



South Carolina House of Representatives

Legislative Update

Robert W. Harrell, Jr., Speaker of the House

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HOUSE WEEK IN REVIEW

The House of Representatives amended, approved, and sent to the Senate H.4400, a bill establishing comprehensive **IMMIGRATION REFORM** provisions:

Harboring Illegal Aliens

The legislation provides that it is a felony offense to transport or harbor illegal aliens so as to further their illegal entry into the United States or circumvent their detection or apprehension by state or federal authorities. A violation is punishable with a fine of up to five thousand dollars and/or imprisonment for up to five years. Specific exemptions are established for providing health care treatment and for providing shelter that is offered for strictly humanitarian purposes or in compliance with the Violence Against Women Act.

“Sanctuary Cities” Prohibited

Political subdivisions are prohibited from adopting provisions that limit or deny the enforcement of state laws pertaining to immigration. Political subdivisions are also prohibited from adopting immigration provisions that are more stringent than state laws.

Penalties for Fraudulent Documents

The legislation provides that it is unlawful to display or possess a false, fictitious, fraudulent, or counterfeit green card or other document, such as a driver’s license or social security card, for the purpose of offering proof of United States citizenship or classification by the United States as an alien lawfully admitted for temporary or permanent residence under federal immigration law. A first offense is a misdemeanor subject to a fine of no more than one hundred dollars or imprisonment for no more than thirty days. A second or subsequent offense is a felony subject to a fine of no more than five hundred dollars or imprisonment for no more than five years.

Public Employment

The legislation prohibits the State and its political subdivisions from entering into a qualifying service contract unless: (1) the contractor and subcontractors participate in the federal work authorization program to verify citizenship status of all new employees; or (2) the contractor agrees to employ only workers who possess valid South Carolina driver’s licenses or identification cards, are eligible to receive such identification, or possess valid driver’s licenses or identification from other states that have licensure requirements at least as stringent as South Carolina’s. A contractor or subcontractor who violates these provisions forfeits to the public employer a penalty of five percent of the gross amount of the contract. A public employer complies with these provisions by obtaining a written statement from the contractor certifying compliance with the requirements. Knowingly filing fraudulent certification is a felony offense that is subject to a fine set at the court’s discretion and/or imprisonment for up to five years.

Private Sector Employment

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The legislation caps at six hundred dollars the amount that a taxpayer is allowed to claim each year on state income taxes as a deductible business expense for wages paid to an employee unless the employee is authorized to work in the United States under federal law. This deductible business expense cap does not apply to the wages of employees whose legal status is verified through possession of valid South Carolina driver's licenses or identification cards, eligibility to receive such identification, or possession of valid driver's licenses or identification from other states that have licensure requirements at least as stringent as South Carolina's.

The legislation's state income tax provisions address not only direct employment situations, but also compensation paid for contract work that is reported on Form 1099. In such situations, state income tax must be withheld at the rate of six percent of the amount of compensation if the employed individual fails to provide a taxpayer identification number or social security number.

Wrongful Termination

The legislation provides a civil right of action for wrongful termination against an employer who knowingly terminates an employee, without proper cause, while retaining in substantially the same job category a person the employer knows or should know is an illegal alien. The recovery for an individual who brings a civil suit under this provision is limited to the reinstatement of his former position and lost wages. This cause of action cannot be brought against an employer who submits the necessary identifying information for all employees through the Systematic Alien Verification of Entitlement (SAVE) program. Such a cause of action is equitable in nature and must be brought within one year from the date of the alleged violation.

Higher Education

The legislation provides that illegal aliens are not eligible to attend the state's public institutions of higher learning. Illegal aliens are not eligible to receive state scholarships, other public assistance, or resident tuition at a private institution of higher learning.

Public Benefits

The legislation requires the validation of citizenship status in order for an individual who is at least eighteen years old to be eligible to receive public benefits. Every applicant is required to execute an affidavit verifying the lawfulness of his presence in the country. In the case of an individual claiming legal alien status, the affidavit serves as temporary authorization for receiving benefits while further verification is conducted through the federal Systematic Alien Verification of Entitlement (SAVE) program. An individual who executes a fraudulent affidavit or assists others in making fraudulent claims is guilty of a felony offense and must be imprisoned for up to five years and/or fined at the discretion of the court.

Exceptions are provided to cover such circumstances as receiving disaster relief, benefits for certain emergency medical treatment, public health assistance for immunization, prenatal care, assistance for victims of domestic violence, South Carolina Retirement Systems benefits, and access to certain programs and services for the homeless such as soup kitchens, crisis counseling, and short-term shelters.

Restitution for Identity Fraud

The legislation provides that an individual found guilty of financial identity fraud or identity fraud involving the falsification of documents that enables an illegal alien to receive public benefits must make restitution to the agency or political subdivision that administered the benefit or entitlement program.

The legislation establishes a civil cause of action for an individual who suffers an ascertainable loss as a result of such identity fraud relating to illegal immigration. A plaintiff is entitled to treble damages.

State Grand Jury

The legislation expands the jurisdiction of the State Grand Jury to include matters involving the large-scale production of false documentation for the purposes of illegal immigration or financial identity fraud.

Firearms

The legislation provides that it is unlawful for an illegal alien to possess, purchase, offer to purchase, lease, rent, barter, exchange, or transport into this State a firearm. A violation is a felony offense punishable with a fine of no more than two thousand dollars and/or imprisonment for no more than five years.

The legislation provides that it is unlawful for an individual for a person to knowingly sell, offer to sell, deliver, lease, rent, barter, exchange, or transport for sale into this State a firearm to a person knowing that such person is not lawfully present in the United States. A violation is a misdemeanor offense punishable with a fine of no more than one thousand dollars and/or imprisonment for no more than three years.

Bond Consideration

The legislation allows an accused individual's illegal alien status to be used as a consideration for determining bond.

Detention of Illegal Aliens

The legislation requires law enforcement to make a reasonable attempt to ascertain the immigration status of every person charged with a criminal offense is confined, for any period, in a local, regional, or state jail or other correctional facility. If verification of lawful status cannot be made from documents in the possession of the person and the person is not a United States citizen, verification must be made within seventy-two hours through a query to the Law Enforcement Support Center (LESC) of the United States Department of Homeland Security or other designated office or agency. If the prisoner is determined to be an illegal alien, the United States Department of Homeland Security must be notified. An account must be kept of the daily expenses incurred for detaining an illegal aliens and an invoice must be sent to the United States Department of Homeland Security for reimbursement of those costs.

