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South Carolina House of Representatives

Legislative Update

David H. Wilkins, Speaker of the House

Vol. 16

February 2, 1999

No. 04

CONTENTS

Week in Review	02
House Committee Action	05
Bills Introduced in the House This Week	08

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WEEK IN REVIEW – JANUARY 25-29, 1999

HOUSE FLOOR

The House of Representatives amended, approved and sent to the Senate, H.3002, the Gambling Cruise Prohibition Act. The bill targets casino boat companies which operate what are commonly referred to as "cruises to nowhere," in which boats dock at coastal ports and proceed to travel outside of the state's territorial waters into international waters where they offer Las Vegas style gambling such as craps, roulette, blackjack, etc. The legislation comes in response to an October 1998 ruling of Federal District Judge David Norton which states that federal law allows such casino gambling ship operations in coastal states unless the individual states have passed legislation that specifically prohibits casino boat gambling. As amended, this bill emphasizes that gambling offenses provided under the South Carolina Constitution and state laws apply to any vessel where the voyage begins and ends in the waters of this state. The bill also references standards expressed in the United States Code, specifically the Johnson Act Amendments of 1992. H.3002 prohibits gambling cruises that embark from a point in South Carolina and return to a point in South Carolina, regardless of whether or not the gambling takes place in or outside of the waters of South Carolina. This bill also prohibits individuals from managing, supervising, controlling, operating, or owning a craft intentionally used for gambling cruises. As amended, the bill prohibits the repair of a gambling device on cruises that embark from a point in South Carolina and return to a point in South Carolina, regardless of the location of the United States or foreign documented vessel when the repairs are made. Penalties are established for failure to comply.

The House approved two measures which propose to shorten the General Assembly's legislative session. The House amended and sent to the Senate, H.3155, a joint resolution proposing to amend the South Carolina Constitution so as to provide that the General Assembly will convene on the second Tuesday in January in even-numbered years and on the second Tuesday in February in odd-numbered years. The proposed amendments provide for an organizational meeting of the Senate and House of Representatives in even-numbered years for the purposes of organization and electing officers. During odd-numbered years, the officers of the House and Senate would convene on the second Tuesday in January for not more than two days in order to 1) accept any bills or resolutions introduced by a member, and 2) refer the bills and resolutions to the appropriate committees. The revised times for convening are designed to allow time at the beginning of odd-numbered years for committees to consider legislation and, by February, generate a sufficient workload to justify meetings of the full House and Senate. The proposed amendments eliminate certain antiquated language and provide that if casualties of war or contagious disease make it unsafe to meet at the seat of government, then the Governor by proclamation may appoint a more secure place to meet. Proposed amendments also provide that members of the General Assembly should not be compensated for more than forty days in any one session.

The House also approved and sent to the Senate H.3156, a bill which changes the date for *sine die* adjournment of the General Assembly from the first Thursday in June to the second Thursday in May. Currently, in any year the House of Representatives fails to give third reading to the appropriations bill by March 31, then the date of *sine die* adjournment is extended by one statewide day for each statewide day after March 31 that the House of Representatives fails to give the bill third reading. This bill retains this process of automatic extension of the session, but changes the House's deadline for passage of the appropriations bill from March 31 to March 15.

The House passed H.3332, a bill which ratifies the amendment approved by voters at the last general election authorizing the State Treasurer to invest endowment funds donated to state-supported institutions of higher learning.

The House approved and sent to the Senate H.3259 a joint resolution which allows a state individual income tax deduction for retirement income, not to exceed three thousand dollars a year, for taxable years 1994 through 1997, for taxpayers who elected to defer a retirement income deduction until age sixty-five or who failed to make such an election.

The House approved and sent to the Senate H.3302 which exempts from the state sales and use tax the purchase price paid by the lessee during or at the end of the term of a consumer automobile lease pursuant to the provisions of the lease, to the extent that the sales tax has already been paid on the lease. When the lessee purchases the automobile during or at the end of the term of the lease, sales tax remaining to be paid by the lessee on the purchase price is due and payable at that time.

The House approved and sent to the Senate H.3184. This bill provides that if a regulation is not approved or disapproved within two years of being submitted for General Assembly Review, then 1) the regulation is deemed permanently withdrawn, and 2) the promulgating agency must re-file the regulation as a new regulation in accordance with the Administrative Procedures Act.

The House approved and sent to the Senate H.3174 which amends the statute relating to defrauding a keeper of hotel, motel, inn, boardinghouse, rooming house, café or restaurant. This bill adds campground to the listed lodging accommodations.

The House also approved and sent to the Senate H.3261 a joint resolution which repeals a joint resolution enacted on December 19, 1843, which granted exclusive use of the marshlands at the northeast end of Sullivan's Island to David Truesdell to use for planting oysters during the pleasure of the General Assembly.

The House gave second reading to H.3341 which allows for the rate flexibility established under the comprehensive automobile insurance revisions of Act 154 of 1997 to go into effect on schedule regardless of whether the rates are filed with the Department of Insurance prior to March 1, 1999.

SENATE FLOOR

During this past week, the Senate addressed three bills relating to school days missed by children. H.3264 (Dorchester County), H.3289 (Cherokee County), and S.407 (Buena Vista Elementary in Greenville County) were read for the third time and having received three readings in both Houses, it was ordered that the titles be changed to Acts and all three enrolled for ratification.

On Tuesday, January 26, the following bills were read for the third time and ordered sent to the House: (1) S.36 a bill that requires a person serving in an office elected by the General Assembly, who is not seeking re-election, to give written notice to the joint committee for the review of candidates, (2) S. 65 a bill requiring the Code Commissioner to annotate in the Code certain unpublished federal opinions, (3) S.109 a bill allowing a process server to serve a summons and complaint or other judicial documents on Sunday, (4) S.129 pertaining to renaming Johns Island 5A Voting Precinct, and (5) S.247 relating to voting precincts in Florence County.

On Tuesday, the Senate gave second reading with notice of general amendments to S.127, a bill which provides that the fees collected from special retail beer and wine permits may be used for affordable housing initiatives. This bill also provides that fees collected from temporary permits for Sunday liquor sales may be used for affordable housing initiatives. On Wednesday, January 27, the bill was read for the third time and ordered sent to the House.

