



South Carolina House of Representatives

# Legislative Update

David H. Wilkins, Speaker of the House

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*NOTE: Bill summaries included in this document are prepared by the staff of the South Carolina House of Representatives and are not the expression of the legislation's sponsor(s) or the House of Representatives. The summaries are strictly for the internal use and benefit of members of the House of Representatives and are not to be construed by a court of law as an expression of legislative intent.*

# HOUSE WEEK IN REVIEW

The House of Representatives returned **S.83**, the “**TORT REFORM ACT OF 2005 RELATING TO MEDICAL MALPRACTICE**”, to the Senate with amendments.

The legislation provides for the **South Carolina Noneconomic Damage Awards Act of 2005**. The term ‘noneconomic damages’ means nonpecuniary damages arising from pain, suffering, inconvenience, physical impairment, disfigurement, mental anguish, emotional distress, loss of society and companionship, loss of consortium, injury to reputation, humiliation, other nonpecuniary damages, and other theory of damages including but not limited to, fear of loss, illness, or injury. The legislation places caps on the amount of noneconomic damages that may be awarded in an action on a medical malpractice claim. The caps are as follows:

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

The **caps do not apply if:**

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

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

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

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

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

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

The legislation has provisions relating to **expert witnesses**. When an expert witness is qualified as to the acceptable conduct of the professional whose conduct is at issue, the

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

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

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

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

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

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

**If the matter cannot be resolved through mediation**, the plaintiff may initiate the civil action by filing a summons and complaint pursuant to the South Carolina Rules of Civil Procedure. The action must be filed:

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- within 60 days after the mediator determines that the mediation is not viable, that an impasse exists, or that the mediation should end; or
- prior to expiration of the statute of limitations, whichever is later.

Participation in the prelitigation mediation pursuant to this section does not alter or eliminate any obligation of the parties to participate in alternative dispute resolution after the civil action is initiated.

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

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

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

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

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

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

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

The House approved and sent to the Senate **H.3133**, a **PROPOSED CONSTITUTIONAL AMENDMENT RELATING TO THE DEFINITION OF MARRIAGE**. This joint resolution proposes to submit to the electors at the next general election whether or not the State Constitution should be amended to provide that marriage is exclusively defined as the union between one man and one woman and that all other attempted unions, including those recognized by other jurisdictions, are void.

The House amended, approved and sent to the Senate **H.3381**, the **“SOUTH CAROLINA LANDOWNER AND ADVERTISING PROTECTION AND PROPERTY VALUATION ACT”**. The legislation provides for the conditions under which a local governing body may require the removal of an off-premises outdoor advertising sign that is nonconforming under a local ordinance and otherwise regulate the use of billboards within its jurisdiction. Under the legislation, a local governing body may enact or amend an ordinance of general applicability to require the removal of any nonconforming, lawfully erected off-premises outdoor advertising sign only if the ordinance requires the payment of just compensation to the sign owners, except as otherwise provided in the bill. The payment of just compensation is not required if:

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

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

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

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

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

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

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

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

The House approved and sent to the Senate **H.3347**. This bill provides that the State Election Commission shall adopt one **UNIFORM STATEWIDE VOTING SYSTEM** to be used to conduct elections in this State.

The House amended, approved, and sent to the Senate **H.3084**, relating to **PROBATE JUDGE QUALIFICATIONS**. This bill adds the requirement that a probate judge must

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not have been convicted of a felony offense or an offense involving moral turpitude. The bill requires that a probate judge must have obtained a four-year bachelor's degree from an accredited post-secondary institution or, if he/she has no degree, have four years' experience as a full-time probate judge, deputy probate judge, or associate probate judge in a probate judge's office in this State. There are grandfather provisions for individuals currently serving in office.

The House approved and sent to the Senate **H.3020**, the **FINANCIAL LITERACY ACT OF 2005**. This bill requires and provides for the State Board of Education (the Board) to develop or adopt curricula, materials, and guidelines for local school boards to use in implementing a program of instruction on financial literacy within courses currently offered in South Carolina high schools. The bill also authorizes the establishment of a special fund to receive public and private contributions to provide financial incentive grants to local school boards for: defraying the costs of financial literacy training for teachers; rewarding schools, teachers, and students who meet certain levels of success in a financial literacy competition; and funding activities related to financial literacy education. The bill requires the Board to incorporate the elements of the financial literacy program into the State Academic Standards of Instruction for kindergarten through twelfth grade.

