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South Carolina House of Representatives

# Legislative Update & Research Reports

Robert J. Sheheen, Speaker of the House

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## CONTENTS

House Week in Review.....	2
Highway Safety Bill.Revisited.....	4
Bills Introduced.....	12

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OFFICE OF RESEARCH

Room 324, Blatt Building, P.O. Box 11867, Columbia, S.C. 29211, (803) 758-5096

## House Week In Review

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The House gave final approval to several significant bills last week, as well as taking time out to honor the 1987 national championship of the Clemson University soccer team.

### Highway Safety and a 901-Page Bill

After hours of debate, the House gave third reading approval to H.3512, the Highway Safety Bill. This bill is notable for its tough new provisions against drunken drivers. A summary of the bill's highlights is presented in this issue of the *Update*.

The House also gave final approval to S.415, the South Carolina Business Corporations Act. This bill, as amended, now goes back to the Senate for consideration. S.415 will substantially revise state laws regarding business and professional corporations. Work on the bill began in the Senate in 1985, and over the past several years has included the input of legislators, business leaders, lawyers and law professors from around the state. (See *Legislative Update* Vol.5, No.3, Jan. 26, 1988.)

### Long Term Care Insurance Act

The House also approved H.3573, the Long Term Care Insurance Act. Long term care insurance is an emerging private financing mechanism for the type of medical services required due to a chronic illness or conditions lasting over a long period of time. H.3573, now before the Senate for consideration, would define long term care insurance and the minimum insurance that must be provided. The bill would also protect people seeking this kind of insurance from unfair or deceptive practices in sales or enrollment. (See *Legislative Update* Vol.5, No.4, February 2, 1988.)

If the General Assembly approves this bill, South Carolina would become one of the first states to enact long term care insurance legislation -- a law that will benefit and protect the state's senior citizens.

**Two Elections**

House members also selected two members for vacancies on the State Reorganization Commission and the House Ethics Committee.

District 118 Rep. D.N. Holt was elected to the House Ethics Committee, and District 115 Rep. D.L. Aydlette was elected to the State Reorganization Commission. Rep. Aydlette will fill the vacancy created by Rep. Juanita White's resignation from the commission.

## Highway Safety Bill

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*Last week, the House gave final approval to tough new highway safety legislation. This bill, now before the state Senate for consideration, would institute stricter measures against the drunken driver, while promoting driver education for young people as a way to get their licenses a year earlier than the bill provides.*

*The following is a synopsis of the key provisions in H.3512. This explains the highlights of the final legislation approved by the House last week, including the floor amendments to the bill. Thanks to Steve Elliott, staff counsel for the House Education and Public Works Committee, for his assistance.*

### Ages for Driver's Licenses

Under the House bill, the minimum age to obtain a special restricted driver's license would be raised from 15 to 16, while the minimum age to obtain a regular driver's license would be raised from the current 16 to 17.

By a floor amendment, the House added language to the bill allowing 15-year-olds to obtain the special restricted driver's license when they complete a driver's education course. Likewise, a regular driver's license can be obtained by a 16-year-old who has completed driver's education. The bill allows 15-year-olds, who currently hold a restricted license, to obtain a regular driver's license at age 16 without driver's education.

In addition, the bill would allow 16-year-olds with the special restricted license to drive by themselves to and from work after dark if they have a signed letter from their employer stating their work schedule. The letter is good for only 30 days. The special restricted license would otherwise require that the teenager be accompanied by a parent or licensed adult when driving at night.

### Tougher Penalties for Driving Without a License

The House bill raises the penalties for driving without a license. First offense would carry a fine of \$50 to \$100. The current penalty is \$25 to \$50.

The bill makes the penalty for second offense a fine of \$500 and/or jail for 45 days. The current second offense law carries a fine of \$50 to \$100 or 30 days in jail.

Third and subsequent offenses would carry only jail time, no fine, if the House bill is enacted. The bill calls for imprisonment from 45 days to six months. The current law allows a fine of \$50 to \$100 or 30 days in jail.

### Habitual Offenders

Under the bill, the designation of a driver as a habitual offender would be made by the State Highway Department in accordance with the Administrative Procedures Act instead of the circuit court as is currently allowed under the law. The bill authorizes the department to revoke the license of the driver if a review of his driving record shows the person to be a habitual offender. Appeal of the department's decision may be made to the circuit court.

### Added Points

The House bill adds a 2 point "improper backing" violation to the point schedule. The originally proposed 5 point violation of speeding more than 20 mph over the limit was deleted during House debate. Under state law, a driver who accumulates 12 points has his license suspended by the Highway Department for six months. This is not changed by the bill.