Cooperation Between State and Federal Law Enforcement

The legislation directs the chief of the South Carolina Law Enforcement Division to enter into negotiations with federal authorities in order to reach an understanding on: (1) the enforcement of federal immigration laws by state and local law enforcement; (2) the detention of illegal immigrants by state and local law enforcement officials and the costs associated with those detentions; (3) the removal of detained illegal immigrants by federal authorities or the deportation of illegal immigrants by state and local law enforcement officials; (4) relevant training for state and local law enforcement officials; and (5) further communication and cooperation between federal law enforcement and state and local law enforcement officials in the area of immigration enforcement.

Registration of Immigration Assistance

The legislation establishes and provides for the enforcement of standards of ethics in the profession of immigration assistance by private individuals who are not licensed attorneys. The legislation limits what immigration assistance a nonlawyer may provide as well as restricts certain activities of these nonlawyers providing immigration assistance for compensation. Exceptions are provided for attorneys and their staff, certain not-for-profit organizations, and other organizations employing or desiring to employ an alien so long as the organization does not seek compensation for the services provided. A person performing immigration assistance services is required to obtain appropriate business licenses; the bill outlines procedures for obtaining and renewing licenses with the Secretary of State. The legislation requires nonattorneys to post signs and give notice in advertisements and communications clearly indicating that they are not attorneys or authorized to give legal advice or accept fees for legal services. Civil and criminal penalties are provided and violations are also subject to the provisions of the South Carolina Unfair Trade Practices Act.

The House also amended **S.392**, the "**SOUTH CAROLINA ILLEGAL IMMIGRATION REFORM ACT**," to replace its provisions with those of **H.4400** and returned the bill to the Senate.

The House approved and sent to the Senate on **H.4347**, a joint resolution that directs the Attorney General to pursue all available remedies and seek **REIMBURSEMENT FROM THE FEDERAL GOVERNMENT FOR COSTS INCURRED BY THE STATE FOR THE INCARCERATION AND PROVISION OF GOVERNMENTAL SERVICES TO ILLEGAL IMMIGRANTS**. This joint resolution also requires the cooperation of State agencies in providing information on illegal immigration and illegal immigrants to the Attorney General.

The House amended Senate amendments to **H.3572**, the "**TRAFFIC EDUCATION PROGRAM ACT**," and returned the bill to the Senate. The Senate subsequently concurred in the House amendment and enrolled the bill for ratification. The legislation authorizes each circuit solicitor to establish as part of the Pretrial Intervention Program a traffic education program for persons who commit traffic-related offenses that are punishable only by a fine and loss of four points or less and that have not resulted in death or serious bodily injury to another person. A person may be considered for a traffic education program only if he has no prior traffic-related offenses on his record,

and a person may not participate in a traffic education program more than once. The program must include both a community service and an educational component. When a person successfully completes a traffic education program, the governmental agency administering the program shall effect a noncriminal disposition of the traffic-related offense, and there must be no record maintained of the traffic-related offense except by the appropriate traffic education program in order to ensure that a person does not benefit from a traffic education program more than once. If a person violates the conditions of a traffic education program or receives a subsequent traffic violation during the six months following the issuance of the ticket for which he has entered the traffic education program, he must be terminated from the program and the traffic-related offense must be reinstated. The legislation establishes program participation fees and provides for how these fees are to be distributed.

The House approved **S.94** and enrolled the bill for ratification. This legislation revises provisions for a **SURVIVING SPOUSE'S RIGHTS TO AN ELECTIVE SHARE, HOMESTEAD ALLOWANCE, AND EXEMPT PROPERTY**, so as to provide for the voluntary waiver of those rights upon fair and reasonable disclosure by the other spouse.

The House appointed a conference committee to address differences with Senate over **S.274**, a bill authorizing the Department of Probation, Parole and Pardon Services to establish **DAY REPORTING CENTERS FOR CERTAIN INMATES OR OFFENDERS**.

The House amended Senate amendments to **H.3623** and returned the bill to the Senate. This bill updates various statutes by referencing the **SOUTH CAROLINA CRIMINAL JUSTICE ACADEMY**, revises provisions for **ELECTRONIC MONITORING DEVICES** utilized by the Department of Probation, Pardon, and Parole, and provides that a circuit solicitor's office or clerk of court may not charge fees relating to the **EXPUNGEMENT OF RECORDS**.

The House returned **S.588** to the Senate with amendments. This bill establishes requirements, powers, duties, and restrictions for a **SMALL EMPLOYER HEALTH GROUP COOPERATIVE**. The legislation authorizes small employers to form cooperatives for the purpose of providing lower health insurance costs to their employees. The legislation requires the Department of Insurance and Office of Research and Statistics of the Budget and Control Board to submit to the Governor and the General Assembly by January 1, 2010, a report on the effectiveness of the health group cooperative in expanding the availability of health insurance coverage for small employers.

The House returned **S.452** to the Senate with amendments. The legislation requires the Department of Natural Resources to establish an **ALLIGATOR MANAGEMENT PROGRAM** that allows for hunting and for selective removal of alligators in order to provide for the sound management of the animals and to ensure the continued viability of the species. The department may establish an alligator hunting season. A person desiring to hunt and take alligators must apply to the department and pay a ten-dollar, nonrefundable application fee. Successful applicants must be randomly selected and must pay a one hundred dollar fee for the permit. The legislation establishes provisions under which a landowner or lessee of property on which alligators occur may apply to the department for a permit to participate in the Private Lands Alligator program. The legislation authorizes the department to designate alligator control agents who demonstrate by training and experience that they possess the skills to remove alligators.

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The legislation establishes penalties for violating alligator hunting provisions and for the unlawful feeding, enticing, or molesting of alligators. All revenue relating to the legislation, including fines, forfeitures, sales, and fees, must be deposited in the Wildlife Protection Fund and used by the department to support the alligator management program.

