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South Carolina House of Representatives

Legislative Update & Research Reports

Ramon Schwartz, Jr., Speaker of the House

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Legislative Update

Legislation Introduced

April 15 was the last day for introducing legislation into the House for this session of the General Assembly. In order to come in under this deadline several bills were filed in skeleton form; as they are fleshed out *Legislative Update* will report on them.

Economic Development & Business

Workers' Compensation (H.2832, H.2833, H.2834). The first bill makes changes in the time of payments for workers' compensation: 21 working days (not 14) after the employer learns of the injury or death. It also revises the time medical reports are due to the Commission from 10 working days to 20 working days. After the 60 day report, further reports are due semi-annually unless otherwise ordered.

The second bill has the Executive Director of the Commission supervise the judicial and administrative departments; salary is set at 90% of that of State Circuit Judges. The Commission can establish internal divisions as it needs to perform its duties.

Under H.2834, awards can be made without hearings when the loss or impairment "is clearly documented by medical reports." An exception can take place if requested by the affected employee within 14 days.

JEDA Loans (H.2838). The state Jobs-Economic Development Authority has as its general duties to "promote and develop the business and economic welfare of this State." JEDA currently has the authority to set up not-for-profit corporations to encourage economic development in South Carolina; this bill would allow the agency to grant them loans. JEDA has the authority to issue bonds to raise money.

Regulation of Private Placement Services (H.2842). This legislation would cover those organizations commonly known as private employment agencies--those companies that promise to find people jobs for a fee. Under these provisions they would have to make an application to the Secretary of State, along with a non-refundable \$200 fee and a \$50 license fee. The services would have to have a surety bond or other security up to \$25,000. Licenses would be renewable annually and could be revoked by the Secretary for unethical, illegal or improper practices.

Environment & Natural Resources

Litter (H.2856, H.2587). Two bills dealing with littering on the highways. The first increases the minimum fine for littering from \$10 to \$50; it also allows a punishment between 1 hour to 10 hours picking up litter. The second bill adds paper and trash to the definition of litter, which currently includes glass bottles, glass, nails, tacks, wire and cans.

Judiciary & Government Operations

"Dram Shop Act" (H.2802). This bill would provide liability for bars and bar owners who contribute to the intoxication of a person who later causes injury because he or she was under the influence.

The party injured by the intoxicated person would have a claim for damages against the license holder or manager of the bar if the bar sold alcoholic beverages to someone underage or already intoxicated; sold a person enough alcohol to cause them to become intoxicated; the injury was caused by operation of a motor vehicle.

The defendant (the bar owner or manager) would have to prove that the operations were not negligent--through proof of good practices, such as employee training, enforcement techniques, and inquiry about the age or degree of intoxication of the customer.

Damages that may be awarded pursuant to a claim for relief under this article are limited to no more than five hundred thousand dollars for each occurrence.

See the research report in this issue for more information.

Student Athletes and Drugs (H.2848). Directs the Commission on Higher Education to put regulations into effect by January 1, 1986, dealing with the use of illegal drugs by student athletes in the colleges and universities in South Carolina. The rules must include at least a written reprimand for a first offense; and for a second offense either the loss of scholarship or prohibition from participation in sports.

Wrongful Discharge (H.2861). This legislation would set up the presumption that any person who was fired or demoted within one year after testifying against his or her employer in court/administrative proceedings was wrongfully discharged or promoted. The person presumably injured (ow!) could file a civil action, with the burden of proof on the employer that wrongful discharge/demotion did not occur. Treble damages would be awarded to the wrongfully discharged.

Offenses Forbidden on State Government Property (H.2862). This bill adds an article to the Code defining and forbidding certain actions on state government property, specifically the Capitol Complex. Among the offenses are "throwing of frisbees, balls, or similar objects that may harass or injure employees, invitees, or members of the general public."

