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South Carolina House of Representatives

Legislative Update & Research Reports

Robert J. Sheheen, Speaker of the House

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Legislative Update

The Week in the House

Background

During the legislative week of April 7 through 10 the House considered a number of measures relating to the state's Workers' Compensation system, took up the first round of consideration on a tough new obscenity bill, and heard from Winthrop College's chorus.

Honors and recognitions

On Tuesday the House moved quickly to consider and approve a resolution commemorating Professional Secretaries' Week (H.2819, sponsored by the Speaker and Speaker Pro Tem, and all Chairpersons of the House Committees). This bill recognizes the week of April 19 through April 25, 1987, as Professional Secretaries' Week and April 22, 1987, Secretaries' Day. The measure also invites the members of government and business to join together on the occasion to pay tribute to the secretarial profession by recognizing their dedicated service to the community and State.

The resolution points to the professional secretary's "increasingly vital role in the modern complexities of business, industry, government, and education" and notes that a secretarial career "has attained the status of an exacting, highly qualified profession."

Thursday was Winthrop Day in South Carolina, an occasion marked by the House which heard the Winthrop College Chorale perform the college's Alma Mater, and other selections.

Nicknames on ballots

On Tuesday the House gave third reading to H.2279 (sponsored by Rep. Pete Pearce) which would allow candidates to be listed by nicknames on the ballot. The bill was amended by the House to prohibit the use of such nicknames as "Judge" or "Major" which imply social or professional status.

Cruelty to animals

A bill concerning ill-treatment of animals was amended and given second reading on Tuesday. H.2021, sponsored by Rep. Harvin, sets definitions of ill-treatment of animals, including inflicting unnecessary pain or torment upon them, overworking them, or depriving them of humane treatment. As amended by the House, the bill specifically exempts practices used in veterinary medicine and animal husbandry.

Punishment for a first offense would be a fine between \$50 to \$200. Second offense of the law would result in a jail term of up to 60 days and or a \$500 fine. Third and subsequent offenses could bring a year in prison and or a fine of \$1,000. For tormenting animals, the punishment could be 60 days or \$500.

The obscenity bill debate

H.2072 (sponsored by Rep. Fair and numerous others) was up for debate during the week of April 7 through 10. This bill would set up tough laws defining, outlawing and punishing creation and distribution of obscenity and pornography, especially child pornography.

Wednesday the House adopted several amendments to the bill—including one which would allow the seizure of equipment used in making pornography—and the measure was placed on the contested calendar.

Workers' Compensation again

During the week the House took up a number of bills relating to proposed changes in the state's Workers' Compensation system.

On Wednesday, H.2482 came up for debate. This measure would set a time limit for holding hearings on starting or stopping payments under the system. A move to table the bill was rejected, but the measure was committed to the Labor, Commerce and Industry Committee.

Also considered by the House: H.2483, which concerns the filing of claims and reports under the Workers' Compensation system—also sent to the LCI Committee; H.2484, proposing changes in the administration of the system, including the term of its director and attorneys—this bill was continued; H.2535, which permits the Commission to grant waivers to notice requirements, as long as the records contain the reason for the waiver—ordered to third reading on Wednesday, given third reading and dispatched to the Senate on Thursday; and H.2536, which would regulate the procedure by which physicians examine persons covered under the Workers' Compensation system and give rating for impairment—this bill was left in interrupted debate on Wednesday.

I don't know nothing about birthing babies

H.2811 (Medical, Military, Public and Municipal Affairs Committee) was passed by the House and sent to the Senate on Thursday. This measure would permit DHEC to set regulations and standards for birthing centers in South Carolina. For more information, see page 9 of this issue of the *Update*.

Dual office holding and fire departments

The state constitution forbids persons from holding two offices ("of honor or profit") at the same time. Recently, a number of bills have been introduced into the House which would exempt members of fire departments from this prohibition. On Thursday one of these measures was approved and ordered to third reading.

H.2497 would submit an amendment to the voters at the next general election, asking if members of "lawfully and regularly organized fire departments" could be exempted from the provision against dual office holding. (Constables and notaries public were thrown in as well.)

