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South Carolina House of Representatives

# Legislative Update & Research Reports

Robert J. Sheheen, Speaker of the House

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## House Week in Review

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Two historic elections marked last week's session of the General Assembly, and the House put in some long hours and hard work on its Highway Safety bill.

### Judgeship Elections

District 75 Rep. Jean Toal, chairman of the House Rules Committee and a 14 year veteran of the House, was elected by acclamation as an associate justice of the South Carolina Supreme Court. With her election, Mrs. Toal will become the first woman member of the state's highest court.

Another first was marked by the election of Richland County Family Court Judge Carol Connor as a judge in the 5th Judicial Circuit. Judge Connor, who is married to former House member Palmer Freeman, will become the state's first woman circuit judge, replacing the retiring Judge Walter Bristow.

The General Assembly also elected by acclamation Associate Justice David W. Harwell of Florence, who has been a member of the Supreme Court since 1980. Benny R. Greer of Darlington also was unanimously elected to the Family Court bench in the 4th Judicial Circuit.

### Legislative Work

The 901-page South Carolina Business Corporations Act (S.415) was given a quick second reading last week after the House accepted the House Judiciary Committee's amendment to the bill. This legislation will substantially revise state laws regarding business and professional corporations. (See last week's *Update* for a review of this bill.)

House members also did some preliminary spade work on the Comprehensive Health Education bill (H.2734), up for second reading in the House. But most of the chamber's time was spent working on the Highway Safety package.

Highway Safety

House members debated a lengthy list of amendments to this House Education and Public Works Committee bill (H.3512). Some of the provisions added last week to this legislation include:

- An amendment that would prohibit five-time DUI offenders from ever getting a South Carolina driver's license.
- A confiscation amendment, which would require any driver convicted at least three times for DUI or DUS, or convicted once of felony DUI, to lose his vehicle to the state.

This amendment would apply to the vehicle's owner or anyone residing with the owner. If someone other than the owner is driving the car when it is confiscated, the owner would have the opportunity to get his car back at a hearing if he can prove that the driver did not have permission to use the car.

- An amendment requiring first time DUI offenders to put special bumper stickers on their vehicles.
- An amendment allowing a defendant, who is convicted of an offense in which he loses his driver's license, to surrender the license immediately to the clerk of court or magistrate. The effective date of the revocation would then begin the day the license was surrendered.

The House continues debate on the bill this week under the special time limitations of the House's cloture rules.

## Briefing on Long Term Care Health Insurance

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### Introduction

H.3573 would create the Long Term Care Insurance Act. The purpose of this act is to define long term care insurance and the minimum coverage that must be provided. The bill also would protect people seeking this kind of insurance from unfair or deceptive practices in sales and enrollment.

### What Is Long Term Care Insurance and What Isn't

As defined by this act, long term care insurance is any insurance policy or rider designed to provide a minimum of 12 consecutive months coverage for any medically-necessary service provided in a setting other than a hospital's acute care unit.

Under this bill, long term care insurance does not include policies providing coverage for basic Medicare supplement, basic hospital expenses, basic medical-surgical expenses, major medical expenses, disability income protection, accidents, hospital confinement indemnity, or specific disease or accident or limited benefits. Standards for group long term care are also included in this legislation.

### Background

At this time, there are no regulations in South Carolina which specifically address long term care insurance. H.3573, sponsored by the Labor, Commerce and Industry Committee, was originally submitted last March by Reps. Pat Harris, Helmly, Blackwell and Waldrop as H.2673, which was referred to the House LCI Committee.

In October and November, the Insurance Subcommittee held public hearings in Greenville, Florence and St. George on the issue of long term care insurance. Public comment at the hearing indicated favorable support for legislation providing standards for this type of insurance.

According to a May 1987 report by the National Conference of State Legislatures and Foundation for State Legislatures, long term care insurance is an emerging private financing mechanism for the type of medical services required due to a chronic illness or a condition lasting over a prolonged period of time. Currently, government payment of long term care through the Medicaid program is

available only for the poor. Individuals who don't qualify for Medicaid generally use their own assets until they are exhausted. In 1985, 53 percent of long term care services was paid with personal funds; 42 percent by Medicaid.

As the elderly population increases in coming years, users of long term insurance also will increase. It is estimated that by the year 2000, the number of older Americans (those over 65) will have increased by 37 percent.

#### Long Term Care and Medicaid

Of particular interest to state legislators is the impact long term care insurance could have on state Medicaid expenditures. According to the NCSL/FSL report, this type of insurance has the potential to reduce state Medicaid expenditures by decreasing the number of people who are forced to rely on Medicaid to pay their nursing home and home health care costs.

