



South Carolina House of Representatives

Legislative Update

David H. Wilkins, Speaker of the House

Vol. 22

June 15, 2005

No. 22

MAJOR ISSUES FROM THE 2005 LEGISLATIVE SESSION

This document summarizes many of the key issues considered by the General Assembly this year. Please note that some of these issues are addressed in more than one bill. In those instances, we have highlighted bills which have made the most progress towards passage. Some major bills which were introduced this year are not included in this document because their progress towards passage makes it more likely that they will be considered next year. The status of bills highlighted in this document is updated to bill history postings of June 15, 2005.

This document is a guide to, not a substitute for, the full text of the legislation summarized. Bill summaries in this document are prepared by staff of the Office of House Research and are not the expression of the legislation's sponsor(s) or the House of Representatives. The summaries are strictly for the internal use and benefit of members of the House of Representatives and are not to be construed by a court of law as an expression of legislative intent.

OFFICE OF RESEARCH

Room 213, Blatt Building, P.O. Box 11867, Columbia, S.C. 29211, (803) 734-3230

CONTENTS

I. OVERVIEW OF THE 2005 LEGISLATIVE YEAR	02
II. MAJOR LEGISLATION THAT PASSED IN 2005	07
Appropriations	08
Business/Economic Development	09
The Courts	16
Criminal Justice	25
Education	32
Environment	37
Gambling	39
Health	40
Marriage/Family	44
State/Local Government	45
Taxation	48
Transportation	48
III. MAJOR LEGISLATION PENDING FOR 2006	50

OVERVIEW OF THE 2005 LEGISLATIVE YEAR

Economic development, education, public safety, and health concerns were prominent among the large number of major issues addressed by the General Assembly in 2005.

The General Assembly passed two separate pieces of **tort reform** legislation which revise the way in which the judicial system handles these private or civil wrongs for which the court provides a remedy, usually in the form of damages. The South Carolina Economic Development, Citizens, and Small Business Protection Act of 2005 establishes new sanctions to target frivolous lawsuits. The act prohibits venue shopping under which courts are selected not out of any connection to the parties of a lawsuit, but because of a reputation for making large awards. Liability provisions are revised so that a party who is only slightly at fault would not bear a disproportionately large share of the liability. The General Assembly also passed comprehensive Medical Malpractice Reform. This legislation places a \$350,000 cap on non-economic damages such as pain and suffering. The act also provides legal protection for doctors who render care in emergency situations.

The General Assembly approved the **2005 Jobs Creation Act**, which amends the Jobs Tax Credit law to promote and encourage small businesses to create new jobs. This legislation encourages investment in high-tech and start-up companies and creates a **Capital Access Program** to assist small businesses in obtaining financing.

A **small business income tax reduction** was also approved under a bill which reduces the tax rate for qualifying businesses by 0.5 percent a year so that, after 2008, their tax rate will be five percent.

The General Assembly approved legislation which enhances current **incentives to the motion picture industry** to do business in South Carolina.

Recognizing the need to improve students' readiness for future employment, the General Assembly approved the **Education and Economic Development Act**. Beginning with elementary school and continuing until graduation, this bill provides an age-appropriate framework for schools to groom our State's children to succeed in the working world.

The General Assembly also approved a plan to implement the voters' 2004 referendum decision to allow the **sale of alcohol by the drink**, eliminating the provision requiring the sale of alcoholic liquor for on-premises consumption only in minibottles.

The General Assembly approved a bill providing for **primary enforcement of seat belt laws**, deleting the current provision prohibiting a law enforcement officer from stopping a driver for a violation of safety belt requirements in the absence of another violation of motor vehicle laws. Under this bill, which became law without the Governor's signature, drivers can be fined \$25 for failing to buckle up, but the violation cannot be reported to the offender's motor vehicle insurer or included in the offender's motor vehicle records.

Legislative Update, June 15, 2005
FINAL MAJOR ISSUES

The final 2005-2006 **State budget plan** includes full funding of the Education Finance Act; full funding of Medicaid; a four percent raise for state employees and a ten percent raise for law enforcement personnel; and funds to hire additional law enforcement officers.

The General Assembly focused on the importance of improving children's physical wellness and nutrition by passing the **Students Health and Fitness Act of 2005**, a bill which acknowledges the inextricable link between good health and school performance.

Legislators passed requiring the State Board of Education to provide materials and guidelines for local school boards to use in implementing a program of instruction on **financial literacy** within courses currently offered in South Carolina high schools. A financial literacy program includes instruction in basic personal finance skills such as balancing a checkbook, managing a savings account, understanding credit card debt, filling out a loan application, and comprehending simple contracts and taxes.

This General Assembly passed legislation that makes comprehensive revisions regarding the handling of **domestic violence** offenses by the judicial system and law enforcement. Among other things, the legislation increases the criminal penalties for domestic violence offenses and requires judges to receive continuing education on issues concerning domestic violence. Under the legislation, law enforcement officers convicted of a domestic violence offense will have their certification revoked.

Lawmakers approved legislation authorizing **unemployment compensation benefits** for individuals who have lost employment as a result of domestic violence. The legislation also revises the state's Employment Security Law by providing that an employee who has been terminated for violating an employer's illegal drug policy is not eligible to receive unemployment compensation.

The General Assembly passed legislation to address the growing problem of **methamphetamine**. Among other things, the legislation provides that manufacturing methamphetamine is a violent crime. The legislation allows an individual to be charged with unlawful conduct towards a minor, if a minor was present at any time during the manufacturing of methamphetamine.

The General Assembly passed reforms pertaining to the **sex offender registry**. Current law requires a convicted sex offender to only register in the county where the offender resides; the legislation requires a sex offender to also register with the sheriff of the county or counties where the offender owns real property or attends any public or private school. This legislation expands the list of convictions that render a person a "sex offender" and requires the State Law Enforcement Division (SLED) to cross-reference alias names in the registry. Under the legislation, SLED must receive a photograph of the offender before the offender is released from prison. The legislation requires that certain offenders placed on parole, probation, or under community supervision must be placed on electronic monitoring.

Lawmakers passed **mental health insurance parity** legislation which requires health insurers to provide coverage for treatment of a list of nine mental health conditions including bipolar disorder, major depression, schizophrenia, and post-traumatic stress disorder. The legislation requires a health insurance plan to provide at least one choice

Legislative Update, June 15, 2005
FINAL MAJOR ISSUES

for treatment of these mental health conditions that places no greater financial burden on the insured than for access to comparable treatment of physical conditions.

The General Assembly passed legislation making various revisions with regard to **mental health care and protective custody**. Among other things, the bill allows a law enforcement officer to take a person into protective custody, if the officer believes that the person is mentally ill or chemically dependent.

The General Assembly passed legislation that revises and eases requirements for a document to be considered a valid **health care power of attorney**.

Legislators passed the **Lewis Blackman Hospital Safety Act**. This act requires each hospital staff member whose duties include the personal care or medical treatment of patients to wear badges clearly stating their name, their department and their job or trainee title. The act requires that patients be notified that the attending physician is the person responsible for the patient's care in the hospital. Each hospital must provide a mechanism that the patient can use to get prompt assistance for the resolution of the patient's personal medical care concerns.

State retirees are assured an annual cost-of-living increase under a comprehensive plan the General Assembly approved. This legislation **reforms the State Retirement System**, including but not limited to increasing employer and employee contributions to the System; eliminating the first annual leave payout for Teacher and Employee Retention Incentive Program (TERI) program participants who enter the program after June 30, 2005; exempting new TERI participants from grievance procedure rights; and removing the earnings limitation for retirees returning to covered service.

The General Assembly addressed the issue of **same sex marriage** by passing a joint resolution which will submit to the electors at the next general election the issue of whether or not the State Constitution should be amended to provide that marriage is exclusively defined as the union between one man and one woman, and that all other attempted unions, including those recognized by other jurisdictions, are void.

The General Assembly passed legislation expanding the **State Grand Jury's jurisdiction to include environmental offenses**.

The General Assembly passed legislation delegating to counties and municipalities the **authority to prohibit or regulate the operation of gambling vessels** that are in engaged in so-called "cruises to nowhere."

Lawmakers approved the **Boiler Safety Act** which establishes criteria for the safe installation and inspection of these high-pressure vessels to be administered by the Department of Labor, Licensing and Regulation.

The General Assembly passed the **Natural Gas Rate Stabilization Act** which proposes to bring greater stability and predictability to rates charged by natural gas distribution utilities by establishing a procedure for the adjustment of rates and charges that routinely takes into account such factors as changes in a utility's expenses, revenues, investments, and depreciation.

Legislative Update, June 15, 2005
FINAL MAJOR ISSUES

Legislators approved new provisions for the oversight of the South Carolina **Public Service Authority**. The legislation establishes new qualifications for members of the Board of Directors of the Public Service Authority and a screening process for candidates for the board. PSA Directors may be removed for cause or for breach of duties. The legislation establishes standards of conduct for directors and defines a conflict of interest transaction. Customers of the Public Service Authority are authorized to sue directors for breach of duty.

POTENTIAL ISSUES FOR 2006

Other significant issues did not receive approval this year and may be considered by the General Assembly in 2006.

The House approved legislation which exempts from **property tax** an amount of fair market value of real property located in the county, sufficient to eliminate any increase in fair market value attributable to a countywide appraisal and equalization program.

The General Assembly may consider the Senate-approved **administrative restructuring bill**. This comprehensive legislation, pending in the House Ways and Means Committee, makes numerous revisions to the structure of State government.

This year the House approved a joint resolution pertaining to **constitutional officers**. This resolution proposes to submit to the voters the question of whether the Secretary of State and the Superintendent of Education should remain elected positions or should instead be appointed by the Governor upon advice and consent of the General Assembly. The joint resolution further proposes to submit to the voters the question of whether or not the State Board of Education should be abolished effective upon the State Superintendent of Education being appointed by the Governor.

The Senate may consider the **Charter School Act of 2005**, a House-passed bill which establishes and provides for the Carolina Public Charter School District, a public body with geographical boundaries the same as the boundaries of the State.

At the end of the 2005 session, the **Medicaid Modernization Act** was sent to a House-Senate conference committee, but no agreement had been reached when the General Assembly adjourned.

The House approved and sent to the Senate the **Right to Life Act**. This legislation provides that the right to due process and the right to equal protection vest at fertilization.

The House passed and sent to the Senate legislation that would abolish **common law marriage**.

The House approved and sent to the Senate legislation revising the process for **nominating judicial candidates** for election by the General Assembly.

Legislative Update, June 15, 2005
FINAL MAJOR ISSUES

House members approved and sent to the Senate legislation which provides that an object containing the words of the **Ten Commandments may be displayed on real property owned by the state** along with other documents of historical significance.

The House approved the **South Carolina Dairy Stabilization Act**. This bill creates a board to establish a fair market breakeven price for milk producers. The board would exercise general supervision over the state milk industry and mediate differences between milk producers, associations, and processors.

The House approved and sent to the Senate legislation that eliminates **Blue Law provisions** that restrict the sale of certain items and prohibit certain work and other activities on Sundays. The legislation provides that an employee of a business that operates on Sunday has the option of refusing to work until 1:30 p.m. on Sunday, if the employee is conscientiously opposed to Sunday work. The legislation makes no changes to provisions that prohibit or otherwise regulate the sale of alcoholic liquors, beer, or wine on Sunday.

The House and Senate approved different versions of legislation that would **limit access to tobacco products by minors**. Compromise legislation was not approved prior to adjournment.

The House approved and sent to the Senate the South Carolina Landowner and Advertising Protection and Property Valuation Act which provides for how a local governing body may regulate the use of **billboards** within its jurisdiction. The legislation did not pass the Senate by the time of adjournment for the year.

MAJOR LEGISLATION THAT PASSED IN 2005

APPROPRIATIONS

2005-06 APPROPRIATION BILL AND CAPITAL RESERVE FUND

The House and the Senate both approved conference reports on the 2005-06 Appropriation Bill (**H.3716**) and the Capital Reserve Fund bill (**H.3717**). Significant highlights of the final adopted plans include:

- The General Reserve Fund is fully restored (\$78 million);
- A proviso is included which provides that any surplus funds will be used first to fund any negative GAAP fund balance which might occur;
- Forty trust funds that were borrowed from during the recent fiscal crisis are fully restored, and two trust funds are partially restored;
- An increase of \$315 million fully funds the Education Finance Act at a base student cost of \$2,290;
- Teachers' salaries are funded at \$300 above the Southeastern Average;
- \$22 million in new funding is provided for school buses, fuel, and repairs;
- \$14 million is appropriated to hold Beaufort and Charleston School Districts harmless from changes in the Education Finance Act formula;
- Medicaid growth receives \$67,562,394;
- \$5 million is appropriated to fund beach renourishment;
- \$11.5 million is appropriated to the Department of Social Services for the Child Support Enforcement Computer System;
- Law enforcement officers receive a pay increase of 10%;
- State employees receive a pay increase of 4%;
- The health insurance plan for State employees and retirees is fully funded so that there will be no premium increases or benefit reductions to plan participants.

*STATUS: **H.3716** and **H.3717** have been ratified and gubernatorial vetoes have been considered. None of the Governor's vetoes addressed the items summarized above.*

STATE FUNDS

The General Assembly approved **H.3847**, a bill which requires that appropriations of Capital Reserve Fund monies are effective on September first of the following fiscal year, rather than thirty days after completion of the fiscal year. The bill also requires that upon closing of the State's financial books for a fiscal year, if the Comptroller General determines that the State has a negative General Accepted Accounting Principles Fund balance (GAAP Fund Deficit), any appropriations in the general or supplemental appropriations act which expend surplus general fund revenues or in a Capital Reserve Fund appropriation act to be effective during the next fiscal year, are suspended and must be used to offset the GAAP Fund Deficit.

The bill requires state entities which receive one percent or more of state general fund appropriations in any fiscal year to provide an estimate of planned general fund expenditures for the next three fiscal years, and this estimate will be a component of that

Legislative Update, June 15, 2005
FINAL MAJOR ISSUES

entity's three-year financial plan which will be updated annually to assist the State in planning for its long-term commitments.

The bill requires that the first ten percent of any surplus General Fund Revenues must be applied to fully restore all funds previously transferred and appropriated from any earmarked or restricted accounts in the Statewide Accounting and Reporting System, as those accounts and subfunds are delineated in the bill.

*STATUS: **H.3847** was approved by the General Assembly and has been signed by the Governor.*

BUSINESS/ECONOMIC DEVELOPMENT

AIR CARRIER HUB TERMINAL FACILITIES

Currently, the State may issue General Obligation Bonds for air carrier hub terminal facilities meeting certain criteria. These funds may be used for acquiring land, constructing, improving, and equipping facilities, and for purchasing equipment and machinery related to the facility. **H.3234** expands the definition of "air carrier hub terminal facility" to also include (irrespective of the number of flights) facilities that will use two or more specially equipped planes that are used for the transportation of specialized cargo and subject to *ad valorem* property taxation or a fee in lieu of taxes in South Carolina. The bill also amends the statutory definition of an "air carrier" to mean a corporation licensed by the Federal Aviation Administration with a certificate of public convenience and necessity or an operating certificate under other applicable federal law or pertinent regulations which operates aircraft to or from an air carrier hub terminal facility. The term "air carrier hub terminal facility" includes an economic development project, as defined in the State General Obligation Economic Development Bond Act, that is functionally related to a facility satisfying one of the criteria included in the definition of an air carrier hub terminal facility. The bill provides that a request for the issuance of bonds must be accompanied by a binding contract with either an air carrier or the principal user of the air carrier hub terminal, to be financed with the issuance of the obligation. Currently, the contract may only be with an air carrier. If the Secretary of Commerce recommends that the Budget and Control Board consider approving the issuance of bonds, he shall forward his written approval and request to both the Joint Bond Review Committee (JBRC) and the Board, rather than only to the Board. The bill also requires that the Secretary's approval and request must be accompanied by a certificate establishing the maximum principal amount of the bonds requested to be authorized; a description of the infrastructure for which the bonds are to be issued; and a tentative time schedule for the time during which the sum requested is to be expended. The bill provides that following the receipt of the approval and request from the Secretary, and after approval by the JBRC, the Board may approve the issuance of the bonds.

Legislative Update, June 15, 2005
FINAL MAJOR ISSUES

*STATUS: **H.3234** was approved by the General Assembly and was signed by the Governor (Act 33).*

ALCOHOL BY THE DRINK

The General Assembly ratified (Joint Resolution **S.19**) the amendment to the South Carolina Constitution approved by voters last year, deleting the provision requiring the sale of alcoholic liquors for consumption on the premises only in sealed containers of two ounces or less, and authorizing the General Assembly to determine the size of containers in which alcoholic liquors or beverages are sold.