Also on Tuesday, the Senate amended and gave second reading with notice of general amendments to the following bills: (1) S.44 a bill relating to criminal record searches for charitable organizations, and (2) S. 60 a bill relating to legal state holidays. On Wednesday, S.60 was read for the third time and ordered sent to the House. Also on Wednesday, S.44 was amended, read for the third time and ordered sent to the House.

The Senate gave second reading to the following bills on Tuesday: (1) S.21 a bill relating to the ill-treatment of animals, and (2) S.27 a bill making it unlawful to give away a live animal as a prize for, or other inducement to enter any contest, game, other competition, inducement to enter a place of amusement, incentive to enter into any business agreement. On Wednesday, January 27, both bills were read for the third time and ordered sent to the House.

On Wednesday the Senate adopted a committee amendment and gave second reading to S.118 relating to exempting ferrets from the prohibition on the sale of wild carnivores as pets. On Thursday, January 28, the bill was read for the third time and ordered sent to the House.

On Wednesday the Senate resumed the interrupted debate on S.1, a joint resolution proposing to amend the State Constitution so as to authorize lotteries conducted in the State with the net revenue used solely to support improvements and enhancements to education. After much debate, S.1 was read the second time with notice of general amendments, carrying over all amendments to the third reading. On Thursday the Senate resumed consideration of S.1, the question being the third reading of the joint resolution. Senator Drummond gave notice of his intent to make a motion to close

debate on S.1 on Tuesday, February 2, 1999. However, debate on this joint resolution was interrupted when the Senate entered into executive session.

On Thursday, after the seal of secrecy of executive session was removed, (1) Ms. Rita Margaret McKinney's appointment as the Director of the Department of Labor, Licensing, and Regulation, and (2) Mr. Charles Seignious Way Jr.'s appointment as Secretary of the Department of Commerce were confirmed in open session.

On Thursday S.399, a bill relating to public notices and public hearings for certain rate increases in insurance lines, was amended, read for the third time, and ordered sent to the House.

Also on Thursday, the following bills were given second reading: (1) S.322 a bill that adds Chesterfield County to the list of those counties that have both a register of deeds and a clerk of court and adds Chesterfield County to the list of those counties in which the governing body appoints the register of deeds, (2) S.332 a bill that ratifies an amendment to the State Constitution so as to delete the prohibition against a marriage between a white person with a Negro, mulatto, or person with one-eighth or more of Negro blood, and (3) S.352 a bill that ratifies an amendment to the State Constitution relating to the qualifications of senators and members of the House.

HOUSE COMMITTEE ACTION

AGRICULTURE, NATURAL RESOURCES, AND ENVIRONMENTAL AFFAIRS

The full Agriculture, Natural Resources, and Environmental Affairs Committee did not meet this week.

EDUCATION AND PUBLIC WORKS

The full Education and Public Works Committee did not meet this week.

JUDICIARY

The Judiciary Committee gave a favorable recommendation with amendments to H.3108, the Truth in Sentencing / Advisory Sentencing Guidelines bill. This bill extends the provisions of Truth in Sentencing to all crimes in South Carolina requiring that offenders serve a minimum of eighty-five percent of their sentence. (Act 83 of 1995 provided Truth in Sentencing for only those offenses with maximum possible penalties of twenty years or more.) This bill also phases out parole, and offenders who commit their crimes after the effective date of this bill will not be eligible for parole release.

H.3108 also establishes Advisory Sentencing Guidelines to complement Truth in Sentencing for all offenses with maximum possible penalties of one year or more. Guidelines weigh the seriousness of the current offense with the offender's prior record

to determine an appropriate sentence. Generally, the Guidelines recommend longer prison sentences for more serious and violent offenders while recommending community punishments for less serious offenders. There is a severability provision in the event any portion of the bill is found to be unconstitutional. The provisions of this bill apply prospectively.

The Judiciary Committee proposes an amendment to H.3108 that would require a defendant to be put under oath when testifying regarding the accuracy of his or her prior criminal record at sentencing. Under this proposed amendment, the State may move to reconsider a defendant's sentence within one hundred eighty days of sentencing, if it can be proven that the defendant willfully provided false information regarding his or her prior criminal record. Also under this proposed amendment, false information provided by a defendant may be considered an aggravating circumstance which may provide cause for deviating upward from the recommended sentencing guidelines' sentence.

The Judiciary Committee proposes to further amend H.3108 by adding The South Carolina Truth in Military Confinement Act. Under this proposed amendment, military personnel who are sentenced to a period of confinement pursuant to a general, special, or summary court martial would serve the full term of confinement, without possibility for early release.

The Judiciary Committee gave a favorable recommendation to H.3184. This bill provides that if a regulation is not approved or disapproved within two years of being submitted for General Assembly Review, then 1) the regulation is deemed permanently withdrawn, and 2) the promulgating agency must re-file the regulation as a new regulation in accordance with the Administrative Procedures Act.

The Judiciary Committee gave a favorable report with amendment to H.3062, a bill that authorizes a state agency to establish, collect, and retain a fine to cover the charges associated with a check dishonored due to insufficient funds. Under this bill, the fine may be used only for the purpose of covering the costs associated with the dishonored check and any unused amounts must be carried forward to the following fiscal year.

As introduced, H.3062 provides that a state agency "may establish, collect, and retain a fine." The Judiciary Committee proposes an amendment to this bill whereby the language is changed to provide that a state agency "must attempt to collect a dishonored check." This proposed amendment authorizes a state agency to retain collected revenues equal to the face amount of the dishonored check as well as a twenty-five dollar service charge. The proposed amendment further provides that any unused amounts must be deposited in the general fund at the end of the fiscal year.

The Judiciary gave a favorable recommendation to H.3174. This bill amends *South Carolina Code of Laws* §45-1-50, the statute relating to defrauding a keeper of hotel, motel, inn, boardinghouse, rooming house, café or restaurant. This bill adds campground to the listed lodging accommodations, and the bill defines the term "campground." The bill also makes minor grammatical changes to the statute.

By a division vote, the Judiciary Committee gave a favorable report with amendment to H.3181. The bill, as introduced, prohibits an inmate from filing a civil action or

appealing a judgment in a civil action, if while in prison the inmate has had three actions in either state or federal court dismissed on the grounds that they were either frivolous, malicious, or failed to state a cause of action. If such an inmate files a fourth civil action, under H.3181 the inmate may be held in contempt of court. The Judiciary Committee proposes an amendment that would delete this provision from the bill.