The House amended, approved, and sent to the Senate **H.3155**, the **SOUTH CAROLINA EDUCATION AND ECONOMIC DEVELOPMENT ACT**. This bill:

- Provides students with strong academics and real-world problem solving skills through individualized educational, academic, and career oriented choices and greater exposure to career information and opportunities.
  - Organize curriculum around clusters of study;
  - Implement career awareness programs in grades 1-5;
  - Implement career counseling and career awareness programs in grades 6-8;
  - Expand career planning for eighth grade students to graduation plans;
  - Employ career specialists in all middle and high schools;
  - Up-date eighth graders' graduation plans in 9<sup>th</sup> and 10<sup>th</sup> grades;
  - 10<sup>th</sup> graders declare an area of academic focus;
  - Involve parents in development of all graduation plans.
- Establishes model programs for at-risk students to ensure that these students receive the opportunity to complete the necessary requirements to graduate with a state high school diploma and build skills to prepare them to enter the job market successfully.
  - State Board must, through regulation, outline specific objective criteria for districts to use in the identification of students at risk for being poorly prepared for the next level of study or for dropping out of school.
  - State Board must, through regulation, identify model programs for at risk students.
  - Each high school must implement one or more model programs to ensure at-risk students can graduate with a state high school diploma.
- Requires the Commission on Higher Education to:
  - Review, revise, and recommend secondary to postsecondary articulation agreements and to promote the development of measures to certify

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- equivalency in content and rigor for all courses included in articulation agreements;
  - Examine dual credit courses to insure they are equivalent in content and rigor to the equivalent college courses;
  - Study the content and rigor of high school courses in order to provide a seamless pathway to postsecondary education;
  - Report annually to the Education and Economic Development Coordinating Council.
- Creates Education and Economic Development Council and Project Office to implement the act and enforce the requirements of the act.
  - Identifies regional education centers to coordinate and facilitate the delivery of information, resources, and services to students, educators, employers, and the community.
  - Replaces School-to-Work Act.
  - Requires the State Board of Education to develop a state model for addressing at-risk students.
  - Provides that school guidance counselors and career specialists shall limit their activities to guidance and counseling and may not perform administrative tasks.

The House amended, approved, and sent to the Senate **H.3108** a bill that **INCREASES MEMBERSHIP ON THE MEDICAL DISCIPLINARY COMMISSION OF THE STATE BOARD OF MEDICAL EXAMINERS**. The Medical Disciplinary Commission of the State Board of Medical Examiners investigates formal complaints filed against physicians. Currently, the Commission is composed of 36 members, all of whom are physicians. This bill increases the size of the Commission to 48 members by adding two lay members from each congressional district. The Governor would appoint the lay members. Each disciplinary panel would be required to have at least one lay member.

The House approved and sent to the Senate **H.3665**, a bill that establishes December fifteenth of each year as **BILL OF RIGHTS DAY** in South Carolina and provides that all governmental bodies are encouraged to observe the day in a manner that emphasizes the document's meaning and importance.

The House amended and debated **S.1**, a bill authorizing **PRIMARY ENFORCEMENT OF SEAT BELT LAWS**, before recommitting the bill to the Education and Public Works Committee.

The House approved and sent to the Senate **H.3249**. This bill rewrites the **PRACTICE ACT FOR OPTOMETRISTS** to make it conform to the administrative framework established for all boards and commissions administered by the Department of Labor, Licensure and Regulation.

**H.3249** makes the following substantive changes with regards to optometrists:

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- The bill requires confiscation of optical supplies used in the unlicensed practice of optometry.
- The bill revises the academic requirements for licensure so as to require a Bachelor of Arts or Science instead of just two academic years at an accredited college or university. This change is in addition to the existing requirement for graduation from a school of optometry.
- The bill provides for licensure by endorsement for optometrists licensed in another state, if they meet all the same conditions for licensure as a therapeutically certified optometrist in South Carolina and have not been disciplined in the other state.
- Currently, there are three types of licensed optometrists: basic certified, diagnostically certified, and therapeutically certified. A basic certified optometrist is licensed to practice without the use of drugs for diagnostic or therapeutic purposes. A diagnostically certified optometrist may use certain drugs for diagnostic procedures and miotics only for emergency purposes involving eyeball pressure. The bill establishes a limited grandfather provision for basic certified optometrists and diagnostic certified optometrists. They may continue to practice until September 30, 2008; after this date, all optometrists must meet the requirements for licensure as therapeutically certified optometrists.

The House approved **S.319**, a bill authorizing the **STATE DOCUMENTS DEPOSITORY SYSTEM** acquire materials in both print and electronic formats.