Subsequently, the General Assembly approved, and the Governor signed, **S.165**, which provides for the sale of alcohol by the drink. Highlights of items included in **S.165** are as follows:

- Retains current law which provides that restaurants and bars must purchase alcohol from the retail liquor stores with federal wholesale basic permits (Class B's); allows Class B's to deliver liquors to restaurants and bars;
- Provides that Class B's can sell and deliver any size bottle except for 1.75 liters (1/2 gallon size);
- Allows restaurants and bars to sell liquor by the drink from any sized container, except for the 1.75 liter bottles; allows restaurants and bars to sell minibottles;
- Requires restaurants and bars to honor requests for brand names of liquor, and to notify the customer if the brand is not available; penalties are provided for non-compliance of this provision;
- Allows wholesale distributors (Class A's) to offer discounts to Class B and retail liquor stores based on location, if the discounts are offered to all Class B's and retail liquor stores;
- Allows wines up to 16% to be sold in places other than liquor stores (corrects an inconsistency in current law);
- Provides an effective date of January 1, 2006 for use of the large bottles, but allows Class B's to begin delivery of minibottles to restaurants and bars on July 1, 2005 or when the Governor signs the bill, whichever is earlier;
- Creates a study committee comprised of Senate and House members to examine the delivery and distribution system, and to make a report to the General Assembly by January 2007;
- Deletes a provision that required breaking of seals of minibottles by customers or in front of customers
- Imposes an excise tax of 5% on the sale of liquor by the drink;
- Provides that sales tax will not apply to excise tax- i.e., a \$4.00 drink=\$4.40 (20 Cents excise; 20 cents sales)
- Keeps funds to be distributed for alcohol-related problems at the 2003-2004 level;
- Defines "alcoholic liquor by the drink" and exempts wine and beer from this definition so they will not be taxed the same way;
- Allows liquor stores to sell minibottles to the general public;
- Provides for graduated penalties for ABC liquor stores and for restaurants and bars for unlawfully refilling or otherwise tampering with alcoholic liquors in any sized container;

Legislative Update, June 15, 2005
FINAL MAJOR ISSUES

- Allows places that sold minibottles to sell alcohol by the drink;
- Clarifies that restaurant and bar servers 18 years of age or older can serve liquor;
- Provides penalties for avoiding payment of the excise tax and for violating other provisions of the bill;
- Allows any establishment that sells minibottles to sell liquor by the drink until their permits expire;

*STATUS: **S.165** was approved by the General Assembly and has been signed by the Governor.*

BOILER SAFETY ACT

The General Assembly passed **S.581**, the "Boiler Safety Act" which charges the Department of Labor, Licensing and Regulation with promulgating regulations for the safe installation and inspection of boilers in this state. A boiler is a closed vessel in which water or other liquid is heated, steam or vapor is generated, or steam is superheated, under pressure or vacuum, for external use by the direct application of energy. All new installations shall conform to generally accepted nationwide engineering standards (conformity with the most recent edition of the Boiler and Pressure Vessel Code or the ASME Code shall be accepted as conformity). The department shall promulgate regulations for installation and inspection of boilers that were in use in this State prior to the implementation of the statewide building code. The regulations must be based upon, and at all times follow, generally accepted nationwide engineering standards and practices and may adopt applicable sections of the Inspection Code of the National Board of Boiler and Pressure Vessel Inspectors. Certain boilers are exempted from regulation under this legislation. Under the legislation, the Director of the Department of Labor, Licensing and Regulation shall appoint a chief boiler administrator. The legislation establishes certification requirements for boiler inspectors. The bill provides for boiler inspection timeframes, criteria, and reporting requirements. A fee not to exceed fifty dollars per facility or per certificate filed with the department may be assessed, collected, and adjusted by the Department of Labor, Licensing and Regulation. A violator of the legislation may be assessed a civil penalty of not more than five thousand dollars for each violation. Failure to comply in a timely manner after written notice by the department of a violation subjects the violator to a penalty of up to one hundred dollars per day.

*STATUS: Having passed the General Assembly, **S.581** became law without the Governor's signature on May 18, 2005 (Act 59).*

HAIR BRAIDING

S.509 requires a person to be a licensed barber or cosmetologist or a registered hair braider to perform hair braiding. The bill defines "hair braiding" as the weaving or interweaving of natural human hair for compensation without cutting, coloring, permanent waving, relaxing, removing, or chemical treatment and does not include the use of hair extensions or wefts. In order to become a hair braider registered by the Barber Board an applicant must complete a one day, six hour board-approved hair

Legislative Update, June 15, 2005
FINAL MAJOR ISSUES

braiding course, pass an examination, and pay a \$25 registration fee. Registration is valid for two years and can be renewed by paying the renewal fee. Anyone practicing hair braiding on the legislation's effective date has one year to complete the education, examination, and registration requirements. The bill establishes the content of the hair braiding course and requires all combs and implements used to braid hair to be disposable or to be sanitized in an approved disinfectant.

*STATUS: Having passed the General Assembly, **S.509** (Act 52) became law without the Governor's signature on May 5, 2005.*

HOTELS WITHOUT FIRE SPRINKLER SYSTEMS REQUIRED TO POST NOTICE

The General Assembly passed **S.348** which provides that all hotels in this State that are not required by law to have a fire sprinkler system in the building, such as historical structures, shall post a notice in a conspicuous place at or near the guest registration desk no later than July 1, 2006. The posting must be on an eight and one-half inches by eleven inches sign with letters no less than three quarters of an inch in size and must state the following: "This building meets local fire and building codes and is not required by law to have a fire sprinkler system." A hotel that violates these notification requirements shall be fined up to two hundred dollars each day.

*STATUS: Having passed the General Assembly, **S.348** was ratified (R 166) and became law without the Governor's signature on June 9, 2005.*

2005 JOBS CREATION ACT

The General Assembly approved **H.3006**, a bill which amends the Job Tax Credit law to promote and encourage small businesses to create new jobs. The bill does the following:

- For companies with 100 employees or more, existing job tax credits would apply (the company receives credit for creating 10 or more new jobs);
- For companies with 99 employees or fewer, the following would apply:
 - If the created job pays a minimum of 120% of the county or state *per capita* income, the credits would fall under the existing job tax credit laws as follows:

Distressed Counties: \$8,000
Least Developed: \$4,500
Under Developed: \$3,500
Moderately Developed: \$2,500

Legislative Update, June 15, 2005
FINAL MAJOR ISSUES

Developed: \$1,500

- If the created job pays less than 120% of the county or state *per capita* income, the credits received would be half of the existing credit.

The bill also provides for the establishment of a Capital Access Program (CAP) to provide a loan loss reserve from state appropriated funds, which would be used to assist participating financial institutions making loans to small businesses located in South Carolina that otherwise would have difficulty obtaining regular bank financing.

To encourage the creation and expansion of distribution centers in the state, the bill also provides that nexus for income and licenses and sales and use tax purposes will be determined without regard to distribution facilities.

*STATUS: **H.3006** was approved by the General Assembly and has been signed by the Governor.*

MOTION PICTURE INCENTIVE ACT AMENDMENTS

The House and Senate approved, and the Governor signed, **H.3152**, a bill which revises the Motion Picture Incentive Act. Revisions include: extending the exemption from sales and use tax to include an exemption from local, as well as state sales and use taxes; allowing up to seven percent of the general fund portion of admissions tax collected and funded to the State Film Commission to be used by the Department of Commerce exclusively for marketing and special events; and deleting a rebate to a motion picture company for sales tax paid on accommodations. The legislation authorizes the South Carolina Film Commission to rebate to a motion picture production company not more than fifteen percent of the total aggregate South Carolina payroll for persons subject to South Carolina income tax withholdings employed in connection with the production when total production costs in South Carolina are at least one million dollars during the taxable year. The rebates in total may not annually exceed ten million dollars and shall come from the state's general fund. This rebate does not apply to the salary of an employee whose salary is equal to or greater than one million dollars for each motion picture. The bill also authorizes the Department of Commerce to carry-forward their portion of the admissions tax for rebates and grants.

*STATUS: **H.3152** was approved by both the House and the Senate and has been signed by the Governor (Act 56).*

NATURAL GAS RATE STABILIZATION ACT

The General Assembly passed and the Governor signed into law **S.18**, the "Natural Gas Rate Stabilization Act". The legislation proposes to bring greater stability and predictability to rates charged by natural gas distribution utilities by establishing a procedure for the adjustment of rates and charges that routinely takes into account such factors as changes in a utility's expenses, revenues, investments, and depreciation. The legislation establishes a procedure under which natural gas distribution utilities under the regulatory authority of the Public Service Commission are authorized to apply for rate

Legislative Update, June 15, 2005
FINAL MAJOR ISSUES

adjustments on an annual basis that fall within a band of 0.50 percentage points above and below the rates that have been set in order to reflect current changes in investments, revenues, and expenses.

*STATUS: Having passed the General Assembly, **S.18** was signed into law by the Governor on February 16, 2005 (Act 16).*

RIDER SAFETY ACT

The General Assembly passed and the Governor signed into law **H.3130**, the “South Carolina Rider Safety Act”. The legislation requires riders of amusement and carnival devices to: (1) comply with posted rules, warnings, and instructions; and (2) refrain from acting in any manner that may cause or contribute to injuries, such as tampering with ride controls, disengaging safety devices, throwing objects off of rides, exiting the ride at undesignated areas, etc. The legislation requires timely reporting of any injuries sustained on rides. Under the legislation the owners of amusement devices are required to post signs relating to rider safety and

requirements for reporting injuries. The legislation establishes a misdemeanor for violations punishable with a fine of not more than five hundred dollars and/or imprisonment for not more than two months.

*STATUS: Having passed the General Assembly, **H.3130** was signed into law by the Governor on March 23, 2005 (Act 30).*

SMALL BUSINESS INCOME TAX REDUCTION

H.3007 provides a State income tax reduction for “pass-through” businesses, defined in the bill as sole proprietorships, partnerships, and ‘S’ corporations, including limited liability companies taxed as sole proprietorships, partnerships, or ‘S’ corporations. The bill reduces the state income tax rate for these businesses by 0.5 percent a year over the course of four years beginning in 2006 so that, after 2008, such businesses are to be taxed at a rate of 5 percent.

*STATUS: **H.3007** was approved by the General Assembly and has been signed by the Governor (Act 41).*

S.C. EDUCATION AND ECONOMIC DEVELOPMENT ACT

See summary under Education

TORT REFORM

See summary under The Courts

UNEMPLOYMENT COMPENSATION DENIED FOR VIOLATORS OF ILLEGAL DRUG POLICIES

The General Assembly passed and the Governor signed into law H.3682, a bill that revises Employment Security Law provisions so as to provide that the termination of an employee for violating an employer's drug policy is to be considered a discharge for cause, which makes the employee ineligible to receive unemployment compensation. Violating an employer's drug policy includes refusing to submit to a required drug test, providing an adulterated sample, or testing positive for illegal drugs. An exception to the ineligibility is provided for a worker's voluntary admission of illegal drug use in instances where the employer has a policy that protects an employee from immediate termination when making such voluntary admissions.

STATUS: Having passed the General Assembly, H.3682 was signed into law by the Governor on May 3, 2005 (Act 50).

UNEMPLOYMENT COMPENSATION FOR JOB LOSS CAUSED BY DOMESTIC VIOLENCE

The General Assembly passed and the Governor signed into law H.3682, a bill that revises Employment Security Law provisions so as to authorize unemployment compensation benefits for individuals who have lost employment as a result of domestic violence. The legislation provides that an employee who has left work voluntarily or has been discharged because of circumstances directly resulting from domestic abuse is eligible for unemployment compensation. Such an employee must: (1) reasonably fear future domestic abuse at or en route to the workplace; (2) need to relocate to avoid future domestic abuse; or (3) reasonably believe that leaving work is necessary for personal safety or safety of the family. To be eligible, the employee must provide documentation of domestic abuse from the police, court records, a shelter worker, attorney, member of the clergy, or medical or other professional. All such documentation or evidence must be kept confidential unless written consent for disclosure is given.

STATUS: Having passed the General Assembly, H.3682 was signed into law by the Governor on May 3, 2005 (Act 50).

THE COURTS

JURISDICTION TO DETERMINE VALIDITY OF MARRIAGE AND PATERNITY CASES

H.3039 provides that family court and probate court have concurrent jurisdiction to hear and determine matters relating to paternity, common-law marriage, and interpretation of marital agreements. However, the bill further provides that the concurrent jurisdiction of

Legislative Update, June 15, 2005
FINAL MAJOR ISSUES

the probate court extends only to matters dealing with the estate, trust, and guardianship and conservatorship actions before the probate court.

*STATUS: Having been approved by the General Assembly, **H.3039** (R176) was signed into law by the Governor on June 3, 2005.*

MENTAL HEALTH TREATMENT AND PROTECTIVE CUSTODY

See summary under Health

TORT REFORM

H.3008, the “**SOUTH CAROLINA ECONOMIC DEVELOPMENT, CITIZENS, AND SMALL BUSINESS PROTECTION ACT OF 2005**,” provides for comprehensive tort reform. This legislation addresses the way in which the State's judicial system handles torts. Torts are private or civil wrongs for which the court provides a remedy, usually in the form of damages.

Civil Procedure; Civil Liability

Current law provides liability among joint tortfeasors (wrongdoers) is both joint and several meaning that any tortfeasor may be responsible for the entire amount of the judgment.

Under this legislation, in an action to recover damages resulting from personal injury, wrongful death, or damage to property or to recover damages for economic loss or for noneconomic loss such as mental distress, loss of enjoyment, pain, suffering, loss of reputation, or loss of companionship resulting from tortious conduct, if indivisible damages are determined to be proximately caused by more than one defendant, joint and several liability does not apply to any defendant whose conduct is determined to be less than 50% of the total fault for the indivisible damages as compared with the total of: (i) the fault of all the defendants; and (ii) the fault ('comparative negligence') if any, of plaintiff. A defendant whose conduct is determined to be less than 50% of the total fault shall only be liable for that percentage of the indivisible damages determined by the jury or trier of fact. The legislation has provisions pertaining to apportionment of percentages of fault among defendants.

Under the legislation, the defendant shall retain the right to assert that another potential tortfeasor, whether or not a party, contributed to the alleged injury or damages and/or may be liable for any or all of the damages alleged by any other party.

The bill provides that setoff from any settlement received from any potential tortfeasor prior to the verdict shall be applied in proportion to each defendant's percentage of liability.

Legislative Update, June 15, 2005
FINAL MAJOR ISSUES

The provisions of this bill do not apply to a defendant whose conduct is determined to be willful, wanton, reckless, grossly negligent, or intentional or conduct involving the use, sale, or possession of alcohol or drugs.

Statute of Repose and Improvements to Real Property

This bill revises the statute of limitations for filing an action for a construction defect. Current law provides that no actions to recover damages in these situations may be brought more than 13 years after substantial completion of the improvement. The legislation lowers the statute of repose to eight years.

The bill further provides that for any improvement to real property, a certificate of occupancy issued by a county or municipality, in the case of new construction or completion of a final inspection by the responsible building official in the case of improvements to existing improvements shall constitute proof of substantial completion of the improvement under the provisions of S.C. Code Ann. §15-3-630, unless the contractor and owner, by written agreement, establish a different date of substantial completion.

Civil Procedure; Venue

The legislation establishes new provisions for venue; the term 'venue' generally refers to the place where a jury is drawn and in which the trial is held. With regards to corporations, the legislation establishes criteria for determining a principal place of business; in considering the proper place for venue, the bill provides that owning property and transacting business in a county is insufficient in and of itself to establish the principal place of business for a corporation.

With regards to venue, the legislation provides as follows:

- Civil actions against a resident individual defendant must be tried in the county where the most substantial part of the alleged act or omission giving rise to the cause of action occurred, or where the defendant resides at the time the cause of action arose.

- Civil actions against a nonresident individual defendant must be tried where the most substantial part of the alleged act or omission giving rise to the cause of action arose, or where the individual plaintiff resides at the time the cause of action arose, or where the corporate plaintiff (including also: domestic corporation, domestic limited partnership, domestic limited liability company, domestic limited liability partnership, foreign corporation, foreign limited partnership, foreign limited liability company, or foreign limited liability partnership) has its principal place of business at the time the cause of action arose.

- Civil actions against a domestic corporation (including also: domestic limited partnership, domestic limited liability company or domestic limited liability partnership) must be tried in the county of the corporation's principle place of business at the time the cause of action arose, or where the most substantial part of the alleged act or omission giving rise to the cause of action occurred.

Legislative Update, June 15, 2005
FINAL MAJOR ISSUES

- Civil actions against a foreign corporation required to possess a certificate of authority pursuant to the provisions of S.C. Code Ann. §33-15-101 et seq. (including also: foreign limited partnership, foreign limited liability company, foreign limited liability partnership) must be tried in the county where the corporation has its principle place of business at the time the cause of action arose, or where the most substantial part of the alleged act or omission giving rise to the cause of action occurred.
- Civil actions against a foreign corporation not required to possess a certificate of authority pursuant to the provisions of S.C. Code Ann. §33-15-101 et seq., (including also: foreign limited partnership, foreign limited liability company, foreign limited liability partnership) must be tried where the plaintiff resides or has its principal place of business at the time of the cause of action arose, or most substantial part of the alleged act or omission giving rise to the cause of action occurred, or where the foreign corporation (including also: foreign limited partnership, foreign limited liability company, or foreign limited liability partnership) has its principal place of business.