Nursing home care is the second largest expense in the national Medicaid budget, making up 37 percent of total state-funded Medicaid expenditures in 1985, according to the NCSL. In addition, total Medicaid nursing home expenditures increased 10 percent each year between 1980 and 1985, making it the fastest growing part of the Medicaid budget with the exception of hospital care.

#### Two Studies

The NCSL/FSL report cites two major studies on the impact of long term care insurance on state Medicaid expenditures. One study, conducted by ICF Inc. for the U.S. Department of Health and Human Services, estimated that long-term care insurance could reduce Medicaid nursing home expenditures by between \$3 billion and \$9 billion annually over a 35 year period (depending on the assumptions used to estimate how many people would purchase long term care insurance, the report states).

Another study by the Brookings Institute, using different assumptions, estimated a maximum average 5 percent reduction in Medicaid expenditures in the years 2016 to 2020. The study suggested reductions might increase in subsequent years.

To date, few states have enacted laws regarding the sale or content of long term care insurance policies. However, a number have undertaken studies of the issue.

Summary of the House LCI Bill

The following is a section by section summary of H.3573. It currently is up for second reading on the uncontested calendar.

- 1) This section describes the purpose of the act: To promote the availability of long term care insurance, to protect those interested in this type of insurance from unfair or deceptive practices, and to establish standards for the development of long term care insurance.
- 2) Existing insurance laws would not be replaced by this act. The exception to this is that laws and regulations applying to Medicaid supplement insurance policies may not be applied to long term care policies.
- 3) If enacted, this bill is to be known as the "Long Term Care Insurance Act."
- 4) This section defines long term care insurance and group long term care insurance, as well as other basic definitions.
- 5) Under this legislation, a group long term care insurance policy issued in another state may not be offered in South Carolina unless the out-of-state policy is governed by the same laws and regulations South Carolina has established for this type of coverage.
- 6) In addition to requiring the Chief Insurance Commissioner to submit regulations on this act for legislative approval, this section also sets out what is allowed under the definition of "preexisting conditions." Several prohibitions are also outlined. Under this act, no long term care insurance may:
  - Cancel or terminate coverage except if the premiums are not paid;
  - Require a new waiting period if the company converts or replaces the coverage with a new form. The exception to this is if the policyholder voluntarily upgrades his coverage.
  - Require that payment of benefits be tied in any way to eligibility for Medicare or Medicaid.
  - Limit coverage to skilled nursing care only.
  - Be advertised or marketed as long term care insurance, unless it complies with this act.

The rights of policyholders also are spelled out in this section. These include:

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- The right to return the policy and receive a premium refund within 10 days if not satisfied for any reason.
- The right to return the policy and receive a premium refund within 30 days of delivery if the policy is issued through direct response solicitation.
- The right to an outline of the policy's coverage to be given the policyholder no later than at the time the policy is delivered.

Under this section, policies that provide benefits only after the person has been in an institution may not condition payment of those benefits on the person being institutionalized again for the same reason within 30 days.

- 7) Regulations drawn in connection with this act must comply with the Administrative Procedures Act.
- 8) The act would apply to any policies issued or delivered after the effective date of the act.
- 9) The penalty for violating this act may include revocation or suspension of the insurer's license or a fine up to \$15,000.
- 10) This section states that any premiums paid for long term care insurance must be excluded in determining the amount an individual must contribute toward the cost of any Medicaid service he receives.
- 11) The act would take effect when the governor signs it.

**Bills Introduced**

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Here is a sampling of bills introduced in the House during the previous week. Not all House bills introduced last week are featured here. The bills are organized by the standing committees to which they were referred.

*Education and Public Works Committee*

No School Til After Labor Day (H.3605, Rep. Corning). This bill would change the opening of the school year for public school grades K-12 and all the state's public colleges and universities. The legislation would prohibit any public institution of higher learning from beginning their fall terms before Labor Day. This same stipulation would apply to public elementary and secondary schools, which could not begin the school term until the day after Labor Day.

School Bus Stop Violations (H.3640, Rep. Moss). Penalties for violating state laws pertaining to school bus signals and stopped school buses would be set by this bill. It would require a fine of not more than \$200 and a 30 day license suspension for violations.

*Judiciary Committee*

Juror Qualifications (H.3626, Rep. Taylor). This joint resolution would make a constitutional change regarding the qualifications of grand and petit jurors. Under this resolution any citizen holding a valid state driver's license would be qualify as a juror. Current law states jurors must be registered voters.