The House amended, approved, and sent to the Senate **H.3715**, relating to **CRIMINAL SEXUAL CONDUCT IN THE THIRD DEGREE**. This bill provides that criminal sexual conduct in the third degree includes situations where a person affiliated with a public or private secondary school in an official capacity but is not a student enrolled in the public or private secondary school and the victim is a person under the age of nineteen who is currently enrolled in a public or private secondary school at which the actor works or has supervisory authority and aggravated force or aggravated coercion was not used to accomplish the sexual battery. An exception is provided for a person affiliated with a public or private secondary school who is lawfully married to the student enrolled in the school at the time of the act. The bill further provides that a person who commits criminal sexual conduct in the third degree is guilty of a felony and, upon conviction, must be imprisoned for not more than ten years.

The House amended, approved, and sent to the Senate **H.4437**. This bill provides an **EXCEPTION TO THE OFFENSE OF THIRD DEGREE SEXUAL EXPLOITATION OF A MINOR** for an employee of the Department of Corrections, Attorney General's office, a prosecuting agency, State Law Enforcement Division, or to a sworn law enforcement officer who, while acting within his official capacity in the course of an investigation, is in possession of material that contains a visual representation of a minor engaging in sexual activity.

The House amended, approved, and sent to the Senate **H.3202**, a **PROPOSED CONSTITUTIONAL AMENDMENT PERTAINING TO HUNTING, TRAPPING, AND FISHING**. This joint resolution proposes to amend the State Constitution so as to provide that hunting, trapping, and fishing and the taking of wild animals, birds, and fish are a valued part of our heritage and shall be forever preserved for the people. Fish and wildlife shall be managed by laws and regulations that provide persons with the continued opportunity to take, by traditional means and methods, species traditionally pursued by hunters, anglers, and trappers. Fish and wildlife management, including taking, shall be consistent with the state's duty to protect this heritage and its duty to conserve wild animals, birds, and fish. Hunting, fishing, or trapping by sportsmen shall always be a preferred and available means of controlling all invasive or overpopulated species. Any person who is licensed to hunt, fish, or trap and who is adversely affected by a failure to comply with this provision shall have a private cause of action to enforce this provision. The right of the people to hunt, fish, trap, and harvest game shall be subject only to such regulations and restrictions as the General Assembly may prescribe by general law. This joint resolution would be submitted to the voters at the next general election.

The House approved and sent to the Senate **H.4390**, a bill **EXEMPTING U.S. ARMED SERVICES PERSONNEL FROM THE HUNTER'S EDUCATION PROGRAM**. This bill provides that the successful completion of the Hunter's Education Program required for receiving a South Carolina Hunting License, does not apply to active or retired United States Armed Services personnel who can demonstrate to the Department of Natural Resources that they received weapons training during their military career.

The House approved and sent to the Senate H.4364. This bill allows **PERSONS UNDER 21 YEARS OF AGE TO LAWFULLY POSSESS HANDGUNS, IF THEY ARE ENGAGED IN THE BUSINESS OF DEALING IN FIREARMS.**

The House amended, approved, and sent to the Senate H.4438, relating to the **DISPOSITION OF FUNDS COLLECTED PERTAINING TO BAIL AND RECOGNIZANCE.** Current law provides a method of distribution of these funds to the general fund of the State, solicitor's office and county general fund. In the case of a forfeiture originated by a municipality, current law provides that the funds must be distributed to the general fund of the State, county general fund, and the municipality. This bill provides that a percentage of the funds collected must be remitted to the Attorney General's Office if it is the prosecuting agency.

The House approved joint resolution H.4566, which authorizes the State Budget and Control Board to negotiate and satisfy the attorney **FEE AWARD ENTERED BY THE SOUTH CAROLINA SUPREME COURT IN THE TEACHER AND EMPLOYEE RETIREMENT INCENTIVE (TERI) PROGRAM LAWSUIT**, Layman, et al. vs. The State of South Carolina, et al.

The House amended, approved, and sent to the Senate H.4344, a bill **REVISING PROVISIONS FOR HUNTING ANTLERED DEER.** The legislation eliminates a provision authorizing the Department of Natural Resources to establish deer hunting provisions in Game Zones 1 and 2 through regulations. The bill provides that in Game Zones 1 and 2 it is unlawful to pursue deer with dogs and it is unlawful to bait for deer. The legislation specifies the weapons that may be used during special primitive weapons seasons including bow and arrow, crossbow, certain muzzle-loading shotguns and certain rifles. The legislation revises bag limits on antlered deer so as to provide limits of: (1) Game Zones 1 and 2: not more than five for all seasons combined; (2) Game Zones 3, 4, 5, and 6: no daily or season limit.

HOUSE COMMITTEE ACTION

AGRICULTURE, NATURAL RESOURCES, AND ENVIRONMENTAL AFFAIRS

The full committee met on January 29, 2008.

The committee gave favorable report on H.4390 **HUNTER'S EDUCATION PROGRAM.** This bill exempts active or retired United States Armed Services personnel, who can demonstrate to the department that they received weapons training during their military career, from the Hunter's Education Program as a prerequisite to receiving a hunting license.

H.4344 OPEN SEASON FOR ANTLERED DEER received favorable report with amendment. This bill clarifies the game zones during open season for taking antlered deer. It is unlawful to pursue deer with dogs and it is unlawful to bait for deer in Game Zones 1 and 2. This bill also describes primitive weapons for special primitive weapons season, including prohibiting revolving rifles. The Department of Natural Resources no longer has administrative responsibility.

The committee gave favorable report with amendment on **S.452 ESTABLISHING AN ALLIGATOR CONTROL PROGRAM**. This bill allows the Department of Natural Resources to establish an alligator management program for private and public lands, as the American alligators are no longer classified as endangered. All alligators taken under the alligator management program must be taken pursuant to permits and under conditions established by the department in accordance with state and federal law, to allow for a sound management program.

The committee gave favorable report on **S.360 RENEWABLE ENERGY RESOURCES**. This bill defines renewable energy as solar photovoltaic energy, solar thermal energy, wind power, hydroelectric, geothermal energy, tidal energy, recycling, hydrogen fuel derived from renewable resources, biomass energy, nuclear energy, and landfill gas.

EDUCATION AND PUBLIC WORKS

The Education and Public Works Committee met on Tuesday, January 29, 2008, and reported out several bills.