Civil Procedure; Frivolous Lawsuits

The legislation establishes new provisions regarding frivolous lawsuits. The legislation provides that a pleading must be signed by at least one attorney of record, or, if the party is not represented by an attorney (a pro se party), the pro se party must sign the pleading and must include the address and telephone number of the pro se party. The signature certifies to the court that the person has read the document and believes, in good faith, the pleading is not frivolous.

If a document is signed in violation of these provisions, the court may impose any sanction that the court considers just, equitable, and proper under the circumstances. Factors to be considered by the court include: the number of parties, the complexity of the claims and defenses, the length of time available to investigate conduct for alleged violations, information disclosed or undisclosed through discovery and adequate investigation, previous violations, any responses to the allegations, and any other factors the court considers just, equitable or appropriate under the circumstances.

A person is entitled to notice and an opportunity to respond before the imposition of sanctions; upon notification, a person has 30 days to respond to the allegations as the person considers appropriate, including, but not limited to, by filing a motion to withdraw the pleading, motion, document, or argument or by offering an explanation of mitigation. If a court imposes a sanction on an attorney, the court shall report its findings to the South Carolina Commission of Lawyer Conduct. All violations shall be reported to the South Carolina Supreme Court and a public record must be maintained and reported annually to the Governor and the General Assembly.

The provisions relating to frivolous lawsuits are in addition to all other remedies available at law or in equity.

Legal Rate of Interest

A money decree or judgment of a court enrolled or entered must draw interest according to the law. This legislation provides that the legal rate of interest is equal to the prime rate as listed in the first edition of the Wall Street Journal published each calendar year

Legislative Update, June 15, 2005
FINAL MAJOR ISSUES

for which the damages are awarded, plus four percentage points, compounded annually. The South Carolina Supreme Court shall issue an order each year confirming the annual prime rate. This applies to all judgments entered on or after July 1, 2005. For judgments entered between July 1, 2005, and January 14, 2006, the legal rate of interest shall be the first prime rate as published in the first edition of the Wall Street Journal after January 1, 2005, plus four percentage points.

Attorney Advertising

Under this bill, it is an unlawful trade practice for an attorney to advertise his or her services in this State in a false, deceptive, or misleading manner including, but not limited to, the use of a nickname that creates an unreasonable expectation of results.

Department of Insurance and General Assembly Review of Insurer's Reduction of Premiums to Reflect Savings

The Department of Insurance shall review data reported on annual statements by liability insurers, including, but not limited to, paid claims, reserves, loss adjustment expenses, and such additional data as the department may require by promulgation of bulletin, to determine savings related to a decrease in litigation and claims paid pursuant to litigation after the effective date of this legislation. The department shall compile a report of savings realized and submit it for General Assembly review upon request.

South Carolina Tort Claims Act and South Carolina Solicitation of Charitable Funds Act

The provisions of this legislation do not affect any right, privilege, or provision of the South Carolina Tort Claims Act or the South Carolina Solicitation of Charitable Funds Act.

*STATUS: **H.3008** (Act 27) passed the General Assembly and was signed into law by the Governor on March 21, 2005.*

S.83 enacts the “**SOUTH CAROLINA NONECONOMIC DAMAGE AWARDS ACT OF 2005.**” The term 'noneconomic damages' means nonpecuniary damages arising from pain, suffering, inconvenience, physical impairment, disfigurement, mental anguish, emotional distress, loss of society and companionship, loss of consortium, injury to reputation, humiliation, other nonpecuniary damages, and other theory of damages including but not limited to, fear of loss, illness, or injury.

The legislation places caps on the amount of noneconomic damages that may be awarded in an action on a medical malpractice claim. The caps are as follows:

- In an action on a medical malpractice claim when final judgment is rendered against a **single health care provider** the limit of civil liability for noneconomic damages of the health provider is limited to an amount not to exceed \$350,000 for each claimant, regardless of the number of separate causes of action on which the claim is based.

Legislative Update, June 15, 2005
FINAL MAJOR ISSUES

- In an action on a medical malpractice claim when final judgment is rendered against a **single health care institution**, the limit of civil liability for noneconomic damages is limited to an amount not to exceed \$350,000 for each claimant, regardless of the number of separate causes of action on which the claim is based.
- In an action on a medical malpractice claim when final judgment is rendered against **more than one health care institution, or more than one health care provider, or any combination thereof**, the limit of civil liability for noneconomic damages for each health care institution and each health care provider is limited to an amount not to exceed \$350,000 for each claimant and the limit of civil liability for noneconomic damages for all health care institutions and health care providers is limited to an amount not to exceed one million fifty thousand dollars for each claimant.
- The bill provides for **increases and decreases of the caps** as determined by the State Budget and Control Board and Board of Economic Advisors in the ratio of the Consumer Price Index to the index as of December 31 of the previous year.

The **caps do not apply if:**

- the jury or court determines that a defendant was grossly negligent, willful, wanton, or reckless and such conduct was the proximate cause of the claimant's noneconomic damages, or
- if the defendant has engaged in fraud or misrepresentation related to the claim, or
- if the defendant altered, destroyed, concealed, or fabricated medical records with the purpose of avoiding a claim or liability to the claimant.

The **provisions of this bill do not limit the amount of compensation for economic damages** suffered by each claimant in a medical malpractice claim. The term 'economic damages' means pecuniary damages arising from medical expenses and medical care, rehabilitation services, costs associated with education, custodial care, loss of earnings and earning capacity, loss of income, burial costs, loss of use of property, costs of repair or replacement of property, costs of obtaining substitute domestic services, a claim for loss of spousal services, loss of employment, loss of business or employment opportunities, loss of retirement income, and other monetary losses.

The **provisions of this bill do not limit the amount of punitive damages** in cases where the plaintiff is able to prove an entitlement to an award of punitive damages as required by law.

In an action involving a medical malpractice claim arising out of **care rendered in a genuine emergency situation** involving an immediate threat of death or serious bodily injury to the patient receiving care in an emergency department or in an obstetrical or surgical suite, this bill provides that no physician may be held liable unless it is proven that the physician was grossly negligent. This exception does not apply when a patient

Legislative Update, June 15, 2005
FINAL MAJOR ISSUES

is medically stable, is not in immediate threat of death or serious bodily injury or has been discharged from the hospital.

In an action involving a medical malpractice claim arising out of **care rendered by an obstetrician on an emergency basis** when there is no previous doctor/patient relationship between the obstetrician or a member of his/her practice with a patient or the patient has not received prenatal care, an obstetrician is not liable unless it is proven the obstetrician is grossly negligent.

The legislation adds certain procedural provisions with regards to an **offer of judgment and the consequences of non-acceptance**. Except in domestic relations actions, after commencement of any civil action based upon contract or seeking the recovery of money damages, whether or not other relief is sought, any party may, at any time more than 20 days before the actual trial date, file with the clerk of the court a written offer of judgment signed by the offeror or his/her attorney, directed to the opposing party, offering to take judgment in the offeror's favor, or as the case may be, to allow judgment to be taken against the offeror, for a sum stated therein, for property, or to the effect specified in the offer. There are provisions detailing how notice of the offer should be made and when the offer is deemed rejected. If an offer of judgment is not accepted and the offeror obtains a verdict or determination at least as favorable as the rejected offer, the offeror shall be allowed to recover from the offeree: (1) any administrative, filing, or other court costs from the date of the offer until judgment; (2) if the offeror is a plaintiff, eight percent interest computed on the amount of the verdict or award from the date of the offer; or (3) if the offeror is a defendant, a reduction from the judgment or award of eight percent interest computed on the amount of the verdict or award from the date of the offer. The bill further provides that this section does not abrogate the contractual rights of any party concerning the recovery of attorneys' fees or other monies in accordance with the provisions of any written contract between the parties to the action.

The legislation has provisions relating to **expert witnesses**. When an expert witness is qualified as to the acceptable conduct of the professional whose conduct is at issue, the expert must be licensed and either board certified or have actual professional knowledge and experience in the area of practice in which the opinion is to be given. In an action alleging professional malpractice, the plaintiff must file with the complaint, an affidavit of an expert witness specifying at least one negligent act or omission claimed to exist and the factual basis for each claim. The legislation does provide for an exception to the contemporaneous filing requirement in cases where the statute of limitations will expire within 10 days of the date of filing. A plaintiff's claim is subject to dismissal if the plaintiff fails to file the required affidavit. The legislation applies to numerous professions.

If a judge finds that **an expert health care provider or health care institution in a medical malpractice action** has offered testimony or evidence in bad faith or without a reasonable basis in fact or otherwise acted unethically in conjunction with testifying as an expert, the judge must report the expert to the state entity that licenses and regulates the profession of the expert or the type of health care entity represented by the expert.

In medical malpractice actions, the legislation requires the parties to participate in **mediation** governed by procedures established in the South Carolina Circuit Court Alternative Dispute Resolution Rules. The bill allows the parties to agree to participate in binding arbitration.

**Legislative Update, June 15, 2005
FINAL MAJOR ISSUES**

The bill requires prior to filing or initiating a civil action alleging injury or death as a result of medical malpractice, **the plaintiff shall file a Notice of Intent to File Suit** in a county in which venue would be proper for filing or initiating the civil action. The notice must name all adverse parties as defendants, must contain a short and plain statement of the facts showing that the party filing the notice is entitled to relief, must be signed by the plaintiff or by his/her attorney, and must include any standard interrogatories or similar disclosures required by the South Carolina Rules of Civil Procedure. Filing the Notice of Intent to File Suit tolls all applicable statutes of limitations. The Notice of Intent to File Suit must be served upon all named defendants in accordance with the service rules for a summons and complaint outlined in the South Carolina Rules of Civil Procedure.

After the Notice of Intent to File Suit is filed and served, all named parties may subpoena medical records and other documents potentially related to the medical malpractice claim pursuant to the rules governing the service and enforcement of subpoenas outlined in the South Carolina Rules of Civil Procedure. Upon leave of court, the named parties also may take depositions pursuant to the rules governing discovery outlined in the South Carolina Rules of Civil Procedure.

Within 90 days and no later than 120 days from the service of the Notice of Intent to File Suit, the parties shall participate in a mediation conference unless an extension for no more than 60 days is granted by the court based upon a finding of good cause. Unless inconsistent with this section, the Circuit Court Alternative Dispute Resolution Rules in effect at the time of the mediation conference for all or any part of the State shall govern the mediation process, including compensation of the mediator and payment of the fees and expenses of the mediation conference. The parties otherwise are responsible for their own expenses related to mediation pursuant to this section. The circuit court has jurisdiction to enforce the provisions of this section.

If the matter cannot be resolved through mediation, the plaintiff may initiate the civil action by filing a summons and complaint pursuant to the South Carolina Rules of Civil Procedure. The action must be filed: (1) within 60 days after the mediator determines that the mediation is not viable, that an impasse exists, or that the mediation should end; or (2) prior to expiration of the statute of limitations, whichever is later. Participation in the prelitigation mediation pursuant to this section does not alter or eliminate any obligation of the parties to participate in alternative dispute resolution after the civil action is initiated.

Under the bill, a person who serves on the **Board of the Joint Underwriting Association or the Board of Governors of the Patients' Compensation Fund** is prohibited from being employed in any manner or compensated by the Joint Underwriting Association or the Patients' Compensation Fund, and this prohibition continues for one year after the person ceases to be a member of the board.

All medical malpractice insurance carriers issuing policies of insurance within South Carolina for licensed health care providers shall provide and maintain coverage to all applicants who timely remit payments for the coverage period. Such policies shall be written on either a 'claims-made' or 'occurrence' basis in compliance with the standard set by the board of directors of the Joint Underwriters Association. These provisions apply only to policies written on or after January 1, 2006.

**Legislative Update, June 15, 2005
FINAL MAJOR ISSUES**

This bill provides that members of certain **professional committees** are exempt from tort liability for any act or proceeding undertaken or performed within the scope of the function of the committee and if the committee member acts without malice.

Current law provides for the **confidentiality of the proceedings and records and other information related to the actions of certain professional committees**. When there is a dispute as to the confidentiality over documents, this bill allows for judicial review by a circuit court judge. If the court determines that any of the documents are not subject to confidentiality, and are otherwise discoverable, the court shall provide the documents to the requesting party and shall assess attorneys' fees against the party unsuccessfully asserting the claim of privilege for any fees incurred by the requesting part in obtaining the documents.

With regards to the **Patients' Compensation Fund for Benefit of Licensed Health Care Providers**, the bill provides that the fund and any income from it must be managed by the board according to its plan of operation. The bill further provides that monies may be withdrawn from the fund only upon the signature of the chairman of the Board of Governors or his/her designee.

The **Medical Disciplinary Commission of the State Board of Medical Examiners** investigates formal complaints filed against physicians. Currently, the Commission is composed of 36 members, all of whom are physicians. This bill increases the size of the Commission to 48 members by adding 12 lay members. The lay commissioners must have at a minimum, a baccalaureate degree or the equivalent and have no ascertainable ties to the health care industry. Each disciplinary panel is required to have at least one lay member. Both lay and physician commissioners are limited to three consecutive terms on the Board.

The bill has provisions for the **Department of Insurance to review data and report to the General Assembly and the Governor** whether this and other related enactments have resulted in reductions in premiums in the health care community and as to any other trends of significance which might impact premium cost.

*STATUS: **S.83** (Act 32) passed the General Assembly and was signed into law by the Governor on April 4, 2005.*

CRIMINAL JUSTICE

“AUTUMN’S LAW” (CRIMINAL SEXUAL CONDUCT/TERMINATION OF PARENTAL RIGHTS)

See summary under Marriage/Family

CRIMINAL DOMESTIC VIOLENCE

H.3984 makes comprehensive revisions regarding the handling of domestic violence offenses by the judicial system and law enforcement.

Judicial Training

The bill requires magistrates, family court judges, and circuit court judges to receive continuing education on issues concerning domestic violence.

Orders of Protection

Under the bill, a person seeking an order of protection from domestic violence is not required to pay a filing fee. The bill also requires that a certified copy of an order for protection must be forwarded by law enforcement within 24 hours to the Federal Bureau of Investigation/National Crime Information Center for inclusion in the person's FBI/NCIC report.

Arrests and Hearings

Under this bill, an officer who effects an arrest for criminal domestic violence, by use of a uniform traffic ticket shall complete and file an incident report immediately following the issuance of the uniform traffic ticket.

The bill requires that an individualized hearing must be held for criminal domestic violence offenses triable in magistrates or municipal court and that the victim of the offense must receive notice of the hearing.

The bill outlines certain factors that the court may consider when considering the release of a person on bond when the victim of the offense is a household member and the person is subject to order or protection or restraining order or has a previous conviction for violation of an order of protection or restraining order. Factors which may be considered include: history of criminal domestic violence, mental health, history of violating governmental or court orders, and whether the person poses a potential threat to another person.

Pretrial Intervention Programs

In order to participate in a pretrial intervention program, if the offense is first offense criminal domestic violence, the person must agree in writing to successful completion of a batter's treatment program approved by the Department of Social Services.

Penalties

The bill increases penalties for criminal domestic violence offenses.

- Under the bill, a conviction for a misdemeanor criminal domestic violence first offense is punishable by a fine of not less than \$1,000 dollars nor more than \$2,500 dollars or imprisonment not more than 30 days.

Legislative Update, June 15, 2005
FINAL MAJOR ISSUES

- Under the bill, a conviction for a misdemeanor criminal domestic violence second offense (within a period of 10 years) is punishable by a fine of not less than \$2,500 dollars nor more than \$5,000 dollars and imprisonment not less than a mandatory minimum of 30 days nor more than one year. The court may allow the mandatory minimum sentence to be served two days during the week or on weekends; offenders are eligible for early release based on credits earned during service, including, but not limited to, good-time credits.
- Under the bill, a conviction for a third or subsequent criminal domestic violence offense (within a period of 10 years) is a felony offense punishable by imprisonment for not less than a mandatory minimum of one year but not more than five years.
- Under the bill, a conviction for criminal domestic violence of a high and aggravated nature is punishable by imprisonment for not less than a mandatory minimum of one year nor more than 10 years. The court may not suspend the mandatory one-year imprisonment.
- The bill provides that a law enforcement officer who is convicted of or pleads guilty or no contest to a criminal domestic violence offense must have his or her law enforcement certification revoked.
- Under the bill, a first offense criminal domestic violence charge may be expunged five years from the date of the conviction.

Study Committee

The bill establishes a committee to study the criminal domestic laws and recommend appropriate changes to the General Assembly by February 15, 2006.

*STATUS: Having passed the General Assembly, **H.3984** (R196) was signed into law by the Governor on June 7, 2005.*

DRUGS

Among other things, **S.16** makes various revisions pertaining to the laws concerning methamphetamine and cocaine.

This bill includes the offense of manufacturing methamphetamine as a violent crime. The bill also provides that a person 18 years of age or older may be charged with unlawful conduct toward a child, if a child was present at any time during the unlawful manufacturing of methamphetamine.