Proposed For Special Order

The following bills have been proposed for special order on the House Calendar by the Rules Committee; at the time this *Update* went to press no action had been taken by the full House on this.

State-Run Primaries (H.2029). This proposal would have primary elections conducted by the State Election Commission and the various county election commissions. County delegations would meet to appoint a board of commissioners numbering from three to five members. The State and county commissions would be responsible for all primary election operations, including printing and counting the ballots. The estimated annual cost is \$2.3 million, to be paid from the candidates' filing fees.

Annexation Procedures (H.2287). This bill is one of three related measures which would change the annexation process in South Carolina. H.2287 would eliminate the requirement that municipal electors have to vote in annexation elections. The other two bills make more substantive changes in the process: H.2285 reduces from 75% to 55% the percentage of property owners who must sign an annexation petition; H.2286 allows a city to initiate annexation proceedings.

Lobbyist Regulations (H.2123). This bill, slightly amended in committee, would impose additional registration and reporting regulations on lobbyists in South Carolina. The bill states that its purpose is "to preserve and maintain the integrity of the governmental policy-making process in South Carolina."

Lobbyists would have to register with the State Ethics Commission, pay a fee of twenty dollars, and indicate who is employing them as a lobbyist. The State Ethics Commission would furnish the General assembly, heads of state agencies and chairmen of committees with the name and address of the lobbyist and his or her employer, and what aspects of the legislative or administrative process the lobbyist will try to influence.

For five years a lobbyist would have to keep the following records: 1) total income; 2) sources of income; 3) total expenditures. A list of itemized income was deleted in committee.

Lobbyists would have to file quarterly reports telling: 1) who they lobbied for during the period; 2) what government actions they tried to influence; 3) source and amount of income; 4) totals of all expenditures made during the quarter, including special events for public officials or employees; 5) money loaned to public officials; and 6) business associations with public officials.

State agencies which conduct lobbying activities would have to report them in the same fashion as outlined above.

The State Ethics Commission would have power to require answers to questions, administer oaths, subpoena and order testimony, ask the Attorney General to take civil proceedings, set forth regulations, and assess civil penalties for failure to file reports.

For background on lobbyist regulations in other states, please see page 1-9 of this *Update*, or consult issue number 3 (January 22, 1985) for a more extended discussion of the subject.

Income Withholding for Child and Spouse Support (H.2561). Legislation passed by Congress last year requires states to enact comprehensive child support enforcement laws. This bill is part of a number of bills which must go into effect by October 1, 1985.

Under the provisions of this legislation the Clerk of Court, sends a notice to the delinquent obligor (the person paying support). The notice tells what monthly obligations have been set by the court; the amount of payments in arrears; and the amount of income to be withheld. The notice also states that the obligor's employer will be contacted to withhold payment.

The obligor has ten days to file a petition. Only two grounds are considered: dispute over the identity of the obligor, or dispute over the existence or amount of arrearages. The court has thirty days to hear this petition and 45 days to decide it.

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Following the decision, or 20 days after the initial notice if there is no petition, the Clerk sends a message to the person's employer. The message says: withhold one month's support obligation (which may be spread over several pay periods); and withhold an additional amount to begin paying the arrears owed.

Withholding starts the next regular pay period after the employer receives the notice. Employers can send the Clerk one check with an itemized statement telling which obligors owe what amounts and to whom. The employer can deduct a \$1.00 fee from the employee each time withholding is processed. Action can be taken against an employer who refuses to withhold payments.

When payments in arrears are paid up, the Clerk notifies the employer to reduce the amount withheld.

Withholding can be terminated: after three years, if there are no arrears, and the obligor demonstrates an ability to continue support payments. If a delinquency occurs--back to withholding under these procedures. A notice to the employer to withhold wages stays in effect until further notice from the Clerk.

Regulations for implementing this law would be made by the Office of Court Administration in consultation with the Department of Social Services.

Second Reading, Contested Calendar

Execution by Injection (H.2130). Would allow the sentence of capital punishment to be carried out by the use of a fatal injection.