H.4408, a bill which **REVISES FRESHMAN REQUIREMENTS TO RECEIVE SCHOLARSHIP ENHANCEMENTS FOR MAJORING IN SCIENCE OR MATH**, received a favorable report from the full committee. Act 115 of 2007 created incentives for students to enter the science and math disciplines. However, with the implementation of the legislation, the defined combination of freshman hours in math and science to be eligible for the scholarship enhancement is problematic for students in certain structured programs. This bill revises the freshman requirements so as to allow the fourteen required credit hours to be taken in math courses or life and physical sciences courses or a combination of both.

The full committee gave a favorable with amendment recommendation to **H.4372**. As originally introduced, this bill enacted the "Aiken Technical College Enterprise Campus Authority Act." As amended by committee, the bill creates the "**SOUTH CAROLINA TECHNICAL COLLEGE ENTERPRISE CAMPUS AUTHORITY ACT.**" This legislation provides a mechanism for the state's technical colleges to respond to private sector initiatives and opportunities in a timely fashion and work in tandem with local and state economic development efforts. This bill establishes an enterprise campus model that may be implemented by any of the state's technical colleges upon approval by the State Board for Technical and Comprehensive Education.

H.4316 received a favorable with amendment report from the Education and Public Works Committee. This bill establishes **ALTERNATIVE CRITERIA FOR AWARDING PALMETTO FELLOWS SCHOLARSHIPS TO STUDENTS WHO ATTEND A "MAGNET SCHOOL"** as defined in the bill. If students in the magnet school meet the

Palmetto Fellows SAT (1200) and GPA (3.5) criteria but not the rank criteria their senior year (top 6%) in their magnet school, this bill allows the students to use the class rank from the high school they would have attended had there been no magnet school. The magnet school student's eligibility application may not cause the regular high school to exceed the 6% limitation for awarding the Palmetto Fellows scholarship.

H.3853, which relates to **SAFETY EQUIPMENT REQUIREMENTS ON A PROJECTING LOAD THAT EXTENDS TO THE REAR FOUR FEET OR MORE**, received a favorable with amendment recommendation from the full committee. This bill requires vehicles or trailers transporting unprocessed forest products to be equipped with certain amber strobe lights as close as practical to the end of the projecting load. The bill includes provisions for the use of a red light or lantern, in the event the strobe light becomes temporarily inoperable. For all other vehicles, the projecting load must be marked at the extreme rear with a red flag or cloth not less than twelve inches by twelve inches so that the entire area is visible to the driver of a vehicle approaching from the rear. Utility companies when responding to an emergency are exempt from these provisions.

The Education and Public Works Committee gave a favorable with amendment recommendation to **H.4357**, a bill pertaining to **COMMERCIAL ADVERTISEMENT ON BUS SHELTERS AND BENCHES**. This bill allows bus shelters and benches including those on which commercial advertisements to be erected and maintained within the rights-of-way of public roads at bus stops of public authorities. A person erecting a bus shelter or bench, including those on which commercial advertisements are placed, within the right-of-way of a state road must obtain a permit for all shelter or bench locations from the Department of Transportation. Commercial advertisements may be placed only on bus shelters or benches belonging to or permitted through a public owner who has awarded an advertising contract through a competitive bid process. The bill includes provisions for payment and collection of fees for advertising permits. Penalties are provided for violations.

JUDICIARY

The Judiciary Committee met on Tuesday, January 29, 2008.

The full committee adjourned debate on **H.4363**, a comprehensive bill pertaining to **MOTOR VEHICLE HEARINGS IN THE ADMINISTRATIVE LAW COURT**.

H.4328 received a favorable report from the Judiciary Committee. This bill makes numerous **TECHNICAL CHANGES WITH REGARDS TO THE ADMINISTRATIVE LAW COURT**. Revisions include, but are not limited to:

- Changing references to Administrative Law Court rather than administrative law judge division;
- Authorizing the Administrative Law Court to have a seal;
- Providing that the sole grounds for discipline and sanctions of administrative law judges are those contained in the Code of Judicial Conduct in Rule 502, Rule 7, of the South Carolina Appellate Court Rules; and

- Allowing an administrative law judge and the judge's spouse or guest to accept an invitation to attend a judicial-related or bar-related functions, or an activity devoted to the improvement of the law, legal system or administration of justice.

H.3202, a **PROPOSED CONSTITUTIONAL AMENDMENT PERTAINING TO HUNTING, TRAPPING, AND FISHING**, received a favorable with amendment recommendation from the committee. This joint resolution proposes to amend the State Constitution so as to provide that hunting, trapping, and fishing and the taking of wild animals, birds, and fish are a valued part of our heritage and shall be forever preserved for the people. Fish and wildlife shall be managed by laws and regulations that provide persons with the continued opportunity to take, by traditional means and methods, species traditionally pursued by hunters, anglers, and trappers. Fish and wildlife management, including taking, shall be consistent with the state's duty to protect this heritage and its duty to conserve wild animals, birds, and fish. Hunting, fishing, or trapping by sportsmen shall always be a preferred and available means of controlling all invasive or overpopulated species. Any person who is licensed to hunt, fish, or trap and who is adversely affected by a failure to comply with this provision shall have a private cause of action to enforce this provision. The right of the people to hunt, fish, trap, and harvest game shall be subject only to such regulations and restrictions as the General Assembly may prescribe by general law. This joint resolution would be submitted to the voters at the next general election.

The following bills were recommitted to the Constitutional Laws Subcommittee:

- **H.4353 STATE SERVICES AND PUBLICATIONS OFFERED ONLY IN ENGLISH**
- **H.4385 ILLEGAL IMMIGRANTS CHARGED WITH CERTAIN OFFENSES**

H.4437 received a favorable with amendment report. This bill provides an **EXCEPTION TO THE OFFENSE OF THIRD DEGREE SEXUAL EXPLOITATION OF A MINOR** for an employee of the Department of Corrections, Attorney General's office, a prosecuting agency, State Law Enforcement Division, or to a sworn law enforcement officer who, while acting within his official capacity in the course of an investigation, is in possession of material that contains a visual representation of a minor engaging in sexual activity.

