiscal year's recurring general fund expenditure base, and determine any projected adjustment in general fund revenues. If a

change is projected, the appropriation for the upcoming fiscal year must be adjusted accordingly.

(C) For purposes of this section:

(1) 'Recurring general fund revenue' means the forecast of recurring general fund revenues pursuant to Section 11-9-1130 after the amount apportioned to the Trust Fund for Tax Relief, as required in Section 11-11-150, is deducted.

(2) 'Recurring general fund expenditure base' means the total recurring general fund appropriations authorized in the current general appropriations act less any reduced appropriations mandated by the General Assembly or the Executive Budget Office pursuant to Section 11-9-1140(B).

Section 6-27-40. (A) No later than thirty days after the end of the calendar quarter, the State Treasurer shall distribute the monies appropriated to the Local Government Fund as follows:

(1) Eighty-three and two hundred seventy-eight thousandths percent must be distributed to counties. Of the total distributed to counties, each county must receive an amount based on the ratio that the county's population is of the whole population of this State according to the most recent United States Census.

(2) Sixteen and seven hundred twenty-two thousandths percent must be distributed to municipalities. Of the total distributed to municipalities, each municipality must receive an amount based on the ratio that the municipality's population is of the population of all municipalities in this State according to the most recent United States Census.

(B) In making the quarterly distribution to counties, the State Treasurer must notify each county of the amount that must be used for educational purposes relating to the use of alcoholic liquors and for the rehabilitation of alcoholics and drug addicts. Counties may pool these funds with other counties and may combine these funds with other funds for the same purposes. The amount that must be used as provided in this subsection is equal to twenty-five percent of the revenue derived pursuant to Section 12-33-245 allocated on a per capita basis according to the most recent United States Census.

Section 6-27-55. From funds distributed to the county pursuant to Section 6-27-40, a county council shall provide a reasonable amount of funds for all county offices of state agencies for which the council is required to provide funding by state law."

Time effective

SECTION 2. This act takes effect upon approval by the Governor and first applies to the annual general appropriations bill process for Fiscal Year 2020-2021.

Ratified the 22nd day of May, 2019.

Approved the 24th day of May, 2019.

No. 85

(R106, H3602)

AN ACT TO AMEND SECTION 44-66-30, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO PERSONS AUTHORIZED TO MAKE HEALTH CARE DECISIONS FOR A PATIENT WHO IS UNABLE TO CONSENT, SO AS TO ADD AN ADDITIONAL CATEGORY OF SUCH PERSONS AND FOR OTHER PURPOSES; AND TO AMEND SECTIONS 44-26-40, 44-26-50, AND 44-26-60, ALL RELATING TO HEALTH CARE DECISION MAKING FOR CLIENTS WITH INTELLECTUAL DISABILITIES OR WHO ARE MINORS, SO AS TO MAKE TECHNICAL CORRECTIONS AND CONFORMING CHANGES.

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

Persons authorized to make health care decisions for a patient unable to consent

SECTION 1. Section 44-66-30(A) of the 1976 Code is amended to read:

"(A) Where a patient is unable to consent, decisions concerning his health care may be made by the following persons in the following order of priority:

(1) a guardian appointed by the court pursuant to Article 5, Part 3 of the South Carolina Probate Code, if the decision is within the scope of the guardianship;

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

(3) a spouse of the patient unless the spouse and the patient are separated pursuant to one of the following:

(a) entry of a pendente lite order in a divorce or separate maintenance action;

(b) formal signing of a written property or marital settlement agreement; or

(c) entry of a permanent order of separate maintenance and support or of a permanent order approving a property or marital settlement agreement between the parties;

(4) an adult child of the patient, or if the patient has more than one adult child, a majority of the adult children who are reasonably available for consultation;

(5) a parent of the patient;

(6) an adult sibling of the patient, or if the patient has more than one adult sibling, a majority of the adult siblings who are reasonably available for consultation;

(7) a grandparent of the patient, or if the patient has more than one grandparent, a majority of the grandparents who are reasonably available for consultation;

(8) any other adult relative by blood or marriage who reasonably is believed by the health care professional to have a close personal relationship with the patient, or if the patient has more than one other adult relative, a majority of those other adult relatives who are reasonably available for consultation;

(9) a person given authority to make health care decisions for the patient by another statutory provision;

(10) if, after good faith efforts, the hospital or other health care facility determines that the persons listed in items (1) through (9) are unavailable to consent on behalf of the patient, a person who has an established relationship with the patient, who is acting in good faith on behalf of the patient, and who can reliably convey the patient's wishes but who is not a paid caregiver or a provider of health care services to the patient. For the purposes of this item, a person with an established relationship is an adult who has exhibited special care and concern for the patient, who is generally familiar with the patient's health care views and desires, and who is willing and able to become involved in the patient's health care decisions and to act in the patient's best interest. The person with an established relationship shall sign and date a notarized acknowledgement form, provided by the hospital or other

health care facility in which the patient is located, for placement in the patient's records, setting forth the nature and length of the relationship and certifying that he meets such criteria. Along with the notarized acknowledgment form, the hospital or other health care facility shall include in the patient's medical record documentation of its effort to locate persons with higher priority under this statute as required by subsection (B)."

Competency to consent to major medical treatment

SECTION 2. Section 44-26-40 of the 1976 Code is amended to read:

"Section 44-26-40. If a client resides in a facility operated by or contracted to by the department, the determination of that client's competency to consent to or refuse major medical treatment must be made pursuant to Section 44-66-20 of the Adult Health Care Consent Act. The department shall abide by the decision of a client found competent to consent."