The bill makes it unlawful for any person, other than a manufacturer, practitioner, dispenser, distributor, or retailer to knowingly possess any product that contains 12 grams or more of ephedrine, pseudoephedrine, or phenylpropanolamine, their salts, isomers, or salts of isomers, or a combination of any of these substances. The offense is a felony with graduated penalties depending upon the amount of the substance the offender has in his or her possession. Exceptions are provided for certain products intended for consumer or agricultural use. This legislation specifically preempts all local

Legislative Update, June 15, 2005
FINAL MAJOR ISSUES

ordinances or regulations governing the possession of any product that contains ephedrine, pseudoephedrine, or phenylpropanolamine.

Current law provides that it is unlawful for a person to take or exercise control over a controlled substance belonging to another person or entity with the intent to deprive the person or entity of the controlled substance. This bill expands that prohibition to also provide that it is unlawful for a person to take or exercise control over the immediate precursor of a controlled substance, or ephedrine, pseudoephedrine, or phenylpropanolamine belonging to another person or entity with the intent to deprive the person or entity of the ephedrine, pseudoephedrine, or phenylpropanolamine.

Under this bill, a person possessing or attempting to possess less than one gram of methamphetamine or cocaine base is guilty of a misdemeanor. The penalty for conviction for a first offense is imprisonment for not more than three years or a fine of not more than \$5,000 dollars, or both. For a first offense the court, upon approval of the solicitor, may require as part of a sentence, that the offender enter and successfully complete a drug treatment and rehabilitation program. A second offense is a felony. The penalty for a second offense is imprisonment for not more than five years or a fine of not more than \$7,500, or both. For a third or subsequent offense, the offender is guilty of a felony. The penalty for a third or subsequent offense is imprisonment for not more than 10 years or a fine of not more than \$12,500 dollars, or both.

Under this bill, a person possessing cocaine in violation of S.C. Code Ann. §44-53-370(c) is guilty of a misdemeanor. The penalty for conviction for a first offense is imprisonment for not more than three years or a fine of not more than \$5,000 dollars, or both. For a first offense the court, upon approval of the solicitor, may require as part of a sentence, that the offender enter and successfully complete a drug treatment and rehabilitation program. A second offense is a felony. The penalty for a second offense is imprisonment for not more than five years or a fine of not more than \$7,500, or both. For a third or subsequent offense, the offender is guilty of a felony. The penalty for a third or subsequent offense is imprisonment for not more than 10 years or a fine of not more than \$12,500 dollars, or both.

*STATUS: Having been approved by the General Assembly, **S.16** (R160) was signed into law by the Governor on June 7, 2005.*

“MARY LYNN’S LAW” (DIVERSIONARY PROGRAMS, VICTIM NOTIFICATION, VICTIM IMPACT STATEMENTS, STALKING AND HARASSMENT, AND RESTRAINING ORDERS)

Diversionsary Programs

H.3543 limits defendant participation in diversionary programs such as mental health court and drug court. The bill provides that (1) a person with a current charge or a prior conviction for a violent offense or a harassment or stalking offense, or (2) a person subject to a restraining order or valid order of protection, or (3) a person currently on parole or probation for any offense, or (5) if the consent of the victim has not been obtained, then that person may not be considered for a diversion program. These

Legislative Update, June 15, 2005
FINAL MAJOR ISSUES

provisions do not apply to a program administered by the South Carolina Prosecution Coordination Commission or by a circuit solicitor.

H.3543 creates a task force to examine and design statewide standards for the operation of mental health courts.

Victim Notification

The bill makes numerous revisions with regards to victim notification.

- Diversionary programs, except a diversionary program administered by the South Carolina Prosecution Coordination Commission or a circuit solicitor, must make reasonable attempts to notify the victim of a crime prior to the defendant's release from the program, unless the defendant is released to a law enforcement agency.
- In every case where there is a court-ordered or mandatory mental evaluation, which takes place in an inpatient facility, the organization or facility responsible for the evaluation must make reasonable attempts to notify the victim of the crime prior to the defendant's release from the facility, unless the defendant is released to a law enforcement agency.
- Notification of a victim may not be only by electronic or other automated communication or recording. However, after three unsuccessful attempts to reach a victim by electronic or automated communication or recording, the appropriate agency or division shall attempt to make personal contact with the victim.
- A department or agency having custody of a person accused, convicted, or adjudicated guilty of committing a crime involving a victim, must inform each victim, upon request, before any transfer of the person to a less secure facility or to a diversionary program. These provisions do not apply to transfers to other law enforcement agencies and transfers to other non-law enforcement locations if the person remains under security supervision. All victims, upon request, must be notified of interdepartmental transfers after the transfer occurs. Notification to a victim may not be only by electronic or other automated communication or recording, except in the case of interdepartmental transfers.
- A law enforcement agency, upon effecting the arrest or detention of a person accused of committing an offense involving a victim, must also provide to a mental health facility the appropriate contact information for each victim.

Victim Impact Statements

The bill makes changes with regards to victim impact statements. The bill requires that in cases in which the sentence is more than 90 days, the prosecuting agency must forward as appropriate and within 15 days, a copy of the victim's impact statement. The bill requires the prosecuting agency to maintain the victim's original impact statement. The victim impact statement must not be provided to the defendant until the defendant

Legislative Update, June 15, 2005
FINAL MAJOR ISSUES

has been adjudicated, found guilty or has pled guilty. The victim's impact statement and its contents are not admissible as evidence in any trial.

Stalking and Harassment

The bill makes substantive changes with regards to the criminal offenses of stalking and harassment. **H.3543** creates the offenses of harassment in the first degree, harassment in the second degree, as well as redefines the offense of stalking. Penalties are outlined for violations. There are exceptions for licensed private investigators and electronic mail service providers. The bill authorizes a law enforcement officer or another person with knowledge of the circumstances to sign a warrant in place of the victim for a person alleged to have committed a harassment or stalking offense.

Prior to setting bail, a magistrate or municipal judge may order a defendant charged with harassment in the first or second degree or stalking to undergo a mental health evaluation. The purpose of this evaluation is to determine if the defendant needs mental health treatment or counseling as a condition of bond. The evaluation must be scheduled within 10 days of the order's issuance. Once the evaluation is complete, the examiner must, within 48 hours, issue a report to the local solicitor's office, summary court judge, or other law enforcement agency. Upon receipt of the report, a bond hearing must be arranged before a circuit court judge or the summary court judge. **H.3543** requires at a bond hearing that the court shall have, if available, all incident reports generated as a result of the offense charged and a copy of the defendant's criminal record.

Before sentencing a person convicted of stalking or harassment in the first or second degree, the court may require the person to undergo a mental health evaluation. The evaluation may not take place until the facility conducting the evaluation has received all of the necessary documentation. If the evaluation results in the unsupervised release of the person, the victim must be notified prior to the person's release. All reasonable efforts must be made to notify the victim personally. Under this bill, a person convicted of a violent offense, harassment or stalking offense or a burglary offense is not eligible for work release.

Restraining Orders

H.3543 authorizes magistrate's court to assess a filing fee against the nonprevailing party in an action for a restraining order. The court may hold a person in contempt of court for failure to pay this filing fee. A restraining order remains in effect for a fixed period of time for not less than one year, as determined by the court on a case-by-case basis. A restraining order issued by a court must not contain the social security number of a party to the order and must contain as little identifying information as necessary of the party it seeks to protect.

*STATUS: Having been approved by the General Assembly, **H.3543** (Act 106) was signed into law by the Governor on June 1, 2005.*

MENTAL HEALTH TREATMENT AND PROTECTIVE CUSTODY

See summary under Health

SEX OFFENDER REGISTRY

H.3328 makes various revisions with regards to the sex offender registry.

Under this bill, the State Law Enforcement Division (SLED) must cross-reference alias names in the registry.

This bill expands the list of convictions that render a person a "sex offender."

- This bill requires people having been found not guilty by reason of insanity of certain offenses to register as a sex offender. However, a person who has been found not guilty by reason of insanity shall not be required to register as a sex offender unless and until the person is declared to no longer be insane or is ordered to register by the trial judge.
- This bill requires people having been convicted, adjudicated delinquent, pled guilty or no contest or found not guilty by reason of insanity in any court in a foreign country of certain offenses to register as a sex offender. However, the bill provides that a person with a foreign conviction may raise as a defense to a prosecution for failure to register that the offense in the foreign country was not equivalent to any offense in South Carolina for which he or she would be required to register. In the cases of foreign convictions, the bill also allows the defense that the finding in the foreign country was based on a proceeding or trial in which the person was not afforded due process of law.
- Under this bill, people convicted of administering, distributing, dispensing, delivering, or aiding, or abetting, or conspiring to administer, distribute, dispense or deliver a controlled substance or gamma hydroxyl butyrate or derivatives thereof to a person with the intent to commit certain crimes must register as a sex offender.
- The bill provides that a sex offender whose name is contained on the sex offender registry, and who has been granted a pardon, must remain on the registry and must continue to register annually. There is an exception in the event that the pardon is based on a finding of not guilty.
- The bill outlines when an offender that files a petition for a writ of habeas corpus or a motion for a new trial may be removed from the registry.

Current law provides that a sex offender must register with the sheriff of the county in which the offender intends to reside within 24 hours of release; this bill changes the requirement to one business day. The bill also provides that an offender's photograph must be provided to SLED before the offender is released from prison.

Current law provides that an offender who is sentenced to probation must register within 10 days of sentencing; this bill changes the requirement to one business day.

Legislative Update, June 15, 2005
FINAL MAJOR ISSUES

Current law requires a convicted sex offender to only register in the county where the offender resides. The bill requires that the offender must also register with the sheriff of the county or counties where the offender owns real property, attends any public or private school, including but not limited to, a secondary school, adult education school, college or university, and any vocational, technical, or occupational school. The bill requires the sheriff in the county in which the offender resides, owns real property, or attends any public or private educational school to notify all local law enforcement agencies within five days.

The bill requires that certain offenders placed on parole, probation, or under community supervision must be placed on electronic monitoring. Under the bill, a person who intentionally removes, tampers with, defaces, alters, damages, or destroys an electronic monitoring device is guilty of felony. The bills also makes it a felony for a person to knowingly and willfully protect, harbor, or conceal an offender who the person knows is not in compliance with the sex offender registry.

The bill provides that a real estate brokerage and its affiliated licensees is immune from liability for any act or omission related to disclosure if the certain information is disclosed in writing to clients and customers written notice that they may obtain information about the sex offender registry and person registered with the registry by contacting the county sheriff. The notice may be included as part of a listing agreement, buyer representation agreement, or sales agreement.

*STATUS: Having passed the General Assembly, **H.3328** (R182) was signed into law by the Governor on June 7, 2005.*

EDUCATION

S.C. EDUCATION AND ECONOMIC DEVELOPMENT ACT

The General Assembly approved **H.3155**, the South Carolina Education and Economic Development Act. Highlights of the bill include the following provisions:

- Requires the State Department of Education (the Department) to develop a curriculum, organized around a career cluster system, which provides students with strong academics and real-world problem solving skills through individualized educational, academic, and career-oriented choices and greater exposure to career information and opportunities;
- Requires school districts to lay the foundation for the clusters of study system:
 - In elementary school through career awareness activities;
 - In middle grades through programs which allow students to identify career interests and abilities and align them with clusters of study for development of individual graduation plans;
 - In high school through guidance and curricula which enable students to complete these graduation plans for a seamless transition to employment, further training, or postsecondary study;

Legislative Update, June 15, 2005
FINAL MAJOR ISSUES

- Requires full implementation of the provisions of the bill by July 1, 2011, at which time the Council (see below) shall cease to exist;
- Requires that during the 2005-06 school year, the Department's guidance and counseling model must provide standards and strategies for school districts to use in developing and implementing a guidance and counseling program in their districts; this model must assist school districts and communities with planning, development, implementation, and assessment of a school guidance and counseling program to support the personal, educational, and career development of pre-kindergarten through twelfth grade students;
- Requires that before July 1, 2006, the Department shall develop state models and prototypes for individual graduation plans and the curriculum framework for career clusters of study, as provided in the bill; parents would be involved in the development of these plans;
- Requires the State Board of Education to develop a state model for addressing at-risk students;
- Requires that before July 1, 2007, school districts shall: organize high school curricula around a minimum of three clusters of study and cluster majors, designed to provide a well-rounded education; provide access for all schools to the South Carolina Occupational Information System, or another information system approved by the Department;
- Requires that during the 2006-07 school year:
 - The Department shall begin implementing a career development plan for education professionals in career guidance;
 - The Department's guidance and counseling program model and career awareness activities must be integrated into the curricula for grades one through five;
 - Counseling and career awareness programs on clusters of study must be provided for grades six through eight;
 - Middle schools - and by 2007-08 high schools - must provide students with the services of a career specialist who is trained and education as provided in the bill;
- Requires that by the 2007-08 school year, all middle and high schools shall have a 300-1 student-to-guidance-personnel ratio;
- Requires that a career services provider shall work to ensure the coordination, accountability, and delivery of career awareness, development, and exploration to students in kindergarten through twelfth grade, through services and responsibilities outlined in the bill;
- Requires that during the 2007-08 school year, all public high schools shall implement a career guidance program model or prototype as developed or approved by the Department, and certified school guidance counselors and career specialists shall counsel ninth and tenth grade students so that before the end of the second semester of the tenth grade, tenth grade students will have declared an area of academic focus within a cluster of study;
- Allows a student to transfer to a high school offering that student's career cluster if not offered by the high school in his attendance zone;
- Prohibits school guidance counselors and career specialists from performing administrative tasks;
- Requires that by the 2009-10 school year, all high schools shall implement the "High Schools That Work" organizational model, or another cluster or model approved by the Department;

Legislative Update, June 15, 2005
FINAL MAJOR ISSUES

- Outlines criteria which must be included in an individual graduation plan;
- Requires the State Board of Education, through regulations, to outline specific objective criteria for districts to use in the identification of students at risk for being poorly prepared for the next level of study or for dropping out of school;
- Requires the establishment of model programs for at-risk students to ensure that these students receive the opportunity to complete the necessary requirements to graduate with a state high school diploma and build skills to prepare them to enter the job market successfully;
- Requires schools to schedule parental conferences, as described in the bill, for students in grades six through twelve;
- Creates and provides for the Education and Economic Development Coordinating Council to advise the Department on the implementation of the provisions of the bill, to review accountability and performance measures, to designate and oversee the regional centers established in the bill (see below), to report annually on the progress of implementing the bill, to make recommendations to the department for a marketing plan to promote awareness of the provisions of the bill, and to provide input regarding promulgation of regulations to carry out the provisions of the bill;
- Requires and provides for regional education centers (before July 1, 2006) to coordinate and facilitate the delivery of information, resources, and services to students, educators, employers, and the community;
- Requires the South Carolina Employment Security Commission to collaborate with the State Technical Education Board and the Commission on Higher Education to assist the Department in planning and promoting career information and employment options and preparation programs provided in the bill, and in the establishment of the regional education centers;
- Requires that beginning with the 2006-07 academic year, colleges of education must include in their training of teachers, guidance counselors, and administrators, specified components relevant to the provisions of the bill;
 - Requires the Department to develop performance-based standards in these areas and include them as criteria for teacher program approval;
 - Requires that by the 2009-10 school year, the teacher's and principal's evaluation systems must include a review of performance in career exploration and guidance;
- Requires the Commission on Higher Education to:
 - Review, revise, and recommend secondary to postsecondary articulation agreements and to promote the development of measures to certify equivalency in content and rigor for all courses included in articulation agreements;
 - Examine dual credit courses to insure they are equivalent in content and rigor to the equivalent college courses;
 - Study the content and rigor of high school courses in order to provide a seamless pathway to postsecondary education;
 - Report annually to the Education and Economic Development Coordinating Council.
- Repeals the 1994 School-to-Work Transition Act.
- Amends current provisions regarding character education by adding respect for authority, good work ethics, and sound educational habits as character traits which should be incorporated into character education programs;

Legislative Update, June 15, 2005
FINAL MAJOR ISSUES

- Requires that school report cards (required under the Education Accountability Act) include dropout reduction data.

*STATUS: **H.3155** was approved by the General Assembly and has been signed by the Governor (Act 88).*

FINANCIAL LITERACY

The General Assembly passed and the Governor signed into law **H.3020**, the Financial Literacy Act Of 2005. This legislation requires the State Board of Education to develop or adopt curricula, materials, and guidelines for local school boards to use in implementing a program of instruction on financial literacy within courses currently offered in South Carolina high schools. A financial literacy program includes instruction in basic personal finance skills such as balancing a checkbook, opening a deposit account, managing a savings account, understanding credit card debt, computing interest rates, filling out a loan application, and understanding simple contracts and taxes. The legislation also authorizes the establishment of a special fund to receive public and private contributions to provide financial incentive grants to local school boards for: defraying the costs of financial literacy training for teachers; rewarding schools, teachers, and students who meet certain levels of success in a financial literacy competition; and funding activities related to financial literacy education. The Board is required to incorporate the elements of the financial literacy program into the State Academic Standards of Instruction for kindergarten through twelfth grade.