Legislation Introduced

Banking and Insurance

Banks and insurance operations (H.2805, Rep. J. Rogers). This measure would permit financial institutions to engage in certain insurance operations, namely 1) owning or controlling insurers licensed in South Carolina to conduct re-insurance business; 2) participating as an underwriting member or investor in an insurance exchange. The bill also adds that nothing in it is to be considered as a prohibition against a financial institution participating in "any presently authorized insurance activity."

Chiropractors and insurance (H.2809, Rep. J. Bradley). This bill would include payment to chiropractors in health and accident insurance policies. If the bill is passed, any policies written after it goes into effect would be included. Current policies would be affected one year after the effective date of the act.

Nonrenewal of insurance (H.2836, Rep. J. Bradley). Insurance companies would not be permitted to nonrenew homeowner's insurance because a person made a claim for damages that resulted from an "act of God," such as hail, wind or lightning. Nor could the insurance company refuse to renew a policy because of claims made because of a fire—unless the insured person caused the fire.

Payment of insurance claims for renters (H.2855, Rep. J. Bradley). A property insurance policy must pay its face value to a renter who suffers the total loss of contents in his or her principal dwelling.

Automobile insurance: notice to customers (H.2856, Rep. J. Bradley). This measure would require auto insurance agents to post a sign in a conspicuous place in their offices informing customers of certain rights. These would include that the insurer and insurance agent may not refuse to write or renew certain policies; that they could not engage in tactics to avoid writing or renewing policies (such as "unreasonable delay in meeting with applicants"); and that violations of these provisions should be reported to the Insurance Commissioner for appropriate action.

Education

Sex education (H.2822, Rep. Fair). This bill would provide for sex education programs in the schools. The legislation recognizes that "the family has the primary responsibility" for sex education and seeks to avoid replacing the family's role. Any sex education conducted by the schools would have as a major component the encouragement of abstinence from sexual intercourse until marriage. Contraceptives and contraceptive information could not be a part of the sex education program.

Local school districts would be responsible for implementing the sex education programs. An advisory committee of nine parents would evaluate and decide on any visual aids, printed materials and resource persons used in the programs.

The bill would set certain guidelines for the programs. Male and female students would have to be taught separately. The students would have to present written parental consent to participate in the program. No student would be "required to talk about sexual issues," or use "street language" as part of the course.

The programs would begin with the 1988 school year.

School administration: one per county (H.2830, Rep. Blackwell). After July 1, 1988, the state would allocate funds for only one central school administration operation per county. Local governments would be permitted to fund additional administrative units if they desired.

School employees: sick leave on retirement (H.2842, Rep. McGinnis). At retirement, public school employees would be permitted to convert fifty percent of their unused sick leave (up to 45 days' worth) to annual leave. They could then receive the standard termination pay for this annual leave.

Environment

Unimproved land and sewage disposal (H.2808, Medical, Military, Public and Municipal Affairs Committee). This bill would establish that contracts for the sale of unimproved land have an implied warranty that the land is either accessible to a sewer line or suitable for individual sewage disposal. If such is not the case, then the contract must have a written disclaimer informing the buyer—and also noting that no building can be erected on the land without a sewage disposal system approved by DHEC.

Hazardous waste disposal (H.2810, Rep. Harvin). Burial of hazardous waste in commercial landfills in South Carolina would first be limited, then stopped by this measure. It would also impose an additional tax per ton on the waste, and grant tax credits for landfill operators reducing the amount they bury.

By June 1988 the annual amount of hazardous waste allowed to be buried in the state would be limited to 90,000 tons. By 1989 this would fall to 50,000 tons, and after that to 1992 it would be no more than 15,000. After December 31, 1992, no hazardous waste would be allowed.

At the same time, fees would increase: an additional \$10 per ton in 1987; \$25 per ton in 1988; and \$50 per ton from 1989 on. Operators could get a tax credit of \$100 for each ton less of waste they buried each year. Improper claiming of the credit, however, could bring a fine of \$1,000 for each \$100 fraudulently claimed.

Finally, no new hazardous waste—that is, no waste not already disposed of in the state's landfills—could be buried after June of this year.

Watercraft and watercraft safety (H.2838, Rep. Foxworth). This bill would have federal law on watercraft operations and watercraft safety become the South Carolina law as well.