Health care decisions of incompetent clients

SECTION 3. Section 44-26-50 of the 1976 Code is amended to read:

"Section 44-26-50. If the client is found incompetent to consent to or refuse major medical treatment, the decisions concerning his health care must be made pursuant to Section 44-66-30 of the Adult Health Care Consent Act. An authorized designee of the department may make a health care decision pursuant to Section 44-66-30(A)(9) of the Adult Health Care Consent Act. The person making the decision must be informed of the need for major medical treatment, alternative treatments, and the nature and implications of the proposed health care and shall consult the attending physician before making decisions. When feasible, the person making the decision shall observe or consult with the client found to be incompetent."

Health care decisions of minor clients

SECTION 4. Section 44-26-60(C) of the 1976 Code is amended to read:

"(C) Priority under this section must not be given to a person if a health care provider, responsible for the care of a client who is unable to

consent, determines that the person is not reasonably available, is not willing to make health care decisions for the client, or is unable to consent as defined in Section 44-66-20 of the Adult Health Care Consent Act."

Time effective

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

Ratified the 22nd day of May, 2019.

Approved the 24th day of May, 2019.

No. 86

(R107, H3789)

AN ACT TO AMEND SECTIONS 56-1-35, 56-1-40, 56-1-140, 56-1-210, 56-1-2100, 56-1-3350, AND 56-1-2080, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE ISSUANCE, RENEWAL, AND EXPIRATION OF CERTAIN DRIVERS' LICENSES, BEGINNERS' PERMITS, COMMERCIAL DRIVER LICENSES, AND SPECIAL IDENTIFICATION CARDS, THE PLACEMENT OF A VETERAN DESIGNATION ON A DRIVER'S LICENSE OR SPECIAL IDENTIFICATION CARD, AND THE ISSUANCE OF COMMERCIAL DRIVER LICENSES AND COMMERCIAL DRIVER INSTRUCTION PERMITS, SO AS TO REVISE THE PERIOD IN WHICH DRIVERS' LICENSES, CERTAIN COMMERCIAL DRIVER LICENSES, AND COMMERCIAL DRIVER INSTRUCTION PERMITS ARE VALID, TO REVISE THE FEES TO OBTAIN DRIVERS' LICENSES, CERTAIN COMMERCIAL DRIVER LICENSES, AND SPECIAL IDENTIFICATION CARDS, TO REVISE THE DOCUMENTS THAT MUST BE PROVIDED TO THE DEPARTMENT OF MOTOR VEHICLES TO OBTAIN A VETERAN DESIGNATION ON A DRIVER'S LICENSE OR A SPECIAL IDENTIFICATION CARD, TO MAKE TECHNICAL CHANGES, TO PROVIDE THAT A PERSON IS PERMITTED TO HAVE ONLY ONE DRIVER'S LICENSE OR IDENTIFICATION CARD, AND TO DELETE THE PROVISION

THAT PERTAINS TO THE RENEWAL OR REISSUANCE OF A COMMERCIAL DRIVER INSTRUCTION PERMIT.

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

Driver's license

SECTION 1. Section 56-1-35 of the 1976 Code is amended to read:

"Section 56-1-35. A member of the armed services of the United States or his dependent who becomes a permanent resident of this State, has ninety days to apply for a South Carolina driver's license, and he must be issued a license without examination except for the visual test required by Section 56-1-210 if he has a valid driver's license from another state or territory of the United States. The license expires eight years from the date of issue."

Driver's license

SECTION 2. Section 56-1-40(7) of the 1976 Code is amended to read:

"(7) who is not a resident of South Carolina. For purposes of determining eligibility to obtain or renew a South Carolina driver's license, the term 'resident of South Carolina' shall expressly include all persons authorized by the United States Department of Justice, the United States Immigration and Naturalization Service, or the United States Department of State to live, work, or study in the United States on a temporary or permanent basis who present documents indicating their intent to live, work, or study in South Carolina. These persons and their dependents are eligible to obtain a motor vehicle driver's license or have one renewed pursuant to this provision. A driver's license issued pursuant to this item to a person who is not a lawful permanent resident of the United States shall expire on the later of: (1) the expiration date of the driver's license applicant's authorized period of stay in the United States; or (2) the expiration date of the driver's license applicant's employment authorization document. However, a driver's license issued pursuant to this item is valid for at least one year but not more than eight years from the date of its issue. Under this provision, a driver's license valid for not more than four years must be issued upon payment of a fee of twelve dollars and fifty cents. A driver's license that is valid for more than four years must be issued upon payment of a fee of twenty-five dollars. In addition, a person pending adjustment of status who presents

appropriate documentation to the Department of Motor Vehicles shall be granted a one-year extension of his driver's license which is renewable annually;"

Driver's license

SECTION 3. Section 56-1-140 of the 1976 Code is amended to read:

"Section 56-1-140. (A) Upon payment of a fee of twenty-five dollars for a license that is valid for eight years, the department shall issue to every qualified applicant a driver's license as applied for by law. The license must bear on it a distinguishing number assigned to the licensee, the full name, date of birth, residence address, a brief description and laminated colored photograph of the licensee, any marking otherwise required or in compliance with law, and a facsimile of the signature of the licensee. No license is valid until it has been so signed by the licensee. The license authorizes the licensee to operate only those classifications of vehicles as indicated on the license.