*STATUS: Having passed the General Assembly, **H.3020** was signed into law by the Governor on April 15, 2005 (Act 38).*

STUDENTS' HEALTH AND FITNESS ACT OF 2005

The General Assembly approved **H.3499**, the Students' Health and Fitness Act of 2005. Highlights of this bill are as follows:

- States that the goal of the bill is to provide every elementary student with the equivalent of thirty minutes of physical activity daily;
- Beginning with the 2006-07 school year, decreases the current 800:1 student-certified physical education teacher ratio to 500:1, phased in over three years;
- Limits physical education classes to a student-teacher average ratio of 28:1;
- Requires and provides for each public school in the State to administer the South Carolina Physical Education Assessment; provides that assessment of students in grades two, five, eight, and high school must be used to assess the effectiveness of the school's physical education program; requires the State Department of Education (SDE) to develop a procedure to calculate a district and school physical education program effectiveness score, and requires that this score be reported through the district and school report card;
- Requires that individual students' fitness status must be reported to parents or guardians in grades five, eight, and high school;

Legislative Update, June 15, 2005
FINAL MAJOR ISSUES

- Allows students meeting certain criteria to be exempted from physical education activities and requirements by seeking a waiver from the local board as provided in current law;
- Requires elementary schools to designate a physical education teacher to serve as its Physical Education Activity Director responsible for coordinating additional physical activity for students and teachers before, during, and after school;
- Allows the use of dance instruction, as it is described in the bill, and the dance components of the South Carolina Physical Education Standards to satisfy one-fourth of the required physical education minutes;
- Allows non-certified or adult volunteers to assist in implementing structured activities if approved by the superintendent;
- Requires professional development to teachers and volunteers on the importance of physical activity for children and the relationship of activity and good nutrition to academic performance and healthy lifestyles, and provides professional development assistance to physical education teachers in unsatisfactorily-performing schools;
- Requires the General Assembly, beginning with school year 2007-08, to appropriate funds to be used for providing grants for licensed nurses in elementary public schools;
- To promote optimal healthy eating patterns, requires SDE to place recommendations of the SDE Task Force on Student Nutrition and Physical Activity Report in policy to be implemented in elementary schools;
- Requires SDE to make available coordinated school health model designed to address health issues of children, and outlines eight components which the program must provide;
- Requires SDE to develop or adopt an assessment program to evaluate district and school health education programs, and requires SDE to begin piloting health education assessments in the 2006-07 school year with implementation in the 2008-09 school year;
- Requires and provides for school districts to establish and maintain a Coordinated School Health Advisory Council (CSHAC) to assess, plan, implement, and monitor district and school health policies and programs, including development of a district wellness policy to begin implementation in the 2006-07 school year;
- Requires districts to work with the CSHAC to develop school health plans which will be a part of the district's currently-required strategic plan;
- Requires school boards to establish policies limiting sales of foods and beverages of minimal nutritional value during the school day, but does not restrict foods which parents may provide for the child to consume at school;
- Provides that each district's CSHAC shall determine which snacks may be sold in vending machines in elementary schools;
- Requires that elementary school students must have at least twenty minutes to eat lunch once they have received their food;
- Requires that students in grades K-5 receive nutrition education weekly;
- Stipulates that implementation of these provisions is contingent upon funding from the General Assembly.
- May not be construed to prohibit or limit the sale or distribution of any food or beverage item through fundraisers by students, teachers, or groups when the items are intended for sale off the school campus.

Legislative Update, June 15, 2005
FINAL MAJOR ISSUES

*STATUS: **H.3499** was approved by the General Assembly and has been signed by the Governor (Act 102).*

ENVIRONMENT

AMENDMENTS TO THE AQUATIC LIFE PROTECTION ACT

The Aquatic Life Protection Act was enacted in 2004; since the enactment of this legislation, the Environmental Protection Agency (EPA) has taken over the NPDES (Natural Pollutant Discharge Elimination System) permit process. This bill allows any permit applicant or existing permittee to notify the South Carolina Department of Health and Environmental Control (DHEC) in writing that it is opting out of the Aquatic Life Protection Act. **S.326** also makes substantive but technical changes to the Aquatic Life Protection Act to make the act compliant with EPA requirements so that DHEC may administer its own program.

*STATUS: Having passed the General Assembly, **S.326** (Act 25) was signed into law by the Governor on March 22, 2005.*

BROWNFIELDS

H.3650 relates to the Brownfields Voluntary Cleanup Program and contract requirements entered into by or on behalf of a nonresponsible party. Brownfields are real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant. The bill provides that a nonresponsible party is not liable to any third-party for contribution, equitable relief, or claims for damages arising from a release of contaminants which is the subject of a response action included in the nonresponsible party voluntary cleanup contract. This limitation of liability commences on the date of execution of the nonresponsible party voluntary cleanup contract by the Department of Health and Environmental Control; however, this limitation must be withdrawn automatically if the nonresponsible party voluntary cleanup contract is lawfully terminated by any party. This limitation applies only to: (1) the parties to the nonresponsible party voluntary cleanup contract and to the nonresponsible party's lenders, signatories, parents, subsidiaries, and successors; and (2) 'existing contamination', as defined in the nonresponsible party voluntary cleanup contract. This limitation of liability does not apply to any release caused by or attributable to the nonresponsible party or its lenders, signatories, parents, subsidiaries, or successors.

*STATUS: Having passed the General Assembly, **H.3650** (R149) was signed into law by the Governor on June 3, 2005.*

GRAND JURY/EXPANSION OF JURISDICTION TO INCLUDE ENVIRONMENTAL OFFENSES

S.22 extends the subject matter jurisdiction of the state grand jury to include wilful criminal violations that result in actual and substantial harm to the water, ambient air, soil or land, or both soil and land. Violations include, but are not limited to, violations of: the Atomic Energy and Radiation Control Act, the State Underground Petroleum Environmental Response Bank Act, the State Safe Drinking Water Act, the Hazardous Waste Management Act, the Infectious Waste Management Act, the Solid Waste Policy and Management Act, the Pollution Control Act, the Erosion and Sediment Control Act, the South Carolina Mining Act, and the Coastal Zone Management Act, or any crime arising out of or in connection with environmental laws, or any attempt, aiding, abetting, solicitation, or conspiracy to commit a crime involving the environment if the anticipated damages, including, but not limited to the cost of remediation, are two million dollars or more as certified by an independent environmental engineer who shall be contracted by the Department of Health and Environmental Control (DHEC). If the knowing and wilful crime is a violation of federal law, then a conviction or an acquittal under federal law for the same act is a bar to the impaneling of a state grand jury.

The bill requires that in investigations of crime, except in matters where DHEC or its officers or employees are subjects of investigation, the Commissioner of DHEC must consult with and, after investigation, provide a formal written recommendation to the Attorney General and the Chief of the South Carolina Law Enforcement Division (SLED). The Attorney General and the Chief of SLED must consider the impaneling of a state grand jury necessary before the Attorney General presents a petition, which includes the Commissioner's written recommendation, to the Chief Administrative Judge.

In the case of evidence brought to the attention of law enforcement by an employee or former employee of the alleged violating entity, the bill provides that there must also be separate, credible evidence of the violation in addition to the testimony or documents provided by the employee or former employee. Where an individual employee performs a wilful criminal violation of the environmental laws, only the individual employee is subject to investigation unless or until there is separate, credible evidence that the individual's employer knew of, concealed, directed, or condoned the employee's actions.

*STATUS: Having passed the General Assembly, **S.22** (Act 75) was signed into law by the Governor on May 24, 2005.*

GAMBLING

CASINO BOATS

H.3694 delegates to counties and municipalities the authority to prohibit or regulate the operation of gambling vessels that are engaged in so-called "cruises to nowhere." The legislation has model language for a local jurisdiction to adopt in order to prohibit gambling vessels engaged in "cruises to nowhere." The General Assembly specifically

Legislative Update, June 15, 2005
FINAL MAJOR ISSUES

retains and does not delegate to local jurisdictions the authority to regulate or prohibit gambling on passenger cruise liners. The bill specifically provides that if the exception for passenger cruise liners is found unconstitutional or invalid, then it is the intent of the General Assembly for the entire legislation to be invalid.

When a local jurisdiction adopts an ordinance regulating or prohibiting gambling vessels, the legislation allows a county or municipality to assess a civil penalty of not more than \$100 dollars per passenger for each violation, with an aggregate total in penalties not to exceed \$50,000 dollars per vessel for a 24-hour period. The bill authorizes local jurisdictions to seek injunctive relief against a person for violation of an ordinance regulating or prohibiting gambling vessels.

If a local jurisdiction does not adopt an ordinance prohibiting a gambling vessel from operating, the legislation authorizes the local jurisdiction to assess a surcharge of up to 10 percent of each ticket sold per gambling cruise and a surcharge or up to five percent of the gross proceeds of each gambling vessel. The bill also outlines reporting requirement that the gambling cruises must make to the Department of Revenue; a gambling vessel that fails to comply with the reporting requirements may be assessed civil penalties.

The bill provides a limited five-year grandfather clause for gambling vessels operating as of January 1, 2005.

*STATUS: Having been approved by the General Assembly, **H.3694** (R131, Act 104) was signed into law by the Governor on June 1, 2005.*

HEALTH

HEALTH CARE POWERS OF ATTORNEY

Under **H.3224**, any document or writing containing the following provisions is deemed to comply with the requirements for a health care power of attorney: (1) the name and address of the person who is authorized to make health-care related decisions if the principal becomes mentally incompetent; (2) the types of health-care related decisions that the health care agent is authorized to make; (3) the signature of the principal; (4) the signature of at least two persons who witnessed the principal's signature; and, (5) the attestation of a notary public.

Additionally, any document that meets the requirements listed above and also provides expressions of the principal's intentions or wishes with respect to the following health care issues authorizes the health care agent to act in accordance with these provisions: (1) organ donations; (2) life-sustaining treatment; (3) tube feeding; (4) other kinds of medical treatment that the principal wishes to have or not to have; (5) comfort and treatment issues; (6) provisions for interment or disposal of the body after death; and, (7) any written statements that the principal may wish to have communicated on his or her behalf.

Legislative Update, June 15, 2005
FINAL MAJOR ISSUES

*STATUS: Having passed the General Assembly, **H.3224** (R179) was signed into law by the Governor on June 7, 2005.*

"LEWIS BLACKMAN HOSPITAL PATIENT SAFETY ACT"

H.3832 requires each hospital staff member whose duties include the personal care or medical treatment of patients to wear badges clearly stating their name, their department and their job or trainee title. All clinical trainees, medical students, interns, and resident physicians must be explicitly identified on their badges. The identifying information must be clearly visible and must be stated in terms or abbreviations reasonably understandable to the average person.

Except in emergency admissions, a hospital is required to provide each patient with written information about the role of clinical trainees, medical students, interns, and resident physicians in patient care. The patient must be notified that the attending physician is the person responsible for the patient's care in the hospital. The notification must state generally whether medical students, interns, or resident physicians may be participating in a patient's care, making treatment decisions, or performing surgery. If at any time a patient or the patient's representative requests that a nurse call his or her attending physician regarding the patient's personal medical care, the nurse is required to place a call to inform the attending physician or his or her designee of the patient's concerns. If the patient wants to speak to the attending physician, the nurse must provide the telephone number and assist in making the call. Each hospital must provide a mechanism that the patient can use to get prompt assistance for the resolution of the patient's personal medical care concerns. A description of this mechanism must be included in the patient notification.

This legislation does not create a civil cause of action. However, the legislation must not be construed to preclude a claim that may have otherwise been asserted under common law or any other provision of law. Also, the provisions of this legislation do not apply to hospitals owned or operated by the Department of Mental Health. The Department of Health and Environmental Control shall administer and enforce these provisions.

*STATUS: Having passed the General Assembly, **H.3832** (R151) became law without the Governor's signature on June 8, 2005.*

MENTAL HEALTH INSURANCE PARITY

The General Assembly passed **S.49**, a bill that requires health insurers to provide coverage for treatment of certain mental health conditions. The legislation's coverage requirements pertain to treatment of the following mental conditions: (1) Bipolar Disorder, (2) Major Depressive Disorder, (3) Obsessive Compulsive Disorder, (4) Paranoid and Other Psychotic Disorder, (5) Schizoaffective Disorder, (6) Schizophrenia, (7) Anxiety Disorder, (8) Post-traumatic Stress Disorder, and (9) Depression in childhood and adolescence. The legislation requires a health insurance plan to provide the insured at least one choice for treatment of mental health conditions within the plan that has rates, terms, and conditions that place no greater financial burden on the insured than for access to treatment of physical conditions in similar settings and for similar types of

Legislative Update, June 15, 2005
FINAL MAJOR ISSUES

treatment. Any required deductible or out-of-pocket limits must be comprehensive for coverage of both mental health and physical health conditions. The legislation establishes provisions under which a health insurer may provide coverage for treatment of mental health conditions through a managed care organization even if the insurer does not otherwise provide for management of care. The legislation does not apply to a health insurance plan that is individually underwritten or provided to a small employer. The legislation provides that the State Employee Insurance Program shall continue to provide mental health parity in the same manner and with the same management practices as included in the plan beginning in 2002, and is not under the jurisdiction of the Department of Insurance. Before July 1, 2008, The Department of Insurance is required to report to the General Assembly an estimate of the impact of this legislation on health insurance costs.

*STATUS: Having passed the General Assembly, **S.49** became law without the Governor's signature on May 25, 2005 (Act 76).*

MENTAL HEALTH TREATMENT AND PROTECTIVE CUSTODY

H.3412 is a bill relating to mental health treatment and protective custody. Currently, a person may be admitted and held in a hospital or mental health facility for emergency admission if:

- a concerned petitioner produces a written affidavit that the person is mentally ill and may cause harm to himself/herself or others if not immediately hospitalized;
- a doctor certifies he/she believes the person is mentally ill and likely to cause harm to himself/herself or others; and
- within 48 hours a probate court makes a preliminary review of the evidence to determine if probable cause exists for continued detention of the patient.

A probate court hearing must be scheduled within 15 days of the emergency admission regarding the involuntary commitment, and the patient is entitled to legal counsel. If before the hearing, the designated examiners determine that the patient is no longer mentally ill to the extent that involuntary treatment is required, this bill requires the examiners to submit a supplemental report to the court. If the court receives a supplemental report at least 48 hours before the hearing stating that the patient is no longer mentally ill to the extent involuntary treatment is required, and setting forth the reasons for the examiners' conclusions, the bill provides that the court shall dismiss the petition and that the patient must be discharged immediately by the facility.

Under current law, if a person is believed to be mentally ill and likely to harm himself/herself or others but cannot be examined by a physician because his/her location is unknown or any other reason, the petitioner can explain the emergency situation in an affidavit and ask the probate court to order a law enforcement officer to take the individual into custody. **H.3412** makes these pick-up orders expire after 72 hours.

If a person appears to be mentally ill or under the influence of drugs or alcohol and is likely to cause harm to himself/herself or others, **H.3412** allows a law enforcement officer to take that person into protective custody and to transport the person to a mental health facility for a psychiatric and chemical dependency examination. The bill provides that the person can be held for only 24 hours, unless an examining doctor certifies the

Legislative Update, June 15, 2005
FINAL MAJOR ISSUES

person should be detained longer pending transportation to a designated hospital. The bill also provides limited civil immunity for law enforcement and medical personnel involved in the protective custody.

The bill also deals with involuntary hospitalization under judicial commitment. When a court has determined a person is mentally ill and needs involuntary treatment, **H.3412** allows the court to order outpatient treatment, if necessary, following in-patient treatment. Currently, there is no provision authorizing the court to order outpatient treatment. This bill requires the treatment facility to inform the court if the patient fails to adhere to a court-ordered out-patient treatment plan, and the court may order additional in-patient treatment.

The bill authorizes family court to order a child to be given an initial psychiatric evaluation by an appropriate community health center. The community mental health center must schedule the court-ordered evaluation as soon as possible and report the results to the court within five days following the evaluation. If the report states the child needs an inpatient psychiatric evaluation, the court can commit the child to a hospital for psychiatric evaluation.

H.3412 also deals with involuntary commitment for chemical dependency. The bill places a 72-hour limit on an order to pick up a person believed to be in need of emergency care for chemical dependency.

*STATUS: Having been approved by the General Assembly, **H.3412** (R144) was signed into law by the Governor on June 3, 2005.*

NURSE LICENSURE COMPACT

H.3142 authorizes South Carolina to join the Nurse Licensure Compact to:

- facilitate the responsibility to protect the public's health and safety;
- ensure and encourage the cooperation between states with regard to nurse licensure and regulation;
- facilitate the exchange of information regarding nurse regulation, investigation, and adverse licensure actions;
- promote compliance of laws governing the practice of nursing in each jurisdiction;
- grant participating states authority to hold nurses accountable for meeting all of state practice laws in the states where their patients are located at the time care is rendered.

For purposes of this bill, the following definitions apply:

- party state - any state that has adopted this compact;
- home state - the party state that is the nurse's primary state of residence;
- remote state - a party state, other than the home state, where the patient is located at the time nursing care is provided or in cases not involving a patient where the recipient of nursing practice is located.

The compact maintains a coordinated licensure information system to collect and share information on nurse licensure and enforcement actions. When a nursing license

Legislative Update, June 15, 2005
FINAL MAJOR ISSUES

application is received in a party state, the licensing board must check through the coordinated licensure information system to verify whether the applicant holds or has ever held a license issued by any other state, whether there are any restrictions on the applicant's multi-state privilege, and whether any other adverse licensure action by any state has been taken against the applicant's license.