H.4438, relating to the **DISPOSITION OF FUNDS COLLECTED PERTAINING TO BAIL AND RECOGNIZANCE**, received a favorable with amendment recommendation from the Judiciary Committee. Current law provides a method of distribution of these funds to the general fund of the State, solicitor's office and county general fund. In the case of a forfeiture originated by a municipality, current law provides that the funds must be distributed to the general fund of the State, county general fund, and the municipality. This bill provides that a percentage of the funds collected must be remitted to the Attorney General's Office if it is the prosecuting agency.

H.3715, relating to **CRIMINAL SEXUAL CONDUCT IN THE THIRD DEGREE**, received a favorable with amendment report. This bill provides that criminal sexual conduct in the third degree includes situations where a person affiliated with a public or private secondary school in an official capacity but is not a student enrolled in the public or private secondary school and the victim is a person under the age of nineteen who is currently enrolled in a public or private secondary school at which the actor works or has supervisory authority and aggravated force or aggravated coercion was not used to

accomplish the sexual battery. An exception is provided for a person affiliated with a public or private secondary school who is lawfully married to the student enrolled in the school at the time of the act. The bill further provides that a person who commits criminal sexual conduct in the third degree is guilty of a felony and, upon conviction, must be imprisoned for not more than ten years.

S.453, which enacts the “**FINANCIAL IDENTITY FRAUD AND IDENTITY THEFT PROTECTION ACT**,” received a favorable with amendment recommendation. Highlights of the legislation include:

- Creates the Consumer Identity Theft Protection Act;
- Requires address verification for credit card applications;
- Requires local law enforcement to report an identity theft if contacted by a suspected victim;
- Requires the State Law Enforcement Division to maintain an ID theft database;
- Provides that a victim may petition a circuit court for a judicial determination of innocence and expungement of record;
- Allows for a consumer to place a freeze on his credit information;
- Prohibits a person from posting, printing, transmitting, selling, or exchanging a social security number or a portion that consists of six digits or more unless there is written authorization, there is a legitimate business or government purpose that provides a benefit, or for other specifically permitted reasons;
- Restricts a business from printing the last five digits of a credit card number or the card expiration date on a receipt;
- Requires businesses and state agencies that own or license computerized personal identifying information to disclose a breach of the security system should one be suspected;
- Makes it unlawful for a person to obtain another’s ID by rummaging through their personal, household, or commercial garbage;
- Makes it so that a consumer reporting agency cannot charge a fee for invoking a freeze, removing a freeze, temporarily lifting a freeze, or reinstating a freeze;
- Adds that placing a freeze on a consumer’s report does not prevent someone from being able to get information concerning criminal records, fraud prevention or detection, personal loss history, or employment, tenant, or individual background screening;
- Adds that a consumer reporting agency must remove all false information from a credit report if the agency receives notice from the consumer to do so. If an agency violates this section, it is liable for three times the actual damages or

\$5,000, whichever is greater. If the agency negligently violates this section, it is liable for actual damages or \$3,000 for each incident, whichever is greater;

- Adds that a person conducting business in this state may notify consumers of a security breach by email or by telephone if those are the person's primary means of communication;
- Changes the definition of "personal identifying information" to make South Carolina's definition the same as the definition used by the majority of other states;
- Removes language that required an issuer of a credit card to get parental consent prior to issuing a card to a person under the age of 21.

[H.4364](#) received a favorable report from the Judiciary Committee. This bill allows **PERSONS UNDER 21 YEARS OF AGE TO LAWFULLY POSSESS HANDGUNS, IF THEY ARE ENGAGED IN THE BUSINESS OF DEALING IN FIREARMS.**

LABOR, COMMERCE AND INDUSTRY

The full committee did not meet this week.

MEDICAL, MILITARY, PUBLIC AND MUNICIPAL AFFAIRS

The Medical, Military, Public and Municipal Affairs Committee met on Tuesday, January 29, 2008.

H.3950 relating to **CREATING THE CHRONIC KIDNEY DISEASE INITIATIVE GOVERNING BOARD**, received favorable recommendation with an amendment. The Board is to be comprised of DHHS director or his designee; DHEC director or his designee; 2 family practice physicians; 2 pathologists; National Kidney Foundation of SC representative; MUSC Nephrology Department of representative; South Carolina Children's Hospital Collaborative representative, private health insurance or HMO representative; 2 nephrologists; 2 faith based community representatives; SC Diabetes Initiative representative; and Palmetto Project representative. Board members will serve two-year terms. The board shall manage funding and implementation of programs to educate the public and health care professionals about the advantages and methods of early screening, diagnosis, and treatment of chronic kidney disease and its complications based on Kidney Disease Outcomes Quality Initiative Clinical Practice Guidelines for chronic kidney disease or other medically recognized clinical practice guidelines. The Department of Health and Human Services shall provide all necessary staff, research, and meeting facilities for this governing board.

H.3957 relating to the **BOARD OF THE DIABETES INITIATIVE OF SOUTH CAROLINA** received favorable recommendation with amendment. Currently, state law provides that the President of the S.C. Affiliate of the American Diabetes Association is to serve as a member of the Board. This bill deletes that member and replaces with the Vice President of the Southeastern Division of the American Diabetes Association. This bill

also deletes the Joint Legislative Committee on Health Care Planning and Oversight member, as this Committee no longer exists.

H.3723, relating to the creation of an **AUTOMATED EXTERNAL DEFIBRILLATOR PROGRAM FOR HIGH SCHOOLS IN THE DISTRICTS**, received favorable recommendation with an amendment. Each school district shall develop and implement an automated external defibrillator program at every high school. It also requires all employees or volunteers who are reasonably expected to use the device to obtain appropriate training. In addition, guidelines are to be established for periodic inspections and annual maintenance of these devices

The committee adjourned debate on **H.4143**, and gave favorable recommendation to the Senate companion bill **S.775** relating to the creation of the **MULTIPLE SCLEROSIS HEALTHCARE ACCESS STUDY COMMITTEE**. This committee is to develop a plan for coordinated service delivery for person with multiple sclerosis. The committee is to be composed of representatives of the Department of Health and Human Services, the two medical schools, SC Hospital Association, SC Medical Association, the National Multiple Sclerosis Society, a MS nurse, and persons living with MS from different geographic regions of the state. The committee shall submit a written report of its findings and recommendations to the General Assembly before January 1, 2009, at which time the committee is abolished.

