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South Carolina House of Representatives

# Legislative Update

David H. Wilkins, Speaker of the House

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## Legislative Update, March 21, 1995

### House Week in Review

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The most contentious debate in the House this past week centered on H. 3647, a bill to suspend the general fund appropriations limits as provided under 1993's "Carnell-Felder" act for purposes of providing property tax relief for owner-occupied residences. In approving the 1995-1996 general appropriation bill, the House had included \$129 million in residential property tax relief and sought an additional \$55 million in such relief by suspending Carnell-Felder, with the intention being to give property tax relief for the next fiscal year totalling nearly \$200 million. On Thursday, March 2, the House had voted 54-53 to "continue" H. 3647 (i.e., delay further debate on the measure until the 1996 session). However, the bill came up again this past Wednesday, March 15, as the House voted 64-52 to reconsider its earlier vote by which the House had voted to continue the bill. Debate on the bill then ensued, with proponents citing demands throughout the state for property tax relief, while opponents expressed concern that suspension of the appropriations limits would be detrimental to restoring the state's credit rating. In the end, however, proponents won out, with the House giving second reading to the bill by a vote of 70-38 that afternoon. Third reading came on Thursday morning, with the bill then sent to the Senate for further consideration.

On Tuesday, the House gave third reading to the proposed general appropriation bill for fiscal year 1995-1996, H. 3362. The budget bill was introduced in the Senate the following day and referred to the Senate Finance Committee for further consideration. A summary of various highlights of the general appropriation bill, as passed by the House, can be found beginning on page 3 of this Update.

On Tuesday, the House and Senate convened in joint session to hear the new Chief Justice of the South Carolina Supreme Court, the Honorable Ernest Finney, Jr., deliver the annual State of the Judiciary address. In his speech, the chief justice told legislators that the judicial system has been taking a number of steps to improve its efficiency amidst rapidly-increasing caseloads but that even with such efforts, the court system remains overextended and understaffed. He noted that the state's judicial system has been underfunded for a number of years, making it difficult to process cases in a timely manner. Chief Justice Finney urged lawmakers to increase funding for the judicial system and also asked legislators to appoint additional judges to the Court of Appeals, Circuit Court and Family Court systems so as to reduce delays in processing cases.

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### Summary of Budget Highlights

With the House having given third reading to the general appropriation bill last Tuesday, March 14, and third reading to several other appropriations bill this past week, this week's Update summarizes some of the provisions included in these appropriations bills. Thanks is given to the House Ways and Means Staff for providing information concerning these appropriations.

#### (I) General Appropriation Bill (H. 3362)

---FY 1995-1996 general appropriation bill includes spending increase of approximately 3.5 percent over current year's appropriated general funds. Includes \$64 million in cuts of state agency budgets.

---Budget does not include any tax increases.

---\$129 million in property tax relief for owner-occupied homes (another \$55 million is provided through set-asides from the Carnell-Felder act, H. 3647, bringing total property tax relief funding for FY 1995-1996 to \$184 million).

---Imposition of hiring freeze on state agencies, regardless of source of funds, except for teaching positions, fire-fighting personnel, seasonal employees and those employees providing 24-hour custody or care. Additionally, no new positions may be created by administrative act, although the Budget and Control Board may grant exemptions to that prohibition.

---\$7 million is provided to maintain the Capital Reserve Fund at a level of 2 percent of previous year's revenue.

---\$47.5 million for maintenance of full state funding for the homestead exemption for persons age 65 and over (with funding for the homestead exemption to be increased depending on final passage of the property tax relief package).

---\$10 million to complete the phase-in of the capital gains rate reduction for taxpayers, which reduces the marginal tax rate on net capital gains to 3.9 percent for the 1995 tax year.

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---\$10 million for the second year phase-in of an increase in the tax exemption for families with children under age 6, increasing the exemption for each child to approximately \$1,225.

---\$4.6 million for first year of six-year phase-out of the soft drinks tax.

---Establishes within the State Treasury a separate "Property Tax Relief Fund" for purposes of providing property tax relief for owner-occupied residences. The first phase of the relief is to be used to remove the portion of the homeowner's tax bill levied for public school operating costs. The General Assembly, in the annual general appropriation act, must appropriate funds beginning in fiscal year 1996 into the fund for this purpose. Additionally, beginning in fiscal years after June of 1996, the General Assembly must (in addition to the funds for this tax relief provided in FY 96) appropriate one-half of estimate recurring revenue growth expected for the fiscal year until residential property taxes are completely phased out.

---Abolishes vehicle safety inspection requirement. (A separate bill which also would abolish vehicle safety inspections passed the House last month and currently is pending in Senate Committee.)

---Requires interest income from state highway fund, interest earnings on County Transportation Fund in the State Treasury, and interest earnings on the Economic Development Account to be credited to the State Highway Fund.

---Allows full-time firefighters and emergency medical service personnel to deduct from their state income tax a subsistence allowance of \$5.00 per day (five dollars daily) for each regular work day in a taxable year.

---Prohibits any member of the General Assembly from receiving in any 1 calendar year on account of service during the regular legislative session any amount exceeding the total amount appropriated for personal service for legislators for the applicable fiscal year divided by 170.

---Extends South Carolina's targeted jobs tax credit to sole proprietors, partnerships, limited liability companies, corporations of any classification, or associations.

---Prohibits an aircraft from being purchased, leased or lease-purchased for more than a 30-day period by a state agency without the prior authorization of the Budget and Control Board and the Joint Bond Review Committee.

---Allows the Budget and Control Board to authorize furloughs of state employees during a fiscal year when the Board of Economic Advisors officially estimates and the Budget and Control Board formally certifies

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that revenues likely will result in a deficit exceeding the combined reserves in the Capital Reserve Fund and the General Fund Reserve. Furloughs may be authorized only with unanimous consent of the Board and only as a last resort alternative to reduction in force of state employees. Furloughs may not exceed 10 days in a fiscal year or 2 days in a pay period.

---Allows governmental bodies to accept gifts-in-kind of architectural and/or engineering services, and items of construction valued under \$250,000 if (1) approval is obtained from staff of the Commission on Higher Education, the Director of the Office of General Services, and designated staff of the Joint Bond Review Committee, and (2) the gift is made or accepted without the intent of influencing the judgment of a governmental body.

---Imposes a \$1,000 penalty on each vehicle a rental company fails to register, license, and pay property taxes on as required by law. This penalty is in addition to any other taxes. The vehicle must be seized by the local sheriff, and if the registration and licensing fees and property taxes are not paid after 90 days, then the vehicle must be destroyed.