H.3181 also requires the Department of Corrections and the Insurance Reserve Fund to maintain a data base of prisoners who file civil actions. The Department of Corrections and the Insurance Fund are charged with notifying the Attorney General if an inmate violates the provisions of this bill.

H.3181 requires a complaint filed on behalf of a prisoner to include the inmate's assigned number.

H.3181 allows a court to dismiss without prejudice a civil action brought by a prisoner against a victim or witness when a prisoner fails to pay certain filing fees and court costs.

Under H.3181, a prisoner may be subject to forfeiting all or part of his or her work, education, or good conduct credits for misconduct in cases brought by the prisoner against a victim or witness in connection with a crime the prisoner has been convicted of regardless of whether or not the prisoner was incarcerated for that crime.

The Judiciary also gave a favorable recommendation to H.3261. This joint resolution proposes to repeal a joint resolution enacted on December 19, 1843, which granted exclusive use of the marshlands at the northeast end of Sullivan's Island to David Truesdell to use for planting oysters during the pleasure of the General Assembly.

LABOR, COMMERCE AND INDUSTRY

The full Labor, Commerce and Industry Committee did not meet this week.

MEDICAL, MILITARY, PUBLIC AND MUNICIPAL AFFAIRS

The full Medical, Military, Public and Municipal Affairs Committee did not meet this week.

WAYS AND MEANS

The full Ways and Means Committee did not meet this week.

BILLS INTRODUCED IN THE HOUSE THIS WEEK

AGRICULTURE, NATURAL RESOURCES, AND ENVIRONMENTAL AFFAIRS

H.3343 RESTRICTIONS ON FISHING FOR DOLPHIN Rep. Sharpe

This bill establishes a fishing season for dolphin and places limits on the number of dolphins which may be caught on recreational and commercial fishing vessels. Penalties are established for violations.

H.3344 HUNTING ON THE RIGHTS-OF-WAY OF PUBLIC ROADS Rep. Sharpe

This bill provides that it is unlawful for a person to hunt on, or to shoot a weapon from, into, or across, the right-of-way of any primary paved road. A violator is guilty of a misdemeanor and must be fined not more than five hundred dollars or imprisoned for not more than thirty days; unless the violation involves personal injury or property damage in which case the fine is not more than five thousand dollars and/or imprisonment for not more than one year. The bill adds this crime to the list of crimes for which the uniform traffic ticket is used. The bill eliminates an existing misdemeanor of hunting on public roads and raises the penalty for hunting on the rights-of-way of a railroad from one hundred to three hundred dollars.

H.3345 TAKING OF ANTLERLESS DEER Rep. Sharpe

This bill authorizes the Department of Natural Resources to issue statewide individual tags for taking antlerless deer. Such statewide tags do not apply to properties receiving antlerless deer quota permits.

H.3346 CHARLESTON COUNTY PARK, RECREATION AND TOURIST DISTRICT Rep. Campsen

This bill adds the provision and maintenance of golf courses to the list of activities permitted for the Charleston Park, Recreation and Tourism District.

H.3360 EMERGENCY FUNDS FROM FLORIDA FOREST FIRES Rep. Koon

This joint resolution authorizes the SC Forestry Commission to retain expenses reimbursed to it by the Federal Emergency Management Agency through the state of Florida so that these funds may be used for the travel expenses and repair and maintenance of fire protection equipment involved in the Florida forest fire emergency of 1998.

H.3374 STRIPED BASS TAKEN FROM LAKE MURRAY Rep. Fleming

This bill provides that the size limit on striped bass taken from Lake Murray during the months of June, July, August, and September is reduced from twenty-one inches to eighteen inches.

H.3391 ANIMAL FEEDING OPERATIONS Rep. Harris

This bill revises requirements for those applying to build or expand an animal feeding operation. Under current law, only animal feeding operations which would exceed a specified production capacity are required to publish required notifications of an intent to build or expand a facility. Under the bill, all animal feeding operations, regardless of capacity, must adhere to notification requirements. The bill also adds two notification requirements: applicants must notify: (1) persons residing on property within one

thousand feet of the property line of the animal feeding operation applicant, and (2) all members of the county governing board. The bill provides that all required notifications must be conducted by certified mail, return receipt requested. Under current law, a public hearing must be conducted only if there are at least twenty requests for such a hearing. Under the bill, a public hearing shall be conducted for all animal feeding operation applications.

H.3393 TRANSFER OF CERTIFICATE OF TITLE ON WATERCRAFT Rep. Law

This bill provides that a certificate of title on watercraft may not be transferred if the Department of Natural Resources has notice that property taxes are owed on the watercraft or outboard motor.

H.3407 ILL TREATMENT OF ANIMALS Rep. Limehouse

This bill increases the possible terms of imprisonment and fines for ill treatment of an animal. The bill also deletes the current requirement that a first offense for this charge must be tried in magistrate's or municipal court.

H.3409 PELTS OF CERTAIN DOMESTICATED ANIMALS Rep. Limehouse

This bill provides that it is illegal to import, buy, or sell the pelt or an item made from the pelt of a domesticated or feral cat or dog. The bill provides that a person who violates this provision is guilty of a misdemeanor and upon conviction must be imprisoned.

EDUCATION AND PUBLIC WORKS

H.3340 SPECIAL LICENSE TAGS Rep. Allison

This bill provides that special license tags which are currently issued for vehicles of certain disabled persons must be issued for vehicles not more than six thousand pounds empty dry weight that are not used for commercial purposes.

H.3368 SC SCHOOL SEXUAL ASSAULT & HARASSMENT INFORMATION ACT Rep. Inabinett

This bill enacts the South Carolina School Sexual Assault and Harassment Information Act. This Act requires the State Department of Education to develop, and the school districts of South Carolina to implement, written policies and practices to provide to students, and remedies for sexual assault and harassment on school campuses and at school-sponsored functions away from school campuses. The bill specifies minimum provisions which must be included in a district's policy, including areas which must be addressed in every policy, and including a requirement that each policy must be designed for the collective levels of understanding for the particular students to whom the policy is to be provided. The bill also includes notification and availability requirements for each district regarding its policy, including a requirement that school districts must distribute to students, faculty, and staff of middle and high schools the written policy for that district.