Other states which currently allow the practice are: Arizona, Arkansas, Delaware, Illinois, Nevada, New Jersey, New Mexico, Oklahoma, Texas, and Washington. Idaho provides for execution either by injection or firing squad; Montana has injection or hanging; and North Carolina uses either injections or the gas chamber.

Filing for Elections (H.2016). As amended in committee, this bill allows a person to file for election to only one office at a time. If a person somehow gets nominated for a second office after being nominated for a first office, he or she must withdraw from the election to the first office. Should there be no other person around who had also filed for the first office, then the filing period can be extended for up to one week.

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Hazing (H.2420). This bill would prohibit any acts during initiations which "cause or have a foreseeable potential for causing physical harm." Persons would also violate the law if they knew of such acts, were in positions of responsibility or authority, and yet allowed them to take place. Punishment for violation could be a \$500 fine and/or a 12 month sentence.

Prior approval from schools, colleges or universities would be required for all initiation rites and proceedings.

For more information, please see *Legislative Update Number 15* (April 16, 1985) for a research report on hazing.

False ID Cards (H.2316). Under the provisions of this bill it would be a felony to manufacture false ID cards or driver licenses; it would also be unlawful to possess or use such invalid cards. A prime use of fake IDs, of course, is for underage persons to purchase alcoholic beverages.

Auto Inspection Violation (H.2160). As amended in committee this bill provides a \$15 fine for failure to display a vehicle inspection sticker.

Pole Lengths, Lights and Flags (H.2307). When a load extends four feet or more beyond the body of a vehicle, a red light or lantern would have to be displayed at night; during the day a red flag 12" x 24" would be required. At this time the flag need only be 12" square. Utility company vehicles responding to emergencies would be exempt from these provisions.

Phase-In of Inventory Tax Relief (H.2595). This bill would provide that counties and municipalities would be reimbursed for revenue lost because of the business tax exemption on the basis of their 1984 tax year inventory values.

Title Certificate for Junked Autos (H.2431). The owner of a vehicle who scraps, dismantles, destroys or disposes of it as wreckage must mail the title to the Highway Department for cancellation. The name of the person who received the vehicle must also be given. These provisions include insurance companies.

Notice of Overdue Support (H.2562). Under the terms of this bill the Clerk of Court would have to provide information about overdue, court-ordered support payments to consumer reporting agencies who requested the information.

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The person being reported on would have to receive prior written notice, and would have 20 days to call for a hearing on the matter. At the hearing the only issues relevant would be: 1) is the person being reported on really the person who owes the payments? 2) are there errors in the amount supposedly owed? 3) did the original court imposing the payments have jurisdiction over the obligor?

"Consumer Reporting Agencies" are those organizations which gather and evaluate consumer credit information and provide reports to third parties.

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* From the Back Pages--Acts & Joint Resolutions, 1911 *
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* An Act to amend Section 3 of an Act entitled "An Act *
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* entitled "An Act to Amend Section 3 of an Act entitled *
* 'An Act to provide the age and time in which road duty *
* shall be performed in certain counties in this State, *
* and to provide for and fix the amount of commutation *
* tax in lieu thereof.' *
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Lobbyist Regulations In Other States

Background

A bill on the House Calendar (H.2123) would increase the regulation requirements on lobbyists in South Carolina. What are the requirements in other states regarding lobbyists?

What is Reported?

Lobbyist *expenses*, total or by category, is the most sought information: 39 states require this, including South Carolina.

Next on the list is *monies or gifts to officials*, with 34 states requiring this information. Once again, South Carolina requires lobbyist to furnish this data.

A key point concerning a lobbyist is, of course, his or her *sources of income*. Eighteen states require this information.

The whole purpose of a lobbyist is to influence legislation; interestingly enough, only 16 states ask lobbyists to declare what *legislation they have supported or opposed*, perhaps because of First Amendment considerations.