---Establishes a fund within the State Treasurer's Office to promote the trapping of coyotes. The Department of Natural Resources would administer the fund. Establishes a committee of 5 members to promote trapping of coyotes and to generate private contributions to the fund. The committee must assess sportsmen organizations in South Carolina an annual fee of \$100 to be deposited to credit of the fund.

### (II) Supplemental Appropriations Bill (H. 3690)

---Totals approximately \$96 million. (These funds are anticipated surplus funds from the current fiscal year, 1994-1995.) These supplemental funds are non-recurring and may only be used by agencies for non-recurring purposes.

---Includes, among other things, approximately \$50 million for higher education (included in that figure is \$35 million for maintenance and equipment); \$8.5 million for public education, and \$12 million for emotionally-disturbed children.

### (III) Capital Reserve Fund Bill (H. 3363)

---Totals \$73.4 million. Includes \$500,000 for the state's 1996 primary elections; \$12.5 million for the federal retirees' settlement (filing extension); and \$2.5 million for the second year of the Catawba Indian Settlement agreement.

---Also includes \$32.9 million for a state employee bonus pay plan. The amount of this bonus averages about 3 percent per employee, and

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instead of being given "across the board," the bonuses will be distributed to employees based on the latest completed employee performance evaluation. The maximum bonus is \$900, and each agency head must develop a plan to implement the program in their particular agency.

### (IV) Property Tax Relief (H. 3651)

---Last week, the Ways and Means Committee approved this bill, with amendments attached. As proposed by Ways and Means, the bill provides for a growing homestead exemption by using one-half of each year's projected growth revenue until this exemption is funded. Entities levying property taxes that are affected by this bill would be required to obtain a 3/5 (three-fifths), and in some cases, 2/3 (two-thirds) majority to spend above the consumer price index (i.e., inflation). Homeowners would still be liable for taxes imposed for debt relief.

### (V) Carnell-Felder Set-Aside (H. 3647)

---Last week the House passed a bill (H. 3647) to provide a means for South Carolina to utilize funds set-aside by the "Carnell-Felder" act (approximately \$55 million) to increase the funds earmarked for property tax relief. The bill would suspend the set-aside requirement for a period of time and allow the funds to be used for residential property tax relief. A total of \$491 million would be required to provide complete property tax relief for owner-occupied homes.

### (VI) Appropriations for Various Subjects

Higher Education: Including both general funds and supplemental funds, \$589.7 million is appropriated for colleges and universities for fiscal year 1996, a reduction of \$11.9 million from the current fiscal year. For FY 1996, colleges and universities are appropriated \$534.8 million in recurring general funds, \$25.9 million less than their FY 1995 base of \$560.7 million.

Tuition Grants: Appropriation increase of \$2.2 million.

Public Education: Average teacher salary increased by 4.2 percent (\$31,749) to meet the estimated southeastern states' average. Base student cost of \$1,619 is to be funded at \$1,684 per pupil to cover estimated inflationary growth of 4 percent this year, with the base student cost funding increase accomplished by using projected growth in Education Improvement Act funds (\$30.9 million) and cutting some EIA programs funded by EIA (\$32.9 million).

Health/Social Services: Appropriations of \$66.6 million.

Department of Social Services: Appropriation of \$4.1 million for welfare reform, with these funds used to implement statewide work support services for AFDC recipients.

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**Health and Human Services Finance Commission:** Appropriation of \$31.1 million to maintain the existing Medicaid program. Current Medicaid programs will not be reduced or eliminated. Of this \$31.1 million Medicaid appropriation, \$11.2 million is to annualize current year non-recurrent funds used to provide recurring program services (such as hospital and nursing home services); \$8.9 million is to maintain the existing Medicaid program given client annualizations and increased growth of eligible persons based on existing eligibility criteria; \$5 million is to provide nursing home cost report adjustments; \$5 million is to provide hospital rebasing; and \$1 million is to provide 500 additional community long term care slots.

**Disabilities and Special Needs:** Increase in recurring funds of \$4 million, of which \$1.4 million is for individual and family support services; \$1.5 million is for services for persons with head or spinal cord injuries; \$600,000 is for prevention programs (including education and research); and \$500,000 is for reduction of the residential waiting list.

**Criminal Justice:** Additional \$24.5 million to criminal justice agencies.

**Corrections:** Appropriation of \$20.5 million for operation of a new correctional institution and to annualize costs associated with facilities opening during the current fiscal year.

**Juvenile Justice:** Increase of \$3,045,138 in order to satisfy the terms and conditions of a lawsuit brought against the Department, with this money spent on addressing living conditions, alternative and community programs in an attempt to alleviate overcrowding and improve staffing levels.

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### Bills Introduced

The following bills were introduced in the House during the legislative week of March 14-16. Not all bills introduced in the House are featured in this Update. The bill summaries are arranged according to the standing committee to which the legislation was referred.

#### **AGRICULTURE, NATURAL RESOURCES AND ENVIRONMENTAL AFFAIRS**

Eating Establishments May Sell Venison (H. 3809, Rep. Witherspoon). This bill allows an eating establishment to sell venison, provided the venison is from farm-raised deer and is processed through a packinghouse approved by the Food and Drug Administration.

Local Governments Prohibited from Selling Agricultural or Horticultural Products (H. 3810, Rep. Witherspoon). This bill prohibits counties, municipalities or special purpose districts from selling agricultural or horticultural products (such as sod, turf, and ornamental plants). Local governments which are involved in turf production when this act becomes effective are exempt from this prohibition.

Turtle Excluder Devices May Be Required in Channel Nets Used for Taking Shrimp (H. 3820, Rep. Thomas). This bill allows the Department of Natural Resources to require use of turtle excluder devices in channel or set nets used for taking shrimp. The devices used must be of a type approved by the Department, and the Department may designate the times, areas, seasons and conditions under which the devices are to be used as conditions of the channel or set net permit.

#### **EDUCATION AND PUBLIC WORKS**

Department of Transportation Must Submit Copies of State's Intermodal Transportation Efficiency Plan and Requirements Pertaining to Rail Service (H. 3786, Rep. Keyserling). This bill requires the Department of Transportation to submit to the General Assembly and Governor a copy of the State's long-range intermodal transportation efficiency plan (prepared in accordance with the federal 1991 Intermodal Surface Transportation Efficiency Act, or "ISTEA") and periodic updates of the State's plan. Additionally, the bill contains provisions governing changes in rail service in South Carolina. An owner of a railroad right-of-way must notify

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the Executive Director of the Department of Transportation (hereafter called "Department") of his intent to abandon a right-of-way, so as to assist the executive director in developing the state's long-range intermodal transportation efficiency plan. This required notification must be sent concurrently with the owner's filing for authorization with the Interstate Commerce Commission for abandonment or discontinuance of a line in South Carolina. The Department also must develop and implement a procedure for providing proposed rail abandonment and discontinuance information to interested parties and the general public. Finally, the bill requires railroads operating in this State to submit on an annual basis to the Department a long-range plan for rail lines indicating the potential for discontinuance of service or abandonment of right-of-way.

