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South Carolina House of Representatives

# Legislative Update & Research Reports

Ramon Schwartz, Jr., Speaker of the House

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# Legislative Update

## Second Reading, Uncontested Calendar

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Items seized in drug busts (H.2155). Currently law enforcement agencies can seize boats, cars and other items involved with drug trafficking only if they present a court with "substantial and compelling need." This bill would reword the law so they would only have to present a "need" to confiscate the property.

Animal trapping (S.529). This measure makes adjustments in the laws about trapping furbearing animals. It makes most "foot-hold" traps illegal, except for those used to protect private property--within 200 yards of a residence, or within 25 yards of a hen house. Persons involved in commercial fur trading would have to have a valid license from the Wildlife and Marine Resources Department.

The furbearing animals involved are: red and gray fox, raccoon, opossum, muskrat, mink, skunk, bobcat, weasel, and beaver.

Medicaid and third party rights (H.2976). The state Health and Human Services Finance Commission would automatically assume the rights of medicaid applicants or recipients to recover from third parties. These third parties would include individuals, or programs liable to pay some or all of the medical costs of injury, disease or disability to the medicaid recipient.

Insurance plans--more than one employer (S.234, S.411). A plan that offers health, dental or short-term disability benefits to the employees of more than two employers is a "multiple employer" plan. Some of these are not considered "fully insured," since a "fully insured" plan has its benefits guaranteed through a contract or policy issued by a licensed insurance company. The multiple, self-insured plans would have to have a license issued by the Chief Insurance Commissioner; plans in existence prior to March 1, 1985, would be exempt.

The second measure would set standards for group accident and health insurance that conform to state laws governing such policies.

Insurance administrators (S.413). Who are insurance administrators? Insurance administrators are people who collect insurance charges or premiums and settle claims. (That wasn't so hard, was it?) This bill would require that such persons have a license from the boss Insurance Commissioner. Exceptions would be made for the following (when processing insurance activities): employers acting for their employees; unions; insurance companies; insurance agents; trusts or their agents; financial institutions; credit card issuing companies; attorneys.

Also required would be a written agreement between the insurance administrator and the insurer.

State Fire Commissioner (H.2209). The State Fire Commissioner would be the "sole source" of fire protection and prevention regulations--except for manufactured housing or forests.

Credit charges (S.303). Act 385 of 1982 is the Consumer Protection Code Revision Act, and covers a wide variety of issues relating to consumers and creditors, and their respective rights and responsibilities. These changes are designed to clarify when creditors are acting "unconscionably" in setting interest rates, hiding extra charges, deceiving the debtor and "overreaching."

Overreaching is generally defined as getting the better of a deal or bargain by unscrupulous or crafty methods.

Employment Security: Overpayments and Late Payments (S.546). If a person receives too much in payment from the Employment Security Commission, he or she is obligated to pay the system back. If the person refuses, this bill would allow the state to recover the amount due from the person's tax refund.

Employers who fail to file the required reports in time could be fined by the Commission--up to 25% of their contributions due, and at least \$25. In addition, employers who fail to send in their contributions within ten days of the due date could be fined 25% of the amount owed.

Fireworks (H.2487). Wholesalers of fireworks would be allowed to sell fireworks only to licensed jobbers or retailers; and jobbers could buy fireworks only from manufacturers or wholesalers licensed to do business in South Carolina.

In addition, fireworks with more than two grains of "pyrotechnical composition" would be illegal. These include the familiar "ground salute," the ever-popular "cherry bomb," the dangerous but exciting "M-80," the ear-drum-shattering "T-N-T salute," and the intriguing "bulldog salute," best known for blowing up toilets and removing unwanted fingers.

Adoption identity (S.1). Adopted persons would have access to records about their biological parents under certain conditions. These conditions would be:

- 1) The adoptee must be at least 21 years old and apply for the information in writing.
- 2) The living biological parents or siblings must have signed affidavits allowing the release of the information.
- 3) The adoption agency must have a confidential register of such information.
- 4) The adoptee and the biological parent must go through counseling regarding the effects of such disclosure.
- 5) The adoptive parents have 30 days in which to file a written protest against the release of the information.