H.3370 SAFETY BELTS ON SCHOOL BUSES Rep. Inabinett

This bill deletes the current exemption from mandatory use of seat belts on school buses. The bill requires that all new or replacement school buses must be equipped with approved safety belts; all school buses currently in service for transporting

elementary and middle school pupils must be equipped with safety belts within three years; and all other school buses currently in service must comply within five years.

H.3378 SALE OF DRIVER'S LICENSE PHOTOS/DIGITIZED IMAGES Rep. Kirsh

This bill prohibits the Department of Public safety from selling copies of photos, electronically stored information, or digitized images contained in a person's driver's license record.

H.3381 SCHOOL BUS MONITORS Rep. Moody-Lawrence

This bill requires that a school bus, while transporting students in grades K-6, in addition to the driver must have an adult passenger who serves as a school bus monitor on board. The bill provides that the monitor, who is responsible for accountability of student passengers and enforcement of school bus etiquette, must have a valid South Carolina driver's license and must earn at least minimum wage.

H.3396 SALE OF DRIVER'S LICENSE PHOTOS/DIGITIZED IMAGES Rep. Bowers

This bill prohibits the sale of copies of photography, electronically stored information, stored photographs, or digitized images contained in a person's driver's license record. The bill also deletes the Part 1B proviso from the 1998 budget which allowed such sales.

H.3397 TRAFFIC SIGNALS IN CHEROKEE COUNTY Rep. Phillips

This concurrent resolution requests that the Department of Transportation install electronic traffic signals at three locations in Cherokee County by July 1, 1999.

**H.3405 CONTRACTS TO PROVIDE COPIES OF PHOTOGRAPHS,
ELECTRONICALLY STORED INFORMATION, STORED
PHOTOGRAPHS, OR DIGITIZED IMAGES Rep. Carnell**

This bill prohibits the Department of Public Safety from entering into contracts to provide copies of photography, electronically stored information, stored photographs, or digitized images.

JUDICIARY

H.3337 CHIEF ADMINISTRATIVE LAW JUDGE Rep. Harrison

Currently, in the event there is a vacancy in the position of chief administrative law judge or for any reason the chief administrative law judge is unable to act, his or her powers and functions must be exercised by the administrative law judge occupying Seat 2. Under this bill, the most senior administrative law judge, as determined by the date of their election to the division, would fill the vacancy.

**H.3338 CONCEALING A CHILD WITH INTENT OF VIOLATING A CUSTODY
ORDER Rep. Harrison**

This bill provides that a law enforcement officer (1) who has probable cause to believe a child is being concealed from his legal custodian, and (2) who is attempting to return the child to his or her legal custodian, may enter a dwelling, building or other structure, or vehicle and use reasonable means to recover and return the child to his or her legal custodian.

H.3356 PROHIBITING THE SALE BY A PUBLIC BODY OF ANY RECORDS, PUBLIC OR OTHERWISE Rep. Limehouse

This bill prohibits the sale by a public body of any records, public or otherwise.

H.3358 CORPORATIONS NOT-FOR-PROFIT FINANCED BY FEDERAL OR STATE LOANS Rep. Fleming

This bill amends Title 33 (Partnerships, Corporations, and Associations) of the *South Carolina Code of Laws* by adding Chapter 36, Corporations not-for-profit financed by federal or state loans. This bill has provisions detailing (1) general provisions, (2) incorporation, (3) membership, (4) governing board, (5) sales, consolidation, and mergers, and (6) dissolution.

H.3358 amends *South Carolina Code of Laws* §§33-20-103 and 33-20-1708, both relating to exemption of certain nonprofit corporations from the provisions of Chapters 1 through 20 and Chapter 31 of Title 33, so as to exempt nonprofit corporations organized pursuant to the newly created Chapter 36.

This bill repeals Chapter 35 of Title 33 of the *South Carolina Code* relating to nonprofit corporations financed by federal loans.

This bill amends the following sections so as to change cross-references to reflect the repeal of Chapter 35 and the addition of Chapter 36:

- *South Carolina Code of Laws* §6-13-120 relating to dissolution of a water district
- *South Carolina Code of Laws* §6-13-10 relating to state authority to make grants to water and sewer authorities or districts
- *South Carolina Code of Laws* §12-6-550, relating to corporations exempt from state income taxes
- *South Carolina Code of Laws* §12-37-2120 relating to exemptions from sales and use taxes
- *South Carolina Code of Laws* §12-37-220 relating to exemptions from property tax

H.3361 PROBATE COURT CERTIFICATION OF AN INSTRUMENT OR DEED OF DISTRIBUTION Rep. Campsen

When a distribution in kind is made, the personal representative of a deceased person's estate must execute an instrument or deed of distribution assigning, transferring, or releasing the assets. Under this bill, before an instrument or deed of distribution may be recorded, the probate court is required to certify that the instrument or deed of distribution conforms to the requirements of the will or of the statute of descent and distribution.

H.3363 UNPAID GOVERNMENTAL SERVICE FEES OR CHARGES Rep. Lucas

This bill establishes a procedure by which unpaid governmental service fees or charges may become liens on the real property serviced. Under the bill, the term "governmental service fee or charge" means a fee or charge imposed by a governing body of a county or municipality for services extended to a property owner's real property.

S.36 PERSONS SERVING IN AN OFFICE ELECTED BY THE GENERAL ASSEMBLY

Sen. Waldrep

This bill requires a person serving in an office elected by the General Assembly, who is not seeking re-election, to give written notice to the joint committee for the review of candidates of his or her decision not to seek re-election. Under this bill, the notice must be given not less than thirty days before the last date for filing for that office, and the notice is irrevocable. If the notice is given less than thirty days before the last date for filing for that office, then under this bill the joint committee may reopen or extend the time period for filing for that office.

S.65 UNPUBLISHED FEDERAL CASE OPINIONS THAT AFFECT STATE STATUTES, ACTS, OR RESOLUTIONS

Sen. Hayes

This bill provides that the Code Commissioner shall annotate in the *South Carolina Code of Laws* all unpublished federal opinions which, in the Code Commissioner's opinion, affect or invalidate a South Carolina statute, act, or resolution.

S.109 PROCESS SERVERS

Sen. Thomas

This bill authorizes a process server to serve a summons, complaint, or other judicial documents on Sundays.