Persons Seeking to Obtain Beginner's Permit or Special Restricted Driver's License (H. 3803, Rep. A. Young). This bill would make successful completion of a driver training course a prerequisite for obtaining a beginner's permit or special restricted driver's license in South Carolina. For purposes of meeting this requirement, the driver training course must have been conducted by the State Department of Education or by a licensed driver training school.

District School Superintendent Not Required To Be Certified as a School Superintendent (H. 3807, Rep. Davenport). This bill allows a school district board of trustees to employ as the district superintendent a person who in the board's opinion is a person of outstanding experience with a distinguished work and academic record. The bill further provides that this person is not required to be certified as a school superintendent or to possess the requisite qualifications required by law for school superintendents in this state.

Department of Transportation Must Recover Engineering or Administrative Cost from a Highway Construction Project Upon Completion of Project and Reception of Full Payment by Contractor (H. 3817, Rep. Townsend). This bill requires the Department of Highways and Public Transportation to recover the engineering or administrative cost from a highway construction project once the project is completed and the contractor has received full payment. The Department must make the final payment to the contractor within 90 days of the Department's final acceptance of the project. If payment is not made in a timely manner, then the Department must pay an administrative fee to the contractor of 1 percent of the amount owed a month.

Special License Plates for Marine Corps League (H. 3818, Rep. Keegan). This bill allows the Department of Revenue and Taxation to issue special license plates to members of the Marine Corps League for private motor vehicles registered in their names. Only 1 plate may be issued per person, with the biennial fee for this special license plate being \$30, plus an initial fee of \$15 for issuance of the plate. The plate must be issued or revalidated biennially. The bill requires the plate to contain

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the Marine Corps emblem on the left side, "USMC" on the right side, and "Semper Fi" across the bottom of the plate.

**Special License Plates for Vietnam Veterans (H. 3819, Rep. Keegan).** This bill allows the Department of Revenue and Taxation to issue special license plates to Vietnam Veterans for private motor vehicles registered in their names. Only 1 plate may be issued per person. The biennial fee for this special plate is \$30, plus an initial fee of \$15 for issuance of the plate. The plate must be issued or revalidated biennially and must bear the words "Vietnam Veteran." The bill also requires an applicant for this plate to verify that he served in the Vietnam Conflict.

## JUDICIARY

**Joint Legislative Committee on Children and Families, and State Agencies, Must Prepare Family Impact Statements on Certain Bills and Resolutions (H. 3789, Rep. Fair).** This bill requires the Joint Legislative Committee on Children and Families to prepare a "family impact statement" (hereafter called "statement") on any bill or resolution which may have a significant impact on the family (i.e., family formation, maintenance and general well-being). The statement must be attached to the bill or resolution before being reported out of committee. Additionally, state agencies must prepare statements on their policies and regulations which may have significant family impact, with the statement on regulations submitted with a regulation being submitted for General Assembly review and the statement on agency policies submitted for review to the Joint Legislative Committee on Children and Families.

In assessing the family impact of proposed bills, resolutions, regulations or agency policies, the assessment must address, among other things, guidelines such as the extent to which the bill, resolution, etc. strengthens or erodes family stability, strengthens or erodes parental authority in educating and supervising their children, or increases or lowers family earnings.

The bill also requires the Joint Legislative Committee on Children and Families to report to the Governor and General Assembly regarding statements the committee has prepared or reviewed and make recommendations as to statutory, regulatory and policy actions that may be taken to strengthen the institutions of marriage and the family in South Carolina. These reports must be made each year before October 1. Additionally, this joint committee must review statutes, regulations and policies existing at the time this act becomes effective in light of guidelines established pursuant to this act; report to the Governor and General Assembly the family impact of these statutes, regulations and policies; and make recommendations as to whether the statutes, etc. may need to be amended in order to strengthen the institutions of marriage and family.

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South Carolina Property Rights Act (H. 3790, Rep. Harrison). Under these provisions, an owner of real property would be entitled to compensation when a state or local regulation substantially diminishes the value of the property (i.e., has the effect of limiting or extinguishing any existing right of an owner to use real property). For purposes of this bill, "regulation" includes all land use regulation, rules or emergency rules, statutes, ordinances, dedications, or denials of permits, licenses, authorizations or other governmental permission if such denial is without cause or is with cause but based on selective enforcement of any statute, regulation or standard, any of which has the effect of limiting or imposing conditions upon the owner's right to use or occupy property. However, several actions are not included in the definition of regulation, as follows:

(1) exercise of power of eminent domain to physically appropriate real property or to effect physical invasion of real property;

(2) repeal or amendment of a statute, ordinance, etc. if the repeal or amendment qualifies, lessens or reverses a limitation or restriction on use of private property;

(3) a state governmental action specifically mandated by the federal government, to the extent that the state action does not result from exercise of legislative, executive or administrative discretion;

(4) law enforcement activity involving seizure of forfeiture of private property for a violation of law or as evidence in a criminal proceeding; or

(5) any regulation which otherwise would be included in the definition of "regulation" to the extent that the regulation has no effect on existing property rights, or clarifies, restates or otherwise imposes restrictions on property use which already were in effect before enactment of such regulation.

The bill provides that in all cases in which it appears likely that adoption or enforcement of a regulation may give rise to a right of compensation to the landowner (whether by constitutional, statutory or common law, then the proposed regulation must be treated as a taking of the property, with the government entity then proceeding to condemn the interest in real property via the State's Eminent Domain Act.

The bill also requires governmental entities, as much as is reasonably possible, to avoid adopting or enforcing regulations in a manner that constitutes a taking of property, requiring a payment of just compensation.

Before adopting or enforcing regulations affecting land use, governmental entities must assess the proposed regulations or proposed manner of enforcing the regulation. In performing this requirement, the assessment must state the specific purpose of the proposed regulation; the probable effect of the proposed action on the use and value of the property; alternatives to the proposed action which could lessen the effect on private property or which could involve lower probable costs to the State; and the source of payment within the governmental entity's budget for such compensation. The entity must deliver copies of the

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assessment to the governor, attorney general and the appropriate financial management authority.