# HOUSE COMMITTEE ACTION

## AGRICULTURE, NATURAL RESOURCES, AND ENVIRONMENTAL AFFAIRS

The full Committee did not meet this week.

## EDUCATION AND PUBLIC WORKS

The full Committee did not meet this week.

## JUDICIARY

The full Judiciary Committee met on Tuesday, March 1, 2005. The Committee gave a favorable with amendment report to **S.83**, "**TORT REFORM ACT OF 2005 RELATING TO MEDICAL MALPRACTICE.**" For a summary of this legislation, please see the House Week in Review portion of this week's *Legislative Update*.

## LABOR, COMMERCE AND INDUSTRY

The full House Labor, Commerce, and Industry Committee met on March 1 and reported out Committee Bill **H.3682**, which revises provisions for **UNEMPLOYMENT COMPENSATION**. This committee bill is a revised and expanded version of legislation introduced as **H.3327**.

**H.3682** provides that the termination of an employee for violating an employer's drug policy is to be considered a discharge for cause, which makes the employee ineligible to receive unemployment compensation. Violating an employer's drug policy includes refusing to submit to a required drug test, providing an adulterated sample, or testing positive for illegal drugs. An exception to the ineligibility is provided for a worker's voluntary admissions of illegal drug use in instances where the employer has a policy that protects an employee from immediate termination when making such voluntary admissions.

**H.3682** provides that an employee who has left work voluntarily or has been discharged because of circumstances directly resulting from domestic abuse is eligible for unemployment compensation. Such an employee must: (1) reasonably fear future domestic abuse at or en route to the workplace; (2) need to relocate to avoid future domestic abuse; or (3) reasonably believe that leaving work is necessary for his safety or the safety of his family. To be eligible, the employee must provide documentation of domestic abuse from the police, court records, a shelter worker, attorney, member of the clergy, or medical or other professional. All such documentation or evidence must be kept confidential unless written consent for disclosure is given.

**H.3682** revises provisions for violations of the State Unemployment Tax Act by replacing "willfully" with "knowingly". The legislation also requires the South Carolina Employment Security Commission to establish procedures to identify the transfer of a business.

## MEDICAL, MILITARY, PUBLIC AND MUNICIPAL AFFAIRS

The Medical, Military, Public and Municipal Affairs Committee met on Tuesday, March 1, 2005, and considered two bills.

**H.3421**, relating to **MENTAL HEALTH TREATMENT**, received a favorable report from the full Committee.

Currently, a person may be admitted and held in a hospital or mental health facility for emergency admission if:

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

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A probate court hearing must be scheduled within 15 days of the emergency admission regarding the involuntary commitment, and the patient is entitled to legal counsel. If before the hearing, the designated examiners determine that the patient is no longer mentally ill to the extent that involuntary treatment is required, H.3412 requires the examiners to submit a supplemental report to the court. If the court receives a supplemental report at least 48 hours before the hearing stating that the patient is no longer mentally ill to the extent involuntary treatment is required, and setting forth the reasons for the examiners' conclusions, H.3412 provides that the court shall dismiss the petition and that the patient must be discharged immediately by the facility.

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

If a person appears to be mentally ill or under the influence of drugs or alcohol and is likely to cause harm to himself/herself or others, H.3412 allows a law enforcement officer to take that person into protective custody and to transport the person to a mental health facility for a psychiatric and chemical dependency examination. The bill provides that the person can be held for only 24 hours, unless an examining doctor certifies the person should be detained longer pending transportation to a designated hospital. The bill also provides limited civil immunity for law enforcement and medical personnel involved in the protective custody.

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

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

H.3421 deals with involuntary commitment for chemical dependency. The bill places a 72-hour limit on an order to pick up a person believed to be in need of emergency care for chemical dependency.

H.3249 received a favorable report from the full Committee. This bill rewrites the **PRACTICE ACT FOR OPTOMETRISTS** to make it conform to the administrative framework established for all boards and commissions administered by the Department of Labor, Licensure and Regulation.