H.3365 CRIMINAL DOMESTIC VIOLENCE

Rep. Young-Brickell

This bill amends *South Carolina Code of Laws* §§16-25-30, 16-25-40, 16-25-50, 16-25-60, 16-25-65, and 16-25-70, all relating to procedures and penalties for criminal domestic violence. This bill deletes fines as a penalty for these offenses. The bill also authorizes the suspension of the sentence imposed, except for mandatory minimum sentences where applicable, upon the offender completing an approved program designed to treat batterers. Under the bill, the offender must pay a reasonable fee for participation in the treatment program, and the fee will be determined on a sliding scale based on the offender's income.

H.3365 creates the offense of criminal domestic violence in the presence of a minor. Penalties are established for failure to comply.

This bill also amends *South Carolina Code of Laws* §22-5-510, relating to bond hearings and the release of defendants, so as to authorize a magistrate to hold a defendant in a case involving criminal domestic violence for forty-eight hours after arrest, upon a good cause shown at the bond hearing.

H.3366 MANDATORY PARENTING PLAN ACT

Rep. Knotts

This bill creates the Mandatory Parenting Plan Act. This bill requires each party in an action for divorce, separate support and maintenance, or legal separation where the (1) custody, (2) visitation, or (3) support of a minor child is an issue, to file a parenting plan within ninety days of filing the complaint.

This bill has provisions detailing what information should be included in the parenting plan. The bill provides that the parenting plan may be used only to address issues relating to parenting functions.

Within forty-five days from the date the parenting plan was to be filed, the parties are required to file a mutually agreed upon parenting plan. If the parties can not agree to a parenting plan, then the bill requires that the parties be referred to mediation and then as a last resort to the court.

The bill has provisions allowing the court to suspend or modify the parenting plan in certain circumstances. However, the bill does require a court to issue written finding of act and an explanation of the reasons for modifying or suspending the parenting plan.

Under this bill, the court is required to make available to each party a "parenting plan kit" which includes a sample parenting plan.

H.3367 JOINT CUSTODY OF A CHILD Rep. Knotts

In proceedings where child custody and visitation are in dispute, this bill provides that there is a presumption that joint custody is in the best interest of the child. This bill also requires a court to order joint custody, unless there are written findings that (1) a parent is unfit, or (2) a parent is geographically removed. This bill further provides that the court should equalize and promote opportunities for each parent to be involved in activities in the child's life.

**H.3369 ELECTION OF THE HOUSE OF REPRESENTATIVES AND SENATE
Rep. Inabinett**

This joint resolution proposes amending Section 2, Article III of the State Constitution relating to the House of Representatives. This joint resolution proposes that beginning in the year 2000 that members of the House of Representatives should be chosen every fourth year instead of every second year.

This joint resolution proposes amending Section 8, Article III of the State Constitution relating to the election of the House of Representatives. This joint resolution proposes that the members of the House of Representatives should be elected every fourth year instead of every second year.

This joint resolution proposes amending Section 6, Article III of the State Constitution relating to the election of the Senate. This joint resolution proposes that beginning in the year 2000 that members of the Senate should be elected every sixth year instead of every fourth year.

If adopted by the General Assembly, the question would be placed before the people for their approval.

H.3371 FRIVOLOUS SUITS Rep. Barrett

This bill amends *South Carolina Code of Laws* §15-36-10, relating to attorney's fees and costs of frivolous suits, so as to further provide for liability for attorney's fees and cost of frivolous suits.

This bill amends *South Carolina Code of Laws* §15-36-20, relating to findings of a proper purpose for an action, so as to provide when a proper purpose may not be found.

This bill also amends *South Carolina Code of Laws* §15-36-40, relating to an aggrieved person's burden of proof after a frivolous suit, so as to provide when the burden of proof has been met.

This bill amends *South Carolina Code of Laws* §15-37-20, relating to costs allowed to a successful party, so as to provide that any person bringing or defending a civil action in the court of common pleas must pay the attorney's fees and costs of the prevailing party.

H.3373 PILOT PROJECT TRANSFERRING CERTAIN OFFENSES COMMITTED BY JUVENILES ON SCHOOL GROUNDS OR AT SCHOOL-SPONSORED EVENTS FROM THE FAMILY COURTS TO THE MAGISTRATES' COURTS Rep. Bales

This joint resolution proposes that Supreme Court should develop a pilot project, in two judicial circuits of its choosing, where the jurisdiction of the following offenses committed by juveniles under the age of seventeen on school grounds or at school sponsored events would be transferred from the family court to magistrate's court:

- assault and battery including, but not limited to, assault and battery against school personnel
- extortion
- bomb threats
- possession, use, or transfer of dangerous weapons
- vandalism
- furnishing, selling, or possession of controlled substances
- theft, possession of stolen property, and
- sexual offenses

This joint resolution proposes that the pilot project would begin July 1, 1999 and end June 30, 2001. The Supreme Court would report to the Judiciary Committees of the Senate and House of Representatives on this pilot project by December 31, 2001.

H.3375 PUBLIC DEFENDER CORPORATIONS Rep. Fleming

This bill provides that the board of directors of a defender corporation is not liable for a loss resulting from an act or omission of a public defender or other employee of the corporation, if the public defender or employee (1) acted within the scope of his or her official duties, and (2) acted in good faith.

H.3377 POWERS OF COUNTY COUNCIL Rep. Harrison

This bill exempts the employee of elected officials from county personnel system policies and procedures regulations.

H.3379 THE MAGISTRATES COURT REFORM ACT OF 1999 Rep. Wilkins

This bill creates The Magistrates Court Reform Act of 1999. This bill requires a magistrate appointed to office after January 1, 2000 to have a four-year baccalaureate degree (although a grandfathering provision exempts any magistrate serving on January 1, 2000 from this provision). The South Carolina Court Administration, in cooperation with the technical college system, must administer an eligibility exam to test the basic skills of persons seeking an initial appointment as a magistrate after January 1, 2000. The senatorial delegation must use the results of the eligibility exams to assist in its selection of nominees (the Governor appoints magistrates with the advice and consent

of the Senate). Persons may be exempted from taking the examination if certain prescribed educational equivalency requirements have been met.