(B) An applicant for a new, renewed, or replacement driver's license may apply to the department to obtain a veteran designation on the front of his driver's license by providing a:

(1) United States Department of Defense discharge certificate, also known as a DD Form 214, that shows a characterization of service, or discharge status of 'honorable' or 'general under honorable conditions' and establishes the person's qualifying military service in the United States armed forces;

(2) National Guard Report of Separation and Record of Service, also known as an NGB Form 22, that shows a characterization of service, or discharge status of 'honorable' or 'general under honorable conditions' and establishes the person's qualifying military service of at least twenty years in the National Guard; or

(3) Veterans Identification Card (VIC) or a letter from a Military Reserve component notifying the recipient of the person's eligibility for retirement pay at age sixty (twenty-year letter). A Veterans Health Identification Card (VHIC) may not be accepted.

(C) The department may determine the appropriate form of the veteran designation on the driver's license authorized pursuant to this section.

(D) The fees collected pursuant to this section must be credited to the Department of Transportation State Non-Federal Aid Highway Fund."

Driver's license

SECTION 4. Section 56-1-210(A) of the 1976 Code is amended to read:

"(A) A license expires eight years from the date of issue."

Commercial driver license

SECTION 5. Section 56-1-2100(E) of the 1976 Code is amended to read:

"(E) Upon payment of a fee of twenty-five dollars and any fee assessed by any associated federal agency, a commercial driver license for which there is no associated HAZMAT endorsement issued by the department expires eight years from the date of issue. Upon payment of a fee of fifteen dollars and any fee assessed by any associated federal agency, a commercial driver license for which there is an associated HAZMAT endorsement issued by the department expires five years from the date the applicant passed the Transportation Security Administration threat assessment."

Identification card

SECTION 6. Section 56-1-3350(B), (C), and (D) of the 1976 Code is amended to read:

"(B) An applicant for a new, renewed, or replacement South Carolina identification card may apply to the Department of Motor Vehicles to obtain a veteran designation on the front of his identification card by providing a:

(1) United States Department of Defense discharge certificate, also known as a DD Form 214, that shows a characterization of service, or discharge status of 'honorable' or 'general under honorable conditions' and establishes the person's qualifying military service in the United States armed forces;

(2) National Guard Report of Separation and Record of Service, also known as an NGB Form 22, that shows a characterization of service, or discharge status of 'honorable' or 'general under honorable conditions' and establishes the person's qualifying military service of at least twenty years in the National Guard; or

(3) Veterans Identification Card (VIC) or a letter from a Military Reserve component notifying the recipient of the person's eligibility for retirement pay at age sixty (twenty-year letter). A Veterans Health Identification Card (VHIC) may not be accepted.

(C)(1) The fee for the issuance of the special identification card is fifteen dollars for a person between the ages of five and sixteen years.

(2) One identification card must be issued free to a person aged seventeen years or older per issuance cycle. A ten-dollar fee must be charged to replace a special identification card before its expiration date.

(D) The identification card expires eight years from the date of issuance. A person is not permitted to have more than one valid motor vehicle driver's license or identification card at any time."

Commercial driver instruction permit

SECTION 7. Section 56-1-2080(3) of the 1976 Code is amended to read:

"(3) The commercial driver instruction permit may not be issued for longer than one year."

Time effective

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

Ratified the 22nd day of May, 2019.

Approved the 24th day of May, 2019.

No. 87

(R108, H3821)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, SO AS TO ENACT THE "ADVANCED PRACTICE REGISTERED NURSE ACT"; AND TO AMEND SECTION 40-33-34, AS AMENDED, RELATING TO MEDICAL ACTS THAT ADVANCED PRACTICE REGISTERED NURSES MAY PERFORM, SO AS TO INCLUDE CERTIFYING THE

MANNER OF DEATH AND EXECUTING DO NOT RESUSCITATE ORDERS EXCEPT IN CERTAIN CIRCUMSTANCES, AND TO PERMIT THE PRESCRIBING OF SCHEDULE II NARCOTIC SUBSTANCES FOR PATIENTS RESIDING IN LONG-TERM CARE SETTINGS IN CERTAIN CIRCUMSTANCES.

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

Citation

SECTION 1. This act must be known and may be cited as the "Advanced Practice Registered Nurse Act".

Allowed medical acts

SECTION 2. Section 40-33-34(D)(2) and (F)(1)(e) and (f) of the 1976 Code, as last amended by Act 234 of 2018, is further amended to read:

"(2) Notwithstanding any provisions of state law other than this chapter and Chapter 47, and to the extent permitted by federal law, an APRN may perform the following medical acts unless otherwise provided in the practice agreement:

(a) provide noncontrolled prescription drugs at an entity that provides free medical care for indigent patients;

(b) certify that a student is unable to attend school but may benefit from receiving instruction given in his home or hospital;

(c) refer a patient to physical therapy for treatment;

(d) pronounce death, certify the manner and cause of death, and sign death certificates pursuant to the provisions of Chapter 63, Title 44 and Chapter 8, Title 32;

(e) issue an order for a patient to receive appropriate services from a licensed hospice as defined in Chapter 71, Title 44;

(f) certify that an individual is handicapped and declare that the handicap is temporary or permanent for purposes of the individual's application for a placard; and

(g) execute a do not resuscitate order pursuant to the provisions of Chapter 78, Title 44.