H.3249 makes the following substantive changes with regards to optometrists:

- The bill requires confiscation of optical supplies used in the unlicensed practice of optometry.
- The bill revises the academic requirements for licensure so as to require a Bachelor of Arts or Science instead of just two academic years at an accredited college or university. This change is in addition to the existing requirement for graduation from a school of optometry.
- The bill provides for licensure by endorsement for optometrists licensed in another state, if they meet all the same conditions for licensure as a therapeutically certified optometrist in South Carolina and have not been disciplined in the other state.
- Currently, there are three types of licensed optometrists: basic certified, diagnostically certified, and therapeutically certified. A basic certified optometrist is licensed to practice without the use of drugs for diagnostic or therapeutic purposes. A diagnostically certified optometrist may use certain drugs for diagnostic procedures and miotics only for emergency purposes involving eyeball pressure. The bill establishes a limited grandfather provision for basic certified optometrists and diagnostic certified optometrists. They may continue to practice until September 30, 2008; after this date, all optometrists must meet the requirements for licensure as therapeutically certified optometrists.

## WAYS AND MEANS

The full Committee did not meet this week.

# BILLS INTRODUCED IN THE HOUSE THIS WEEK

## AGRICULTURE, NATURAL RESOURCES, AND ENVIRONMENTAL AFFAIRS

### **H.3666 INOCULATING PETS AGAINST RABIES Rep. Dantzler**

This bill relates to inoculating pets against rabies. The bill provides that a licensed veterinarian or someone under the direct supervision of a licensed veterinarian must administer these inoculations.

### **H.3678 STATE NUTRITION ASSISTANCE PROGRAM Rep. J.E. Smith**

This bill establishes within the Department of Agriculture the State Nutrition Assistance Program (SNAP) for the purpose of providing funds to South Carolina food banks in order to supplement by purchase the donated food distributed by these food banks. The

bill further provides for the distribution and uses of funds appropriated for the SNAP program.

## EDUCATION AND PUBLIC WORKS

### **H.3675 LICENSING OF PROMOTERS, MANUFACTURERS, AND DEALERS OF RECREATIONAL VEHICLES Rep. Dantzler**

This bill requires the Department of Motor Vehicles (DMV) to provide for the licensing of: a promoter of a recreational vehicle show, whose purpose is the sale of new recreational vehicles; manufacturers who are allowed to bring new recreational vehicles into an area of promotion, from which stock the various dealers participating in the show may display and sell at retail to patrons of the show. The bill provides licensing fees for out-of-state manufacturers and dealers. In-state manufacturers and dealers are exempt from these fees.

### **H.3681 USC-SUMTER Rep. Weeks**

This bill authorizes USC-Sumter to offer four-year degrees, contingent upon certain local government funding specified in the bill. The bill also amends definitions under the *State General Obligation Economic Development Bond Act* so as to provide that "project" also includes the University of South Carolina-Sumter for purposes of implementation of its four-year degree program.

### **S.98 SAFE SCHOOLS ACT Sen. Reese**

This bill requires local school districts to adopt a policy prohibiting harassment, intimidation, or bullying at school. The bill delineates minimum components which must be included in the policy. The bill requires the State Board of Education to assist districts by developing model policies for grades K-12, and requires school districts, as funds are available, to provide training on the school's policy to employees and volunteers and to develop a process for discussing the district's policy with students. The bill requires schools to include on the report cards information regarding bullying prevention programs and the number of bullying incidents.

### **S.237 NOTICE OF SUSPENSION OF DRIVER'S LICENSE Sen. Ryberg**

This bill revises the manner in which a person must be notified of a suspension of his driver's license.

### **S.251 "NO MORE HOMELESS PETS" SPECIAL PLATES Sen. Grooms**

This bill provides that certain funds which are collected for special "No More Homeless Pets" license plates and which are used to support local spaying and neutering programs, must be designated for use by the South Carolina Department of Agriculture, rather than the State Veterinarian, to support these programs.

### **S.406 COMMERCIAL DRIVER'S LICENSES Sen. Ryberg**

This bill requires the South Carolina Department of Motor Vehicles to administer the South Carolina Commercial Driver's License Program in accordance with the Federal Motor Carrier Safety Regulations, and makes numerous revisions of commercial driving provisions to bring these provisions into conformity with these federal regulations.

### **H.3699 POWER OF EMINENT DOMAIN AT HIGHER LEARNING INSTITUTIONS Rep. Altman**

This bill provides that the board of trustees of an institution of higher learning that is vested with the power of eminent domain may not exercise this power without prior approval from the Commission on Higher Education and the State Budget and Control Board.