WAYS AND MEANS

The full House Ways and Means Committee met during the week and reported out two bills.

The committee gave a report of favorable with amendments on **H.4470**, a bill establishing **TAX CREDITS AND INCENTIVES FOR FIRE SPRINKLER SYSTEM INSTALLATION AND IMPROVEMENT**, that complies with the standards most recently adopted by the National Fire Protection Association. This bill provides a state income tax credit for the purchase, installation, or improvement of a fire sprinkler system equal to eighty percent of the costs of purchase, installation, and retrofitting of the system, not to exceed fifty thousand dollars. The legislation exempts fire sprinkler systems from the state sales tax. The legislation revises provisions for the depreciation allowed in the valuation of manufacturing property for purposes of the property tax, so as to allow a twenty percent annual depreciation for the addition or upgrade of a fire sprinkler. This cost may be completely depreciated. The legislation allows an exemption from county property taxes for five years for the first fifty thousand dollars of the cost of adding to and upgrades of fire sprinkler systems. The legislation limits charges imposed by municipal and special service district water systems for separate lines for fire sprinkler systems to actual costs. The State Fire Marshal is assigned additional authority relating to fire sprinkler systems.

The committee gave a favorable report on **H.4520**, a bill **EXPANDING FINANCING UNDER THE HIGHER EDUCATION REVENUE BOND ACT**. The legislation allows the issuance of higher education revenue bonds to finance educational, administrative, operations, and health facilities of colleges and universities.

The committee adjourned debate on H.4494, a bill **REVISING PROVISIONS RELATING TO ENDOWED PROFESSORSHIPS**.

BILLS INTRODUCED IN THE HOUSE THIS WEEK

EDUCATION AND PUBLIC WORKS

H.4587 SCHOOL BUS ROUTES Rep. G.M. Smith

In deciding on proposed school bus routes, this bill requires the district and the State Board of Education to consider the proximity of bus stops to residences inhabited by convicted sex offenders. In no event shall a bus stop be placed within 500 yards of the residence of a convicted sex offender.

H.4592 PROHIBITION ON CERTAIN DRIVERS OPERATING VEHICLES WHILE

***USING CELL PHONES AND OTHER DEVICES* Rep. Littlejohn**

This bill provides that it is unlawful for a person who holds a beginner's permit, conditional driver's license, or a special restricted driver's license to operate a vehicle while using a cell phone or another wireless communications device. Graduated penalties are provided for violations.

H.4610 STATE MUSEUM SPECIAL LICENSE PLATES Rep. Bingham

This bill provides that the Department of Motor Vehicles may issue "State Museum" special license plates. The bill includes provisions for the distribution of fees collected for the license plates.

H.4615 AGE OF ATTENDANCE IN PUBLIC SCHOOLS Rep. Mulvaney

This bill allows children who have substantially completed an out-of-state or private kindergarten program or first grade with a different age requirement to attend kindergarten or first grade in South Carolina.

H.4621 HIGHWAY SAFETY Rep. Hutson

Relating to the Department of Public Safety's (DPS) tabulation, analysis, and publication of statistical information regarding accident reports, this bill requires DPS to analyze and publish an annual report regarding each site where three or more traffic accidents occurred during a year. The bill further requires the Department of Transportation (DOT) to use this information to develop a program to improve highway safety and furnish a status report of its highway safety improvements to the DOT Commission and two committees of the General Assembly.

H.4622 PROCEDURES FOR APPROACHING AN EMERGENCY VEHICLE Rep. Hutson

This bill provides that four points must be assessed against the driving record of a person for the improper operation of a vehicle when approaching a stationary emergency vehicle. This bill provides that all persons driving in or through an

emergency scene must exercise due regard for the safety of all persons when driving to or from an emergency scene. A person who commits a moving violation in an emergency is subject to a fine that is double the fine otherwise prescribed for that moving violation, and the bill further provides that certain conduct by a driver constitutes a factor in aggravation.

JUDICIARY

S.857 STATE AGENCIES AND POLITICAL SUBDIVISIONS OF THE STATE SHALL OFFER ALL SERVICES, PUBLICATIONS, PRINTED, AUDIO AND VIDEO MATERIALS, AND TEST IN AN ENGLISH-ONLY FORMAT EXCEPT IN CERTAIN CIRCUMSTANCES Sen. McConnell

Currently, English is the official language of the State of South Carolina. This bill provides that after July 1, 2008, all state agencies and political subdivisions of the State shall offer all services, publications, tests, and any other material, whether in printed, audio, or video format, only in an English language format unless otherwise required by federal law or regulation. Exceptions are also provided for:

- public schools or institutions of higher learning to meet the academic or other purposes of their missions;
- to protect the health or safety of any person;
- to promote trade, tourism, or commerce;
- to use proper names, terms of art, or phrases from languages other than the English language;
- to protect the rights of victims of crime or criminal defendants; or
- by the South Carolina Educational Television Network for educational purposes only.

S.863 FRAUDULENT INTENT IN DRAWING CHECK, DRAFT OR OTHER WRITTEN ORDER Sen. Thomas

This bill provides that the dismissal of a prosecution of a case brought for fraudulent intent in drawing a check, draft or other written order by reason of want of prosecution or proof of payment of restitution and administrative costs must not be used as evidence of an act of moral turpitude for purposes of disqualifying a person subject to an official background certification. The bill further provides with certain exceptions that after prosecution is initiated, the payment of a dishonored check, draft, or order does not constitute a defense or grounds for dismissal of charges brought, but the payment may be considered in mitigation of the sentence by the trial judge or magistrate.

S.1023 CODE OF LAWS Sen. McConnell

This is a joint resolution to adopt revised Code Volumes 16A and 17 of the Code of Laws of South Carolina, 1976, to the extent of their contents, as the only general permanent statutory law of the state as of January 1, 2008.

H.4578 PROPOSED CONSTITUTIONAL AMENDMENT PERTAINING TO SPECIAL PURPOSE DISTRICTS Rep. Harrison

This joint resolution proposing to amend the State Constitution would be submitted to the voters at the next general election. This joint resolution proposes to amend the State Constitution to authorize the General Assembly, by special or local law, to abolish a special or public service district and transfer its assets and liabilities to an assuming service provider.