### Increased Speeding Fines

For speeding 10 mph or less over the speed limit, the House bill requires fines of \$15 to \$25. Current state requires a \$5 to \$25 fine or imprisonment up to 10 days.

For speeding more than 10 mph above the limit but less than 15 mph, the bill stipulates a \$25 to \$50 fine. For speeding more than 15 mph above the limit but less than 25 mph, the bill requires a \$50 to \$75 fine. Current law makes this speeding

category 10 mph above the limit but less than 25 mph, carrying a \$10 to \$50 fine or imprisonment up to 20 days.

For more than 25 mph above the limit, the House bill requires a \$75 to \$200 fine or jail time up to 30 days. Current law sets the fine at \$25 to \$100 and the same jail time.

Under this section of the bill, the House stipulated that for speeding offenses of 15 mph above the limit, \$5 of the fine must go to the Highway Fund. Further, the High Department must give first consideration to hiring more troopers with the money.

### Driving Under the Influence

DUI convictions received particularly strict treatment by the House. Here are some of the proposed changes in H.3512.

#### License Taken at the Time of Arrest

The driver's license of a person arrested for DUI would be taken from him at the time of arrest. The summons given the defendant by the arresting officer would serve as a temporary license until the court appearance. If the defendant is convicted or pleads guilty or no contest, the license is turned over to the court by the arresting officer. The required suspension period begins when the officer turns over the license to the court. However, if the driver is already under suspension, the new suspension must run consecutively.

#### DUI Bumper Stickers

In order to get a provisional driver's license following a 1st offense DUI conviction, the defendant would be required to place "DUI Offender" bumper stickers on both bumpers of every vehicle of which he is insured as the primary driver. The stickers, obtained from the State Highway Department, would cost \$5 each. They must be left on the car while the driver has a provisional license. If the stickers are removed, so will the provisional license.

#### DUI Punishments

The House bill increases the monetary penalties for DUI, beginning with 2nd and subsequent offenses.

Second offense DUI would carry fine of \$2,000 to \$5,000 and imprisonment from 48 hours to one year. In addition, this provision was amended to state that a 2nd offense DUI fine could not be suspended to less than \$1,000, with \$250 of it going to

the Victim's Compensation Fund. Under the current law, the jail time is the same, but the fine is at least \$1,000.

Third offense would carry fines from \$3,500 to \$6,000, an increase over the current law, which requires a fine of at least \$2,000. Jail time would remain the same under the House bill: at least 60 days but no more than 3 years.

Fourth offense DUI was given a stricter penalty by a floor amendment. For 4th offense DUI and all subsequent offenses, the bill allows jail time only: imprisonment of 1 to 5 years. This change would give 4th time DUI offenders the same punishment now given 5th and subsequent offense DUI offenders under the current law.

#### 5th Offense DUI

Those convicted of 5th offense DUI would be barred forever from getting a driver's license in South Carolina by H.3512. A floor amendment deleted language in the present law that would have allowed a "rehabilitation" period after five years for the 5th offense driver.

#### Vehicle Confiscation

Under this new section of the bill, a third offense DUI or DUS conviction during the past five years, or a felony DUI conviction, would result in the forfeiture of the vehicle driven during the offense, if the driver is the owner of the vehicle or a resident of his household. The vehicle would be confiscated at the time of the arrest.

If the owner was not driving the vehicle, he would have a chance to get it back at an expeditious hearing. The vehicle would be returned if the owner can prove he did not give permission to use the car or did not know the driver did not have a valid license.

If the vehicle is forfeited, it would be sold at public auction with the liens satisfied first, then the costs and expenses of the seizure and sale, and the balance of the proceeds going to law enforcement.

#### Felony DUI

Last session, the General Assembly added to the law high fines and mandatory jail time for felony DUI convictions which result in great bodily injury or death. A section of H.3512, added by floor amendment, would permanently revoke the license of anyone convicted of felony DUI where the victim of the accident dies.

### Suspended Licenses

If a person is convicted or pleads guilty to an offense for which loss of his license is part of the punishment, a floor amendment to H.3512 requires him to turn in his license immediately upon conviction to the clerk of court or magistrate. The effective date of the license revocation would begin when the license is surrendered.

However, if the magistrate or clerk of court willfully fails to send the ticket and license to the state Highway Department within five days of the conviction, then the revocation begins when the Highway Department receives the license. And if the offender's license is already under suspension due to a prior offense, then the amendment requires the new suspension to run consecutively. The bill allows a 24 hour temporary license to be issued to allow the defendant to get home.

