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South Carolina House of Representatives

Legislative Update & Research Reports

Ramon Schwartz, Jr., Speaker of the House

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STATE DOCUMENTS

CONTENTS

LEGISLATIVE UPDATE

Legislation Filed.....	2
Health Care Professionals in South Carolina.....	7
Telephones: Not Everybody Has One.....	8

RESEARCH REPORT

Comparable Worth.....	9
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AROUND THE HOUSE

S.C. House of Representatives Staff Listing.....	13
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Legislative Update

Legislation Filed

Government Operations

Selection of DHEC Board (H.3715). This bill would transform the selection of DHEC Board members from a gubernatorial to a legislative function. At present, the members are appointed by the Governor with the advice and consent of the Senate. Currently, there are seven members, one from each Congressional District, and one selected at large as Chairman.

This bill would increase the number of Board members to nine, chosen as follows: one member from each Congressional District and one Chairman, elected by the General Assembly; the Chairs of the Senate Medical Affairs and the House Medical, Military, Public and Municipal Affairs Committee.

Terms of office would remain the same. Sitting members would be permitted to serve out their existing terms; their successors would be chosen under the new system.

Changes in State Boxing Commission (S.1017). Under terms of this bill, the present State Boxing Commission would be transmuted into the State Athletic Commission; county boxing commissions would be similarly changed.

The State Athletic Commission would have its membership increased from seven to nine members. Seven members would be appointed by the Governor with the advice and consent of the Senate; there would be one member appointed from each Congressional District, and one member appointed at large to serve as Chair. In addition, the President of the Senate and the Speaker of the House would each appoint a member from their respective chambers.

Perhaps the most important and far-reaching change would be the inclusion of wrestling events under the control of the Commission. Not only is this proposed addition a tribute to the growing popularity of wrestling, it is a definite challenge to the state.

Can the Athletic Commission deal with Nature Boy Rick Flair? Is South Carolina ready to put its full faith and credit on the line as it goes toe to toe with the Rock and Roll Express? And what of the potential international repercussions that might follow a confrontation with the Koloffs?

Beer and Wine Permits (S.1192). This Senate bill would allow the ABC Commission to consider distance alone in granting or denying licenses to sell beer and wine; the counterpart House bill is H.3691.

Patient's Compensation Fund (H.3744). This legislation would amend parts of Chapter 59, Title 39 of the Code, dealing with medical malpractice.

Article 2 of that chapter sets up the Patients' Compensation Fund, which pays the amount of an medical malpractice claim or judgment over \$100,000 per individual case or over \$300,000 in one year. Health care providers who participate currently pay membership fees as determined by the fund's board.

H.3744 would allow an additional assessment to be made by the board and paid by the members if there is insufficient money in the fund's account to meet liabilities. To remain in the fund, participants would have to pay these assessments.

Providers could withdraw from the fund by giving thirty days written notice.

The bill also makes other changes in the fund's operation, such as deleting the requirement that funds be invested in short-term investments, or that audits of the records of the fund be prepared in terms of "generally accepted accounting principles." Audits will still be performed, however, with reports going to the Department of Insurance, the Legislative Audit Council, and the Budget and Control Board.

Medical Malpractice (H.3750). This legislation is aimed at dealing with the "potential for a crisis in the affordability and accessibility of health care because of every increasing medical liability insurance costs ..." The bill has four major goals:

- 1) Assure affordable, accessible and quality health care to all citizens of the state;
- 2) Assure protection to health care providers against potential liability;
- 3) Contain health care liability costs and keep awards in rational relationship to damages;
- 4) Place as few restraints as possible on claimant's rights.

To accomplish these goals, the bill would set certain procedures to follow in medical malpractice cases.

First, there would be a statute of limitations on filing: three years from the date of the treatment that supposedly caused the problem, or from the date when the problem should have been discovered; together, no more than six years from the date of occurrence. The limitation would be two years if the cause of action is leaving a "foreign object" in the body.