The bill lists a number of additional factors which must be taken into consideration when appraising property taken through regulation under the procedures of the eminent domain statute. Among the factors which must be considered are the economic impact of the regulation on the property owner; the present use of the property and of adjacent property; any economic benefit to the property as a result of the proposed regulation; and existence of any liens or encumbrances on the property. The bill also entitles the property owner to bring an action for damages in inverse condemnation and to obtain attorney's fees if the governmental entity does not institute condemnation proceedings when enactment of a regulation has the effect of diminishing the value of the real property.

County Council May Employ and Discharge County Attorney and Internal Auditor (H. 3791, Rep. Cooper). This bill provides that under the council-administrator form of county government, county council is solely responsible for employment and discharge of the county attorney and internal auditor.

Mistake of Age Not a Defense in Sexual Exploitation of a Minor (H. 3792, Rep. Fair). This bill provides that mistake of age is not a defense in prosecution of the offense of third degree sexual exploitation of a minor.

Commitment of Juveniles (H. 3793, Rep. Wilkins). This bill allows the Family Court to commit a child age 12 or older who has been adjudicated delinquent or is found in contempt of court for a determinate period not exceeding 90 days to a secure correctional facility operated by the Department of Juvenile Justice, without first committing the child to an evaluation center.

Status Offenders (H. 3794, Rep. Wilkins). This bill deletes a provision under which children guilty of "status offenses" (i.e., offenses which would not be criminal offenses if committed by adults) or who violate conditions of probation for an offense cannot be committed to correctional institutions or secure detention facilities operated by the Department of Juvenile Justice.

Status Offenders (H. 3795, Rep. Wilkins). Current law prohibits a child who is guilty of a violation of law which would not be a criminal offense if committed by an adult from being committed to the custody of a correctional institution or secure evaluation center operated by the Department of Juvenile Justice. This bill would allow a child guilty of such violation to be committed to that institution or center for a determinate period not exceeding 90 days, without any requirement that the child first be first temporarily committed to an evaluation center.

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Penalties for Failing To Stop for School Bus (H. 3806, Rep. Hutson).

Current law makes it a misdemeanor, punishable upon conviction by a fine of \$100-\$200 or imprisonment of not more than 30 days, for the driver of a vehicle to fail to stop when meeting or overtaking a stopped school bus. This bill makes the offense a felony when death or great bodily injury results, and also toughens other penalties for the offense, with a conviction, plea of guilty or nolo contendere of forfeiture of bail for this offense punishable as follows:

First Offense: A misdemeanor punishable by fine of not less than \$1,000 or imprisonment of not more than 30 days; however, in lieu of imprisonment, the court may require the person to complete at least 10 days of community service.

Second or Subsequent Offense: A misdemeanor punishable by fine of between \$2,000 and \$5,000 or imprisonment of between 30 and 60 days.

Committing Offense Which Results in Great Bodily Injury to a Pedestrian: Felony punishable by fine of between \$5,000 and \$10,000 and imprisonment of between 60 days and 1 year.

Committing Offense Which Results in a Pedestrian's Death: Felony punishable by fine of between \$10,000 and \$25,000 and imprisonment of between 1 year and 5 years.

Additionally, the Department of Public Safety must suspend the driver's license of a person who is convicted or who receives a sentence upon plea of guilty or nolo contendere to this felony for the term of imprisonment plus 1 year.

For purposes of this bill, "great bodily injury" is bodily injury which creates substantial risk of death or which causes serious, permanent disfigurement or protracted loss or impairment of the function of any bodily member or organ.

Government Entities May Not Use Race or Certain Other Factors as Criteria for Discrimination or Preferential Treatment as Pertains to Public Employment, Education or Contracting (H. 3812, Rep. Limbaugh). This proposed constitutional amendment would prohibit the State or any of its political subdivisions from using race, sex, color, ethnicity or national origin as criterion for either discriminating against or granting preferential treatment to any individual or group in operation of the state's system of public employment, public education or public contracting. This prohibition would only apply to state action taken after this constitutional amendment became effective, and allowable remedies for violation of this prohibition would include reasonable attorney's fees.

The provisions of this constitutional amendment, however, are not to be interpreted as:

(a) prohibiting classifications based on sex that are reasonably necessary to normal operation of the state's system of public employment or public education, including authorization for or establishment of single-gender institutions of higher learning by the General Assembly;

(b) invalidating any court order or consent decree that is in force on the constitutional amendment's effective date;

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(c) prohibiting state action that is necessary to establish or maintain eligibility for any federal program, when ineligibility would result in loss of federal funds to the State; or

(d) prohibiting a public agency from obeying a court order requiring the consideration of racial, ethnic, national origin, gender or religious characteristics to remedy effects of the agency's past discriminatory practices.

If adopted by the General Assembly (requires approval of 83 of the House's 124 members and 31 of the 46 members of the Senate), this proposed constitutional amendment would be submitted to the voters at the November 1996 general election.

Portraits, Flags and Other Items Moved from State House During Upcoming Renovation Must Be Returned to Original Location Upon Reoccupation (H. 3816, Rep. Quinn). This bill requires all portraits, flags, banners, monuments, statues and plaques which may be removed from the State House during the upcoming renovation project to be returned to their original location upon completion of the renovations. The bill also provides that once these items are returned to their original location following the renovations, the location of these items may not be changed except by an act approved by the General Assembly.

Prohibition Against Purchasing, Bartering or Trading of Marine Products Handled or Taken Unlawfully (H. 3821, Rep. Keyserling). This bill prohibits anyone not licensed as a primary wholesale seafood dealer (hereafter called "dealer") from knowingly receiving or attempting to receive, barter or trade saltwater products taken, landed, produced or cultured in South Carolina but not first handled by a licensed dealer. This prohibition, however, does not apply to persons receiving live bait from a person properly licensed in sale of live bait. Additionally, the bill prohibits anyone from purchasing or attempting to purchase, barter or trade saltwater fishery products which are taken, produced, etc. unlawfully. Violation of these provisions is a misdemeanor, punishable upon conviction by a fine of between \$100 and \$500 and/or imprisonment not exceeding 90 days. However, if this violation is committed at the same time as another violation of the State's fish and game laws, then the penalty for violation of these provisions is a fine of between \$200 and \$500 and/or imprisonment not exceeding 90 days. Furthermore, it is a misdemeanor to conspire to violate these provisions, punishable upon conviction as follows:

Conspiracy to violate these provisions: Maximum fine of \$1,000, or imprisonment not exceeding 1 year, or both fine and imprisonment.

Conspiracy to violate these provisions and any other provisions of the State's fish and game laws: Fine not exceeding \$2,000, or imprisonment not exceeding 1 year, or both fine and imprisonment.