### Loaded Vehicles

The House bill requires trucks loaded with gravel, stone, garbage or like substances to have the load covered by a tarp or similar covering. The truck also must be loaded so that the highest point of the load is not above the top walls of the truck and that the part of the load resting against the truck's walls must be six inches below the walls. Fines for violation are required, with a \$50 fine for 1st offense and a \$100 fine for subsequent offenses. Certain agricultural, livestock and textile vehicles, among others, are exempt under this section.

### Headlights On

With this provision, drivers in South Carolina would be required to turn on their headlights in bad weather or during conditions that severely reduce the driver's ability to see objects. Parking lights would not be enough. Violations would result in a \$25 fine. However, the bill establishes a warning ticket period until Jan. 1, 1989 to allow the public to become aware of the new law.

### Tinted Windows

The House bill requires vehicles in South Carolina to conform to the requirements of federal Motor Vehicle Safety Standard 205, which states windows must allow at least a 70 percent

transmittal of light. The federal standard and South Carolina law under this section would apply to the windshields and all windows of passenger cars and to the windshields and front windows of buses and trucks. The House bill extends the federal safety standard so that owners of vehicles are prohibited from tinting the glass of their vehicles to block more than 30 percent of the available light.

The bill gives owners of cars with windows tinted darker than the standard three years to conform, and exempts people who need darker windows for medical reasons. Penalties for violations would be a fine of up to \$100 or imprisonment up to 30 days.

Current law states it is illegal to sell a vehicle with windows transparent from only one side. The State Highway Department is also prohibited from registering these vehicles.

#### Failing to Stop for a Siren or Blue Light

The House bill requires a minimum 30 day license suspension for willfully failing to stop for a siren or blue light. State law now requires a minimum fine of \$500 or at least 90 days imprisonment. Despite the tough penalties, the bill also would add the language "in the absence of mitigating circumstances" to the section making it unlawful to fail to stop.

#### School Bus Transportation

When determining school bus routes, school districts would be required to give top priority to transportation of the youngest students facing hazardous conditions under the House bill.

And in light of widespread publicity on school bus safety, a floor amendment to the bill sets penalties for violating the state's stopped school bus laws. Under this amendment to H.3512, a driver convicted of violating stopped school bus laws would be guilty of a misdemeanor and subject to fines of \$100 to \$200 or up to 30 days in jail.

#### Child Safety Seats and Seat Belts

The House bill would raise the age of children required to use safety seats or seat belts. Under the bill, children up to age 6 must wear a seat belt while riding in the front seat, or be in a safety seat or seat belt while riding in back. Current law requires restraint of children up to age 4.

The House bill also requires these safety measures of all vehicles equipped with seat belts. The current law does not require mandatory restraint in taxis, church and school buses, public transportation or commercial vehicles.

#### Motor Vehicle Financial Responsibility Act

Drivers who fail to maintain the insurance required by this act would meet with more severe penalties under the House bill. First offense conviction would require a \$100 to \$200 fine or 30 days in jail. Second offense would result in a \$250 fine and/or 60 days in jail. Third and subsequent offenses would require imprisonment from 45 days to six months. Penalties for this violation under current law are the same for all offenses: a \$100 fine or 30 days in jail.

These same penalties would apply to other uninsured vehicle violations under the provisions of H. 3512. For example:

These new penalties would apply when a owner fails to turn in to the state Highway Department his tags and registration when the insurance on his car is cancelled or expires and he does not obtain new insurance within five days. (The current penalty for this violation is a \$100 fine or 30 days in jail for all offenses.)

They also would apply when a person falsely certifies that his vehicle is insured in order to register it.

And to a driver who knowingly drives an uninsured vehicle or knowingly allows an uninsured vehicle to be driven.

And to the owner who sells or transfers a vehicle to a member of his family when the vehicles tag and registration have been suspended.

#### Additional Measures

In addition, H.3512 would require that:

- All prior traffic convictions be considered before a sentence is imposed for a traffic violation.

*Legislative Update, February 9, 1988*

- Any person driving a fire truck, including volunteer firemen, would have a special endorsement on his driver's license authorizing him to drive a fire truck. The endorsement would be obtained after the driver demonstrates his ability to safely control the fire truck to the appropriate safety officer.
- All provisions of H.3512, if enacted, would go into effect July 30, 1988.

Bills Introduced

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

*Education and Public Works Committee*

Out of State Student Limits (H.3693, Rep. Beasley). If approved, this bill would limit the number of out-of-state students to no more than 25 percent of the incoming freshman class admitted to the state's public colleges and universities beginning in the fall 1989. This limit would also apply to graduate and professional schools but only if there is a sufficient number of in-state students to fill the class. By 1993, no more than 25 percent of the total number of students enrolled at each public higher education institution could be from out-of-state.