(e) may include Schedule II narcotic substances if listed in the practice agreement and as authorized by Section 44-53-300, provided, however, that the prescription must not exceed a five-day supply and

another prescription must not be written without the written agreement of the physician with whom the nurse practitioner, certified nurse-midwife, or clinical nurse specialist has entered into a practice agreement, unless the prescription is written for patients in hospice or palliative care or for patients residing in long-term care facilities;

(f) may include Schedule II narcotic substances for patients in hospice or palliative care, or for patients in long-term care facilities, if listed in the practice agreement as authorized by Section 44-53-300, provided, however, that each such prescription must not exceed a thirty-day supply;"

Time effective

SECTION 3. This act takes effect sixty days after approval by the Governor.

Ratified the 22nd day of May, 2019.

Approved the 24th day of May, 2019.

No. 88

(R109, H3986)

AN ACT TO AMEND ARTICLE 3 OF CHAPTER 5, TITLE 11, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE "ABLE SAVINGS PROGRAM" SO AS TO RENAME THE PROGRAM THE "PALMETTO ABLE SAVINGS PROGRAM" AND TO MAKE CONFORMING CHANGES; TO AMEND SECTION 12-6-1140, AS AMENDED, RELATING TO INCOME TAX DEDUCTIONS, SO AS TO MAKE CONFORMING CHANGES; AND TO DIRECT THE CODE COMMISSIONER TO MAKE CERTAIN CONFORMING CHANGES.

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

Palmetto ABLE Savings Program

SECTION 1. Article 3, Chapter 5, Title 11 of the 1976 Code is amended to read:

"Article 3

Palmetto ABLE Savings Program

Section 11-5-400. There is established the 'Palmetto ABLE Savings Program'. The purpose of the Palmetto ABLE Savings Program is to authorize the establishment of savings accounts empowering individuals with a disability and their families to save private funds which can be used to provide for disability related expenses in a way that supplements, but does not supplant, benefits provided through private insurance, the Medicaid program under Title XIX of the Social Security Act, the supplemental security income program under Title XVI of the Social Security Act, the beneficiary's employment, and other sources; and to provide guidelines for the maintenance of these accounts.

Section 11-5-410. As used in this article:

(1) 'Palmetto ABLE account' or 'account' means an individual savings account established in accordance with the provisions of this article and pursuant to Section 529A of the federal Internal Revenue Code of 1986, as amended.

(2) 'Account owner' means the person who enters into a Palmetto ABLE account agreement pursuant to the provisions of this article. The account owner also must be the designated beneficiary; however, a trustee, guardian, or conservator may be appointed as an account owner for a designated beneficiary who is a minor or lacks capacity to enter into an agreement. Also, the agent of the designated beneficiary acting under durable power of attorney may open and manage an account on behalf of and in the name of a designated beneficiary who lacks capacity.

(3) 'Designated beneficiary' means an eligible individual whose qualified disability expenses may be paid from the account. The designated beneficiary must be an eligible individual at the time the account is established. The account owner may change the designated beneficiary so long as the new beneficiary is an eligible individual who is a qualified member of the family of the designated beneficiary at the time of the change.

(4) 'Eligible individual', as defined in Section 529A(e)(1) of the federal Internal Revenue Code of 1986, as amended, means:

(a) an individual who is entitled to benefits based on blindness or disability pursuant to 42 U.S.C. Section 401, et seq., or 42 U.S.C. Section 1381, as amended, and the blindness or disability occurred before the date on which the individual attained age twenty-six; or

(b) an individual with respect to which a disability certification, as defined in Section 529A(e)(2) of the federal Internal Revenue Code of 1986, as amended, to the satisfaction of the Secretary of the United States Treasury is filed with the Secretary for a taxable year and the blindness or disability occurred before the date on which the individual attained age twenty-six.

(5) 'Financial organization' means an organization authorized to do business in this State and is:

(a) licensed or chartered by the Director of Insurance;

(b) licensed or chartered by the State Commissioner of Banking;

(c) chartered by an agency of the federal government; or

(d) subject to the jurisdiction and regulation of the federal Securities and Exchange Commission.

(6) 'Management contract' means a contract executed by the State Treasurer and a program manager selected to act as a depository or manager of the program, or both.

(7) 'Member of the family' has the meaning defined in Section 529A of the federal Internal Revenue Code of 1986, as amended.

(8) 'Nonqualified withdrawal' means a withdrawal from an account which is not:

(a) a qualified withdrawal; or

(b) a rollover distribution.

(9) 'Program' means the Palmetto ABLE Savings Program established pursuant to this article.

(10) 'Program manager' means a financial organization or an agency or department of another state that has been designated to administer a qualified ABLE Program selected by the State Treasurer to act as a depository or manager of the program, or both.

(11) 'Qualified disability expense' means any qualified disability expense included in Section 529A of the federal Internal Revenue Code of 1986, as amended.

(12) 'Qualified withdrawal' means a withdrawal from an account to pay the qualified disability expenses of the designated beneficiary of the account.

(13) 'Rollover distribution' means a rollover distribution as defined in Section 529A of the federal Internal Revenue Code of 1986, as amended.

(14) 'Savings agreement' means an agreement between the program manager or the State Treasurer and the account owner.

(15) 'Secretary' means the Secretary of the United States Treasury.