Second, the person bringing a suit would have to show the court what he or she expects to prove, the persons who will be sued, the persons who will be witnesses and what their testimony is expected to be. In addition, the plaintiff must file an affidavit with one of the following as its contents:

- 1) The plaintiff has consulted with a "licensed health care provider" who agrees that there is cause for the action. A written report from the health care provider must be attached.
- 2) The plaintiff did not consult with a health care provider because of the statute of limitations; however, a written report will be provided within 90 days.
- 3) The plaintiff has asked for medical records from the defendant, but the records have not been provided. A report must be filed with the court within 90 of the plaintiff receiving the records.
- 4) No expert testimony is needed to prove the cause of action.

The defendant shall also file an affidavit with the court, stating that he or she has consulted with a "licensed health care provider," and the provider has determined there is no cause for medical malpractice action.

The bill goes on to state that punitive damages may not be greater than actual damages awarded; nor may a plaintiff demand a set sum of money.

Finally, the bill makes certain changes in the Joint Underwriting Association, which provides professional liability insurance for the health care providers in the state. The board of the Association is reduced from 21 to 13 members. Among the members, two represent hospitals; two, dentists or oral surgeons; three, physicians; two, the insurance industry.

The State Consumer Advocate, chair of the Senate Banking and Insurance Committee, House Labor, Commerce and Industry Committee, and Chief Insurance Commissioner are ex officio members. The presiding officer is the Chief Insurance Commissioner.

Banking & Finance

Bad Checks (H.3720). This bill would amend 34-11-60 of the Code, which deals with "drawing and uttering fraudulent check, draft, or other written order."

At present, it is unlawful to write bad checks "to obtain money, services, credit or property of any kind or nature whatever, or anything of value..." This bill would specifically include "rent" in that list.

Banks and South Africa (S.809). This measure would require banks and other financial institutions to file an annual statement with the Board of Financial Institutions regarding their dealings with the nation of South Africa and its various agencies and organizations.

For more information on the subject of South Africa and South Carolina investments, please see the research report in *Update* number 9, March 10, 1986.

Crime and Safety

Home Protection Devices, Tax Credit (H.3740). This bill would allow persons to deduct part of the cost of home protection devices from their state taxes. A person could claim 25% of total expenditures, or up to \$1,000 per year, on devices bought to safeguard the home from intruders.

The bill does not go into detail as to what constitutes a "home protection device," but instructs the State Tax Commission to develop the appropriate regulations.

Firearms (H.3741). This bill would create the crime of "criminal transfer of firearms." It would be unlawful to transfer a firearm—sell, lease, rent, give, etc.—to a person if you suspect he either 1) will use the weapon in a felony; 2) has been convicted of a previous felony.

It would also be unlawful to take control of a person's firearm with intent to deprive him of its possession, and it would be illegal to accept possession of a firearm if you know or suspect that it was stolen.

The penalty for violation of these provisions would be either a \$5,000 fine, or one year in prison, or both.

Use of Deadly Force to Protect Home (H.3742). This proposes amending Article 11, Chapter 3, Title 16 of the 1976 Code by adding a section permitting the use of deadly force under certain circumstances.

First, it states that a person is justified in using force "when he reasonably believes that the force is necessary to prevent or terminate ... unlawful entry into or attack upon his habitation..."

However, a person is justified in the use of deadly force—"force likely to cause death or serious bodily injury"—only if the following conditions are present:

- 1) The entry is made or attempted "in a violent and tumultuous manner, surreptitiously, or by stealth," which would make the possible victim feel that the intruder intends assault or personal violence—and that force is necessary to protect himself or those in the house.
- 2) the person in the house "reasonably believes" that the entry is being made to commit a felony, and force is necessary to prevent this.

Indigenous Culture

Barbeque Decals (H.3718). This bill would direct the State Department of Agriculture to "design and print distinctive decals which may be displayed wherever barbeque is sold."