Conspiracy to violate wildlife laws (H.2839, Rep. Foxworth). This legislation would make conspiracy to violate of current state laws on game, hunting and so forth the offense of conspiracy to violate wildlife conservation laws. It would also increase the fiscal penalty from \$2,000 to \$5,000. The punishment of up to one year in prison and loss of hunting/fishing/trapping rights for one year would remain intact.

Hazardous waste contingency funds (H.2851, Rep. E.B. McLeod). The fees charged for burial of hazardous waste are used to bankroll special contingency funds in the counties where the landfills are located. Presently the local governments receive one dollar per ton for their contingency funds; this bill would increase that to three dollars per ton.

General wildlife violation penalties (H.2880, Rep. Foxworth). Unless violations of wildlife statutes had other penalties specified for them, the punishment would be a fine between \$25 and \$200, or imprisonment for 10 to 30 days.

Hazardous infectious wastes (H.2863, Rep. Foxworth). Yet another type of hazardous waste exists out there: hazardous infectious waste, which include materials from laboratories, hospitals and the like. These are capable of causing disease or death if not disposed of properly. This measure would set certain standards for treatment and disposal of hazardous infectious wastes.

Specific requirements are set for storage, transportation and disposal of such wastes. Sterilization, incineration or burial are three methods available; sharp wastes, such as glass, scalpels and needles, would have to be segregated from other wastes and disposed of separately.

Fiscal

Capital improvement bonds and prisons (H.2816, Rep. McLellan). Any capital improvement bonds issued to comply with the terms of the Nelson prison lawsuit would be exempt from 2-7-105 of the Code.

That section says simply that such state capital improvement bonds may be authorized by the General Assembly in even numbered years.

Tax conforming (H.2834, Rep. Kirsh). This measure would bring the state tax system into line with recent changes in the federal tax laws.

Highways and gasoline taxes (H.2869, the Speaker of the House, the Speaker Pro Tem, the Chairpersons of House standing committees). This measure increases the gasoline tax in this state, with the additional funds going to the Strategic Highway Plan for Improving Mobility and Safety.

The bill would also require that the first \$10 million generated from the additional tax go to a separate account for economic development. This money could be spent only with authorization from the Coordinating Council on Economic Development, which would set the priorities for projects. Each year, \$10 million from the tax would have to go into this account, but the account would never hold more than \$20 million.

The Highway Department would submit to the General Assembly a list of its first fifty projects to be funded within six months after the tax goes into effect. This list would be revised and updated each year. Projects would be listed according to priority, as determined by three factors: 1) need for increased roadway capacity; 2) need to improve safety; 3) economic benefit to be derived.

A select committee of Representatives and Senators would be created to monitor the funds raised through the new tax. This would include the persons listed here, or their designees: the Speaker, a House member appointed by the Speaker, the Chairman of Education and Public Works, the Chairman of Ways and Means, Chairman of Senate Finance, President Pro Tempore, Chairman of the Senate Transportation Committee, and a member of the Economic Coordinating Council.

Agricultural real property (H.2877, Rep. White). This bill would make changes in classifying land as agricultural real property—and thus allowing the owner to pay at the lower rate established for farm lands.

Any property over five acres that is used for recreation, and all waterfront lands could no longer be classified as agricultural real property. Waterfront lands would be those 210 feet in any direction from the shoreline of the Atlantic Ocean, a bay, river, stream, lake, and so forth.

Currently, if 50 percent of the land qualifies as agricultural real property, then the entire property is considered to be agricultural. This bill would require at least 75 percent of the land qualify.

Tax exemption for boats: old, small and weak (H.2883, Rep. Pearce). This bill would give tax exemptions for boats which meet the following requirements: they must be seven years or older, fifteen feet or smaller, capable of carrying no more than two persons, and powered by engines twenty horsepower or less.

Government Operations

Automatic weapons (H.2806, Rep. Kohn). A brief bill that states that when there is a conflict between federal law and state law concerning the use and possession of automatic weapons, federal law controls.

Generals in the Unorganized Militia (H.2833, Rep. J. Bradley). The rank of General bestowed upon any member of the state's Unorganized Militia at the Citadel would have to be approved by the General Assembly.

Retirement age for legislators (H.2850, Rep. McAbee). This bill would lower the retirement age from 60 to 55 for members of the General Assembly participating in the state retirement system.