Section 11-5-420. (A) The State Treasurer shall implement and administer the program under the terms and conditions established by this article. The State Treasurer has the authority and responsibility to:

(1) develop and implement the program in a manner consistent with the provisions of this article;

(2) engage the services of consultants on a contract basis for rendering professional and technical assistance and advice;

(3) seek rulings and other guidance from the Secretary and the federal Internal Revenue Service relating to the program;

(4) make changes to the program required for the participants in the program to obtain the federal income tax benefits or treatment provided by Section 529A of the federal Internal Revenue Code of 1986, as amended;

(5) charge, impose, and collect administrative fees and service charges in connection with any agreement, contract, or transaction relating to the program;

(6) develop marketing plans and promotional materials;

(7) establish the methods by which the funds held in accounts must be dispersed;

(8) establish the method by which funds must be allocated to pay for administrative costs;

(9) do all things necessary and proper to carry out the purposes of this article;

(10) adopt rules and promulgate regulations necessary to effectuate the provisions of this article;

(11) prepare an annual report of the Palmetto ABLE Savings Program to the Governor, the Senate, and the House of Representatives; and

(12) notify the Secretary when an account has been opened for a designated beneficiary and submit other reports concerning the program required by the Secretary.

(B) The State Treasurer may contract with other states in developing the program.

Section 11-5-430. (A) The State Treasurer may implement the program through use of program managers as account depositories or managers, or both. The State Treasurer may solicit proposals from program managers to act as depositories or managers of the program, or both. Program managers submitting proposals shall describe the investment instruments to be held in accounts. The State Treasurer may select more than one program manager and investment instrument for the program. The State Treasurer may select as program depositories or

managers the program managers, from among the bidding program managers, that demonstrate the most advantageous combination, both to potential program participants and this State, of the following factors:

(1) financial stability and integrity of the program manager;

(2) the safety of the investment instrument being offered;

(3) the ability of the program manager to satisfy recordkeeping and reporting requirements;

(4) the program manager's plan for promoting the program and the investment the organization is willing to make to promote the program;

(5) the fees, if any, proposed to be charged to the account owners;

(6) the minimum initial deposit and minimum contributions that the financial organization requires;

(7) the ability of the program manager to accept electronic withdrawals, including payroll deduction plans; and

(8) other benefits to the State or its residents included in the proposal, including fees payable to the State to cover expenses of the operation of the program.

(B) The State Treasurer may enter into contracts with program managers necessary to effectuate the provisions of this article. A management contract must include, at a minimum, terms requiring the program managers to:

(1) take action required to keep the program in compliance with requirements of this article and take actions not contrary to its contract to manage the program to qualify as a 'qualified ABLE Program' as defined in Section 529A of the federal Internal Revenue Code of 1986, as amended;

(2) keep adequate records of each account, keep each account segregated, and provide the State Treasurer with the information necessary to prepare the statements required by Section 11-5-440;

(3) compile and total information contained in statements required to be prepared under Section 11-5-440 and provide compilations to the State Treasurer;

(4) if there is more than one program manager, provide the State Treasurer with information as is necessary to determine compliance with Section 11-5-440;

(5) provide the State Treasurer with access to the books and records of the program manager to the extent needed to determine compliance with the contract, this article, and Section 529A of the federal Internal Revenue Code of 1986, as amended;

(6) hold all accounts for the benefit of the account owner, owners, or the designated beneficiary;

(7) be audited at least annually by a firm of certified public accountants selected by the program manager, with the approval of the State Treasurer, and provide the results of the audit to the State Treasurer;

(8) provide the State Treasurer with copies of all regulatory filings and reports made by the program manager during the term of the management contract or while the program manager is holding any accounts, other than confidential filings or reports that are not part of the program. The program manager shall make available for review by the State Treasurer the results of the periodic examination of the manager by any state or federal banking, insurance, or securities commission, except to the extent that a report or reports may not be disclosed under law; and

(9) ensure that any description of the program, whether in writing or through the use of any media, is consistent with the marketing plan developed pursuant to the provisions of this article.

(C) The State Treasurer may:

(1) enter into contracts as he considers necessary and proper for the implementation of the program;

(2) require that an audit be conducted of the operations and financial position of the program depository and manager at any time if the State Treasurer has any reason to be concerned about the financial position, the recordkeeping practices, or the status of accounts of the program depository and manager; and

(3) terminate or not renew a management agreement. If the State Treasurer terminates or does not renew a management agreement, the State Treasurer shall take custody of accounts held by the program manager and shall seek to promptly transfer the accounts to another financial organization that is selected as a program manager or depository and into investment instruments as similar to the original instruments as possible.

(D) The State Treasurer, the Department of Social Services, the Department of Health and Human Services, and the Department of Disability and Special Needs are authorized to exchange data regarding eligible individuals to carry out the purposes of this article.

Section 11-5-440. (A) A Palmetto ABLE account established pursuant to the provisions of this article must be opened by a designated beneficiary, a designated beneficiary's agent under a durable power of attorney, a trustee holding funds for the benefit of a designated beneficiary, or a court appointed guardian or conservator of a designated beneficiary. Each designated beneficiary may have only one account.

The State Treasurer may establish a nonrefundable application fee. An application for an account must be in the form prescribed by the State Treasurer and contain the following:

(1) name, address, and social security number of the account owner;

(2) name, address, and social security number of the designated beneficiary, if the account owner is the beneficiary's trustee or guardian;

(3) certification relating to no excess contributions; and

(4) additional information as the State Treasurer may require.

(B) A person may make contributions to a Palmetto ABLE account after the account is opened, subject to the limitations imposed by Section 529A of the federal Internal Revenue Code of 1986, as amended, or any adopted rules and regulations promulgated by the State Treasurer pursuant to this article.