There would be three categories of decal:

- (1) *Barbeque - Whole hog - Cooked with wood.*
- (2) *Barbeque - Whole hog - Cooked from a heat source other than wood.*
- (3) *Barbeque - Part of, but not whole hog - Cooked from any source of heat.*

Any person who used a decal which lied about the type barbeque sold at his establishment (the swine!) would be guilty of a misdemeanor; punishment would be either a fine of up to \$200, or imprisonment for not more than thirty days.

Left unaddressed: the burning issue of mustard-based vs tomato-based sauce for the barbeque.¹ Perhaps this highly emotional topic is better avoided—especially as it tends to arouse considerable agitation among vast segments of the populace.

¹ Not to mention the supporters of vinegar as the prime ingredient in the barbecue process.

Health Care Professionals in South Carolina

Medical malpractice, patient's compensation funds—bills have been introduced concerning these and other related topics. Across the nation more and more attention is being given to the rising cost of liability insurance for doctors, the amount of awards given in malpractice suits, and the general state of health care in the United States.

South Carolina is no exception, as bills summarized in this Update show. How many health care providers are affected by these concerns? A review of the most recent issue of the state *Statistical Abstract* gives the following figures for active health care professionals (non-federal) in South Carolina.

<u>County</u>	<u>Physicians</u>	<u>Dentists</u>	<u>County</u>	<u>Physicians</u>	<u>Dentists</u>
Abbeville	20	5	Greenwood	111	28
Aiken	97	49	Hampton	9	8
Allendale	9	2	Horry	126	42
Anderson	180	51	Jasper	10	6
Bamberg	10	6	Kershaw	31	18
Barnwell	18	9	Lancaster	38	21
Beaufort	77	35	Laurens	37	15
Berkeley	22	17	Lee	7	2
Calhoun	4	3	Lexington	105	58
Charleston	1,047	186	McCormick	1	0
Cherokee	32	13	Marion	31	9
Chester	26	6	Marlboro	23	8
Chesterfield	26	10	Newberry	26	11
Clarendon	11	7	Oconee	43	16
Colleton	25	10	Orangeburg	80	27
Darlington	47	20	Pickens	50	28
Dillon	21	6	Richland	801	140
Dorchester	24	29	Saluda	4	2
Edgefield	14	6	Spartanburg	329	86
Fairfield	10	4	Sumter	77	24
Florence	180	53	Union	15	11
Georgetown	44	20	Williamsburg	21	10
Greenville	542	147	York	114	40

STATE TOTALS: Physicians— 4,426; Dentists—1,212

Telephones: Not Everybody Has One

These days, televisions and telephones seem universal in the United States—but are they? Telephones certainly aren't, as recent results from federal government statistics show. In fact, South Carolina ranks in top three of states where households are without telephones.

The figures were taken from federal surveys used to determine unemployment rates. A question was asked if the household being surveyed had a telephone. The study found that there was a correlation between the number of households without telephones and the percentage of households below the poverty line.

Of course, changes in telephone rates and charges will affect how many households are able to afford the utility. With the breakup of AT&T, many areas have seen increases in telephone costs; this would make it likely that more households will be forced to do without telephone service in the future.

The United States average of households with no telephone is 8.3 percent.

The following information comes from the latest issue of *State Policy Reports*, published by State Policy Research.