## JUDICIARY

### **H.3653 AMENDMENTS RELATING TO SURETY BONDING REQUIREMENTS FOR BIDDERS ON A PUBLIC PROCUREMENT CONTRACT**

**Rep. J.H. Neal**

This bill relates to surety bonding requirements for bidders on a public procurement contract. The bill provides that the General Services Division of the State Budget and Control Board shall establish a program to provide technical assistance to a historically underutilized business seeking a surety bond. The bill authorizes the General Services Division to contract with insurance companies, surety companies, agents or brokers to implement the program. Under the bill, a historically underutilized business is defined as a small business that is a profit-making corporation, sole proprietorship, partnership, or joint venture in which more than 50% of the shares of stock or other equitable securities are owned by one or more persons who are members of the following groups: Black American, Hispanic American, Asian Pacific American, Native American and Women. The term small business means an entity that qualifies as a small business pursuant to 13 Code of Federal Regulations Section 121.

### **H.3654 "DEATH PENALTY MORATORIUM ACT" Rep. J.H. Neal**

This bill enacts the "Death Penalty Moratorium Act." The bill establishes a 15 member Commission on the Death Penalty, and the bill has provisions outlining membership on the Committee. The Committee shall conduct a thorough study of all matters relating to the administration of the death penalty at the state level to determine whether it comports with constitutional principles and requirements of fairness, justice, equality, and due process. The Commission must submit a preliminary report to the Governor and General Assembly within one year after the date of its first meeting. Within two years of the first meeting of the Commission, the bill requires that a report to the Governor and the General Assembly containing a detailed statements of its findings and conclusions. The bill provides that the State shall not carry out a sentence of death imposed under State law until the General Assembly considers the final findings and recommendations of the Commission on the Death Penalty and enacts legislation repealing these provisions.

### **H.3655 RACE-BASED TRAFFIC AND PEDESTRIAN STOPS Rep. J.H. Neal**

This bill adds Chapter 22, entitled Race-Based Traffic and Pedestrian Stops, to Title 23. The bill defines the term 'minority group' as persons of African, Hispanic, Native American or Asian descent.

The bill provides for the collection and compilation of certain information gathered by a law enforcement officer to determine whether traffic and pedestrian stops he/she makes are race-based. The bill provides for appropriate counseling and training of a law enforcement officer found to have been engaged in race-based traffic or pedestrian stops within 90 days of review. The bill provides for annual sensitivity training for any

employees who may conduct stops of motor vehicles or pedestrians in violation of the prohibition against racial profiling.

The bill provides that each law enforcement agency shall adopt a policy to discourage race-based traffic and pedestrian stops. The bill provides that the Governor may withhold state funds or federal pass-through funds from a law enforcement agency which fails to comply with these provisions. The bill provides that the Director of the Department of Public Safety may withhold accreditation of the noncompliant law enforcement agency.

The bill allows a law enforcement agency to use certain federal funds to equip its vehicles with video equipment to record traffic and pedestrian stops.

The bill allows local governments to establish civilian review boards or use existing review boards to investigate allegations of misconduct by local law enforcement officers.

**H.3656 "SOUTH CAROLINA CLEAN ELECTIONS ACT" Rep. J.H. Neal**

This bill provides a procedure by which certain candidates for office who agree to limitations on contributions to receive a predetermined amount of public funds for campaigns. The bill also requires electronic disclosures for all campaign contributions to candidates and political committees.

**H.3657 "INNOCENCE PROTECTION ACT" Rep. J.H. Neal**

This bill provides that a person in custody after conviction may apply to the court for certain forensic DNA testing. The bill outlines the duties and responsibilities of a court upon receipt of an application for DNA testing. The cost of DNA testing is borne by the State or the applicant, as the court may order in the interest of justice, if it is shown that the applicant is not indigent and possesses the means to pay. The bill provides for preservation of biological material secured in connection with a criminal case for so long as the material may have probative value as evidence.

**H.3661 PROPOSED CONSTITUTIONAL AMENDMENT TO AUTHORIZE A  
PROCEDURE BY WHICH A CANDIDATE FOR ELECTIVE OFFICE**

**MAY**

**FINANCE HIS/HER CAMPAIGN WITH PUBLIC FUNDS Rep. J.H. Neal**

This joint resolution proposes to submit to the electors at the next general election whether or not the General Assembly shall establish a procedure by which a candidate for elective office may finance his/her campaign with public funds.

**H.3680 MANDATORY EXHIBITION AND DEMONSTRATION OF A VOTING  
MACHINE Rep. Bailey**

This bill provides that it is mandatory, rather than optional, that the Commissioners of Election or other Electoral Board designate suitable and adequate times and places for the exhibition and demonstration of a voting machine containing a sample ballot.