(C) Contributions to a Palmetto ABLE account may be made only in cash. The State Treasurer or program manager shall reject or withdraw contributions promptly:

(1) in excess of the limits established pursuant to subsection (B); or

(2) the total contributions if the:

(a) value of the account is equal to or greater than the account maximum established by the State Treasurer. The account maximum must be equal to the account maximum for post secondary education savings accounts; or

(b) designated beneficiary is not an eligible individual in the current calendar year.

(D)(1) An account owner may:

(a) change the designated beneficiary of an account to an individual who is a qualified member of the family of the prior designated beneficiary in accordance with procedures established by the State Treasurer; and

(b) transfer all or a portion of an account to another ABLE account, the designated beneficiary of which is a member of the family as defined in Section 529A of the federal Internal Revenue Code of 1986, as amended.

(2) An account owner may not use an interest in an account as security for a loan. A pledge of an interest in an account is of no effect.

(E)(1) If there is any distribution from an account to an individual or for the benefit of an individual during a calendar year, the distribution must be reported to the federal Internal Revenue Service and each account owner, the designated beneficiary, or the distributee to the extent required by state or federal law.

(2) A statement must be provided to each account owner annually and at other increments established by the State Treasurer in the program guidelines. The statement must contain the information the State Treasurer requires to be reported to the account owner.

(3) A statement and information relating to an account must be prepared and filed to the extent required by this article and other state or federal law.

(F)(1) The program shall provide separate accounting for each designated beneficiary. An annual fee may be imposed upon the account owner for the maintenance of an account.

(2) Funds held in a Palmetto ABLE account:

(a) are exempt from attachment, execution, or garnishment for claims of creditors of the contributor and the designated beneficiary;

(b) to the fullest extent permissible under state and federal law, will be disregarded for the purposes of determining a designated beneficiary's eligibility to receive, or the amount of, any public assistance available to the designated beneficiary, including Medicaid; and

(c) following the death of a designated beneficiary, may be subject to recovery by the South Carolina Department of Health and Human Services up to an amount equal to the total of Medicaid benefits, if any, paid on behalf of the designated beneficiary by the state Medicaid program, but only to the extent recovery is required by state or federal law. Recovery by the State is subject to regulations imposed by the Secretary.

(3) The amount distributed from a Palmetto ABLE account for the purposes of paying qualified disability expenses:

(a) are exempt from attachment, execution, or garnishment for claims of creditors of the contributor and the designated beneficiary; and

(b) to the fullest extent permissible under state and federal law, will be disregarded for the purposes of determining a designated beneficiary's eligibility to receive, or the amount of, any public assistance available to the designated beneficiary, including Medicaid.

(G) To the extent earnings in an ABLE account and distributions from an ABLE account, or a qualified account under Section 529A located in another state, are not subject to federal income tax, they will not be subject to state income tax.

Section 11-5-450. (A) Nothing in this article may create or be construed to create any obligation of the State Treasurer, the State, or any agency or instrumentality of the State to guarantee for the benefit of an account owner or designated beneficiary with respect to the:

(1) return of principal;
(2) rate of interest or other return on an account; or
(3) payment of interest or other return on an account.

(B) The State Treasurer may adopt rules and promulgate regulations to provide that each contract, application, or other similar document that may be used in connection with opening an account clearly indicates that the account is not insured by the State and that the principal deposited and the investment return are not guaranteed by the State.

Section 11-5-460. (A) The Palmetto ABLE Savings Program Trust Fund is established in the Office of the State Treasurer. The trust fund must be utilized if the State Treasurer elects to accept deposits from contributors rather than have deposits sent directly to the program manager. The trust fund must consist of any monies deposited by account owners and other contributors pursuant to the provisions of this article which are not deposited directly with the program manager. All interest derived from the deposit and investment of monies in the trust fund must be credited to the fund. At the end of each fiscal year, all unexpended and unencumbered monies in the trust fund must remain in the fund and not be credited or transferred to the state general fund or to another fund.

(B)(1) The Palmetto ABLE Savings Expense Fund is established in the Office of the State Treasurer. The expense fund must consist of monies received from the Palmetto ABLE Savings Program manager or managers, governmental or private grants, and state general fund appropriations, if any, for the program.

(2) All expenses incurred by the State Treasurer in developing and administering the Palmetto ABLE Savings Program must be payable from the Palmetto ABLE Savings Expense Fund."

Palmetto ABLE Savings Expense Fund Income Tax Deduction

SECTION 2. Section 12-6-1140(12)(b) of the 1976 Code is amended to read:

"(b) Any interest, dividends, gains, property, or income accruing on the payments made to an investment trust agreement pursuant to Article 3, Chapter 5, Title 11, or on any account in the Palmetto ABLE Savings Expense Fund or a qualified fund under Section 529A located in another state, must be excluded from the gross income of any such account owner, contributor, or beneficiary for purposes of South Carolina income taxes, to the extent the amounts remain on deposit in the Palmetto ABLE

Savings Expense Fund or are withdrawn pursuant to a qualified withdrawal."

Conforming changes

SECTION 3. The Code Commissioner is directed to change or correct all references to the "ABLE Savings Program" to the "Palmetto ABLE Savings Program." References to the ABLE Savings Program in the 1976 Code or other provisions of law are considered to be and must be construed to mean the "Palmetto ABLE Savings Program."

Time effective

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

Ratified the 22nd day of May, 2019.

Approved the 24th day of May, 2019.