Four states require that lobbyists tell of any *business associations with state officials* they have.

How Much is Reported?

States vary on how many of these categories must be reported by lobbyists. Strict states, such as Alabama, California, Colorado and Indiana, require all of the data listed above.

Less stringent reporting requirements exist in the majority of states. South Carolina is not alone in demanding only expenditures and monies or gifts to officials. Arizona, Delaware and South Dakota require the same information. Vermont and West Virginia, as examples, ask only for total expenditures.

Five states require no reports from lobbyists at all: Arkansas, Georgia, Louisiana, Utah and Wyoming.

When Are Reports Due?

In twelve states lobbyists must file a monthly report; however, in half of those states the reports are required only during the legislative session: Alabama, Connecticut, Maine, Nebraska, Nevada and Texas.

Lobbyists in six states must send in a quarterly report. Ten states require a semi-annual report from lobbyists, and 9 states (including South Carolina) require an annual report.

Some states have established unique reporting deadlines. Kentucky requires a report after the session; Missouri and Rhode Island ask for reports three times during its session. Montana has the most complicated setup, with the reports due "before February 16 during the session; by the 16th of the month when \$5,000 or more was spent the previous month; and 60 days after adjournment."

What About Registration?

Whether lobbyists report or not, all are required to register with their states. In just under half the states (21) the registration is with the Secretary of State. Eight states require lobbyists to register with a state ethics commission. South Carolina requires lobbyists to register with both the Secretary of State and the Ethics Commission.

In four states the Clerk of the House and the Secretary of the Senate are the registration agents.

Naturally, there are states with something completely different. In Kentucky registration is with the Attorney General; in Montana lobbyists sign up with the Commissioner of Political Practices; in New York the lobbyist must register with and report to the Temporary State Commission on Lobbying; and in Tennessee the official in charge is the State Librarian and Archivist.

Dram Shop Laws

Background

All over the country the issue of drinking and driving and what to do to alleviate the problem is a main topic of concern for citizens and legislators. The problem of drunk driving has brought up another issue concerning who, if anyone, is responsible for the condition of the drunk driver; the driver or the person(s) who served him/her the alcohol?

Twenty-three states have determined that the taverns or bars that serve a person alcohol are at least partially responsible for that person's actions once they leave the bar. In other words, a bar can be liable if a patron is involved in an accident once he/she leaves the bar. These laws are called "dram shop" laws.

A bill has been introduced into the S.C. House (H.2802) which would make bar owners and managers responsible for injuries caused by intoxicated patrons.

The term "dram shop" is of British origin, when bars were once called dram shops. Although these laws have been in existence for some time they have been used much more frequently in recent years due to the national concern over drunk driving accidents.

Who is Liable?

The dram shop laws are now being used forcefully by drunk driving victims, and not just against liquor establishments but against corporations and individuals as well. In Massachusetts the Supreme Court recently decided that cities and towns can be held responsible for the failure of police to stop and detain drunk-drivers.

The decision came in the case of Debbie Irwin who was awarded \$873,000 in 1983 because police failed to stop a drunken driver, who moments later caused an accident, killing Mrs. Irwin's husband and daughter.

Don Nichols, a Minneapolis lawyer and editor of *Liquor Liability Journal*, said in a December 1984 *Nation's Business*, "If you're a person with a catastrophic injury who are you going to want to pay for that--yourself or an employer who in some small way contributed to the accident?" Adds Dr. Morris Chafetz, a past

This report was prepared by Janet Abbazia, an intern in the House Research Office.

member of the Presidential Commission on Drunk Driving, and Director of the National Institute for Alcohol Abuse and Alcoholism: "I'm not in favor of simply creating more work for lawyers, but on the other hand, you can't just walk away from responsibility any more. The public's attitude about responsibility has shifted."