Machine Guns and Sawed Off Shotguns (H.3632, Rep. Stoddard). This bill would add a section to the Code relating to machine guns and sawed off shotguns and rifles. The bill states no permit or registration for machine guns or sawed off shotguns or rifles would be required of "a governmental entity which has significant public safety responsibility for the protection of life or property."

Claims For or Against Minors or Incapacitated People (H.3634, Rep. Wilkins). This bill clarifies and expands on several points in the state Probate Code relating to settlement claims for or against minors or incapacitated people. It specifies, in part, that the Probate Court will oversee protective and guardianship proceedings and clarifies certain points relating to conservators. This bill also spells out the jurisdiction of the circuit court in connection with these kinds of settlements. If enacted, the circuit court would have exclusive jurisdiction in these cases to approve settlements of claims of \$10,000 or more. The probate court would have concurrent jurisdiction with the circuit court to approve the settlement of claims under \$10,000.

*Labor, Commerce and Industry Committee*

Auto Insurance Limits (H.3641, Rep. E.B. McLeod). This bill would raise the minimum automobile insurance limits to \$25,000/\$50,000/\$25,000. The current legal minimum is \$15,000/\$30,000/\$5,000.

*Medical , Military, Public and Municipal Affairs*

New Department of Children's Services (H.3604, Rep. Corning). This bill would create the South Carolina Department of Children's Services, a specialized agency designed to provide an integrated statewide program of children's services. These services would include child care and child development, child protective services, foster care and other out-of-home placement services, adoption and other birth-parent services, and counseling services for children and their families. Most of these functions are now being handled by the state Department of Social Services.

A 12-member commission -- two commissioners selected from each congressional district -- would oversee the work of the new department. Six commissioners would be elected by the General Assembly; six by gubernatorial appointment with the governor selecting the chairman from among the 12. The new commission would select an executive director to run the new department.

Under this proposal, the federal Title XX and Title IV-B funds pertaining to children's services would be transferred from DSS to the new department. The funds and duties would be phased-in from the state and county DSS offices to the new department beginning July 1, 1988.

Post-Hospitalization Mental Health Treatment. (H.3642, Rep. McAbee). Any person, involuntarily committed to a state mental health facility, would be required to receive post-hospitalization treatment in a community mental health facility. In addition, the bill requires DMH's in-patient facilities to set up these treatments before the patient is released. Post-hospitalization treatment would be continued until the patient receives the approval of a psychiatrist to stop. The department would have to report to the DMH Board each year regarding compliance with these requirements.

Mental Health Patients and Violent Crimes (H.3643, Rep. McAbee). This bill involves patients being treated in state mental health facilities who have been charged with violent crimes. H.3643 would require that prior to any plea bargain agreement or prior to a dismissal of the charges brought against the patient, a hearing must be held. In the hearing, all parties, including the victim or his nearest relative (if the victim is dead or incapacitated), may present arguments for or against the dismissal or plea bargain agreement.

Autopsies and Mental Health Patients (H.3645, Rep. McAbee). This bill would require an autopsy to be performed on all state mental health patients who died "under unusual circumstances," or who died within two weeks of a medical or surgical treatment in a mental health facility.

Criminal History Checks (H.3644, Rep. McAbee). The state Mental Health Department would be required to run a criminal history check on every applicant for a clinical position within the department or anyone seeking a contract that would bring them in contact with patients. If the check uncovers a conviction, guilty plea or no contest plea to any crime involving moral turpitude, the person could not be hired or the contract accepted.

Incident Reports (H.3646, Rep. McAbee) This is another bill dealing with the state Department of Mental Health. Under this one, any patient-to-patient, patient-to-staff or staff-to-patient incident that results in an injury must be reported within five days to the Commission on Mental Health and Mental Retardation and to the governor's ombudsman.

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*Ways and Means Committee*

Snow Days and State Employees (H.3637, Rep. J.H. Burriss). This bill would forgive the snow days taken Jan. 7, 8, 11 by state employees, and would allow state employees, who had to work those days, to be given compensatory time.

Name That Bridge (H.3651, Rep. M.D. Burriss). Expenses incurred by the State Highway Department in connection with the dedication of a road, bridge or facility would be reimbursed with "C" funds from the county or counties where the dedication occurs. This reimbursement is limited to \$500. The reimbursement must be approved by the county delegation(s) and the district highway commissioner. Under current law, the reimbursement is from the state highway fund with approval of expenses by the county delegation(s).