Percentage of Households Without Telephones - 1984

<u>State</u>	<u>%</u>	<u>State</u>	<u>%</u>	<u>State</u>	<u>%</u>
Mississippi	18.3	Oregon	9.4	Hawaii	6.5
New Mexico	16.6	Nevada	9.1	Rhode Island	6.3
SOUTH CAROLINA	15.3	Idaho	9.0	Colorado	6.1
Alaska	13.6	Wyoming	8.7	New Hampshire	6.0
Arkansas	13.5	Montana	8.6	Illinois	5.9
Georgia	12.8	Indiana	8.3	Kansas	5.6
Arizona	12.6	New York	8.2	Delaware	5.4
West Virginia	12.3	Missouri	8.0	Wisconsin	5.3
Kentucky	12.3	Ohio	7.7	New Jersey	5.3
Texas	11.6	California	7.5	North Dakota	5.0
Alabama	11.4	Virginia	7.5	Pennsylvania	4.9
Florida	11.4	Vermont	7.4	Nebraska	4.7
Tennessee	11.3	Utah	7.2	Massachusetts	4.7
North Carolina	11.1	South Dakota	7.1	Iowa	4.4
Oklahoma	10.2	Michigan	7.0	Maryland	4.3
Louisiana	10.1	Maine	6.7	Connecticut	4.2
Oregon	9.4			Minnesota	3.9

Comparable Worth

Introduction

Comparable worth is an issue that confronts both private and public employers. Since payroll costs amount to such a large proportion of the State's annual budget, any potential change in how employees are compensated automatically becomes a matter of concern for legislators. This research report examines the topic of comparable worth.

What is Comparable Worth?

Comparable worth represents the idea that two different, distinct occupations that are considered to be of the same value to an employer should be compensated equally. This means that jobs which require similar degrees of education, skill and responsibility should be ranked and paid equivalent wages; two jobs that are totally different, such as secretary and truck driver, but which are of equal worth to the employer should receive equal pay.

In a system to provide comparable pay, the worth of jobs would be calculated by their value to the company. A truck-driving firm cannot function without drivers, nor can it operate without a secretary to take orders. Because these jobs are seen to be equally important in the comparable worth theory, they should receive the same pay.

Problems and Issues Surrounding Comparable Worth

Conflict centers around the following points:

- 1) The reliability of an employer's value judgement on jobs.
- 2) How comparable worth will affect supply and demand on the free market.
- 3) The problems of sex discrimination.
- 4) Occupational integration, or the practice of men and women moving out of traditional occupational fields into those of the other sex.

This research report was prepared by Lynn Potts, a student at USC, and legislative intern with the House Research Office.

Comparable worth also rests on the premise that the pay relationships established in our market system are usually discriminatory against women. Comparable worth is designed, in part, to pay women on a more comparable basis to men.

Proponents of the Theory

Comparable worth proponents claim that the difficulty in evaluating job worth can be diminished by hiring one of the many consulting firms that specialize in job evaluation studies. The consultant ranks all the jobs according to such criteria as the knowledge, skill, and problem solving requirements for the job; any hazards or unpleasantness associated with the job; and the accountability of the employee. After ranking these criteria, the consultant assigns a total point score to each job. These points determine the range for the job's base pay.

Proponents have used the figures from job evaluations to illustrate that women are paid less than men in comparable jobs. Women typically earn only 64% of what men earn in any given year, according to the National Committee on Pay Equity. Supporters of comparable worth believe that by enacting this type of legislation, the sex discrimination of unequal pay would be ended. Title VII of the 1964 Civil Rights Act prohibits discrimination based on sex, but some argue that it still exists by the fact that women are not fairly paid.

Proponents also believe that internal job relationships dictate more the salary discrepancy between male and female dominated jobs than do market conditions. They also believe that the market does discriminate. In an interview with *U.S. News & World Report*, Gerald McEntee, President of the American Federation of State, County and Municipal Employees, argued that women have long been the victims of the male dominated work force. Women entered the work force on a lower pay scale and have remained there regardless of the increase in their skill, education, or their job value to an employer, McEntee said.

Comparable worth supporters point to existing experiments with the concept of comparable pay equality. Minnesota action in 1982 on comparable worth has led to pay-equity wage hikes for 9,000 of some 29,000 state employees. Nina Rothchild, State Commissioner of Employee Relations, says this action will raise state payroll costs by about 3% and the state budget by less than 2%—amounts that do not require increased taxation.