In addition to the criminal penalties for conspiring to violate these provisions, the person's privilege to hunt or fish must be revoked for 1 year.

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The bill also requires the seizure of products which are or are attempted to be purchased, bartered or traded by a person accused of violating these provisions, along with the products' containers. At the officer's discretion, the product may be released alive or (if lawful to be sold) sold, with sale proceeds held by the Department of Natural Resources pending final disposition of the case. Each pound of fish, dozen of crabs, bushel of oysters, quart of shrimp, pound of other saltwater fishery product, or part of them purchased or attempted to be purchased, bartered or traded unlawfully may be considered a separate offense. Money derived from the sale is to be retained by the Department for purposes of fisheries management and enforcement of the State's fish and game laws.

**Priority To Be Given to Specific Precincts in Election Recounts** (S. 207, Sen. Wilson). Current law requires a recount to be held in primaries and general elections when the difference in votes between the declared winner and another candidate is not more than 1 percent of the total votes cast in the primary or general election. This bill allows the canvassing agency to give priority in the recount to specific precincts if one of the affected candidates, for reasonable cause, makes such a request.

**Scheduling of Special Elections** (S. 272, Sen. Alexander). Currently, South Carolina law provides for holding of special elections to fill vacancies in office occurring because death, resignation or removal of office. If the vacancy involves an office for which there are partisan elections, then a special election is held on the 18th Tuesday after the vacancy occurs (with the first primary and runoff occurring, respectively, on the 11th and 13th Tuesdays following the occurrence of the vacancy). This bill requires the special election to be held on the same date as the general election if the date under which the special election normally would be held (i.e., 18th Tuesday following the vacancy) is within 60 days of the general election.

**Voting Machines** (S. 321, Sen. Washington). Under current law, mechanical models of voting machines are provided to voters for purposes of demonstrating the manner of voting on the machine. This bill also would allow an illustration of a voting machine to be used, such that either the illustration or the mechanical voting model may be used to assist voters on election day.

**Community Recreation Special Tax Districts** (S. 421, Sen. Rose). Under current law, a referendum to create a community recreation special tax district must be held on the date of the state general election. This bill would allow the referendum to be held either at the state general election or on a date set for special election, as determined by the county council. The bill also requires county council to appoint members to this tax district's Commission in accordance with any written agreement entered into between the county and any municipality having any portion of its territory within that recreation district.

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**Badges of Poll Watchers** (S. 625, Senate Judiciary Committee). Current law allows candidates with opposition in a primary and candidates in a general election to appoint a poll watcher for any voting place, with a watcher required to wear identification specifying the candidate or party he is representing. This bill prohibits a poll watcher's badge from specifying the candidate he represents.

## LABOR, COMMERCE AND INDUSTRY

**Auto Insurance Reform** (H. 3781, Rep. Felder). (Note: While this bill was introduced the week of March 6-9, time constraints prohibited preparation of a detailed summary of this bill for the March 14 Update; therefor, an expanded summary of this bill is provided below.)

The bill deletes the requirement that auto insurers offer an objective standards rate, instead requiring insurers to file and offer a base rate for auto insurance which is subject to allocation and recoupment charges. Insurers also must offer the applicable rates approved for policies ceded to the Reinsurance Facility. Effective October 1, 1995, the director of the Reinsurance Facility or his designee must disallow further use of the objective standards rate previously filed in accordance with state law, with the director or designee, concurrently with the date above, required to modify the uniform merit rating plan to the extent that surcharges are based as a percentage of the base rate, not a flat dollar amount, incorporating into the surcharges the prior objective standards rate surcharge (such that the overall rate levels on applicable policy premiums before and after the effective date are generally the same). Upon the effective date of these provisions, the provisions are not to be construed as to require a rating organization, its members or subscribers, or an individual insurer to immediately refile final rates or premium charges previously approved by the director and his designee and referred to as the base rate for auto insurance coverages.

The bill prohibits the "safe driver discount" from being included in the rate of premium calculation for (1) a driver who has held a valid driver's license for under 2 years; or (2) any applicant for auto insurance who cannot show valid proof of 12 months prior and continuous auto liability insurance coverage on vehicles owned by the applicant at the date of application. The state rating and statistical division is required to develop and file a loss component for private passenger auto insurance coverages based on the total experience of all insurers in the state, including risks ceded to the Reinsurance Facility, with due consideration given to actual loss experience within South Carolina for the most recent 3-year period for which such information is available, to prospective loss experience within this State, and to all other relevant factors within the State. This loss component is applicable to the risk and territorial classification plan promulgated and approved by the director or his designee. The bill requires the expense component for

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private passenger auto insurance rate or premium changes, as filed by the Board of Governors of the Reinsurance Facility, to accurately reflect the actual expenses of the Facility without profit and for use with the pure loss component as developed under this act. The base rate for any private passenger auto insurance risk ceded to the Facility by an insurer cannot be less than the base rate in effect and in use on November 1, 1994 by those auto insurers contracted for risks written by them through designated producers. Establishment of a uniform rate for risks having no merit plan points currently ceded to the Facility, by insurers having company-filed rates in effect on October 1, 1995 which are less than the state uniform rate, must be accomplished within a 2-year period. The loss component portion of the state uniform rate, on private passenger auto insurance coverages ceded to the Facility between October 1, 1995 and September 30, 1996, cannot be more than 10 percent greater than the loss component for such coverage filed with the director or his designee by the insurance services office. This percentage increases to 15 percent for coverages ceded to the facility between October 1, 1996 and September 30, 1997; 20 percent between October 1, 1997 and September 30, 1998; 25 percent between October 1, 1998 and September 30, 1999; and 30 percent between October 1, 1999 and September 30, 2000.

The bill deletes current provisions which state that an auto insurance risk is not insurable if the operator's permit of the named insured has been revoked or suspended, so as to state that every auto insurance risk is insurable. The bill increases from \$5,000 to \$15,000 the minimum coverage an auto insurance policy must carry for property damage and allows an auto insurer to refuse to write physical damage coverage for those applying for such coverage or to renew such coverage if the insured has 1 or more merit rating plan points.