Massachusetts' lawyer Ron Beitman, who represents many plaintiffs suing liquor servers said in the same *Nation's Business* article, "Five to seven years ago, juries weren't responsive at all to the idea of servers being liable. You would never take a case like that before them. Now they will listen."

Dram Shop Laws at Work

The state of New Jersey is generally recognized as having some of the toughest drunk driving laws in the nation. In June of 1984 the New Jersey Supreme Court ruled that social hosts could be held liable for subsequent accidents if they knowingly served guests at their homes too much alcohol. The New Jersey appeals court extended this to include corporate hosts and allowed a lawsuit against Sam Goody, Inc., owner of a chain of music record stores, to proceed. The suit was brought by survivors of the victim of an accident caused by a Sam Goody worker who left an employee Christmas party drunk. The company's involvement in the worker-funded party was limited to lending a stereo system and paying \$75 to rent the hall.

However, New Jersey is far from the only state to toughen up, similar cases are being brought to court around the country. For example, in Parkville, Missouri a tavern that gave away beer, as well as the radio station that carried commercials for the offer, paid a total of \$92,500 to the parents of a boy killed by a drunk driver. The driver had patronized the bar after hearing the commercials and had had too much to drink.

A Denver bar agreed to pay up to \$9.5 million to a permanently injured woman for serving liquor to the driver of a car that hit her. In Maryland, police are asking motorists arrested for drunk driving where they were served their last drink. The name of the establishment is then referred to the local licensing board for investigation.

Beitman notes a 300 to 400 percent increase in the number of host and corporate liability cases filed or settled over the last year. Possible next targets, says Beitman, are companies whose salesmen wine and dine potential buyers who then get involved in accidents.

Arguments Against Dram Shop Laws

Duncan Cameron, director of communications for the Distilled Spirits Council of America, stated in *Nation's Business*, "The problem isn't oversupplying, it's overdemanding. If I want to get drunk, I'll find a way. The individual driver is the one who must be controlled, the one who has to bear the responsibility."

Many also see a distinction between corporate and private hosts on the one hand, and, on the other, liquor establishments that have long been forbidden to serve underage or inebriated customers. Licensed servers are not only trained in this area but are also insured against losses from liability for such accidents. Homeowners and companies that serve liquor at occasional parties are neither trained nor, in many cases insured for such losses.

What Are Bars and Businesses Doing About It?

Restaurants and bars are responding to the trend by training servers to cut off excessive drinkers; by encouraging at least one member of a group not to drink; and by offering free food and transportation in selected circumstances.

"It's defensive--we have to protect our businesses," says Gene Sage, owner of the four Sage's restaurants in the Chicago area. "Our industry is under attack. We serve only 25% of the alcohol people drink, but we are getting all the heat for it."

Sage's has one of the most comprehensive programs in the country aimed at reducing legal liability. Any waiter or waitress who works there more than 10 days receives training developed by Chafetz, who established the Health Education Foundation in Washington to provide training to servers. Servers are taught to detect problem customers early and learn how to shift customers away from more drinks.

In addition, Sage's offers free soft drinks to the "designated driver" in any group that comes in. Hors d'oeuvres which are rich in protein are served with drinks in order to absorb alcohol. During the holiday season Sage hires a full-time driver with a car to drive overindulgent customers home.

Sage's program has been so successful that Anheuser-Busch plans to offer Chafetz's training to thousands of retailers as well. Last May the National Restaurant Association unveiled an alcohol awareness training program for managers and servers, and it urges its members to discontinue promotions such as "two-for-one" or "all-you-can-drink." (See H.2692 for proposed banning of such practices in South Carolina.)

As for businesses, after the Sam Goody case was set for trial several New Jersey companies announced plans to cancel Christmas parties or to hold them at hotels.

Conclusion

South Carolina is currently considering legislation which would institute a dram shop law in the state. These laws appear to be a natural outgrowth of the anti-drunk-driving movement that is moving in the direction of holding the servers of alcohol as responsible as the imbibers.