No. 89

(R112, H4004)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, TO ENACT THE "PHYSICIAN ORDERS FOR SCOPE OF TREATMENT (POST) ACT" BY ADDING CHAPTER 80 TO TITLE 44 SO AS TO ENABLE CERTAIN PERSONS TO EXECUTE A POST FORM SIGNED BY A PHYSICIAN THAT SETS FORTH THE PATIENT'S WISHES AS TO HEALTH CARE WHERE THE PATIENT HAS BEEN DIAGNOSED WITH A SERIOUS ILLNESS OR MAY BE EXPECTED TO LOSE CAPACITY WITHIN TWELVE MONTHS; TO REQUIRE HEALTH CARE PROVIDERS AND HEALTH CARE FACILITIES TO ACCEPT A POST FORM AS A VALID MEDICAL ORDER AND TO COMPLY WITH THE ORDER, WITH EXCEPTIONS; TO REQUIRE THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL TO PERFORM CERTAIN DUTIES WITH RESPECT TO OVERSEEING POST FORMS AND TO PROMULGATE REGULATIONS; TO PROVIDE IMMUNITY FROM CIVIL AND CRIMINAL

LIABILITY AND FROM DISCIPLINARY ACTION FOR CERTAIN PERSONS ACTING IN ACCORDANCE WITH PROVISIONS OF THE CHAPTER; TO ALLOW A POST FORM TO BE REVOKED BY THE PATIENT OR PATIENT'S LEGAL REPRESENTATIVE; AND FOR OTHER PURPOSES.

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

Citation

SECTION 1. This chapter may be cited as the "Physician Orders for Scope of Treatment (POST) Act".

Physician Orders for Scope of Treatment (POST) Act

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

"CHAPTER 80

Physician Orders for Scope of Treatment Act

Section 44-80-10. As used in this chapter:

(1) 'Advance care planning' or 'ACP' means the making of decisions by a person about the care the person wants to receive if the person becomes unable to communicate or consent to care and the documentation of those decisions by acceptable methods recognized by the State.

(2) 'Advance directive' means a written statement such as a health care power of attorney executed in accordance with Section 62-5-504, in which an individual expresses certain wishes relating to life-sustaining treatment, including resuscitative services.

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

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

(5) 'Emergency medical technician (EMT)' when used in general terms for emergency medical personnel, means an individual possessing a valid EMT, advanced EMT (AEMT), or paramedic certificate issued by the State pursuant to the provisions of Section 44-61-20.

(6) 'Health care facility' means any nonfederal public or private institution, building, agency, or portion thereof, whether for-profit or not-for-profit, that is used, operated, or designed to provide health

services; medical treatment; or nursing, rehabilitative or preventive care to any person or persons. This includes, but is not limited to, ambulatory surgical facilities, health maintenance organizations, home health agencies, hospices, hospitals, infirmaries, intermediate care facilities, kidney treatment centers, long-term care facilities, medical assistance facilities, mental health centers, outpatient facilities, public health centers, rehabilitation facilities, residential treatment facilities, skilled nursing facilities, and adult daycare centers. The term also includes, but is not limited to, the following related property when used for or in connection with the foregoing: laboratories; research facilities; pharmacies; laundry facilities; health personnel training and lodging facilities; patient, guest, and health personnel food service facilities; and offices or office buildings for persons engaged in health care professions or services.

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

(8) 'Legal representative' means a person with priority to make health care decisions for a patient pursuant to the Adult Health Care Consent Act.

(9) 'Patient' means an individual who presents or is presented to a health care provider for treatment.

(10) 'Physician' means a doctor of medicine or doctor of osteopathic medicine licensed by the South Carolina Board of Medical Examiners.

(11) 'Physician Orders for Scope of Treatment (POST) form' means a designated document designed for use as part of advance care planning, the use of which must be limited to situations where the patient has been diagnosed with a serious illness or, based upon medical diagnosis, may be expected to lose capacity within twelve months and consists of a set of medical orders signed by a patient's physician addressing key medical decisions consistent with patient goals of care concerning treatment at the end of life that is portable and valid across health care settings.

(12) 'Serious illness' means a condition which, based upon best medical judgment, is likely to result in death within a period of not to exceed twelve months.

Section 44-80-20. The department shall:

(1) oversee the POST form and its future iterations;

(2) display a printable sample of the POST form currently being used by the department on the department's or a designee's publicly accessible website, along with any related information the department chooses to post; however, if posted on a designee's website, the

department shall post a link on its website to the form and any related information;

(3) develop a statewide, uniform process for identifying a patient who has executed any advance directive, a POST form, or a combination of advance directives and a POST form;

(4) develop a process for collecting feedback to facilitate the periodic redesign of the POST form in accordance with current health care best practices;

(5) develop POST-related education efforts for health care professionals and the public; and

(6) promulgate regulations necessary to perform the duties assigned and ensure compliance with the provisions of this chapter.

Section 44-80-30. (A) The POST form must be a uniform document based on the standards recommended by the National Physician Orders for Life-Sustaining Treatment (POLST) paradigm and must include the information set forth in subsection (C).

(B) A copy, facsimile, or electronic version of a completed POST form is considered to be legal.

(C) The POST form must include the following information:

(1) patient name and contact information;

(2) date of birth;

(3) effective date of form;

(4) diagnosis;

(5) treatment plan;

(6) health care representative or health care agent contact information;

(7) CPR preference;

(8) medical intervention preferences;

(9) preferences for antibiotics; and

(10) assisted nutrition and hydration preferences.