State agencies charging for services (S.84, Sen. McConnell). The Senate version of bills introduced in the House to prohibit state agencies from setting or increasing fees for their services, unless the fees are approved by the General Assembly. There would be the standard exceptions: state-funded health facilities, state-funded colleges and universities; training programs operated by the state; and fees which state agencies charge other state agencies.

Absentee ballot (S.166, Sen. Holland). Persons tending the sick would be added to the list of those eligible to vote by absentee ballot. This includes students, members of the Armed Services, the disabled, persons with a recent death in the family, and election workers.

Dual office holding (S.604, Sen. Pope). Another bill that would state that members of "lawfully and regularly organized fire departments" are not to be considered dual officeholders as defined by the state constitution.

Health

Sexually transmitted diseases (H.2807, Medical, Military, Public and Municipal Affairs Committee). This measure would update provisions in the state's statutes relating to sexually transmitted diseases. Currently the law lists a number of different diseases, such as syphilis, gonorrhea and so forth. The bill states that sexually transmitted diseases "include all venereal diseases."

Physicians, laboratories and other health providers are still required to report incidents of sexually transmitted diseases to the appropriate health authorities. In addition, the bill would require that persons infected with the diseases identify the persons with whom they have had sexual contact. Violations of these provisions would receive stiffer punishment that is currently the case.

The bill would add a section to the Code making it a crime for someone with HIV (the virus which causes AIDS) to "knowingly expose another person" to the disease without telling them of their risk. The penalty for this would be a fine of up to \$5,000 or prison for a year.

Birthing centers: regulation (H.2811, Medical, Military, Public and Municipal Affairs Committee). This legislation would establish the "Birthing Center Licensure Act" to regulate the facilities in South Carolina. Such facilities would not include hospitals.

Such centers would have to be licensed by DHEC; the license would run for a twelve-month period. A \$200 fee would be charged (and the money used to fund the program).

Only "low risk" births could be planned at the birthing centers; a physician would have to make a written determination that the birth is indeed low risk. Care would be provided by physicians, certified nurse-midwives, or licensed lay-midwives. A physician would have to be on call at all times.

DHEC could revoke licenses or impose fines for failure to follow the provisions of the law, appropriate regulations, or improper conduct or practices at the birthing centers.

Asbestos abatement programs (H.2831, Rep. Hawkins). The removal of asbestos from buildings has become a much more familiar procedure in recent years. This bill proposes to provide licensing and regulation of asbestos removal and abatement programs in South Carolina. DHEC would be the state agency which would issue permits and annual licenses for such operations, and also write necessary regulations.

Sheriff qualifications (H.2862, Rep. Wilkins). This proposes an amendment to the state constitution, permitting the General Assembly to provide by law for the qualifications of sheriffs.

Medical tort claims (H.2873, Rep. J. Rogers). This measure would create a mechanism to determine medical tort claims in this state, and pay damages out of a state-operated fund.

The bill would create the South Carolina Medical Tort Claims Commission, which would be a three-member panel to review and decide on the issues of liability and damages in medical tort claim cases. Members would be appointed by the Governor with the advice and consent of the General Assembly to serve six-year terms. There would be a commission director and staff appointed by the three Commissioners.

Commission set up to hear cases

In essence the process would be much like the Workers' Compensation system: persons believing they have been injured because of negligence or improper care from a medical provider would file a claim with the Commission. A hearing would be held, usually in the home county of the main defendant.

At the hearing evidence would be taken, and the Commission would have subpoena powers. There would also be a panel of three doctors (or dentists) in the same field of speciality as the medical provider being charged with the injury. These three would provide expert testimony to the Commissioner hearing the case. Names for these panels would be provided by the State Board of Medical Examiners and the State Board of Dentistry; participants would be volunteers.

Decision rendered

After hearing the evidence, the Commissioners will give their decision, finding the medical provider negligent or not negligent. If the decision is for the plaintiff (that is, the doctor or dentist was actionably negligent) then damages can be awarded.

Award money must be divided and explained, telling what amount is for economic damages, and what is for non-economic damages. Total amount of damages may not be over \$500,000. The commissioner hearing the case may also recommend punitive damages.