**H.3692 "CRIMINAL DOMESTIC VIOLENCE COURTS ACT" Rep. Haskins**

This bill authorizes circuit solicitors to create criminal domestic violence courts in their circuits for persons who commit criminal domestic violence offenses. It is solely within

the discretion of each circuit solicitor whether a particular court is a post-conviction model, a diversion model, or a combination of both. However, all domestic violence courts must provide an element of intensive, long-term treatment including, but not limited to anger management counseling. Offenders participating in criminal domestic violence courts shall contribute to the cost of the treatment received based on guidelines developed by the circuit solicitor. The bill provides procedures for admission into a criminal domestic violence court as well as creates a State Criminal Domestic Violence Court Office to coordinate the operation of criminal domestic violence courts.

**H.3694 "GAMBLING CRUISE PROHIBITION ACT" Rep. Miller**

This bill prohibits gambling or the repair of gambling devices on a vessel in a voyage that begins and ends within South Carolina. The bill prohibits the operation of a vessel that transports persons to another vessel for the purpose of gambling, if both the transporting vessel and the vessel on which a gambling device is used or repaired begins and ends its voyage in this State. A violation of this provision is a felony punishable by a maximum sentence of five years imprisonment and a \$25,000 fine.

**H.3697 PROPOSED CONSTITUTIONAL AMENDMENT PERTAINING TO SESSIONS OF THE GENERAL ASSEMBLY Rep. Hinson**

This joint resolution proposes to submit to the electors at the next general election whether or not to amend the State Constitution with regards to sessions of the General Assembly. The joint resolution provides that after the General Assembly convenes on the second Tuesday in January of each year that the Senate and the House of Representatives may recede for a period not to exceed 30 calendar days, unless extended by a two-thirds vote. The joint resolution further provides that each body may provide for meetings during the legislative session, as it considers appropriate. The joint resolution proposes to delete the section of the State Constitution, which provides that neither house, during the session of the General Assembly, shall without the consent of the other adjourn for more than three days, nor adjourn to meet in another place.

**H.3700 VENUE OF ACTIONS BETWEEN LANDLORD AND TENANT Rep. Clemmons**

This bill provides that all matters between landlord and tenant must be tried where the subject matter or some part of the property is situated.

## **LABOR, COMMERCE AND INDUSTRY**

**S.365 BOND AND SECURITY FOR CONSTRUCTION CONTRACTS UNDER STATE CONSOLIDATED PROCUREMENT CODE Sen. Leatherman**

This bill revises bond and security provisions for construction contract performance and payment under the State Consolidated Procurement Code, so as to reduce the maximum retention amount for each installment pending completion of the project from five percent to three and one-half percent.

**S.368 RESIDENT DESIGN PROFESSIONAL PREFERENCE IN STATE PROCUREMENT PROCESS Sen. Leatherman**

This bill establishes a preference in the state procurement process for a resident design professional. The legislation defines "design services" and "resident" for the purpose of this preference.

**H.3659 “SOUTH CAROLINA LIVING WAGE ACT” Rep. J. H. Neal**

This bill enacts the South Carolina Living Wage Act to provide that a state contract for services must require state contractors to pay an hourly wage rate that is at least the living wage. The legislation provides for the amount of the initial living wage, with and without insurance benefits. Waivers of the requirement of paying a living wage are established based on economic hardship. The legislation provides for the administration and enforcement.

**H.3660 ALTERNATIVE BASE PERIOD UNDER EMPLOYMENT  
SECURITY LAW Rep. J. H. Neal**

This bill provides for an alternative base period for certain claimants of benefits under the South Carolina Employment Security Law. The legislation further provides that, when certain information is not available, the commission may base the determination for eligibility for unemployment insurance benefits on the affidavit of a claimant with respect to weeks and wages for certain calendar quarters.

**H.3662 PROFESSIONAL ENGINEER LICENSE Rep. J. H. Neal**

This bill revises definitions pertaining to engineers and land surveyors, so as to eliminate the definition of “associate professional engineer”, define “NCEES examination”, and revise the definition of “professional engineer”. The legislation revises eligibility requirements to obtain a license as an engineer, so as to require that a professional engineer be certified as an engineer-in-training before being licensed. The legislation provides that an applicant will receive his professional engineer license to practice upon passing the NCEES examination, principles, and practice.

**H.3672 DURATION OF AN INSURANCE PRODUCER’S LICENSE AND THE  
LAPSING OF A LICENSE ON RENEWAL FOR NONPAYMENT OF A  
FEE Rep. Kirsh**

With regards to the duration of an insurance producer’s license and the lapsing of a license on renewal for nonpayment of a fee, this bill changes the procedure for reinstating a license for nonpayment of a fee or failure to comply with the continuing education requirement.