#### California Court Holds Landlords Responsible

Those following the progress of the Landlord/Tenant bill (H.2119) might be interested in a recent California Supreme Court ruling that holds landlords strictly accountable for injuries resulting from "latent defects" in their property.

The case arose when a tenant in an apartment complex was injured in the shower because the shower door was made of untempered glass. Testimony at the trial brought out that a layperson could not easily tell tempered from untempered glass.

The Court decided that the landlord was responsible. First of all, landlords are part of the "overall producing and marketing" situation which makes the housing available. Second, the contracts between landlord and tenant imply some warranty that allows the tenant to rely on the "landlord's implied assurance of safety." The tenant "is in no position to inspect for latent defects in the increasingly complicated modern apartment buildings or to bear the expense of repair."

Finally, the court decided that landlords were in a better position to bear the costs of defect-caused injuries, because they can spread out the expenses of either providing quality housing to protect tenants, or compensating tenants injured through defects in the premises.

Source: *United States Law Week*, May 21, 1985

Harry Byrd, 1925-1985

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Another major league pitcher from South Carolina has recently passed away: Harry Byrd, a seven-season veteran with the American League who played for five teams and was League Rookie of the Year in 1952 with the Philadelphia Athletics.

Born in Darlington, South Carolina, on February 3, 1925, Harry Gladwin Byrd made his major league debut in 1950 with the Athletics, but recorded no decisions on the mound. He returned to Philadelphia in 1952 and posted a 15-15 record, with three shutouts and a 3.32 ERA. Ironically, his rookie season was to be his best.

In 1953 Byrd's record dropped to 11-20, and he led the league in losses. He still had the good stuff to hurl two shutouts, but his ERA rose to 5.51.

Traded to the New York Yankees, Byrd had the opportunity to pitch on a pennant-contending team; but fate was against him. During Byrd's career, New York won the American League pennant every year except one from 1950 through 1957--the exception was 1954, the year Byrd pitched for the Yankees. That season they came in second, eight games behind Cleveland.

Byrd played the 1955 season for Baltimore and Chicago. He performed respectably with both clubs, posting 3-2 and 4-6 records, with a shutout for each team. In 1956, however, his performance with the White Sox was dismal: a 0-1 record; an ERA that ballooned to 11.25. Traded to Detroit, he ended his career on a more favorable note, going out at 4-3 and an ERA of 3.36.

During his years in the majors, Byrd played with the likes of Al Kaline, Walt Dropo, Nellie Fox, and Larry Doby. He served on pitching staffs that included Bobo Newsome, Whitey Ford, and Johnny Sain. For his one season with the Yankees he was a team mate of such legends as Phil "The Scooter" Rizzuto, Mickey Mantle, and Yogi Berra.

*Harry Byrd - Career Statistics*

Teams (All AL): Philadelphia, 1950, 1952-53; New York, 1954; Baltimore, 1955; Chicago, 1955-56; Detroit, 1957

W	L	PCT	SV	G	GS	CG	IP	H	BB	SO	ShO	ERA
46	54	.460	9	187	108	33	827	890	355	381	08	4.35

# Texas Study Looks at Day-Care

## Background

Day-care licensing is now a major topic of concern for many states. A recent Texas study looks at licensing procedures and standards in ten of the most populous states plus New York City.

## Regulation and Budget

Six of the states, including Texas, regulate day-care facilities on a state basis. California delegates slightly more than half of the regulation of family day care through contracts with county offices. In Florida, the state office shares regulation of day-care centers with the counties.

Private family day care varies considerably from state to state. For example, Ohio and New Jersey do not regulate family day care. In Florida it is a county option, and most counties do not regulate. In New York City all "private enterprise" is subject to regulation, but, in actual practice, lack of staff makes regulation virtually impossible. Similarly, in North Carolina a family day-care registration program has not been fully implemented due to lack of staff.