The bill specifies the conditions under which a nurse may be issued a license to practice in participating and non-participating states. Under the compact, a license to practice nursing issued by a home state to a resident in that state must be recognized by each party state as authorizing a multi-state licensure privilege to practice in each party state. In order to obtain or retain a license, an applicant must meet the home state's qualifications for licensure, license renewal, and all other applicable home state laws. A party state may, in accordance with that state's due process laws, revoke, suspend, or limit the multi-state licensure privilege of any licensee to practice in its state and may take any other actions under its applicable state laws that are necessary to protect the health and safety of its citizens. The practice of nursing in a party state subjects a nurse to the jurisdiction of the nurse licensing board and the laws and the courts in that party state.

If a party state takes an action against a nurse, it must notify the administrator of the coordinated licensure information system. The administrator must notify the home state of any actions taken by other states in the compact. The compact provides due process procedures for a nurse against whom an adverse licensure action is ordered.

The bill also requires, beginning January 1, 2007, a foreign-educated applicant for licensure as a registered nurse in South Carolina to pass the National Council Licensure Examination and an English language proficiency test.

*STATUS: Having been approved by the General Assembly, **H.3142** (Act 87) was signed into law by the Governor on May 26, 2005.*

STUDENTS' HEALTH AND FITNESS ACT OF 2005

See summary under Education

MARRIAGE/FAMILY

“AUTUMN’S LAW” (CRIMINAL SEXUAL CONDUCT/ TERMINATION OF PARENTAL RIGHTS)

S.227 pertains to the adoption and termination of parental rights when the child is conceived as a result of criminal sexual conduct or incest.

Under the bill, consent or relinquishment for adoption is not required when the biological parent of a child conceived as a result of that parent's criminal sexual conduct or incest as found by a court of competent jurisdiction unless, with respect to a conviction for

Legislative Update, June 15, 2005
FINAL MAJOR ISSUES

criminal sexual conduct, the sentencing court makes specific findings on the record that the conviction resulted from consensual sexual conduct where neither the victim nor the actor were younger than 14 years of age nor older than 18 years of age at the time of the offense.

The bill also provides that conception of a child as a result of the criminal sexual conduct of a biological parent, as found by a court of competent jurisdiction, is grounds for terminating the rights of that biological parent, unless the sentencing court makes specific findings on the record that the conviction resulted from consensual sexual conduct where neither the victim nor the actor were younger than 14 years of age nor older than 18 years of age at the time of the offense.

*STATUS: Having passed the General Assembly, **S.227** (R165) was signed into law by the Governor on June 7, 2005.*

CRIMINAL DOMESTIC VIOLENCE

See summary under Criminal Justice

SAME SEX MARRIAGE

This joint resolution proposes to submit to the electors at the next general election whether or not the State Constitution should be amended to provide that marriage is exclusively defined as the union between one man and one woman and that all other attempted unions, including those recognized by other jurisdictions, are void.

*STATUS: Having passed the General Assembly, **H.3133** (Act 45) became effective April 28, 2005.*

UNEMPLOYMENT COMPENSATION FOR JOB LOSS CAUSED BY DOMESTIC VIOLENCE

See summary under Business/Economic Development

STATE/LOCAL GOVERNMENT

PUBLIC SERVICE AUTHORITY

The General Assembly passed **S.573**, legislation that revises provisions for the oversight of the South Carolina Public Service Authority. This bill adds the Directors of The South Carolina Public Service Authority to the list of officers who may be removed by the Governor for cause. The legislation also allows a director to be removed for breach of duties. The legislation provides that a director shall discharge his duties: (1) in good faith; (2) with the care an ordinarily prudent person in a like position would exercise under similar circumstances; and (3) in a manner he reasonably believes to be in the

Legislative Update, June 15, 2005
FINAL MAJOR ISSUES

best interests of the Public Service Authority. Acting in the best interests of the Public Service Authority includes balancing of the following: (a) preservation of the financial integrity of the Public Service Authority and its ongoing operation of generating, transmitting, and distributing electricity to wholesale and retail customers on a reliable, adequate, efficient, and safe basis, at just and reasonable rates, regardless of the class of customer; (b) economic development and job attraction and retention within the Public Service Authority's present service area or areas within the State authorized to be served by an electric cooperative, or municipally owned electric utility that is a direct or indirect wholesale customer of the authority; and (c) exercise of the powers of the authority in accordance with good business practices and the requirements of applicable licenses, laws, and regulations. The bill provides that the Public Utilities Review Committee has the duty to screen candidates for the Board of Directors of the Public Service Authority and establishes qualifications for members of the Board of Directors. Two of the eleven directors shall have substantial experience serving on an electric cooperative board or substantial experience on an electric cooperative board, but must not serve as an employee or board member of an electric cooperative during their term as director.

Governmental immunity provisions are revised so as to provide that the Public Service Authority is not liable for certain losses resulting from conduct of a director of the authority. The bill specifies conduct for which a director of the Public Service Authority is not immune from liability and prohibits the Insurance Reserve Fund from providing insurance coverage for that individual liability.

The bill prohibits the Public Service Authority from disposing of certain property without prior approval of the General Assembly or from inquiring into the feasibility of disposing of its property. The bill establishes standards of conduct for directors of the Public Service Authority and defines a conflict of interest transaction. The bill permits customers of the Public Service Authority to sue directors of the authority for breach of duty and provides for damages. The bill provides that only the net earnings not necessary for the operation of and in the best interest of the Public Service Authority shall be paid to the State Treasurer and used to reduce the tax burdens on the people of the State.

*STATUS: Having passed the Senate and the House of Representatives, **S.573** was ratified on May 18, 2005 (R 82). On May 24, the Governor vetoed the legislation. On May 25, the Senate and the House voted to override the Governor's veto.*

RETIREMENT SYSTEM REFORM

The General Assembly approved **S.618**, a comprehensive bill which makes significant revisions to the South Carolina Retirement Systems. Highlights of changes to the current systems include:

CONTRIBUTIONS

Legislative Update, June 15, 2005
FINAL MAJOR ISSUES

- Teacher and Employee Retention Incentive Program (TERI) participants and retired members working for covered employers will pay active employee contributions as of July 1, 2005. Currently they pay no contributions.
- Employee contributions increase to 6.25% on July 1, 2005 and to 6.50% on July 1, 2006. Currently South Carolina Retirement System/Optional Retirement Program employees pay a 6.0% contribution.
- Employer contributions increase by .5% on July 1, 2006 and by another .5% effective July 1, 2007.

BENEFITS

Active/New TERI Employees

- New TERI participants after June 30, 2005 will no longer receive the first annual leave payout. Annual leave will be paid out at the time of separation from employment.
- TERI participants prior to July 1, 2005 are eligible for second payout of annual leave.
- Requires Average Final Compensation (AFC) recalculation at the end of TERI period to include unused annual leave for new TERI participants after June 30, 2005;
- TERI participants are eligible for one-year salary Group Life Insurance.
- Upon leaving TERI employment, a retiree is eligible to return to work for a covered employer at the discretion of the agency. The retiree must experience a one day break in service.
- New TERI participants as of the day following ratification of **S.618** are exempt from the State Employee Grievance Procedure Act.

Retired Employees

- A retired member can return to covered employment after 15 consecutive calendar days.
- Retired members employed prior to July 1, 2005 are eligible for an annual leave payout upon separation.
- No earnings limitations for retirees returning to covered service;
- Retired members who return to a covered employer are eligible for one-year salary Group Life Insurance in lieu of retiree \$2,000, \$4,000 or \$6,000 insurance.
- Retired members who return to a covered employer will receive bonus annual leave at their applicable rate but will not be paid for their unused annual leave upon separation.
- Current retired members and retirees returning to covered employment are exempt from the State Employee Grievance Procedure Act effective July 1, 2005.

*STATUS: **S.618** was approved by the General Assembly and has been signed by the Governor.*

TAXATION

ALCOHOL BY THE DRINK

See summary under Business/Economic Development

SMALL BUSINESS INCOME TAX REDUCTION

See summary under Business/Economic Development

TRANSPORTATION

AIR CARRIER HUB TERMINAL FACILITIES

See summary under Business/Economic Development

PRIMARY ENFORCEMENT OF SEAT BELTS

The General Assembly approved **S.1**, a bill which allows a law enforcement officer to stop a driver for a violation of safety belt requirements in the absence of another violation of the motor vehicle laws. This provision is effective six months after the bill becomes law. For violation of safety belt requirements, the bill provides for a twenty-five dollar fine, but prohibits custodial arrest and prohibits reporting the violation to the offender's motor vehicle insurer. The bill also prohibits including any safety belt violations in the offender's motor vehicle records or in criminal records maintained by SLED.

The bill also prohibits issuance of a citation for violation of safety belt provisions when the stop is made in conjunction with a driver's license check, safety check, or registration check conducted at a checkpoint established to stop all drivers, except when the driver is cited for violating another motor vehicle law.

The bill provides that violation of seat belt provisions is not admissible as evidence in a civil action and no search of the vehicle or passengers may be made solely because of a violation of seat belt provisions.

The bill also requires that any time a vehicle is stopped by a law enforcement officer without a citation being issued or an arrest being made, the officer must complete a data collection form as provided in the bill, and the Department of Public Safety (DPS) is required to maintain a database for this information and report the information on its website. The bill authorizes the General Assembly to withhold state funds or federal pass-through funds from any law enforcement agency failing to comply with this requirement. The bill provides for legislative review of, and recommendations for any changes in, the data-gathering requirements during the 2010 legislative session.

The bill requires DPS to provide education programs designed to create awareness of safety belt laws and to increase use of safety belts in rural and ethnically diverse areas throughout the State.

*STATUS: **S.1** was approved by the General Assembly and became law without the Governor's signature on June 9, 2005.*

Legislative Update, June 15, 2005
FINAL MAJOR ISSUES

MAJOR LEGISLATION PENDING FOR 2006

ADMINISTRATIVE RESTRUCTURING

The Senate approved **S.80**, a comprehensive bill which makes numerous revisions to the structure of State government including, but not limited to:

1. New or Revised Cabinet Agencies:

Department of Administration, effective July 1, 2006

This new department would consist of the following:

- (a) the Division of General Services of the Budget and Control Board, except for the real property programs; and
- (b) the Office of Energy of the Budget and Control Board; and
- (c) a new Office of State Inspector General. The Office of State Inspector General would:
 - (1) be appointed by the Governor with the advice and consent of the Senate for a term to be coterminous with that of the Governor;
 - (2) be required to have an accounting or business degree and a level of auditing experience;
 - (3) initiate, supervise, and coordinate investigations, recommend polices, and carry out other activities designed to deter, detect, prevent, and eradicate fraud, waste, misconduct, and abuse in the programs, operations, and contracting of all executive agencies.

Department of Behavioral Health Services, effective July 1, 2006

This new department would consist of the following existing departments or agencies:

- (a) Department of Alcohol and Other Drug Abuse Services;
- (b) the Continuum of Care (Governor's Office); and
- (c) Department of Mental Health.

Department of Health and Human Services, effective January 1, 2006

- (a) DHHS would be renamed the Department of Health Oversight and Finance.
- (b) The department would administer the Web-Based Client Management System, developed by the Office of Research and Statistics in conjunction with DHHS.

2. Changes in existing agencies:

Babynet, effective July 1, 2006

- (a) This program to benefit infant and toddlers is currently at DHEC.
- (b) This program would be transferred to the Department of Disabilities and Special Needs.

Budget and Control Board, effective July 1, 2006

The Board would have the following new components:

- (a) the Chief Information Officer would be:

Legislative Update, June 15, 2005
FINAL MAJOR ISSUES

- (1) appointed by the Governor with the advice and consent of the Senate;
 - (2) removable by a majority vote of the Budget and Control Board;
 - (3) responsible for developing policies and standards for the management of information technology in state government and providing management and technical assistance to certain state agencies; and
 - (4) available to assist agencies not under the CIO's authority if requested by the agency. Two groups of agencies would not be under the CIO's authority for obtaining information technology and telecommunications:
 - (i) agencies not subject to the procurement code: the General Assembly, the State Senate, the State House of Representatives, the Judicial Branch, the Legislative Council, the Office of Legislative Printing, Information and Technology Systems, the South Carolina Public Service Authority, and the South Carolina State Ports Authority.
 - (ii) agencies subject to the procurement code: Department of Transportation, the Medical University of South Carolina, Clemson University, the University of South Carolina and its regional campuses, the state's four-year public colleges and universities, the state's technical schools and colleges, the South Carolina Education Lottery Commission, and an identifiable division of a state agency that has a fiduciary responsibility to use its assets in a manner consistent with constitutionally protected trust funds.
- (b) an organizational entity, the Coordinating Council for Cultural and Information Services that would:
- (1) not affect the agencies' existing governing bodies;
 - (2) meet at least quarterly and make a report about consolidating certain services in an effort to avoid duplication and increase efficiency and effectiveness;
 - (3) involve the following:
 - (i) Executive Director of the South Carolina Arts Commission;
 - (ii) Director of the South Carolina Department of Archives and History;
 - (iii) Director of the Confederate Relic Room and Museum;
 - (iv) President of South Carolina Educational Television;
 - (v) Director of the South Carolina State Library;
 - (vi) Director of the South Carolina State Museum;
 - (vii) State Archaeologist of the South Carolina Institute of Archaeology and Anthropology, and
 - (viii) Chairman of the Old Exchange Commission.
- (c) a State House, Legislative, and Judicial Facilities Operations Division; and

Legislative Update, June 15, 2005
FINAL MAJOR ISSUES

- (d) a Grants Review Committee for awarding grants to counties and municipalities.

Department of Motor Vehicles, effective July 1, 2005

- (a) all hearing officers of the Department of Motor Vehicles would be transferred to the Administrative Law Court.
- (b) hearing officers would continue to exercise their present responsibilities and other functions and duties provided by the Chief Judge of the Administrative Law Court.

- 3. No changes in the elected status of constitutional officers.

*STATUS: **S.80** was approved by the Senate and is pending consideration in the House Ways and Means Committee.*

“ALL-TERRAIN VEHICLE SAFETY ACT” (“CHANDLER’S LAW”)

The House approved and sent to the Senate **H.3726**. Among other things, this bill provides that a person 16 years of age or younger may not operate an all-terrain vehicle (ATV) within this State unless the person: (1) has successfully completed an ATV safety education course provided by or approved by the Department of Natural Resources, and has been issued a safety certificate; or (2) is operating the ATV as part of a prescribed ATV safety education, training, and skills program and is under the direct supervision of a certified ATV safety instructor.

The bill further provides that a person 16 years of age or younger may not operate, ride, or otherwise be propelled on an ATV within this State unless the person wears a safety helmet and eye protection meeting United States Department of Transportation standards for motorcycles.

Under the bill, ATVs are exempt from *ad valorem* personal property taxes beginning January 1, 2005.

The restrictions in this legislation apply to operation of an ATV's on those lands open to the public.

Under the bill, it is unlawful to operate an ATV except in compliance with the local regulations and restrictions for an ATV operation. The bill requires a person 16 years of age or younger must be accompanied by an adult.

The bill further provides that it is unlawful to operate an ATV between one-half hour after sunset to one-half hour before sunrise unless it is equipped with operational headlights, and they are on.

Under the bill, it is unlawful to cross an unbridged stream except at a designated ford or crossing. Riding in any water bodies or watercourses is unlawful.

Legislative Update, June 15, 2005
FINAL MAJOR ISSUES

The bill requires that an ATV have an effective muffler system in good working condition; a United States Department of Agriculture Forest Service approved spark arrester in good working condition, and a brake system in good operating condition.

Under this bill, it is unlawful to operate an ATV while under the influence of alcohol or any controlled substance. The bill provides that it is unlawful to operate an ATV in a negligent or reckless manner. Also, it is unlawful to operate an ATV in a manner that damages flora or fauna, roads, trails, firebreaks, signs, gates, guardrails, bridges, fencing, or other public property.

The bill provides that no governmental entity and no property owner is liable for injuries or damage resulting from an ATV operation on lands open to the public for an ATV operation. Under this legislation, the State is immune from liability for any injury or damage as a result of operating an ATV on any lands at any time.

Violations of this legislation, unless otherwise specified, are misdemeanors punishable by a fine of not less than \$50 dollars nor more than \$200 dollars.

*STATUS: **H.3726** passed the House and was referred to the Senate Committee on Fish, Game and Forestry on May 3, 2005.*

ANIMAL FIGHTING

The House approved and sent to the Senate **H.3344**. This bill allows and outlines procedures for the forfeiture of property, monies, negotiable instruments, securities and other things of value when a person violates a provision of the Animal Fighting and Baiting Act. The bill does create an exception for the innocent owner of property subject to forfeiture.

The bill further provides that a person who engages in or is present at cockfighting or game fowl testing is guilty of a misdemeanor for the first offense. A first offense is punishable by a fine or not more than \$1,000 or imprisonment for not more than one year. A second offense is a misdemeanor punishable by a fine of not more than \$5,000 or imprisonment for not more than three years. A third or subsequent offense is a felony punishable by a fine of not more than \$5,000 or imprisonment not more than five years. A person with a third or subsequent offense is subject to the forfeiture of monies, negotiable instruments and securities specifically gained or used to engage in or further a violation of these provisions.