**H.3685 UNFAIR TRADE PRACTICE FOR A MOTOR VEHICLE REPAIR  
BUSINESS TO ADMINISTER INSURANCE CLAIMS FOR REPAIRS  
Rep. Cato**

This bill provides that it is an unfair trade practice for a motor vehicle repair business to administer insurance claims for motor vehicle repairs.

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

**S.321 WAR ROSTER PREPARED AND DISTRIBUTED BY THE DIVISION OF  
VETERANS AFFAIRS Sen. Moore**

This bill provides for the Division of Veterans Affairs in the Office of the Governor to prepare a complete roster of all South Carolina members of the United States military who served on active duty during certain conflicts. The war roster shall include the name, principal items of record of persons who served on active duty during certain conflicts, and an order of battle to include the name of military units based in South

Carolina participating in certain conflicts. The inclusion of a person's name on a roster does not entitle the person to any additional benefits or any benefits for which the person would not otherwise qualify. The bill provides that the rosters and their distribution must be maintained and updated based on workloads and availability of funds. The bill repeals Section 73, Part II of Act 164 of 1993 relating to publication and distribution of other military rosters.

**H.3667 WAR ROSTER PREPARED AND DISTRIBUTED BY THE DIVISION OF VETERANS AFFAIRS Rep. J. Brown**

This bill provides for the Division of Veterans Affairs in the Office of the Governor to prepare a complete roster of all South Carolina members of the United States military who served on active duty during certain conflicts. The war roster shall include the name, principal items of record of persons who served on active duty during certain conflicts, and an order of battle to include the name of military units based in South Carolina participating in certain conflicts. The inclusion of a person's name on a roster does not entitle the person to any additional benefits or any benefits for which the person would not otherwise qualify. The bill provides that the rosters and their distribution must be maintained and updated based on workloads and availability of funds. The bill repeals Section 73, Part II of Act 164 of 1993 relating to publication and distribution of other military rosters.

**H.3668 VETERANS AFFAIRS Rep J. Brown**

Currently, the Division of Veterans Affairs is a part of the Office of the Governor. Under this bill, the Division of Veterans Affairs would become a separate and autonomous department of State government with a governing board to consist of nine persons and a department director appointed by the board.

**H.3674 PRACTICE OF DENTISTRY Rep. Bingham**

This bill authorizes the South Carolina State Board of Dentistry to issue licenses by credentials to practice dentistry and to establish the criteria for obtaining such a license.

## WAYS AND MEANS

**S.320 U.S.C. ATHLETIC FACILITIES REVENUE BONDS Sen. Leatherman**

This bill raises from forty million dollars to sixty million dollars, the outstanding debt limit for University of South Carolina athletic facilities revenue bonds.

**S.339 BEER AND WINE LICENSE TAXES Sen. Leatherman**

This bill provides that, except for beer brewed at a brewpub, taxes on beer and wine are in lieu of all other taxes and licenses on beer and wine of the State, the county, or the municipality, except the sales and use tax or the local hospitality tax.

**H.3658 "SELF-SUFFICIENCY STANDARD" FOR USE BY STATE AGENCIES Rep. J.H. Neal**

This bill provides for the establishment of a person's "self-sufficiency standard," defined in the bill as a calculation of the income an employed adult requires to meet his family's needs including items such as housing, food, dependent care, transportation, and medical costs. This standard would be used by state agencies which counsel persons seeking education, training, or employment, to assist in establishing personal financial goals and estimating the amount of income needed to support their families.

**H.3663 “MICROENTERPRISE DEVELOPMENT ACT” Rep. J.H. Neal**

This bill requires the Coordinating Council for Economic Development to establish a microenterprise technical assistance and capacity building grant program to provide grant assistance to qualified organizations. Under the provisions of the bill, these organizations would match these grant funds, and would use the funds to provide training and technical assistance to low-income entrepreneurs to benefit persons who meet certain income criteria. A “microenterprise” is defined in the bill as a sole proprietorship, partnership, or corporation with less than five employees which lacks access to conventional loans or other banking services.

**H.3664 SCHOOL TRUST FUND Rep. Walker**

This bill imposes an additional 2-1/2% state sales, use, and casual excise tax (does not apply to Accommodations Tax), and raises various maximum sales tax caps, with the additional revenue attributable to these increases dedicated to a fund known as the “School Trust Fund.” The bill provides an exemption from property tax and provides that the School Trust Fund revenue be used to replace the property tax revenue for school operating expenses. The bill also requires a referendum in counties in which the local option sales tax is currently imposed for the purpose of determining whether to rescind the tax.