Budgets also differ considerably from state to state. California spends \$9 million to regulate 5,300 licensed centers and 29,000 family day-care homes. Michigan budgets \$5 million to regulate 2,400 licensed centers and 11,000 family day-care homes. Texas budgets \$5.2 million for the regulation of 7,200 licensed facilities and 16,000 family day homes.

## Standards Enforcement

For larger day-care facilities, Texas' rules require more frequent facility visits than any of the other jurisdictions surveyed. Although Florida does not require a specific number of visits, the state reports quarterly visits to day-care centers. New Jersey has two types of inspectors, one specializing in program and the other in life safety, including fire inspections. New Jersey reports that the program inspectors visit facilities about twice every three years. Michigan reported that the state is unable to meet its requirement of annual visits and actually visits sites about every two years.

For those jurisdictions that regulate family day homes, California and Illinois report at least one routine inspection visit per regulatory period. Michigan manages one visit within the first three months, and then visits only when a complaint is received. California visits a sample of homes annually, and Illinois reports annual visits. Florida visits annually the homes it regulates; however family day care is unregulated in 57 out of 67 counties.

#### Fire, Health and Sanitation Inspections

Health inspections for larger day-care facilities are required for all jurisdictions, although Illinois no longer performs required routine inspections due to lack of staff. California and Florida are the only surveyed states that have health and safety inspections for family day care homes.

Routine fire inspections for larger day-care facilities are required and performed in most reporting jurisdictions on an annual basis. Exceptions to this are Michigan, which requires an inspection only once, and New Jersey, where inspections are performed every three years. Routine fire inspections for family day care are performed only in Florida and Michigan.

#### Staff-Child Ratio

Staff-child ratio is the most controversial issue in the day-care community. Some studies claim that group size and consistency of caregivers is more important than staff-child ratio. Other studies indicate that, within a reasonable range, skills of the individual staff person should determine the maximum number of children cared for in terms of protection of health, safety, and well-being. Still others argue that staff-child ratio should be considered in conjunction with a number of other factors in addition to the chronological and developmental ages of the children in care.

Adding to the controversy is the fact that staff costs account for 75 to 80 percent of the total cost of operating a day-care facility. These costs are borne, for the most part, by parents, frequently by single female parents at or below poverty line incomes.

Some jurisdictions, such as Florida, New York State, North Carolina, and Texas, consistently permit more children to be cared for by one staff person as the age of the children in care increases.

#### Square Footage Requirements

Researchers have investigated the effects of variation in space in day-care settings. When space is very limited (less than 25 square feet per child) studies show that children become more physical and aggressive with their peers and more destructive with their toys.

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Research and expert opinion are now indicating that, beyond the crowding level, the way space is organized may be more important than square footage. There are indications that "...spatial organization that allows children privacy and quiet, where different kinds of activities--loud block play and quiet puzzle play, or messy finger painting and neat pine-cone collecting--are kept clearly separated, may be more beneficial than simply more square feet of play area."

#### Qualifications of Day-care Center Director and Staff

The majority of the states surveyed required that the director of a day-care facility have college hours in child development or early childhood education. In terms of requirements for day-care center staff, Florida and Michigan set no specific requirements while North Carolina's requirement must be met by only one staff person in the facility.

Massachusetts is the only state surveyed which sets minimum requirements for education or experience for family day-care providers.

Studies have found that "with more training in child development, preschool and day-care teachers are more interactive, helpful, talkative, playful, positive, and affectionate with the children in their care..."

The major arguments raised against increasing the requirements for qualifications of day-care center directors and staff have focused on the issues of cost and measurement of competence. Day-care center directors and staff are among the lowest paid categories of workers in the U.S. Increasing the salaries to match the educational requirements would result in increased day-care costs, primarily to parents already overburdened in this area. There is a trend of a higher turnover in staff with above minimum qualifications. High staff turnover rates are a major problem in providing of day care.

It is argued that if a day-care facility is meeting standards in all areas, staff and director should be assumed to be competent regardless of educational and experience qualifications. Raising the standards, it is argued, would close the field to many competent, caring workers; while meeting the more stringent standards, as a whole, would provide no guarantees of better care for children.

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