H.4579 OPERATION OF A MOTOR VEHICLE THAT IS APPROACHED BY AN AUTHORIZED EMERGENCY VEHICLE MAKING USE OF AUDIBLE AND VISUAL SIGNALS Rep. G.M. Smith

This bill provides instructions on how a driver of a motor vehicle that is approaching certain parked authorized emergency vehicles shall proceed. The bill includes criminal penalties for violations.

H.4585 ELIMINATION OF PROHIBITION OF ALCOHOLIC LIQUORS SALES ON STATEWIDE ELECTION DAYS Rep. G.M. Smith

This bill deletes the prohibition on the sale of alcoholic liquors on statewide election days.

H.4588 DEEDS Rep. G.M. Smith

Relating to the requirement that a deed be filed with an affidavit stating the value of the realty conveyed, this bill deletes a provision that the value of the realty conveyed is not required in an affidavit accompanying a deed exempt from the recording fee requirement.

H.4589 REVISIONS PERTAINING TO ATTEMPTED MURDER AND ASSAULT AND BATTERY OFFENSES Rep. Young

Among other things, this bill creates the offense of attempted murder. The bill creates graduated assault and assault and battery offenses; the bill also repeals common law assault and battery offenses. This bill includes certain assault and assault and battery offenses as those classified as "violent offenses". Relating to life sentences for certain offenses, this bill also adds certain assault and assault and battery offenses to the offenses considered "most serious" and "serious".

H.4590 DRIVER'S LICENSES AND SPECIAL IDENTIFICATION CARDS Rep. Clemmons

This bill requires that a driver's license and a special identification card have imprinted on their reverse sides certain references to the national domestic violence hotline and the national sexual assault hotline.

H.4591 UNSOLICITED CONSUMER TELEPHONE CALLS Rep. Clemmons

Relating to unsolicited consumer telephone calls, this bill provides that a consumer telephone call includes calls of a political nature. Relating to prohibited automatically dialed announcing device calls, this bill include calls made with the assistance of a live operator under certain circumstances.

H.4596 UNFAIR TRADE PRACTICES IN CERTAIN REAL ESTATE TRANSACTIONS Rep. Cato

This bill makes it an unfair trade practice for a person with an interest in a real estate transaction involving an appraisal to commit any act that impairs the independent judgment of the appraiser in carrying out the appraisal assignment. The bill provides for

a civil cause of action including the award of court costs and attorney's fees, and provides for revocation of professional licenses of offenders.

H.4601 REVISIONS RELATING TO CRIME VICTIMS Rep. W.D. Smith

This bill makes numerous revisions relating to crime victims, including but not limited to:

- Allowing the Crime Victim's Advisory Board to authorize additional counseling for victims based on documented need;
- Allowing crime victims' compensation claim submission via facsimile or other electronic means;
- Restructuring and renaming the Victim/Witness Assistance Program
- Creating the Victim Services Coordinating Council and providing for its membership,
- Creating the Office of Victim Services Education and Certification within the Office of the Crime Victims' Ombudsman and establishing certification and continuing education requirements for victim service providers; and
- Authorizing the Crime Victims' Ombudsman to promulgate necessary regulations.

H.4609 EMINENT DOMAIN Rep. Merrill

This bill reforms eminent domain procedures and outlines certain procedures required of a county before it may exercise eminent domain. Among other things, the bill provides that the owner of condemned property has the right of first refusal to redeem his property if the condemning entity does not use the property for the intended public use or it contemplates a sale to another party. This bill requires written approval before certain public bodies may exercise eminent domain. The bill provides that the only public entity that may exercise directly the right of eminent domain without approval of the State Budget and Control Board is the South Carolina Department of Transportation.

H.4616 SIX-MONTH MORATORIUM ON THE FORECLOSURE OF CERTAIN MORTGAGES Rep. Hart

This joint resolution provides for a six-month moratorium on the foreclosure of certain mortgages secured by residential real estate located in South Carolina.

H.4620 PROPOSED CONSTITUTIONAL AMENDMENT ELIMINATING CERTAIN STATE CONSTITUTIONAL OFFICERS Rep. Harrell

This joint resolution proposing to amend the State Constitution would be submitted to the voters at the next general election. This joint resolution proposes to amend the State Constitution so as to delete the Adjutant General, Commissioner of Agriculture, Secretary of State, and Superintendent of Education from the list of state officers which the constitution requires to be elected. Upon the expiration of the terms of these officers serving in office on the date of the ratification of this provision, these positions must be appointed by the governor, upon the advice and consent of the General Assembly, to serve at his pleasure and to be removable by him for any reason. The proposed amendment includes additional provisions relating to the Adjutant General so as, among other things, to update references to his title and military rank. This proposed constitutional amendment also abolishes the State Board of Education effective upon the State Superintendent of Education being appointed by the governor.

LABOR, COMMERCE AND INDUSTRY

S.858 APPLICATION OF PROPERTY INSURANCE CREDITS OR DISCOUNTS FOR RETROFITTING PROPERTY FOR STORM RESISTANCE

Sen. McConnell

This bill revises provisions relating to essential property insurance and rating plan factors, so as to provide credits and discounts or surcharges and debits calculated on certain rating factors for retrofitting property in all areas of the state in addition to providing credits and discounts or surcharges and debits calculated on certain rating factors for retrofitting property in the coastal area or seacoast area.

H.4594 REGULATION OF RESIDENTIAL HEATING AND AIR CONDITIONING CONTRACTING Rep. Sandifer

This bill prohibits a person from engaging in the business of residential heating and air conditioning contracting unless licensed as a residential specialty contractor. Certain exceptions are provided. The legislation prohibits providing a potential buyer a proposal for sale or installation of residential heating and air conditioning, other than a written estimate, before the specifications for the system have been reviewed and approved by a licensed employee of the retail seller, or the retail seller. The legislation further specifies contract requirements for the sale and installation of a heating and air conditioning system. The Department of Labor, Licensing and Regulation is authorized to promulgate regulations establishing civil penalties for violations.