The bill requires the plan of operation for the Reinsurance Facility to mandate that every member, upon any assessment related to private passenger auto risks, must collect that assessment for payment to the Facility by way of a surcharge on auto insurance policies issued by the member. The plan also must provide for 2 general classes of assessments relating to private passenger auto reinsurance operations of the facility--(1) a clean risk allocation, and (2) a "loss allocation". The clean risk allocation is the recovery of anticipated losses attributable to the facility's experience with drivers having no merit rating plan points; the "loss allocation" is the recovery of past facility operating losses attributable to the experience with private passenger auto risks after applying as revenue the clean risk subsidy. Beginning November 30, 1995 and before December 1 of each year thereafter, the facility's governing board must determine the clean risk allocation surcharge for use in the next calendar year period, from loss experience and expense data of the prior fiscal year. On November 30, 2000 and before December 1 of each year thereafter, the board must calculate the loss allocation surcharge for use in the next calendar year period from any actual operating loss attributable to ceded private passenger auto risks applying as revenue the clean risk subsidy in the prior fiscal year. All investment income from

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the premium on businesses reinsured by the facility must be retained by or paid over to the facility. The bill also provides a "phase-in period" for the assessment and collection of risk allocation by member insurers, such that in 1996, only 5 percent of the clean risk allocation is to be so assessed and collected. This percentage increases to 20 percent in 1997; 30 percent in 1998; 50 percent in 1999; and 100 percent beginning in the year 2000.

The bill requires the Facility to accept cessions on a policy of private passenger auto insurance at the option of an insurer, but only at the rate or premium charge as determined under the rating plans established by the governing board and approved by the director or his designee. The bill lists conditions under which the director is to give such approval.

The bill also changes the membership of the Facility's governing board, reducing from 4 to 3 the number of board members representing consumers, increasing from 4 to 6 the number of board members representing producers. Of the 6 producer members, 2 must be selected from a list of persons nominated by the Independent Insurance Agents of South Carolina; 2 must be selected from a list of persons nominated by the Professional Insurance Agents of South Carolina; and 2 must be selected from a list of persons nominated by the South Carolina Association of Auto Insurance Agents. The bill also eliminates from the board's membership a designated agent.

The governing board of the facility is directed to contract with 1 or more insurers meeting eligibility requirements promulgated by the board to act as servicing carriers for writing of auto insurance through producers assigned to the servicing carrier by the governing board. After September of 1995, producers previously directed by the director or his designee of the Department of Insurance, or the governing board, may continue to serve in the capacity of a servicing agent for the facility and is not required to requalify or reapply for assignment. The bill allows producers to apply to the governing board for assignment to a servicing carrier and makes producers eligible for assignment upon meeting certain qualifications, as listed in the bill. The bill prohibits the Facility's governing board from contracting with an insurer to act as a servicing carrier solely for the insurer's own authorized and voluntarily-contracted agents, and servicing carriers must accept assignments of servicing agents on an equitable, nondiscriminatory basis promulgated by the governing board.

The bill also provides for a 5-year phasing out of recoupment fees, such that beginning July 1, 1996 through June 30, 1997, 55 percent of these fees are to be borne by risks having zero surcharge points under the uniform merit plan promulgated by the director or his designee. This percentage increases to 63 percent for July 1997-June 1998; 71 percent for July 1998-June 1999; and 80 percent between July 1999 and June 2000.

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The bill also requires any person who operates or allows operation of an uninsured motor vehicle to suffer immediate impoundment of the vehicle until he posts sufficient liability insurance, pays any storage and impoundment fee, and any other fines or fees imposed for operation of the uninsured vehicle.

Prorated Alcoholic Beverage Licenses (H. 3787, Rep. Richardson; and H. 3813, Rep. J. Harris). Both bills require license fees for alcoholic beverage licenses to be prorated for persons who initially apply for a license after the first day of a license period. Under these provisions, the person applying for the license must pay the entire fee if applying during the first quarter of the licensing period; 75 percent of the prescribed fee if applying during the second quarter; 50 percent if applying during the third quarter; and 25 percent if applying during the fourth quarter. However, unlike in H. 3813, the provisions of H. 3787 would be retroactive, applying to licenses issued after November of 1994, with eligible licensees entitled to a refund of the difference between the license fee they paid and the prorated fee as prescribed in this act.

Insurance Definitions (H. 3801, Rep. A. Young). This bill provides that for purposes of the State's Insurance Law, "insurer" does not include an individual or group workers' compensation self-insurer which is qualified by and subject to the exclusive jurisdiction of the State's Workers' Compensation Commission as pertains to securing payment of compensation liabilities. Additionally, the bill provides that for purposes of "covered claims" under the State's Property and Casualty Insurance Guaranty Association Act, "reinsurer," "insurer", "insurance pool" or "underwriting association" does not include qualified, individual or group worker's self-insurers who are subject to the exclusive jurisdiction of the Workers' Compensation Commission as pertains to securing payment of compensation liabilities.

Workers Compensation Uninsured Employers Fund (H. 3802, Rep. A. Young). Under current law, the South Carolina Workers' Compensation Uninsured Employers' Fund ensures payment of workers' compensation benefits to injured employees whose employers had failed to acquire the necessary coverage for their employees. This bill provides that the fund also ensures payments of workers' compensation benefits to the employees of companies which were previously (a) qualified as self-insurers, if security posted by the individual self-insurer proves inadequate to pay existing claims, or (b) participants in group self-insurance funds, if both the group's posted security and joint and several liability of the group's members at the time of loss proves inadequate to pay existing claims.

Payment of License Tax on Cigarettes and Tobacco Products (H. 3808, Rep. Law). This bill provides that distributors required to pay the license tax on tobacco products must report to the Department of Revenue and Taxation all tobacco products sold or disposed of in South Carolina, and pay taxes due thereon not later than the 20th day of the month next

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succeeding the month of the sale or disposition. However, any person or distributor making shipments of tobacco products to retail locations in and out of South Carolina may apply for a license enabling them to purchase tobacco products free of tax, and report and pay tax on sales of tobacco products sold to locations in South Carolina. The bill also repeals provisions which require cigarette license taxes to be paid by affixing license stamps to the products.

**Personal Information on College Students Not To Be Disclosed for Purposes of Credit Arrangements** (H. 3811, Rep. Lloyd). This bill requires the permission of a student enrolled in a public or private college or university in South Carolina (or the permission of the parent or guardian if the student is under 18) before the student's name, address or phone number can be disclosed to another person or entity, if the person or entity intends to use that information to offer the student a credit arrangement such as credit card or debit card. Before forwarding the names, address or phone numbers of more than 50 of its students at one time when requested by a person or entity, the college or university must first obtain certification that the information will not be used in violation of these provisions.

**Borrowers May Select Mortgage Company of Choice without Restriction** (H. 3814, Rep. Scott). This bill allows a borrower, with regard to mortgage loans, to select the mortgage company of his choice without restriction. Additionally, the bill imposes a civil penalty of between \$5,000 and \$10,000 on any seller of real property who pressures or attempts to pressure a purchaser-borrower to seek the mortgage loan for the property being purchased from a mortgage company preferred by the seller. For purposes of this civil penalty, these pressure acts include but are not limited to use of a tactic indicating to the purchaser-borrower that the seller will not pay any or all of the purchaser-borrower's closing costs associated with the mortgage loan.