In Australia, experience with comparable worth has helped to raise women's wages to 80% of men's from 65% ten years ago when the program began. The hiring of women has not markedly slowed since the inception of pay equity laws in Australia, according to Daniel Mitchell, a labor economist at UCLA.

Proponents of comparable worth include the National League of Cities, and the American Federation of State, County and Municipal Employees

Opponents of the Theory

Opponents to comparable worth declare that the comparison of two distinct jobs cannot be done. They argue that supply and demand determine wages, not someone's opinion of a worthy occupation. Many economists believe that market forces represent the only meaningful basis for saying what jobs are worth.

Opponents point out that job evaluation consulting firms differ on their criteria systems and points. Another problem with job evaluations are that the scores do not tell you anything about the labor market. If two jobs were comparable, but one was hard to fill while the other had many applicants, how would pay equality be in order?

Comparable worth would not only raise wage costs, but would also crimp an employer's inalienable right to set pay strategies, says the National Association of Manufacturers. The Association fears the effect of comparable worth on the common practice of paying lower wages in the South than for identical jobs at the same company in the North. National government action on comparable worth would force companies to pay the same wages for the same jobs and those deemed comparable, regardless of the geographic region or the existence or absence of unions.

Opponents do not dispute the fact that women earn less than men, but they argue that reasons for this include the lack of work experience or the part of women, especially older women; and that women choose some occupations because with fewer office hours because of the work they must do at home--women remain the driving domestic force. June O'Neill, Director of the Women and Family Policies Program of the Urban Institute, argues that the salary gap has narrowed for workers under 35 years of age. "Younger women are looking more like men in terms of their career aspirations and work histories. This will continue."

Nor do opponents see comparable worth as expanding opportunities for minorities and women that have been "stuck" in low paying, low prestige jobs. Because young women are now expanding into previously male-dominated occupations for higher pay, opponents of comparable worth believe that by raising pay in traditionally female occupations above what the market would bring, occupational integration would be stopped and that employers would cease hiring women. Of course this rests on the theory that professional women are only seeking wage, not prestige increase.

The Equal Pay Act of 1963 addressed jobs in which men and women had the same duties but women were paid less. Opponents see comparable worth as an extension of the Equal pay act. They argue that congress considered an identical concept at the time of the Equal Pay Act, but could find little practicality with it, and that the concept has changed little since then. Opponents also believe that comparable worth will cause a great change in the economic system of the U.S. as a result of the increased wage cost, and ignoring the market value of jobs.

Opponents include the Reagan Administration, the U.S. Chamber of Commerce and the National Association of Manufacturing.

Conclusion

In recent years, 45 state legislatures have passed bills to study or enact the concept of comparable worth. Despite opposition from the federal government and private enterprise, the study of comparable worth is probably here to stay.

The best known case of comparable worth has occurred in Washington state. In 1983, Federal District Court Judge Jack Tanner found that Washington's compensation system "discriminates on the basis of sex." He ordered immediate compensation of back pay to all affected workers. This ruling was based on a 1974 Washington report that found female-dominated jobs were paid 20% less than male-dominated jobs. The case centered around nine workers who were suing the state for sex discrimination. The ruling meant that some 15,500 workers were eligible for salary increases and back pay that amounted to \$1 billion.

Last September, however, a Federal Appeals court overturned Judge Tanner's ruling on comparable worth in Washington. The three judge court in San Francisco unanimously dismissed the previous decision. The Appeals Court found that the State of Washington did not set sex-based salaries and that a new wage study based on different criteria might be in order for Washington. The Appeals Court also ruled that an employer could only be ordered to use comparable worth pay standards in cases of proven discrimination. Claimants in the original Washington case are appealing to the Supreme Court. Supporters view this decision as a minor set back, but it could greatly affect other court cases about comparable worth.

Regardless of the setbacks, comparable worth is not disappearing as states and cities begin to practice it through collective bargaining and legislation. Comparable worth policies have been put into effect in Minnesota, Iowa, New York, Wisconsin, and Connecticut. Both supporters and opponents are trying not to lose any further ground. The ensuing struggle should prove to be of great significance for employees and employers alike.