The bill also requires magistrates to observe 10 trials before presiding over a trial. Magistrates would be paid by the state through the SC Court Administration, and counties would be prohibited from supplementing the salaries of magistrates. Three base categories for salaries are established, depending on the population of the county where the magistrate is located. Magistrates in counties of 150,000 or more would be paid 55% of a circuit court judge's salary; for counties between 50,000 and 149,000, magistrates would be paid 45% of a circuit judges salary; and for counties below 50,000, magistrates would be paid 35% of a circuit court judge's salary. Magistrates would not be paid 100% of the base salary until after four years in office.

The bill also increases the fee in magistrates court for issuing a summons and complaint in a civil action and for giving judgment from \$25 to \$45, increases the fee for proceedings by a landlord against a tenant from \$10 to \$20, and raises the costs charged by the court for writing bad checks from a maximum of \$20 to a maximum of \$41. The bill also raises the fee for the party applying for a warrant to a maximum \$41 if the case is dismissed for lack of prosecution (current law provides a maximum \$20 liability). The bill also allows concurrent civil jurisdiction for magistrates on specified legal actions that do not involve over \$7,500 (as opposed to the current cap of \$5,000 on these itemized legal actions).

H.3380 PISTOLS Rep. Moody-Lawrence

This bill requires that an owner of a pistol must maintain it in a locked compartment or have a trigger lock placed on it when the pistol is not being used. Penalties are established for failure to comply.

H.3385 SOUTH CAROLINA GARNISHMENT ACT OF 1999 Rep. Stille

The bill authorizes a right to a writ of garnishment for individuals that receive a judgment in any court. However, a writ of garnishment under this bill may only be issued for actions arising under contract. The provisions of this bill do not apply to garnishment for income tax purposes or child support purposes.

Under this bill, the judgment debtor's income, wages, interest, rents, capital gains, dividends, bonuses, and commissions are subject to garnishment. No other types of personal property of the debtor are subject to garnishment. Funds or benefits from (1) a pension or retirement program, or (2) an individual retirement account are exempt from the process of garnishment until paid or otherwise transferred to a member or beneficiary of the program. The bill also provides that nothing in this section shall prohibit the attachment of welfare benefits as defined in 29 U.S.C. §1002(1) in the control of an administrator or trustee.

When the amount of judgment is five thousand dollars or less, then jurisdiction over the garnishment action must be in magistrate's court. Otherwise jurisdiction over such garnishment actions is in the circuit court.

Under the bill, no writ of garnishment before judgment may be issued until the plaintiff gives a bond with surety to be approved by the court payable to the defendant in at least double the amount of the debt demanded.

The bill outlines the procedure in which a judgment creditor may obtain a writ of garnishment.

If salary or wages are garnished, then the court must issue a continuing writ of garnishment to the judgment debtor's employer. Under the bill, the judgment debtor's employer may collect up to five dollars against the salary or wages of the judgment debtor to reimburse the employer for administrative costs for the first deduction from the judgment debtor's salary or wages and up to one dollar for each deduction thereafter. This bill provides that no employer may discharge any employee because his or her earnings have been subjected to garnishment.

S.60 STATE HOLIDAYS Sen. Ford

This bill provides that Martin Luther King's birthday and Confederate Memorial Day will be regular, rather than optional state holidays. This bill deletes references to Robert E. Lee's birthday and Jefferson Davis' birthday as holidays. Also under this bill, general election day would be an optional holiday rather than a regular holiday.

S.44 CRIMINAL RECORDS SEARCH FOR CHARITABLE ORGANIZATIONS

Sen. Jackson

This bill authorizes the State Law Enforcement Division (SLED) to charge a maximum fee of eight dollars for a criminal record search performed for 1) a charitable organization, or 2) the use of a charitable organization. The bill requires SLED to develop appropriate forms. The bill also provides its own definition for the term "charitable organization."

H.3392 SHERIFF QUALIFICATIONS Rep. Gamble

This bill amends *South Carolina Code of Laws* §23-11-110, relating to the qualifications necessary to offer as a candidate for sheriff, so as to provide that service as a coroner for ten years satisfies the same requirement as ten years service as a summary court judge.

H.3395 MEMBERS OF THE HOUSE OF REPRESENTATIVES Rep. Inabinett

This bill provides that the election date for members of the House of Representatives is the Tuesday after the first Monday in November of every other even-numbered year. This bill provides that the term of office for the House of Representatives is four years. This bill also provides that the term of office for the Senate is six years.

H.3398 ATTORNEY'S FEES IN STATE INITIATED ACTIONS Rep. Robinson

This bill further provides for the awarding of attorney's fees in any civil action or administrative proceeding brought by or against the State, a political subdivision of the State, or an agency of the State.

Under this bill, the prevailing party (unless the prevailing party is the State, a political subdivision, or an agency) may be allowed to recover reasonable attorney's fees to be taxed as costs against the appropriate agency or losing party, if it is found that: (1) the agency or losing party acted without substantial justification in pressing its claim against the prevailing party, and (2) there are no special circumstances that would make the award of attorney's fees unjust.

Also under this bill, the prevailing party may petition for attorney's fees within thirty days following the later of: (1) final disposition of the case, or (2) the issuance of a final administrative decision. The petition for attorney's fees must be supported by an affidavit setting forth the basis for the request.

H.3400 PERSONS PLEADING GUILTY OR NOLO CONTENDERE TO CERTAIN CRIMINAL OFFENSES INVOLVING MINORS MAY NOT ENTER THE GROUNDS OR BUILDINGS OF AN ELEMENTARY OR SECONDARY SCHOOL Rep. Robinson

This bill provides that no person who has been convicted of or pled guilty to or nolo contendere to certain specified criminal offenses involving minors may enter the grounds or buildings of an elementary or secondary school, or come within a hundred-yard radius of the school, except under certain circumstances. Penalties are established for failure to comply.

H.3401 ANTIQUE SLOT MACHINES Rep. Robinson

This bill provides that the provisions of *South Carolina Code of Laws* §12-21-2710, relating to the prohibition against the possession of certain types of gaming or slot machines, do not apply to antique slot machines that are (1) made before January 1, 1965, (2) kept by the owner at his or her principal residence, and (3) not used for commercial or gaming purposes.

H.3402 LEGAL RATE OF INTEREST ON ACCOUNTS AND ON MONETARY DECREES AND JUDGMENTS Rep. Robinson

Currently, the legal interest rate on accounts and monetary decrees and judgments is 14% per annum. Under this bill, the legal interest rate would be equal to the coupon issue yield equivalent, as determined by the State Treasurer, of the average accepted auction price for the last auction of fifty-two week United States Treasury bills settled immediately prior to the date of judgment. Under this bill, interest shall be computed daily to the date of payment and shall be compounded annually.