H.4612 "DEBT COLLECTION LICENSING ACT" Rep. W. D. Smith

This bill enacts the "Debt Collection Licensing Act" to provide for the licensure and regulation of debt collectors by the Department of Consumer Affairs. The legislation establishes licensure requirements, including fees, surety bonds, and record keeping requirements. The legislation establishes grounds for denial, revocation, or suspension of a license. The legislation provides for license renewal procedures and requirements, including continuing education. The legislation establishes debt collection procedures and provides civil and criminal penalties for violations.

H.4613 "PERSONAL PROPERTY RECOVERY ACT" Rep. W. D. Smith

This bill enacts the "Personal Property Recovery Act" to provide for the licensure and regulation of recovery agencies and recovery agents by the Department of Consumer Affairs. The legislation establishes licensure requirements, including fees, surety bonds, and record keeping requirements. The legislation establishes grounds for denial, revocation, or suspension of a license. The legislation provides for license renewal procedures and requirements, including continuing education. The legislation establishes personal property recovery procedures and provides civil and criminal penalties for violations.

MEDICAL, MILITARY, PUBLIC AND MUNICIPAL AFFAIRS

S.297 The "SOUTH CAROLINA EMERGENCY MEDICAL SERVICES EMPLOYMENT ACT" Sen. Peeler

This bill enacts the South Carolina Emergency Medical Services Employment Act" requiring a person seeking employment as an emergency medical technician (EMT)

must undergo a state and national criminal records check prior to employment. These criminal records checks are not required for an EMT employed as of July 1, 2008.

S.775 MULTIPLE SCLEROSIS HEALTHCARE ACCESS STUDY COMMITTEE

Sen. Scott

This joint resolution establishes the Multiple Sclerosis Healthcare Access Study Committee. This committee will study the availability of health care services to multiple sclerosis patients in this state. The committee's findings and recommendations must be provided to the general assembly by January 1, 2009, at which time this study committee is abolished.

S. 799 AURICULAR DETOXIFICATION THERAPY Sen. Hayes

This bill deletes the requirement that auricular detoxification therapy take place under the direct supervision of a licensed acupuncturist.

H. 4567 "CHILDCARE SAFETY ENHANCEMENT ACT OF 2008" Rep.

Scarborough

This bill enacts the "Childcare Safety Enhancement Act of 2008". This bill addresses:

- Requiring certain childcare facilities be licensed by the Department of Social Services and persons providing childcare for seven to twelve children be licensed as a group childcare home;
- Requiring family childcare homes to maintain a registry of children enrolled
- Requiring persons providing childcare for six or fewer children be registered with the Department of Social Services
- Requiring the Department of Social Services to conduct at least one inspection of such facility every three years
- Deleting the provision that no regulation may be promulgated if disapproved by the advisory committee; and
- Establishing misdemeanor and felony crimes for childcare violations.

H. 4595 AGE RESTRICTIONS ON BLOOD DONORS Rep. Crawford

This bill allows a person sixteen years old to donate blood with the consent of parents or guardian.

WAYS AND MEANS

H.4568 LEGISLATIVE AUDIT COUNCIL ESTIMATES Rep. Rice

This bill requires the Legislative Audit Council to submit to a party requesting an audit an estimate of the cost of an audit at least thirty days before beginning the audit.

H.4586 PREPAYING STUDENT LOANS WITHOUT PENALTY

Rep. G. M. Smith

This bill requires every entity, whether state-supported or private, that provides student loans to borrowers enrolled in higher education institutions in this State, to allow borrowers to prepay their loans without penalty and without having to pay unaccrued interest.

H.4593 STATE INCOME TAX CREDIT FOR EMPLOYING AN APPRENTICE IN

A HIGH SCHOOL VOCATIONAL PROGRAM Rep. Littlejohn

This bill revises provisions for the apprentice state income tax credit, so as to allow an employer a credit against state income tax equal to five hundred dollars in each taxable year for employing an apprentice in a high school vocational program.

H.4611 *LIMITATIONS ON REVISITING A REFERENDUM ON THE LOCAL OPTION CAPITAL PROJECT SALES TAX OR TRANSPORTATION INFRASTRUCTURE SALES TAX Rep. Sandifer*

This bill provides that when a majority 'no' vote is certified in a referendum on the imposition of the local option capital project sales tax or the local option transportation infrastructure sales tax, a subsequent referendum must not be held before the second general election following the date of the referendum in which the 'no' vote was certified.

H.4614 *SALE OF THE PORTION OF THE STATE FARMER'S MARKET RICHLAND COUNTY PROPERTY USED FOR LARGE WHOLESALE OPERATIONS Rep. Bales*

This joint resolution directs the State Budget and Control Board to sell to the University of South Carolina that portion of the property of the State Farmer's Market in Richland County used for large wholesale operations. The proceeds of the sale must be used exclusively to upgrade retail and small wholesale facilities on the remaining State Farmer's Market property and, where appropriate, to acquire adjoining property to provide additional space for retail and small wholesale facilities.

H.4617 *REVISED MEMBERSHIP OF THE COMMISSION ON WOMEN Rep. Young*

This bill increases the membership of the Commission on Women from seven to fifteen including one member appointed by the Governor from each congressional district and nine members appointed by the Governor from the State at large.

H.4623 *ZERO-BASE BUDGETING Rep. Hutson*

This bill establishes a Joint Zero-Base Budget and Agency Evaluation Committee to select state agencies and departments for a zero-base budget review and evaluation. The legislation creates a division within the Legislative Audit Council to conduct evaluations of programs of state agencies and departments selected by the joint committee to determine if these programs have outlived their usefulness or should be changed to address the priorities and needs of the citizens they affect. The legislation establishes a procedure for the initiation of a review and provides for its findings after a review has been completed. The Governor is required to apply zero-base budgeting principles in the preparation of the annual recommended state budget. The House Ways and Means Committee and the Senate Finance Committee are required to apply zero-base budgeting principles in the consideration of the annual general appropriations bill and bills or joint resolutions making supplemental appropriations.

**H.4627 DISTRIBUTION OF EXCISE TAX REVENUES ON THE SALE OF
ALCOHOLIC LIQUORS FOR ON-PREMISES CONSUMPTION
Rep. Cotty**

This bill relating to the five percent excise tax on the sale of alcoholic liquors for on-premises consumption and the distribution of the revenues of the tax, so as to provide that the minimum distribution to state agencies, counties, and local entities must be based on revenues received in fiscal year 2004-2005, rather than revenues allocated.

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