*STATUS: **H.3344** passed the House and was referred to the Senate Judiciary Committee on May 12, 2005.*

BILLBOARD REGULATION: LANDOWNER AND ADVERTISING PROTECTION AND PROPERTY VALUATION ACT

The House of Representatives approved and sent to the Senate **H.3381**, the "South Carolina Landowner and Advertising Protection and Property Valuation Act". The legislation provides for the conditions under which a local governing body may require

Legislative Update, June 15, 2005
FINAL MAJOR ISSUES

the removal of an off-premises outdoor advertising sign that is nonconforming under a local ordinance and otherwise regulate the use of billboards within its jurisdiction. Under the legislation, a local governing body may enact or amend an ordinance of general applicability to require the removal of any nonconforming, lawfully erected off-premises outdoor advertising sign only if the ordinance requires the payment of just compensation to the sign owners, except as otherwise provided in the bill. The payment of just compensation is not required if:

- (1) The local governing body and the owner of the nonconforming off-premises outdoor advertising sign enter into an agreement to relocate and reconstruct the sign. The agreement must include provisions for: (a) relocation of the sign to a site reasonably comparable to or better than the existing location, and (b) payment by the local governing body of the reasonable costs of relocating and reconstructing the sign.
- (2) The local governing body and sign owner enter into a voluntary agreement allowing for the removal of the sign after a set period of time instead of just compensation.
- (3) The off-premises outdoor advertising sign is adjudicated to be a public nuisance or detrimental to the health or safety of the populace; or
- (4) The removal is required for opening, widening, extending or improving streets or sidewalks, or for establishing, extending, enlarging, or improving a public enterprise, and the local governing body allows the off-premises outdoor advertising sign to be relocated to a comparable or better location and the local governing body pays the costs of the relocation.

For the purposes of relocating and reconstructing a nonconforming off-premises outdoor advertising sign under an agreement with the sign's owner, a local governing body, consistent with the welfare and safety of the community as a whole, may adopt a resolution or adopt or modify its ordinances to provide for the issuance of a permit or other approval, including conditions as appropriate, or to provide for dimensional, spacing, setback, or use variances as it considers appropriate as long as it does not affect the federal provisions for the relocation of outdoor advertising signs affected by state highway projects.

If a local governing body has offered to enter into an agreement to relocate a nonconforming off-premises outdoor advertising sign, and within one hundred twenty days after the initial notice by the local governing body, the parties have not been able to agree that the site or sites offered by the local governing body for relocation of the sign are reasonably comparable to or better than the existing site, the parties, by mutual agreement, may enter into binding arbitration to determine the comparability of the site offered for relocation. If this arbitration proceeding results in a determination that the proposed relocation site(s) are not comparable to or better than the existing site, and the local governing body elects to proceed with the removal of the sign, the parties shall determine just compensation to be paid to the sign owner. If the parties are unable to reach an agreement regarding just compensation within thirty days of the receipt of the arbitrators' determination regarding relocation, and the local governing body elects to proceed with the removal of the sign, the parties, by mutual agreement, may enter into binding arbitration to determine the amount of just compensation to be paid. If the parties choose not to enter into binding arbitration for the purposes of either relocation or just compensation and the local governing body elects to proceed with the removal of the sign, the local governing body shall bring an action in circuit court for a determination

Legislative Update, June 15, 2005
FINAL MAJOR ISSUES

of the just compensation to be paid by the local governing body to the sign owner for the removal of the sign.

A local governing body shall not prevent the repositioning of a nonconforming sign on the same parcel of land to facilitate the development of the parcel so long as the repositioning of the sign does not increase the degree of the sign's nonconformity.

The requirement by a local governing body that the issuance or continued effectiveness of a zoning ordinance or issuance of a license or permit is conditional upon the removal or alteration of a lawfully erected sign constitutes a compelled removal that is prohibited without prior payment of just compensation.

An off-premises outdoor advertising sign may not be removed until the owner of the property on which it is located has been compensated fully by the local governing body requiring the sign's removal for a loss which may be suffered as a result of the removal of the sign through the termination of a lease or other financial arrangement with the sign owner. The compensation must include damage to the landowner's property occasioned by removal of the sign.

The provisions of this legislation may not be used to interpret, construe, alter, or otherwise modify the exercise of the power of eminent domain by an entity under the Highway Advertising Control Act or the manner in which outdoor advertising is valued by the South Carolina Department of Transportation.

H.3381 takes effect upon approval by the Governor. Nothing in this legislation preempts or otherwise alters or modifies an ordinance or regulation enacted by a local governing body before the effective date of this legislation.

*STATUS: **H.3381** passed the House of Representatives on March 3, 2005, and was sent to the Senate where it was referred to the Judiciary Committee. On May 4, the Senate Judiciary Committee reported out the bill majority favorable with amendment, minority unfavorable. On May 24, the Senate set the bill for Special Order, but debate was interrupted and no further action was taken before adjournment.*

BLUE LAWS

The House approved and sent to the Senate **H.3647**. As passed by the House, this bill eliminates Blue Law provisions that restrict the sale of certain items and prohibit certain work and other activities on Sundays. The legislation provides that an employee of a business that operates on Sunday has the option of refusing to work until 1:30 p.m. on Sunday, if the employee is conscientiously opposed to Sunday work. This conscientious objector provision does not apply to employees, including support, maintenance, repair, and other service personnel, of a manufacturing establishment or a research and development operation that by its nature or for economic reasons involves processes requiring continuous and uninterrupted operation. The legislation makes no changes to provisions that prohibit or otherwise regulate the sale of alcoholic liquors, beer, or wine on Sunday.

Legislative Update, June 15, 2005
FINAL MAJOR ISSUES

*STATUS: **H.3647** passed the House and was referred to the Senate Judiciary Committee on April 27, 2005. On May 18, 2005, the bill received a favorable with amendment report from the Senate Judiciary Committee.*

CHARITABLE RAFFLES

The House approved and sent to the Senate **H.3621**. This joint resolution proposes to submit to the electors at the next general election whether or not a raffle conducted by certain charitable organizations is a lottery prohibited by the State Constitution. All raffle proceeds, except for the costs of the prizes and the costs of printing tickets, would have to be used exclusively for the organization's tax-exempt purposes. A charitable organization would be limited to holding a raffle not more than four times in a calendar year. For purposes of this provision, all raffles occurring on one date are defined as one raffle.

*STATUS: **H.3621** passed the House and was referred to the Senate Judiciary Committee on April 28, 2005.*

CHARTER SCHOOL ACT

The House approved and sent to the Senate **H.3010**, a bill that establishes and provides for the Carolina Public Charter School District (the District), a public body with geographical boundaries the same as the boundaries of the State of South Carolina. As approved by the House, the bill provides that the District must be governed by a board of trustees, whose office must be housed in and staffed by the Office of the Governor until the 2010-2011 school year, at which time it shall be transferred to the State Department of Education. District trustees would be appointed by the Governor (3); the Speaker of the House (3); the President *Pro Tempore* of the Senate (3); and the State Superintendent of Education (2).

Under the provisions of the bill, District trustees have the same powers, rights, and responsibilities with respect to charter schools as other school district boards of trustees of this State including but not limited to: exercising general supervision over public charter schools, granting charter status to qualifying applicants, and determining district policy. The bill requires applicants who wish to form a charter school to form a charter committee and to submit an application to the Charter School Advisory Committee and the school board of trustees from which the charter committee is seeking sponsorship. The Advisory Committee must determine within sixty days whether the application is in compliance, and an application that is in compliance must be forwarded to the school district from which the application is seeking sponsorship with a letter stating that the application is in compliance. The bill requires that this letter shall also include a recommendation from the Charter School Advisory Committee to approve or deny the charter. The letter must specify the reasons for this recommendation, and the recommendation is nonbinding on the school board of trustees. The bill includes provisions and procedures for local school boards of trustees which have information that an approved application by the Carolina Public Charter School District adversely affects the other students in its district, or that the approval of an application fails to meet the spirit and intent of the Charter Schools Act. In such instances, the local school board

Legislative Update, June 15, 2005
FINAL MAJOR ISSUES

may appeal the granting of the charter to the State Board of Education. The bill provides that the State Board must, within forty-five days, affirm or reverse the application for action by the Carolina Public Charter School District. The bill provides that schools currently established as a private school which desire to convert to a charter school must dissolve and shall not be allowed to open as a charter school for a period of twelve months.

*STATUS: **H.3010** was approved by the House on January 27, and on May 19 was reported majority favorable with amendment, minority unfavorable, from the Senate Education Committee. The bill is on the Senate calendar pending second reading, with three Senators listed as desiring to be present.*

COMMON LAW MARRIAGE

The House approved and sent to the Senate **H.3588**. The bill repeals current law relating to the validity of a marriage contracted without the issuance of a license; the bill provides that a common law marriage in this State may not be recognized on and after January 1, 2006. Exceptions are provided for common law marriages existing as of December 31, 2005.

*STATUS: **H.3588** passed the House and was referred to the Senate Judiciary Committee on May 3, 2005.*

CONSTITUTIONAL RESTRUCTURING

The House approved and sent to the Senate **H.3011**. Currently, the South Carolina Constitution provides for the statewide election of the Secretary of State and Superintendent of Education. **H.3011**, a joint resolution, proposes to submit to the voters at the next general election whether these two offices should be removed from the Constitution's list of elected positions and should instead be appointed by the Governor upon advice and consent of the General Assembly. The joint resolution further provides to submit to the voters whether or not the State Board of Education should be abolished effective upon the State Superintendent of Education being appointed by the Governor.

*STATUS: **H.3011** passed the House and was referred to the Senate Judiciary Committee on February 2, 2005.*

DISARMING A LAW ENFORCEMENT OR CORRECTIONS OFFICER

The Senate approved and sent to the House **S.560**. This bill creates the offense of taking a weapon or firearm from the possession of a law enforcement or corrections officer. Taking a weapon other than a firearm from a law enforcement or corrections officer is a felony punishable by imprisonment for not more than five years, or a fine of not more than \$1,000, or both. Taking a firearm from a law enforcement or corrections officer is a felony punishable by imprisonment for not more than 10 years, or a fine of not more than \$5,000, or both.

Legislative Update, June 15, 2005
FINAL MAJOR ISSUES

*STATUS: **S.560** passed the Senate and was referred to the House Judiciary Committee on April 6, 2005.*

DISPLAYING THE TEN COMMANDMENTS ON REAL PROPERTY OWNED BY THE STATE

The House approved and sent to the Senate **H.3817**. This bill provides that an object containing the words of the Ten Commandments may be displayed on real property owned by the State along with other documents of historical significance that have formed and influenced the United States legal or governmental system. The bill further provides that the display of an object containing the words of the Ten Commandments must be in the same manner and appearance generally as other documents and objects displayed and must not be presented or displayed in any fashion that results in calling attention to it apart from the other displayed documents and objects.

*STATUS: **H.3817** passed the House and was referred to the Senate Judiciary Committee on April 12, 2005.*

JUDICIAL ELECTIONS

The House approved and sent to the Senate **H.3079**. This bill revises the process for nominating judicial candidates for election by the General Assembly. Under this legislation, the Judicial Merit Selection Commission would release to the General Assembly the full list of individuals found qualified and fit for judicial office. Under current law, the Judicial Merit Selection Commission submits to the General Assembly a list of the three individuals found most qualified.

The bill eliminates the one-year waiting period for a former member of the General Assembly to be elected to a judicial office. The bill provides, instead, that a member of the General Assembly may not file for a judicial office while the member is serving in the General Assembly.

The bill also provides that no member of a legislator's immediate family may be elected to a judicial office while that legislator is serving in the General Assembly. As used in this bill, the term 'immediate family member' means an individual who is: (1) a child residing in the person's household; (2) a spouse of the person; or (3) claimed by the person or the person's spouse as a dependent for income tax purposes.

*STATUS: **H.3079** passed the House and was referred to the Senate Judiciary Committee on March 15, 2005.*

LAW ENFORCEMENT OFFICERS AND PARDONS

The Senate approved and sent to the House **S.78**. This bill relates to the issuance of certificates and other appropriate indicia of compliance and qualification to law enforcement officers or other persons trained by the Department of Public Safety's

Legislative Update, June 15, 2005
FINAL MAJOR ISSUES

(DPS) Division of Training and Continuing Education. The bill revises the type of evidence relating to criminal convictions and character that an employer of a law enforcement officer must provide to DPS regarding an officer who is a candidate for certification. The bill provides that a pardon does not allow a person to become a certified law enforcement officer, unless the pardon is based on a finding of innocence. The bill further provides that some pardoned crimes and convictions may be used to enhance certain subsequent offenses.

*STATUS: **S.78** passed the Senate and was referred to the House Judiciary Committee on March 10, 2005.*

MEDICAID MODERNIZATION ACT

The House and Senate approved differing versions of **S.305**, the Medicaid Modernization Act. As approved by the House, this bill:

- Requires the Department of Health and Human Services (DHHS) to implement effective and efficient Medicaid care management including administering care management programs for routine care and implementing care management programs for chronic disease care;
- Requires DHHS to provide for effective Medicaid pharmacy benefit management by establishing the Pharmacy and Therapeutics Committee to recommend classes of drugs that should be included on a preferred drug list and criteria for implementation of a preferred drug list program;
- Provides for Medicaid State Agency Service Management programs, including periodic meetings of directors of all state agencies receiving Medicaid funds for the purpose of controlling the growth of Medicaid and improving the state Medicaid program;
- Requires DHHS to report to the General Assembly on Medicaid expenditures and to conduct periodic audits and reviews of state agencies receiving Medicaid funds;
- Adds provisions requiring DHHS to develop Medicaid eligibility determination criteria, to centralize Medicaid eligibility processing, and to conduct audits of eligibility files, and amends provisions relating to reports to the General Assembly, so as to further specify the contents and requirements for these reports;
- Deletes provisions relating to child development services;
- Provides for Medicaid fraud and abuse management, including provisions requiring audits, sanctions, and contracting with other entities to prevent Medicaid fraud, abuse, and waste;

Legislative Update, June 15, 2005
FINAL MAJOR ISSUES

- Adds provisions requiring health insurers to submit names and other identifying information to the Department of Insurance to be provided to DHHS to use in identifying Medicaid recipients who have other health insurance coverage;
- Adds provisions authorizing DHHS to fund the net costs of any third party liability and drug rebate collection efforts from the revenue collected in those efforts;
- Amends provisions relating to counties providing office space to DSS, to also require counties to provide space for DHHS eligibility processing;
- Repeals Joint Resolution 370 of 2002 relating to nursing home bed franchise fees;
- Provides that DHHS may consider supplemental insurance policies in determining the insured's financial eligibility for Medicaid;
- Provides that the DHHS shall reimburse hospitals the Graduate Medical Education costs beginning no later than October 1, 2005;
- Provides for network adequacy standards for Health Maintenance Organizations that contract with the DHHS;
- Creates the Joint Medicaid Review Committee composed of six members- three from the House and three from the Senate; the committee is to be briefed regularly by the Director of DHHS and is to study the Medicaid program and recommend legislation; the committee may also receive testimony and call for assistance, and is to be staffed by agencies;
- Creates an Information Technology Planning Team to be convened by the Office of Information Technology of the State Budget and Control Board; the team is composed of state health and human service agencies and private sector information technology experts, is to include representatives of DHHS, the Department of Health and Environmental Control (DHEC), the Department of Social Services (DSS), the Department of Disabilities and Special Needs (DDSN), and the Department of Vocational Rehabilitation (VR) and is to address redundant systems, incompatible software, and sharing of information;
- Creates a special Health Care and Human Services Fund requiring monies deposited into the fund to be used first for:
 - DSS- Statewide Child Support Enforcement System- \$40 M (non-recurring)
 - DHEC- Healthy People 2010- \$4 million
 - DDSN- \$9 million
 - Department of Mental Health (DMH)- \$10.5 million
 - DHHS- \$4 million for Information Technology Team recommendations
 - Remaining revenue for Medicaid program as the Director of DHHS determines.
- Creates an Office of Behavioral Health Office in DHEC that includes the offices of DMH, the Department of Alcohol and Other Drug Abuse Services (DAODAS),

Legislative Update, June 15, 2005
FINAL MAJOR ISSUES

and Continuum of Care for Emotionally Disturbed Children; Community Mental Health Centers and Commissions on Alcohol and Other Drug Abuse Services are not changed;

- Transfers licensure and regulation of daycare facilities from DSS to DHEC;
- Provides that the intent of the General Assembly in reorganizing agencies is to eliminate duplication of operations, to consolidate similar services, to achieve cost efficiency, to simplify and integrate to the fullest extent possible, program application and eligibility determination processes; and to put funds to maximum use for direct service delivery;
- Calls upon the Executive Director of the B&C Board to assist with implementation of the reorganization;
- Transfers the Commission for the Blind to Vocational Rehabilitation.
- Codifies Division on Aging in the Lt. Governor's Office.