H.3403 LEGAL RATE OF INTEREST Rep. Robinson

Currently, in all cases of accounts stated and in all cases in which a sum or sums of money must be ascertained, the legal interest rate is 8¾ % per annum. Under this bill the legal interest rate would be prime rate.

Currently, the legal interest rate on accounts and monetary decrees and judgments is 14% per annum. Under this bill, the legal interest rate would be prime rate plus 1%.

This bill also details how the prime rate is to be calculated.

H.3404 NONPARTISAN ELECTIONS FOR MEMBERS OF THE ALLENDALE COUNTY BOARD OF EDUCATION Rep. Cave

This bill provides for nonpartisan elections for the members of the Allendale County Board of Education beginning in the year 2000. This bill outlines procedures (1) through which a person may declare his candidacy, (2) how the elections are conducted, (3) how election results are determined, (4) the general powers and duties of the education board, and (5) the terms of members elected.

H.3410 DEFINITION OF "A PERSON RESPONSIBLE FOR A CHILD'S WELFARE"

Rep. Limehouse

This bill revises the definition of "a person responsible for a child's welfare" to include a public or private school teacher. This bill also amends *South Carolina Code of Laws* §20-7-510, relating to child abuse and neglect, to include school administrators and school personnel.

H.3411 FORFEITURE, CONFISCATION, AND DISPOSITION OF VEHICLES

Rep. W. McLeod

This bill amends *South Carolina Code of Laws* §56-5-6240, relating to the forfeiture, confiscation, and disposition of vehicles seized from a person convicted of driving under the influence of intoxicating liquors or drugs, or while his or her license is suspended. This bill revises the procedure to dispose of a forfeited vehicle, if the person fails to file an appeal within ten days of his or her conviction. This bill provides that a sheriff or chief of police may contract with a private attorney to provide an individual with representation in a vehicle forfeiture proceeding. This bill further provides that attorney costs must be paid from the proceeds of the sale of the vehicle.

H.3414 JUDICIAL MERIT SELECTION COMMISSION Rep. Altman

This bill provides that no member of the judicial merit selection commission is eligible to seek judicial office while (1) serving on the commission, and (2) for a period of one year after service on the commission.

This bill clarifies that individuals do not seek to be nominated by the commission but, rather, seek judicial office. This bill provides that an individual may apply as a candidate for only one judicial vacancy announced in the commission's notice of vacancies.

This bill provides that when the commission finds that a candidate is unqualified, then the candidate must be furnished a copy of the commission's report concerning his or her qualifications. Furthermore, this bill provides that the report must be kept confidential.

This bill also provides that a judicial candidate is not permitted on the floor in either House during the time the person is listed as a qualified candidate and that election is pending.

H.3414 provides that the commission shall release a list of qualified candidates rather than just releasing its nominees. This bill provides that the list of qualified candidates for the judicial office is binding on the General Assembly. This bill also provides that the chairman of the judicial merit selection commission announces the list of qualified candidates for each judicial race, rather than the commission's nominees.

LABOR, COMMERCE AND INDUSTRY

H.3341 AUTOMOBILE INSURANCE RATE REVISIONS Rep. Cato

This bill allows for the rate flexibility established under the comprehensive automobile insurance revisions of Act 154 of 1997 to go into effect on schedule regardless of whether the rates are filed with the Department of Insurance prior to March 1, 1999.

H.3351 HEALTH INSURANCE COVERAGE FOR MENTAL HEALTH CONDITIONS

Rep. Lucas

This bill provides that a health insurance plan must provide coverage for treatment of mental health conditions, including alcohol or substance abuse, and must not establish any rates, terms, or conditions which places a greater financial responsibility on the insured for access to treatment for a mental health condition than for access to treatment of a physical health conditions. A health insurance plan which does not otherwise provide for management of care, or does not provide managed care for treatment of all conditions, may provide coverage for treatment of mental health conditions through a managed care organization. The bill establishes qualifications for entities which deliver covered mental health or alcohol or substance abuse treatment. Before July 1, 2001, the Department of Insurance shall report to the General Assembly on the estimated impact of this legislation on health insurance costs, actions taken by the department to assure that insurers are in compliance, and the segments of the state's population who may be excluded from coverage of treatment for mental health conditions and alcohol or substance abuse.

H.3413 CHOICE OF HEALTH CARE PROVIDER UNDER MANAGED HEALTH CARE

Rep. Maddox

This bill provides that an individual has the right to select a health care provider. Under the legislation, a managed health care plan or a preferred provider organization may not deny an enrolled individual access to the health care provider of his choice. If an enrolled individual chooses to receive care from a provider who does not participate in the plan or organization, the plan or organization must reimburse the nonparticipating provider at the same rate it reimburses participating providers. The plan or organization may not structure deductibles, terms, or conditions in a way that discriminates against or among health care providers. A managed health care plan or preferred provider organization may not terminate its agreement with any provider without cause.

H.3415 EDUCATIONAL REQUIREMENTS FOR REAL ESTATE BROKERS AND SALESMEN

Rep. Bailey

This bill raises the hours of classroom instruction which must be completed before applying to take a license examination as a real estate salesman or broker. The requirement for a salesman is raised from thirty to sixty hours of pertinent classroom instruction, and the requirement for a broker is raised from one hundred twenty to one hundred fifty, with ninety, rather than sixty, of those hours devoted to advanced real estate principles and practices and related topics.

MEDICAL, MILITARY, PUBLIC AND MUNICIPAL AFFAIRS

H.3339 CONTINUING EDUCATION FOR COSMETOLOGISTS

Rep. Sharpe

This bill requires the State Board of Technical Education (the board) to administer a program of continuing education for cosmetologists. The bill outlines responsibilities of the board insofar as this program is concerned. The bill requires that the Department of Labor, Licensing and Regulation establish (by regulation) criteria for course providers, course instructor qualifications, and course content. The bill also provides that licensees living outside of South Carolina and not currently working in South Carolina

may satisfy their continuing education requirement in South Carolina by completing continuing education courses that meet the requirements of the State in which they are practicing.