**H.3673 PUBLIC HIGHER EDUCATION INSTITUTIONS Rep. Kirsh**

This bill authorizes the governing body of an institution of higher learning to enter into lease agreements with a private entity for certain services for the creation and operation of an on-campus facility, with the approval of the State Budget and Control Board, and to employ counsel to advise or represent it except in a litigation matter without the approval of the Attorney General. The bill also requires the Commission on Higher Education to develop a formula for allocation of Education Lottery Account technology grants for four-year institutions which is not competitively based in order to permit multi-year investment approaches.

**H.3676 ALCOHOLIC LIQUORS SOLD BY THE DRINK Rep. Merrill**

This bill includes numerous provisions related to sale of alcohol by the drink. The bill includes provisions: imposing an excise tax of five percent of the gross proceeds of sales of liquor by the drink for on-premises consumption; requiring that entities which receive minibottle tax revenue shall receive at least the same amount of revenues from this excise tax as they did from minibottle tax revenue during fiscal year 2004-05; requiring that alcoholic liquor sold by the drink must be purchased only from specifically licensed persons; providing that liquor distributors and liquor stores may deliver only to establishments licensed for on-premises consumption; prohibiting substitution of another brand of liquor in place of the brand that the customer ordered; and prohibiting a licensee from refilling or reusing a bottle of liquor or otherwise tampering with the contents of the bottle. The bill also amends provisions regarding regulation of liquor wholesalers by prohibiting liquor manufacturers, distillers, importers, or wholesalers from furnishing, giving, renting, lending, or selling to the holder of a retail permit any equipment, fixtures, free product, or service, and the bill prohibits the holder of the retail permit from accepting these items. The bill allows a manufacturer, distiller, importer, or wholesaler of alcoholic liquors to discount product price as provided in the bill, based on quantity purchases if all discounts are on price only, appear on the sales record, and are available to all customers.

**H.3677 SALES TAX EXEMPTION FOR RELIGIOUS BOOKSTORE**  
**SALES Rep. Davenport**

This bill eliminates the sales and use tax exemption for religious bookstore sales.

**H.3679 CONSTITUTIONAL AMENDMENT RE FUNDING PUBLIC**  
**SCHOOLS Rep. Cobb-Hunter**

This joint resolution provides for a referendum for a Constitutional amendment to determine whether the General Assembly shall provide for the manner in which each public school district is adequately and equitably funded.

**H.3693 SCHOOL EQUITY AND PROPERTY TAX RELIEF**  
**ACT Rep. Bingham**

This bill imposes an additional 2% sales, use, and casual excise tax (does not apply to sale of unprepared food which can be purchased with U.S. Department of Agriculture food coupons or to Accommodations Tax) and raises certain other fees and sales tax limits, with the additional revenue attributable to these increases dedicated to a trust fund known as the "School Tax Millage Exemption Trust Fund." (Among other items, the bill imposes a tax on the sale of lottery tickets.)

The bill provides an exemption from property tax and provides that the Trust Fund revenue be used to replace the property tax revenue for school districts. The bill requires that schools be paid monthly from these revenues, based on the district's weighted pupil units, as provided in the bill. The bill provides that beginning July 1, 2005, a base student cost no longer shall be established annually by the General Assembly nor shall the Division of Research and Statistics calculate an annual inflation factor.

The bill provides that for a period of three years beginning July 1, 2005, and ending June 30, 2010, a local governing body may, under certain conditions, increase the millage rate for general operating purposes above the rate imposed for the preceding year only by a two-thirds vote of the membership of the governing body. The bill also requires a referendum in counties in which the local option sales tax is currently imposed for the purpose of determining whether to rescind the tax.

**H.3702 CONTRACTS FOR SCHOOL TRANSPORTATION**  
**SERVICES Rep. J.R. Smith**

This bill revises current requirements regarding school districts contracting with private individuals or contractors for transportation services, by providing a revised method of calculating aid from the State.

**H.3703 PROPERTY TAX MILLAGE** Rep. Vaughn

This bill replaces current calculation and imposition of a rollback property tax millage rate for reassessment years with a provision requiring that, for the property tax year of implementation of a countywide reassessment program, the property tax millage for operations of all property tax entities in the county must be adjusted to a rate estimated to produce no more revenue than the total received in the preceding year, plus an additional one percent.

## Legislative Update, March 8, 2005

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