Section 44-80-40. (A) A POST form executed in South Carolina as provided in this chapter, or a similar form executed in another jurisdiction in compliance with the laws of that jurisdiction, must be deemed a valid expression of a patient's wishes as to health care. A South Carolina health care provider or health care facility may accept a properly executed POST form as a valid expression of whether the patient consents to the provision of health care in accordance with Section 44-66-60 of the Adult Health Care Consent Act.

(B) A health care provider or health care facility that is unwilling to comply with an executed POST form based on policy, religious beliefs,

or moral convictions shall contact the patient's health care representative, health care agent, or the person authorized to make health care decisions for the patient pursuant to Section 44-66-30 of the Adult Health Care Consent Act, and the health care provider or health care facility shall allow the transfer of the patient to another health care provider or health care facility.

(C) A health care provider including, but not limited to, a physician, physician assistant, advance practice registered nurse, registered nurse, or emergency medical technician, who in good faith complies with a POST form, is not subject to criminal prosecution, civil liability or disciplinary penalty for complying with the POST form executed in accordance with this chapter and the Adult Health Care Consent Act.

Section 44-80-50. (A) A POST form may be revoked at any time by an oral or written statement by the patient or a patient's legal representative.

(B) A revocation is only effective upon communication to the health care provider or health care facility by the patient or the patient's legal representative.

(C) The execution of a POST form by a patient, or the patient's legal representative, pursuant to this chapter automatically revokes any previously executed POST form.

Section 44-80-60. (A) Any individual acting in good faith as a legal representative who executes a POST form on behalf of an incapacitated patient in accordance with this chapter, the Adult Heath Care Consent Act, and regulations promulgated pursuant to those statutes is not subject to criminal prosecution or civil liability for executing the POST form.

(B) A health care provider, health care facility, or other person who has not received actual notice of the revocation of a POST form and complies with the wishes stated in the POST form is not subject to civil or criminal liability or professional disciplinary action for actions taken pursuant to this chapter which are in accordance with reasonable medical standards. This subsection provides an affirmative defense to any civil, criminal, or professional disciplinary action filed or instituted against a health care provider, health care facility, or other person for conduct authorized by this chapter.

Section 44-80-70. This chapter may not be construed to condone, authorize, or approve suicide, physician-assisted suicide, or euthanasia, or to permit any affirmative or deliberate act or omission of an act to end life other than to permit the natural process of dying. Death resulting

from the withholding or withdrawal of life-sustaining procedures pursuant to an executed POST form and in accordance with this chapter does not, for any purpose, constitute a suicide, homicide, or vulnerable adult abuse or neglect.

Section 44-80-80. (A) The executing of a POST form does not in any manner affect the sale, procurement, or issuance of any policy of life insurance, nor shall it be deemed to modify the terms of an existing policy of life insurance. A policy of life insurance is not legally impaired or invalidated in any manner by the withholding or withdrawal of life-sustaining procedures pursuant to this chapter notwithstanding any term of the policy to the contrary.

(B) Execution of a POST form is voluntary. A health care provider, health care facility, health care service plan, insurer issuing disability insurance, self-insured employee benefit plan, or nonprofit hospital plan may not require any person to execute a POST form as a condition of being insured for, or receiving, health care services.

Section 44-80-90. (A) The absence of a POST form does not give rise to a presumption concerning the intent of a patient with respect to the consent to or refusal of life-sustaining procedures. A health care provider or health care facility must be guided by the patient's stated wishes, or if unable to consent or otherwise communicate, the wishes as stated by the patient's surrogate decision maker as provided in Section 44-66-30 of the Adult Health Care Consent Act, as well as the established standards of care.

(B) Nothing in this chapter may be interpreted to interfere with the right of an individual to make decisions regarding use of life-sustaining procedures as long as the individual is able to do so, or to impair or supersede any right or responsibility that any legal representative or other authorized person has to order the withholding or withdrawal of medical care in any lawful manner. In that respect, the provisions of this chapter are cumulative.

(C) The execution of a POST form is always voluntary and is for a person with an advanced illness. The POST form records a patient's wishes for medical treatment in the patient's current state of health. Preferred medical treatment as stated by the patient on the POST form may be changed at any time by the patient or a designated health care representative or health care agent of the patient to reflect the patient's new wishes. While no form can anticipate and address all medical treatment decisions that may need to be made, an advance health care directive applies regardless of health status. An advance directive allows

a patient to document in detail future health care instructions and to name a health care agent to speak on the patient's behalf if the patient is unable to communicate to ensure that the patient's advance directive wishes as to life-sustaining medical treatment are fulfilled.

Section 44-80-100. A POST form executed pursuant to this chapter remains effective until revoked or until a new POST form is executed pursuant to this chapter. Any physician who is responsible for the creation and execution of a POST form shall make reasonable efforts to periodically review and update the POST form with the patient as the patient's needs dictate but at least once per year.

Section 44-80-110. An advanced practice registered nurse (APRN) may create, execute, and sign a POST form if authorized to do so by his or her practice agreement. The POST form must be for a patient of the APRN, the physician with whom the APRN has entered into a practice agreement, or both.

Section 44-80-120. A physician assistant (PA) may create, execute, and sign a POST form if authorized to do so by his or her scope of practice guidelines. The POST form must be for a patient of that PA, the PA's supervising physician, or both."

Time effective

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

Ratified the 22nd day of May, 2019.

Approved the 24th day of May, 2019.

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ASHLEY HARWELL-BEACH
Code Commissioner
P. O. Box 11489
Columbia, S.C. 29211