H.3382 PREGNANCY PREVENTION EDUCATION Rep. Moody-Lawrence

This bill requires that a female who is pregnant, unmarried, and under eighteen years old shall complete a pregnancy prevention education course. The bill provides minimum areas of instruction which must be included in the course, and provides that content of the courses must be specified by the Department of Health and Environmental Control (DHEC) and the courses must be conducted free of charge by the county health departments of this State.

The bill also requires that DHEC conduct a study and report to the General Assembly by January 1, 2000, on the cost to develop and implement a pregnancy and sexually transmitted disease prevention education program for males.

WAYS AND MEANS

H.3342 GAMING AND TOURISM FUND ACT Rep. Sharpe

This bill imposes a six dollar license tax on each paid admission to a casino gambling boat. This tax is in addition to the admissions tax and all other applicable taxes. The bill provides that revenue from the six dollar tax will be used by the Department of Parks, Recreation and Tourism for general operational expenses and for community festivals.

H.3357 JOINT MUNICIPAL WATER SYSTEMS Rep. Fleming

This bill amends the Joint Municipal Water Systems Act (SC Code of Laws, Title 6, Chapter 25). A "joint municipal water system" is currently defined as a public body corporate and politic whose members' governing bodies have agreed to create a system to undertake the impounding, acquisition, treatment, production, transmission, distribution, service, and sale of water to a municipality which is a member of the system and other municipalities, and persons which are not members when approved by the governing body of each member. The bill provides that the members may also create a water system for the purpose of creating a *financing pool*. A "financing pool" is defined in the bill as a fund of money, obtained through the issuance of a construction note of a joint municipal water system, which may be loaned to the members of it by way of interim financing. A joint municipal system created for this purpose may issue from time to time its construction notes for the purpose of creating a financing pool and providing funds to defray the cost of administration of the financing pool and the costs of issuance of the construction notes. The bill provides for issuance of and uses of the proceeds from construction notes and for use of monies in a financing pool. The bill provides that the income of a joint system is exempt from state taxes, and that none of the income, profits, or assets of a joint system may inure to the benefit of any individual or private entity.

H.3359 PROPERTY TAX ON MOTOR HOMES Rep. Dantzler

This bill provides that a motor home on which the interest portion of indebtedness is deductible pursuant to the Internal Revenue Code as an interest expense on a qualified primary or second residence is also a primary or second residence for purposes of *ad*

valorem property taxation in this State and is considered real property rather than personal property for property tax purposes.

H.3372 PROPERTY TAX EXEMPTION FOR AUTOMOBILES Rep. Bales

This bill provides a property tax exemption for five thousand dollars of the market value of private passenger motor vehicles and motorcycles. The bill also provides that if the assessed value of a motor vehicle is less than fifty dollars after an exemption is applied, then the vehicle is not subject to tax.

**H.3383 PROPERTY TAX ON PRIVATE PASSENGER MOTOR VEHICLES
AND MOTORCYCLES** Rep. Vaughn

This joint resolution proposes an amendment to the SC Constitution establishing a separate class of property for purposes of the property tax consisting of private passenger motor vehicles and motorcycles, which must be assessed for property tax at ten and one-half percent of fair market value or some percentage less than ten and one-half percent as set by the governing body of each property taxing entity in the county.

**H.3384 PUBLIC EMPLOYEES' DEFINED CONTRIBUTION RETIREMENT
PLAN** Rep. Stille

This bill establishes the Public Employees' Defined Contribution Retirement Plan (the Plan). Individuals first employed after June 30, 1999, who would otherwise be members of the SC Retirement System or the SC Police Officers Retirement System will instead become members of the Plan. The bill provides that existing retirement systems must continue for individuals first becoming members before July 1, 1999, and for former members who are reemployed after June 30, 1999, if they so elect. A member of an existing retirement system on July 1, 1999, may irrevocably elect to switch to a membership in the Plan.

The bill requires that the Plan be administered by the SC Budget and Control Board (the Board) or by an entity with which the Board may contract, in accordance with certain requirements included in the Internal Revenue Code of 1986. The bill provides that the Board shall establish vesting rights in employer contributions consistent with requirements of the Internal Revenue Code of 1986, but which afford maximum portability of a member's account. The bill requires that the Plan include more than one employee-directed investment fund appropriate for investment by public employees and an educational program that explains to employees the probable and possible benefits and risks of the various funds.

The bill establishes in the State Treasury the Public Employees Defined Contribution Retirement Plan Fund, and allows the Board (or the entity with which it has contracted) to purchase group annuity contracts, individual retirement annuities, disability insurance investment contracts, securities, mutual funds, interest in trusts, and other financial instruments to provide retirement and related benefits similar to those provided under an existing retirement system. The bill requires that the administrator of the Plan provide a statement, at least quarterly, for each member's individual account. The bill also provides for information which must be included in this statement, and provides for auditing of the plan's assets.

H.3394 STATE GENERAL APPROPRIATIONS ACT Rep. Inabinett

This bill provides that beginning with its 2001 session and in each session every two years thereafter, the General Assembly shall enact a biennial state general appropriations act.

H.3399 NAMING OF STATE PROPERTY Rep. Robinson

This bill provides that no public property purchased or constructed with State funds or otherwise acquired or owned by the State may be named for a living person or a person who has been deceased for less than one year.

H.3408 STATE SALES TAX EXEMPTIONS Rep. Limehouse

This bill provides an exemption from state sales tax for the gross proceeds of sales or sales price of school supplies, school clothes, and other school-related items sold to consumers during the last two weeks in August and the first two weeks in September.

The *Legislative Update* is on the Worldwide Web. Visit the South Carolina General Assembly Home Page (www.lpitr.state.sc.us) and click on the "Quick Find Guide." On the next screen, click on "Legislative Updates." This will list all of the *Legislative Updates* by date. Click on the date you need.

SPECIAL NOTE: A cumulative index to the weekly issues of the *Legislative Update* has been added to the *Legislative Update* page on the Worldwide Web. Bills are listed in numerical order in this index. Each bill number is followed by a list of hypertext links (in chronological order) to every reference to that bill in any issue of the *Legislative Update* during the current session, 1999-2000. This is an easy way (just click on the links) to find summaries of bills introduced into the House and to follow the progress of a bill through House committees and on the floors of the House and Senate.

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LEGISLATIVE UPDATE

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