Both sides in the case would have the right to appeal the decision to the full Commission.

Medical Indemnity Fund

In order to pay the damage awards, a separate Medical Indemnity Fund would be created. This fund would be administered by a director (also appointed by the Governor with the advice and consent of the General Assembly for a six-year term). Each year the Fund's staff would assess the amount that all health care providers in the state—hospitals, other medical facilities, and individuals, such as physicians, dentists, for example—would have to contribute to the Fund.

Money for awards made by the Tort Claims Commission would come from this fund.

Highways and Byways

Social security number on driver's license (H.2813, Rep. Kirsh). The title says it all: this bill would require the Highway Department to put a person's social security number on his or her driver's license.

Transporting litter (H.2814, Rep. Kirsh). Any vehicle which transports litter would be required to have a cover to prevent the trash from "dropping, sifting, leaking or otherwise escaping from the vehicle." Violations could bring a fine between \$50 to \$200.

The bill defines litter to include the usual bottles, glass, cans, paper and so forth—and also crockery, offal, and disposable packages.

A similar bill dealing with transport of rocks, gravel and other contents is H.2849, discussed below.

Speed limits on interstates (H.2817, Rep. Kohn). Now that the Congress has over-riden the President's veto of the highway bill, the speed limit on the interstates can go back up to 65 miles per hour—at least outside of urban areas. This bill would change the speed limits on interstates inside South Carolina to conform with the federal law.

Driver's licenses under sixteen years (H.2832, Rep. McEachin). Currently, the Highway Department can issue beginner's or instructional permits or special driver's licenses to persons between fifteen and sixteen years old. This bill would delete that option.

Trucks carrying gravel, rocks, etc. (H.2849, Rep. T.C. Alexander). This measure would impose some restraints on those loading trucks with gravel, rocks or other cargo which could fall out onto the highways (or onto other vehicles). If level, the load would have to be six inches below the tops of the four walls of the truck; if unlevel, the highest point could not be above the top of the walls; another alternative would be to have the load covered so that it couldn't leak, fall, sift or other come out.

First offense against these provisions would be punishable by a \$500 fine; second and subsequent offenses would be \$1,000 each.

The bill would not apply to transportation of animals, seed cotton, or feed grain.

Confiscation and sale of vehicles (H.2852, Rep. McElveen). This measure would permit the confiscation and sale of motor vehicles for persons convicted of second and subsequent offenses of driving under the influence (DUI) or driving under suspension or without a license (DUS). It would also allow the confiscation and sale of vehicles for persons guilty of first offense felony DUI.

No more auto inspection (H.2853, Rep. Sharpe). This bill would strike 56-5-37 from the Code. That is the part which requires annual inspection of motor vehicles. See the next page for some comparisons between states on vehicle inspection laws.

Insurance and motor vehicle registration/license (H.2858, Rep. J.C. Johnson). Applicants for motor vehicle license or registration would have to provide information about their insurance on the application form. Included would be the amount of insurance, insurer and agent, policy number and dates.

Law and Justice

Speedy trials involving children (H.2878, Judiciary Committee). This bill would require courts to provide for quick trials when children are involved. In cases of sexual offenses against children under sixteen, then testimony could be taken using closed circuit television or video taping.

Divorce for homosexuality (H.2854, Rep. G. Brown). The law concerning grounds for divorce in South Carolina would be altered under this proposal to include homosexuality as a condition allowing the granting of divorce. The change would require a constitutional amendment, which would be submitted to the voters at the next general election.

Civil action immunity for charitable volunteers (H.2857, Rep. J.C. Johnson). Unpaid volunteers for recognized charitable organizations would be immune from liability in cases involving death, injury or other loss that arise from their organization's activities. The exceptions to this would be in those cases where the volunteer goes beyond his or her role to cause the injury. This would include the traditional "wilful or wanton misconduct," which makes a person liable.

Deadly force justified (H.2859, Rep. Kohn). The law would be amended under this bill to permit residents to use deadly force in certain situations—namely, when a person is attempting to break into their home, and they believe that such force is needed to either protect themselves from violence, or prevent a felony from taking place.