**Restricted Lenders** (S. 602, Sen. Short). This bill is identical to H. 3766, introduced on March 8 in the House, which imposes new finance charges on consumer loans and revises provisions governing unconscionable transactions.

The bill requires licensees (those licensed to lend in amounts of \$7,500 or less) to provide additional loan information in annual reports submitted to the State Board of Bank Control. Among other requirements, the information must include the total number of loans and aggregate dollar amounts made by the lender which renewed existing accounts, the total number of loans and aggregate dollar amounts made to new borrowers, and the total number of loans and aggregate dollar amounts outstanding at the beginning and end of the reporting period. Higher maximum finance charges are imposed for loans over \$150 but not more than \$2,000---\$25 per \$100 on the portion of the cash advance not exceeding \$600; \$18 per \$100 on the portion exceeding \$600 but not more than \$1,000; and \$12 per \$100 on the portion exceeding \$1,000 but less than \$2,000. (Currently, the

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maximum finance charges for loans of that range are \$20 per \$100 on portions of the advance not exceeding \$200; \$18 per \$100 on portions exceeding \$200 but not more than \$600; \$11 per \$100 on portions over \$600 but not more than \$1,000, and \$9 per \$100 on the portion exceeding \$1,000 but less than \$2,000.) The initial charge on loans in excess of \$150 is subject to refund upon prepayment of the loan. For loans over \$2,000 but not more than \$7,500, the maximum finance charge is increased from \$7 to \$9.

The bill prohibits a licensee from renewing a loan more than once in a 15-month period where the cash advanced to the customer is less than 10 percent of the net outstanding loan balance at the time of renewal. Also, the loan finance charge for supervised loans or \$600 or less cannot exceed \$25 per \$100 of the amount loaned. Supervised lenders, when filing their annual reports with the State Board of Financial Institutions, must provide additional information concerning their loans; as examples, the report must include the total number of loans and aggregate dollar amounts outstanding at the beginning and end of the reporting period and the highest annual percentage rate charged by the lender on loans of various sizes. Supervised lenders are prohibited from renewing a loan of \$1,000 or less more than once during a 15-month period where the cash advanced to the customer is less than 10 percent of the net outstanding loan balance at the time of renewal.

The bill also revises conditions under which a transaction is unconscionable under the Consumer Protection Code and which remedies are available in such cases. A provision is deleted under which a person may recover treble the damages sustained because another person has engaged unconscionable conduct in collecting a debt from a transaction, and in place of that provision, the bill provides that a consumer has a cause of action to recover actual damages, and in an action other than a class action, a right to recover from the person engaging in the unconscionable conduct a penalty of between \$100 and \$1,000. In considering whether the transaction is unconscionable, the court may also consider to taking a nonpurchase money nonpossessory security interest in certain belongings (such as clothing, furniture, etc.) of the consumer and his or her dependents. The bill expands the definition of "communication" as pertains to unconscionable conduct for purposes of these consumer transactions, such that a creditor or debt collector may not engage in certain behavior in trying to reach the debtor. Among other things, the creditor or debt collector may not publish a list of consumers who allegedly refuse to pay debts (except to a consumer reporting agency); may not communicate with a consumer at an unusual time or place (such as late at night); may not contact a consumer at his place of employment after the consumer or employer has requested that no contacts be made there; and may not advertise for sale any debt to coerce payment of the debt. Additionally, "false representation", as applies to fraudulent, etc. misrepresentations in connection with collection of a consumer credit transaction, includes, among other things, the character, amount or legal status of any debt; a claim of the individual that he is an attorney; or a claim or implication

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that the consumer committed any crime, or other conduct to disgrace the consumer.

These provisions also prohibit actions concerning unconscionable conduct in collecting debts from consumer credit transactions from being commenced in court until at least 30 days after the facts/circumstances of a claim of such conduct has been filed with the Administrator of the Department of Consumer Affairs. The administrator must provide to the Director of the Board of Financial Institutions copies of claims of unconscionable conduct in collecting a debt filed against a supervised or restricted lender, and the administrator must take steps to investigate, evaluate and attempt to resolve such complaints. The administration of the Department of Consumer Affairs must develop a written pamphlet which explains the rights and responsibilities of consumers who obtain loans under the state's banking or consumer protection code. The pamphlet must be given to a consumer at the time the initial loan is made whenever the amount financed is \$2,000 or less and must be readily available to all consumers at all times in each loan office. Supervised lenders who previously were licensed as restricted lenders may be licensed again as restricted lenders, if all persons related to such persons make the same election.

Finally, the bill establishes an 8-member study committee (3 members from the House, 3 from the Senate, the State Consumer Advocate or designee, and the Director or his designee of the Consumer Finance Division of the State Board of Financial Institutions) to study the impact of this act on the consumer finance industry, with the committee required to report its findings and any recommendations to the General Assembly by January 1, 1998. Additionally, on or after July 1, 1998, a second review of the consumer finance industry must be commenced by an 8-member study committee (with same make-up as the committee making the first review). This committee must report its findings and any recommendations to the General Assembly by January 1, 1999. Existing staff of the Senate Banking and Insurance and House Labor, Commerce and Industry Committees, and other legislative staff as may be available, would be used to perform both these studies.

### **MEDICAL, MILITARY, PUBLIC AND MUNICIPAL AFFAIRS**

Massage Practice Act (H. 3785, Rep. Sharpe). This bill is designed to regulate the practice of massage in South Carolina, for the purpose of protecting the health, safety and welfare of the public.

For purposes of regulating the massage practice, the bill establishes a 9-member Board of Massage within the Department of Labor, Licensing and Regulation (hereafter called "Department"), with these members appointed by the governor with the advice and consent of the

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Senate. Of the 9 members, 6 must be licensed massage therapists (1 from each congressional district) and 3 must be at-large members, with these 3 being members of the general public who are not licensed massage therapists and who do not have any financial interest in the profession of massage therapy. Board members must be high school graduates or hold a G.E.D. (graduate equivalency diploma) and may serve a maximum of 2 four-year terms. Members may be removed from office at the discretion of the governor. The bill provides for the organization and meetings of the board and entitles board members to per diem, mileage and subsistence as allowed for members of other state boards and commissions.