S.C. House of Representatives Staff

Alphabetical Listing

A	Agle, Susan	217	5771	L	Leverette, Ruby	305	7320		
	Arledge, Lorene	425	5202		Levy, Juanita	State House	5240		
	Arndt, Wendy	515A	2268		M	Mack, Margie	State House	8343	
B	Barron, Keller	212	5259	Martin, Ann		5th Floor	7634		
	Benjamin, Ronald	State House	5049	Martin, Rebecca		104	8431		
	Best, Martha	305	7320	Maynard, Jan		State House	7910		
	Black, Shirley	State House	8343	McFadden, Helen		512	7268		
	Bryant, Michael	508	5027	McKinney, Sandra		508	5027		
C	Cain, Leroy	State House	5049	McNamee, Susan		512	7268		
	Carter, Samuel H.	324	5096	Motley, Shirley		305	7320		
	Caskey, Carol	State House	8119	Muldraw, Ruth		515	5620		
	Chambers, Ruth	301	7996	Murday, Dave		216	7190		
	Clark, Mary Denis	525	7014	N	Nason, John	525	7015		
	Clark, Alton	319	5728		Nidiffer, Dottie	407	5825		
	Cockfield, Shirley	512	7268	O	Oliphant, Julia	State House	5240		
	Conaty-Buck, Susan	220	5932		P	Padgett, Richard	State House	5049	
	Council, Terry W.	State House	5240			Parker, Debbie	State House	5240	
	Cox, Julie	525	7015			Payton, Cheryl	217	5771	
	Craft, Sherri	212	5259			Playfair, Bonnie	State House	8119	
	Cummings, Roosevelt	120	5144	R		Randolph, Virgie Lee	425	5202	
	Cushman, Ann	217	5771		Rentz, Gail	425	5202		
D	Deadmon, Earlene	301	7996		Rigby, Magdelene	State House	2991		
	Deaton, Lucy	213	7707		Rogers, Mildred	305	7320		
	Dreher, Catherine	411	5856		Rush, Becky	305	7320		
E	Drummond, Phyllis	216	7190		S	Sanders, Ann	State House	8343	
	Elliott, Stephen L.	429	3852	Scheibler, Rosemarie		State House	5240		
F	Fields, Michael	411	5856	Shealy, Lois		State House	5240		
	Floyd, Sophia	534	2191	Stanick, Linda		508	7788		
	Foster, Anne	State House	5240	T		Taylor, Jo An P.	213	7707	
	Foster, Linda	120	5144			Tidwell, Ruth W.	104	8431	
	Frierson, Rosalyn W.	525	7015		Tilley, Jean	525	7015		
	Fusci, Donna	518	5641		Tinsley, Donna	429	3852		
	Fusco, Frank	525	7015		V	Varn, Sidney	State House	5240	
G	Gause, Louise	State House	8119			W	Wade, Ricky	525	7015
	Grant, Ernestine	213	7707		Walters, James		State House	5049	
H	Harper, C. Lem	508	7788	Williams, J.D.	State House	7910			
	Harvin, Debra	525	7015	Witkoski, Michael	324	5096			
	Hayes, Dwight	407	5825	Y	Young, Karen	213	7707		
	Hegler, William V.	411	5856		Young, Paulette	4th Floor	7107		
	Hennings, Eleanor	301	7989		Z	Zander, Lori	State House	5240	
	Hinton, Lendy	429	3852			J	James, Pat	State House	8342
	Hooks, Susan	525	7015				Jeter, Catherine	518	5527
	Horton, Lynn	305	7320				Jones, Francine	324	5096
I	Inkley, Scott	525	7015				Joseph, Tina	213	7707
	J	James, Pat	State House				8342		
Jeter, Catherine		518	5527						
Jones, Francine	324	5096							
Joseph, Tina	213	7707							