*STATUS: The House and the Senate approved differing versions of **S.305**. The bill has been referred to a House-Senate conference committee to work out these differences.*

MUNICIPAL WATER AND SEWER SERVICE EXTENSION

The House approved and sent to the Senate **H.3525**, a bill that establishes conditions under which municipalities are to extend sewer and water services. The bill provides that, upon the written request of a property owner requesting the municipality to extend water or sewer service, the municipality shall provide the service and levy an assessment against the property of the owner requesting the service for the costs of the service. The property owner shall agree to pay the costs either by (1) paying the costs before the municipality begins construction or (2) insuring the costs in the form of a performance bond before the municipality begins construction. This legislation applies only to property located within the corporate limits of a municipality.

*STATUS: The House of Representatives sent **H.3525** to the Senate on May 3, 2005, where the bill was referred to the Judiciary Committee. On May 26, the Senate recalled the bill from the Judiciary Committee, but no further action was taken before adjournment.*

PHYSICAL THERAPY

The House approved and sent to the Senate **H.3604**. The bill allows a physical therapist or a physical therapist assistant to be employed by a health care provider, if the provider already employed a physical therapist or physical therapist assistant as of April 7, 2004. The bill further provides that a health care provider, who is not a physical therapist, may not employ a greater number of physical therapists or physical therapist assistants than the provider employed on April 7, 2004, or expand physical therapy services in any manner.

Legislative Update, June 15, 2005
FINAL MAJOR ISSUES

The bill requires a health care provider to furnish a patient with a written disclosure form before a referral is made for physical therapy services in which the provider has a financial interest. A physical therapist may not accept a referral from an employer provider unless the disclosure is made. The bill requires the provider to give the patient a written disclosure form informing the patient of:

- the existence of the investment interest;
- the name and address of each applicable entity to which a referral is made in which the referring health care provider is an investor;
- the patient's right to obtain physical therapy services at the location or from the provider or supplier of the patient's choice, including the entity in which the referring provider is an investor;
- the names and addresses of at least two alternative sources of these services available to the patient;
- a schedule of typical fees for items or services usually provided by the entity or, if impracticable because of the nature of the treatment, a written estimate specific to the patient.

The referring provider must obtain the patient's signature that the information in the disclosure form has been provided to the patient.

*STATUS: **H.3604** passed the House and was referred to the Senate Committee on Medical Affairs on May 10, 2005.*

PROPERTY TAX FREEZE

The House approved **H.3264**, a bill which exempts from property tax an amount of fair market value of real property located in the county, sufficient to eliminate any increase in fair market value attributable to a countywide appraisal and equalization program.

The bill provides that once the fair market value of the property is first reduced, that reduced value remains the fair market value subject to property tax, regardless of further increases in fair market value of that real property as determined in subsequent countywide appraisal and equalization programs. The bill provides that when real property is transferred so that the property is no longer eligible for the exemption, the property is subject to being taxed in the tax year following the transfer at its value, at current fair market value as determined by the County Assessor. The bill includes relevant notice requirements for closing attorneys in a real estate transfer and includes provisions and procedures required to qualify for the exemption.

The bill repeals a section of law which authorizes the governing body of a county by ordinance to exempt an amount of fair market value of real property located in the county sufficient to limit to fifteen percent any valuation increase attributable to a countywide appraisal and equalization program.

The bill also allows the governing body of a county which implemented in property tax year 2004 the values for real property determined in a countywide

Legislative Update, June 15, 2005
FINAL MAJOR ISSUES

reassessment and equalization plan, by ordinance and for property tax year 2005 only, to revert to the values of real property used in the calculation of 2003 property taxes.

*STATUS: **H.3264** was approved by the House on May 5, and is pending consideration in the Senate Finance Committee.*

PUT PARENTS IN CHARGE

H.3652, introduced as a statewide program, was amended by the House Ways and Means Committee as a pilot program to be implemented in only two districts - one district from the top 25% in *per capita* income and one from the bottom 25% in *per capita* income.

The bill provided tax credits for tuition paid by the family of a qualifying student to attend an independent school, a public school outside the student's assigned district, or expenses related to home schooling, so long as the parent or guardian's taxable income did not exceed \$75,000 (increased by \$5,000 for each exemption over two claimed by a family). The credit would have been the lesser of 80% of the actual tuition paid or 51% of the average state per pupil expenditure for most students.

The bill also provided a tax credit for a limited amount of contributions to a scholarship granting organization, used to pay for a qualifying student to attend an independent school, a public school outside of the student's assigned district, or for expenses related to home schooling. The amount of the scholarship would have been the lesser of 80% of the actual tuition paid or 51% of the average state per pupil expenditure for most students.

The bill required the State Budget and Control Board to report annually on the impact of these tax credits and scholarships on public school enrollment and state and local funding for school districts, and required the Board to provide a long-term evaluation over a minimum twelve-year period regarding parent and student satisfaction, and academic performance for participants in the program and public school students. The Board would have also been required to track and assess the impact of the bill on school capacity, availability, and quality.

*STATUS: **H.3652** was tabled by the House on May 4, 2005.*

“RIGHT TO LIFE ACT”

Legislative Update, June 15, 2005
FINAL MAJOR ISSUES

The House approved and sent to the Senate **H.3213**. This bill provides that the right to due process and the right to equal protection vest at fertilization. The legislation does not prohibit the prescription of a morning after pill to a rape victim.

*STATUS: **H.3213** passed the House and was referred to the Senate Judiciary Committee on April 18, 2005.*

SHORTENING THE LEGISLATIVE SESSION

The House approved and sent to the Senate **H.3380**, a **PROPOSED CONSTITUTIONAL AMENDMENT TO SHORTEN THE LEGISLATIVE SESSION BY REVISING ANNUAL COMMENCEMENT**. This joint resolution proposes an amendment to the Constitution of South Carolina, relating to sessions of the General Assembly, so as to provide for annual sessions of the General Assembly commencing at varying times in even-numbered years and odd-numbered years. The proposed amendment provides that the annual session of the General Assembly shall convene at the State Capitol in the City of Columbia on the second Tuesday of January in even-numbered years and on the second Tuesday in February in odd-numbered years. The proposed amendment provides for an organizational session for the Senate in certain years. The proposed amendment provides for other revisions regarding the elimination of certain obsolete language, provisions for the election of officers of the General Assembly, provisions for certain meetings for the introduction and referral to committee of legislation, and provisions for certain committee meetings.

*STATUS: **H.3380** passed the House and was referred to the Senate Judiciary Committee on March 1, 2005.*

The House approved and sent to the Senate **H.3378**, a bill which **SHORTENS THE LEGISLATIVE SESSION BY REVISING THE TIME OF ANNUAL ADJOURNMENT**. The bill changes the date for the mandatory adjournment of the General Assembly from the first Thursday in June to the second Thursday in May. The bill also provides that in any year that the House of Representatives fails to give third reading to the appropriations bill by March 15th, rather than March 31st, the date of adjournment is extended by one statewide day for each statewide day after March 15th, rather than March 31st, that the House fails to give the bill third reading.

*STATUS: **H.3378** passed the House and was referred to the Senate Judiciary Committee on March 1, 2005.*

S.M.A.R.T. FUNDING

The House approved and sent to the Senate **H.3086**, the S.M.A.R.T. (Streamlined Management and Accounting Resources for Teaching) Funding In Education Act. As approved by the House, the bill establishes a fund management and accounting program that consolidates all program funding to the state's school districts and special

Legislative Update, June 15, 2005
FINAL MAJOR ISSUES

schools for enhanced flexibility in their operations of grades K-12. The bill outlines six general categories in which funds may be spent: (1) quality teaching; (2) instruction; (3) technical assistance; (4) operations, infrastructure, and safety; (5) workforce education; and (6) special needs. The bill allows for transfer of funds among programs within these categories, and provides for some flexibility in distribution of funding across the six general categories. The funding categories and subcategories established in the legislation are to be utilized beginning January 1, 2006. The legislation also creates a S.M.A.R.T. Funding Study Committee (whose nine members are appointed: three each by the Governor, the Speaker of the House, and the President Pro Tempore of the Senate) to work in conjunction with the Education Oversight Committee and the State Department of Education to study the effectiveness and appropriateness of the allocation of, and flexibility in, funding in the S.M.A.R.T. Funding Act. The report must be made by July 1, 2007, at which time the committee shall dissolve.

*STATUS: **H.3086** was approved by the House and is pending in the Senate Finance Committee.*

SOUTH CAROLINA DAIRY STABILIZATION ACT

The House approved and sent to the Senate **H.3355**. This bill creates a 13 member South Carolina Milk Board (the Board), whose duties, among other things, are to ensure that dairy producers receive fair market breakeven prices, to monitor the consumption and distribution of South Carolina produced milk, and to mediate differences between milk producers and buyers. The bill provides for the membership of the Board. The bill provides for the Board to appoint an executive director who shall serve *ex-officio* as a non-voting Board member. Principal offices of the Board will be within the South Carolina Department of Agriculture building. Under the bill, the Board is an instrumentality of the State and is authorized to make, adopt, and enforce regulations and issue and enforce orders necessary to carry out the purposes of the bill.

The bill requires and provides for buyer fees to be collected on all fluid milk produced in this State, and the bill requires that funds from these fees must be deposited into a special fund (the Dairy Producers Settlement Fund) and disbursed, as provided in the bill, to all producers in the State who sold or shipped milk in the month when prices fell below the fair market breakeven amount as determined by the Board.

H.3355 prohibits a milk buyer from engaging in the purchase of South Carolina milk until having obtained a license from the Board. The Board is authorized, among other actions, to invoke a monetary penalty for buyers who violate the provisions of the bill. Funds from such penalties would be deposited into the Dairy Producers Settlement Fund.

The bill requires and provides for the Board to develop an accounting system designed to show for each buyer of fluid milk under the Board's supervision, the total purchases of South Carolina milk by the buyer and the sales of milk sold in this State. The bill further requires that buyers under the supervision of the Board use this system of accounting.

Legislative Update, June 15, 2005
FINAL MAJOR ISSUES

H.3355 provides that violations of the provisions of the bill are a misdemeanor punishable by fine or imprisonment, and multiple violations may result in license or permit revocation.

The bill requires the Board to prepare an annual budget and requires the Board to collect funds required for operation of the bill's provisions from the State's dairy producers. Expenses of the Board must be met by an assessment of up to one cent per gallon of milk produced in this State.

The provisions of **H.3355** are repealed on July 1, 2012.

*STATUS: **H.3355** passed the House and was referred to the Senate Committee on Agriculture and Natural Resources on March 1, 2005.*

SOUTH CAROLINA SUNSET COMMISSION

The House approved, and sent to the Senate **H.3150**, a bill that establishes and provides for the South Carolina Sunset Commission (the Commission) and for a separate Sunset Review Division of the Legislative Audit Council (the Division). The Division is created to conduct sunset reviews of certain state agency and department programs, and to report its findings based on the review criteria delineated in the bill. The Division is to conduct these reviews to determine whether the programs have outlived their usefulness or must be changed to address the needs and priorities of South Carolinians and the General Assembly. After the report is published, the bill requires the Commission to conduct a public hearing on the agency and its programs. The report must be filed with the House and Senate by January 15 of each year, and reauthorization of an agency or program must be accomplished in a special provision in the annual general appropriations act. The existence of any state agency or program may be reauthorized by the General Assembly for periods not to exceed twelve years. Any agency or program not reauthorized is terminated. The bill authorizes the General Assembly, if it

determines the circumstances warrant it and by concurrent resolution, to advance the termination date and sunset review scheduled for an agency.

*STATUS: **H.3150** was approved by the House and is pending consideration in the Senate Judiciary Committee.*

SOUTH CAROLINA TEACHER PROTECTION ACT OF 2005

The Senate approved and sent to the House **S.13**. This bill provides that a teacher may bring a civil action against a student who commits a criminal offense against the teacher, if the offense occurs on school grounds or at a school-related event, or if the offense is directly related to the teacher's professional responsibilities. The bill does not limit the civil remedies available to another party as a result of the same criminal act.

Legislative Update, June 15, 2005
FINAL MAJOR ISSUES

In addition to the protections granted under the South Carolina Tort Claims Act, no teacher has civil liability to a student or to a party acting in interest of a student for an act or omission by the teacher that occurs while the teacher is acting on behalf of the school if the: (1) teacher was acting within the scope of the teacher's employment, (2) actions of the teacher did not violate the law, including regulations set by the individual district or school, (3) acts or omissions were not the result of wilful or intentional conduct or gross negligence, (4) acts or omissions were not the result of the teacher operating a motor vehicle or watercraft, and (5) actions of the teacher do not constitute a violation of the student's civil rights.

Any student that commits simple assault and battery against a person affiliated with a school in an official capacity, when the offense occurs on school grounds or at a school-related event, or when the offense is directly related to the school official's professional responsibilities is guilty of a misdemeanor. The penalty is a fine of not more than \$500 or 30 days imprisonment, or both.

Any student enrolled in a school that commits assault and battery (other than one that is aggravated) against a person affiliated with a school in an official capacity, when the offense occurs on school grounds or at a school-related event, or when the offense is directly related to the school official's professional responsibilities is guilty of a misdemeanor. The penalty is a fine of not more than \$5,000, or not more than one-year imprisonment, or both.

Any student enrolled in a school that commits assault and battery of a high and aggravated nature against a person affiliated with a school in an official capacity, when the offense occurs on school grounds or at a school-related event, or when the offense is directly related to the school official's professional responsibilities is guilty of a misdemeanor is guilty of a felony. The penalty is a fine of not more than \$5,000, or not more than 10 years imprisonment, or both.

Among other things, this bill provides that at each proceeding the judge must inquire if the victim has been notified of the proceeding. If the victim is present at the proceeding, the judge must inquire if the victim desires to be heard at the proceeding.

*STATUS: **S.13** passed the Senate and was referred to the House Judiciary Committee on April 14, 2005.*

YOUTH ACCESS TO TOBACCO PREVENTION ACT OF 2005

The House and Senate have passed different pieces of legislation to prevent youth access to tobacco. The Senate passed **S.384**, and the House passed **H.3243**. Listed below is a summary of **H.3243** as it passed the House. Differences between the Senate and House legislation are discussed in the status portion of the summary.

Under **H.3243**, it is unlawful for a person to sell, furnish, give, distribute, purchase for, or provide a minor under the age of 18 a tobacco product.

Legislative Update, June 15, 2005
FINAL MAJOR ISSUES

The bill also provides that it is unlawful to sell a tobacco product to an individual who does not present upon demand proper proof of age. Proof of age is not required from an individual who the person reasonably believes to be over 27 years of age. The bill further provides that a retail distributor of tobacco products must provide training to its employees about selling tobacco related products. Any retail establishment that does not provide training is subject to a fine of not more than \$1,000 dollars.

The bill makes it unlawful for a person under 18 to possess a tobacco product. Exceptions are made for people under 18 who make certain deliveries.

Violations are misdemeanors triable exclusively in either municipal or magistrate court. For a first offense, the penalty is a fine of not less than \$100 dollars. For a second offense, which occurs within three years of the first offense, the penalty is a fine of not less than \$200 dollars. For third and subsequent offenses, which occur within three years of the first offense, the penalty is a fine of not less than \$300 dollars. In lieu of these penalties, the court may require an individual who is less than 18 who illegally purchases or possesses a tobacco product to perform not less than 24 hours of community service for the first offense and not less than 40 hours of community service for a second or subsequent offense. A person who is less than 18 may have his or her record expunged upon becoming 18 if the person has paid the fine imposed and successfully completed any court-ordered community service. A violation of the provisions of this bill does not violate an establishment's beer and wine permit and is not a ground for revocation or suspension of a beer and wine permit. Also, a conviction does not affect a person's eligibility for a LIFE Scholarship or any other state sponsored scholarship program.

*STATUS: **H.3243** passed the House and was referred to the Senate Judiciary Committee; the Senate Judiciary Committee reported the bill out favorably with amendment on May 25, 2005. The Senate amendment has provisions relating to the sale of tobacco from vending machines.*

*NOTE: Similar legislation, **S.384** passed the Senate and was referred to the House Judiciary Committee on April 19, 2005. **S.384** was recalled from the House Judiciary Committee on May 19, 2005; the House returned **S.384** to the Senate with amendments on May 27, 2005. The Senate amended the House amendments on May 31, 2005.*

**Legislative Update, June 15, 2005
FINAL MAJOR ISSUES**

The *Legislative Update* is on the Worldwide Web. Visit the South Carolina General Assembly Home Page (<http://www.scstatehouse.net>) and click on "*Publications*," then click on "*Legislative Update*." This will list all of the *Legislative Updates* by date. Click on the date you need.

NOTE: THE LEGISLATIVE UPDATE IS AVAILABLE TO LEGISLATIVE TRACKING SUBSCRIBERS. YOU MAY REGISTER FOR THIS FREE SERVICE ON THE SOUTH CAROLINA GENERAL ASSEMBLY HOME PAGE BY CLICKING ON "ELECTRONIC TRACKING" (UNDER "LEGISLATIVE RESOURCES"), THEN CLICKING ON "ADD NEW SUBSCRIPTION RECORD" AND COMPLETING THAT FORM.