Motor Vehicle Inspection Laws in the States

A measure has been filed in the House (H.2853, Rep. Sharpe) which would eliminate the requirement for annual motor vehicle inspections in South Carolina. What other states do or do not require such inspections? A look at the latest *Book of the States* published by the Council of State Governments gives the answers.

States with Annual Inspections

Arkansas, Connecticut, Delaware, Hawaii, Louisiana, Maine, Massachusetts, Mississippi, Missouri, New Hampshire, New Jersey, New York, North Carolina, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Texas, Utah, Vermont, Virginia, West Virginia

States with Spot Checks or Random Inspections

Alaska, Iowa, Kansas, Michigan, Minnesota, North Dakota, Ohio, Oregon, Washington, Wisconsin

States with Special Inspection Provisions

Alabama: spot inspections at discretion of state troopers; Arizona, Colorado, Georgia: emission control inspections; Illinois: trucks, buses and trailers only; Maryland: only at sale or transfer of used cars

States with No Inspections

California, Florida, Idaho, Indiana, Kentucky, Montana, Nebraska, New Mexico, South Dakota, Wyoming

Other States Consider Legislation Similar to S.C.

Orange for hunters

A bill introduced into the House earlier this session (H.2389, Rep. Pearce) would require hunters to wear a solid orange colored coat while out in the field. A similar bill has recently been passed by the Virginia Senate.

Voting 38 to 7 the Senate approved legislation that would require hunters to wear either an orange colored hat or orange "upper body clothing." Violations could result in a \$15 fine and—perhaps more importantly—failure to wear the clothing could be introduced as evidence in civil suits for injury or death.

Several news reports suggest that there is likely to be some disagreement over the measure. Sponsors of the bill noted that none of the hunters killed during the Virginia deer season were wearing orange clothing. On the other hand, the Chairman of the House Conservation and Natural Resources Committee feels that mandatory hunter safety courses would be more effective than distinctive clothing.

Limits for credit card interest?

Another measure introduced into the S.C. House has a counterpart in other legislatures. H.2390 (Rep. Pearce) would limit interest on credit cards to 5% over the prime rate, and never more than 15% at most. Similar bills are under debate in several other states.

According to the publication *From the State Capitals*, half of the states may consider legislation affecting credit card interest rates. Nineteen states may see bills to lower the ceiling on rates; 15 states might tie the rates to the prime rate or other financial index; and 12 states might require banks and other institutions to disclose more information on interest rates and annual fees.

Last year 22 states considered interest rate legislation; seven took action. The most sweeping changes took place in Connecticut which dropped maximum rates from 18% to 15%; some predicted banks would flee the state, setting up their credit card operations in nearby, non-regulated states. This did not happen; instead, a rate war broke out that saw the interest on credit card debt fall to 12 percent and below in Connecticut.

In Tennessee the House has voted to approve a reduction in interest rates to 6% over the prime rate or no more than 21% maximum. Currently rates in Tennessee range from 18 to 20 percent; the bill, if enacted, would lower those figures to around 13 or 14 percent.

Not included in the regulated rates: credit cards issued by department stores or gas companies. Reason for the omission: some legislators argued that courts would strike down any attempt by a state to regulate out-of-state business operations.

Missouri's Senate is considering a bill that would reduce credit card interest rates in the Show Me State. Currently 22 percent, the rates would fall to 10 percent under the proposed legislation. As currently drafted the measure would apply to debts only up to \$1,000, and would affect both in-state and out-of-state banks issuing credit cards.

No limits for credit cards?

In Indiana, on the other hand, the Senate recently voted to remove the ceiling on credit card interest rates. For the past five years 21% has been the upper limit allowed on interest in Indiana. Supporters of the change said that banks simply set their rates at the highest rate allowed, rather than responding to the financial market. Some senators said that removing the limit would create more flexibility, benefitting banks and consumers.

Sending a message--sort of

Finally, in Connecticut the House of Representatives has put its sentiments regarding credit card interest rates on record--but some lawmakers doubt the practical effect of the move.

A resolution was unanimously passed by the chamber asking out-of-state banks to follow Connecticut's 15 percent limit on credit card interest rates. One of the members who voted for the measure expressed a bit of confusion: "This legislation has absolutely no teeth," Rep. Alan Schlesinger is quoted as saying. "We are sending out a message, but to who I don't know."