The board must regulate the licensure of massage therapists, and in doing so must examine applicants for licensure, license and renew licenses of qualified applicants, approve continuing education course programs, conduct hearings on violations of these provisions, mediate consumer complaints and discipline persons in violation of this act. The bill lists a number of fees the Board must charge and collect in regulating the practice of massage. As examples, the initial licensure fee for a massage therapist cannot exceed \$100, and a continuing education course provider fee cannot exceed \$100. The bill prohibits anyone from practicing massage without a license issued under these provisions, although a person licensed under State law and whose scope of practice overlaps with the practice of massage is not also required to be licensed pursuant to this act unless he holds himself out to be a practitioner of massage. In order to be licensed as a massage therapist, a person must meet 3 requirements: (1) be at least age 18 and have received a high school diploma or G.E.D.; (2) complete a 500-hour course of supervised study at a board-approved massage school; and (3) receive a passing grade on the National Certification Exam for Therapeutic Massage and Bodywork or an examination approved by the board or administered by the Department. The board must offer a written examination for licensure at least once a year and must specify the general areas of competency to be covered by licensure exams. An applicant who fails an exam may be re-examined as provided by the board in regulation. A license issued under these provisions is not transferable and must be displayed prominently in the person's place of business. The bill also requires the board annually to publish a roster containing the names and places of businesses of all persons licensed to practice massage.

A person seeking to renew his license must pay a renewal fee and comply with continuing education requirements. The board must promulgate regulations establishing continuing education requirements and criteria for approval of continuing education programs or courses, including but not limited to correspondence courses for license renewal (not to exceed 12 classroom hours per biennium) and reinstating an inactive license (not to exceed 12 classroom hours for each year the license was inactive).

If the director has reason to believe that a person licensed under this act has become unfit to practice massage therapy or has violated a provision of this act or regulation promulgated pursuant to it, or a

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person has filed a complaint charging a licensee with violations of this act or its regulations, then the director must initiate an investigation. If an investigation reveals probable cause exists for a hearing, then the boards must hold a hearing to determine whether the licensee should be subject to disciplinary action. At these hearings, the board or its designated officer or panel may administer oaths, subpoena witnesses and compel production of information or documents. Additionally, if the board has reason to believe that a person is violating or intends to violate a provision of this act, or regulations promulgated pursuant to the act, then the board may order the person to immediately cease and desist from engaging in the conduct. If the person is practicing massage without a license, then the board also may apply to an administrative law judge for a temporary restraining order prohibiting the unlawful practice. The board also may seek other equitable relief from an administrative law judge to enjoin the violation or intended violation of this act or its regulations.

The bill lists grounds on which the board may deny initial licensure to or take disciplinary action against a person. Among other things, such action may be taken against a person who [1] makes a false statement in applying for licensure; [2] violates a provision of this act, a regulation or order of the board or department; [3] is convicted of crime directly related to the practice or ability to practice massage; [4] has sustained a physical or mental disability which makes further practice dangerous to the public; or [5] has practiced massage while under the influence of alcohol or drugs or uses those items to a degree as to make him unfit to practice massage. When investigating grounds for taking disciplinary action based upon an alcohol or drug addiction or a physical or mental disability, the board may require an applicant or licensee to submit to a mental or physical exam (including a drug test) and obtain records pertaining to the mental or physical condition of an applicant or licensee. If an applicant or licensee does not consent to an examination or to the board's obtainment of records, then licensure must be denied or suspended until the applicant or licensee complies with the board's request(s). However, applicants or licensees prohibited from practicing because of alcohol, drugs or mental/physical impairment must be given opportunities at reasonable intervals to demonstrate to the board the ability to resume or begin practice of massage with reasonable skill and safety to patients. Upon determination by the board that at least 1 ground for discipline exists, then the board may issue a public or private reprimand; order community service; order restitution; impose costs (not exceeding actual costs to the board in investigating and processing the disciplinary action against the licensee); impose a fine not exceeding \$1,000 for each violation; place the licensee on probation, restrict or suspend the license (and prescribe conditions to be met during the probation, restriction or suspension); or permanently revoke the license.

The bill also makes it unlawful (punishable upon conviction by a fine of not more than \$1,000 or imprisonment not exceeding 6 months) for a person to commit various licensing violations (as examples, by using a

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revoked license, allowing the use of his license by an unlicensed person, or giving false evidence in obtaining a license).

If an applicant for licensure fails to meet the educational or examination requirements at the time the board is established, then for 1 year after establishment of the board, it (the board) may waive the education requirements and issue a provisional license; however, within 1 year after issuance of the provisional license, the applicant must pass the National Certification Exam or an exam approved by the board to be granted a renewed license.

**Day Care Licensing (S. 46, Sen. Jackson).** This bill requires persons seeking to be licensed, registered or approved to operate day care centers (including private, public, family or church/religious day care centers) to undergo fingerprint reviews conducted by the State Law Enforcement Division and the FBI to determine any criminal history. These fingerprint reviews also must be conducted on persons who will operate such facilities, persons seeking employment or to provide caregiver services at those facilities, and must also be conducted on current employees, caregivers, etc. at the time a currently-licensed day care facility seeks renewal of its license.

The bill also contains provisions concerning issuance and renewal of licenses, as follows:

(a) **Private Day Care Centers:** Expands conditions under which licenses may not be issued to or renewed for an operator, so as to include convictions for felonies or other criminal offenses of a similar nature committed in other jurisdictions or under federal law. Also prohibits license renewal if the operator has an employee or caregiver who has been convicted of those or other offenses.

(b) **Public Day Care Centers:** Prohibits approval from being granted if the applicant, operator of the facility, employee or caregiver has been convicted of an offense against the person, offense against morality and decency, contributing to delinquency of a minor, a felony or any other criminal offense of a similar nature. Also prohibits a facility from employing or engaging the services of an operator, employee or caregiver convicted of any of these crimes, with violation of this prohibition a misdemeanor punishable upon conviction by a fine of not more than \$5,000 and/or imprisonment not exceeding 1 year.

(c) **Family Day Care Centers:** Prohibits an applicant from registering as an operator if he or his employee or caregiver has been convicted of an offense against the person, offense against morality and decency, contributing to the delinquency of a minor, a felony or criminal offense of similar nature.

(d) **Church and Religious Day Care Centers:** Prohibits licensure or registration from being issued to these centers if an operator, caregiver or employee at the child care facility has been convicted of various crimes (same ones as listed in [b] and [c]---offense against morality and decency, felony, etc.) Makes it a misdemeanor, punishable upon conviction by a fine not exceeding \$5,000 and/or imprisonment not exceeding 1 year,

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for a person convicted of any of these crimes to serve as an employee, caregiver or operator of a facility or to seek to provide these services for or with the facility.

The bill also prohibits SLED from charging more than \$25 to conduct a state criminal history review.

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