Midlands Technical College (H.3677, Rep. Klapman). This bill would repeal Richland-Lexington Counties Commission for Technical Education and replace its authority, duties and functions with the newly created Midlands Technical College Commission, which would oversee the operation of Midlands TEC. Under this bill, Lexington County would increase its representation on the new Midlands Technical College Commission. With the enactment of H.3677, Lexington County would add one member to the board, and the next Richland County vacancy on the board would be filled by Lexington County. This would bring the representation on the 13-member board to eight members from Richland County and five from Lexington County. Funding for the commission's facilities would be on a proportional basis equal to the population of the participating counties.

*Judiciary Committee*

Victim's Rights Constitutional Amendment (H.3668, Rep. Harvin). This joint resolution proposes adding crime victim's rights to the state Constitution. The resolution proposes the addition of three sections to Article I. These sections would require that crime

victims be treated with dignity and respect during all phases of the criminal justice system; that a crime victim is entitled to receive financial compensation from the perpetrator, and that a crime victim may explain to the court the crime's impact on his life before the perpetrator is sentenced. If approved, these three sections would go before the voters on the November general election ballot.

*Labor, Commerce and Industry Committee*

State Athletic Commission (H.3669, Rep. Sharpe). Members of the State Athletic Commission and its committees, officials, agents, referees and employees would be exempt from liability when performing official functions under this bill. In part, the bill also would allow state-owned buildings and facilities to be used for athletic events as long as the event is held under the jurisdiction of a nationally recognized organization and the Athletic Commission approves it.

*Medical, Military, Public and Municipal Affairs Committee*

State Board of Corrections (S.897, Sen. Mitchell). This bill would add an at-large member to the State Board of Corrections. The appointment would be made by the governor with advice and consent of the Senate. This would increase the board from seven to eight members.

*Ways and Means Committee*

Mandatory Revenue Percentage for Education (H.3664, Rep. McGinnis). If enacted, this bill would require that beginning with the new budget year, the General Assembly shall appropriate at least 37.9 percent of the estimated General Fund revenues for public elementary and secondary education.

Board of Economic Advisors (H.3670, Rep. McLellan). A number of changes in the make up and function of the Board of Economic Advisors would be enacted if this bill becomes law. The bill calls for change in the make up of the Board of Economic Advisors. The bill proposes eliminating two board positions: the non-state employee member appointed by the State Budget and Control Board and the chief economist of the Division of Research and Statistical Services. Instead, the board would have a member appointed by the

governor; another appointed by the Senate Finance Committee chairman, and a third member appointed by the chairman of the House Ways and Means Committee. The gubernatorial appointee would serve as board chairman

The chairman of the State Tax Commission would continue as an ex officio, non-voting member of the board. This also would be the case with the Budget and Control Board's director of Research and Statistical Services Division. In addition to reporting to the governor, the chairman of the board also would report directly to the Senate Finance and Ways and Means chairmen to establish policy governing economic trends.

In addition, H.3670 would authorize the Board of Economic Advisors to create an advisory board to assist it.

The director of the Research and Statistical Services Division, Budget and Control Board, would serve as the board's staff director, supplying any staff or support service that the board may need. The bill proposes having the Budget and Control Board's executive director assist the Ways and Means and Senate Finance chairmen, in addition to the governor and the chairman of the Board of Economic Advisors, in providing an effective system of compiling current and reliable economic data.

Finally, the bill would require the Board of Economic Advisors to certify the revenue projections used at each stage of the budget process.

State Agency Fee Increases (H.3686, Rep. Carnell). State law now prohibits most state agencies from setting fees for performing any duty unless the fees are permitted by statutory law. This amendment to that law also would prohibit those same agencies from raising existing fees except as allowed under the law.

Infectious Waste Tax (H.3692, Rep. McTeer). A tax would be placed on disposal by incineration of infectious waste if this bill receives legislative approval. This tax would equal 25 percent of the total fee charged for incineration and disposal. The revenues collected from the tax would be deposited in a separate fund for each county in which the incineration occurred. The fund could be used only for the county's economic development, recreation and cultural activities. The bill also includes a definition of infectious waste.

Palmetto Seed Capital Corporation (H.3701, Rep. Winstead). This bill would establish the "Palmetto Seed Capital Corporation" and the "Palmetto Seed Capital Limited Partnership." The purpose of both would be to provide equity financing to new businesses operating or locating in South Carolina. Both would be private, for-profit entities capitalized by private sector investors to invest predominantly in start-up businesses.