

Vol. 16

March 9, 1999

No. 09

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WEEK IN REVIEW - MARCH 1-5, 1999

HOUSE FLOOR

The House of Representatives set for Special Order, amended extensively, approved and sent to the Senate **H.3626**, a joint resolution directing the Department of Revenue to promulgate strict and comprehensive regulations which would be effective July 1, 1999, for the operation of video poker games in South Carolina. The joint resolution, as amended, directs the Department to make recommendations for imposing a tax rate and regulations for imposing additional fees on the machines or on the owners, distributors, and operators of the machines, in an amount necessary to generate an additional aggregate revenue of at least three hundred million dollars annually. The joint resolution also provides that the regulations must include: (1) a requirement for background checks for video gaming industry employees, owners, distributors, operators, and any individual with a financial interest in a video gaming business; (2) a requirement for a minimum payout percentage for the machines as a function of the amount of money inserted into the machine; (3) limitations on video gaming industry advertising; (4) a requirement for the electronic collection of video gaming taxes; (5) any other regulations the Department deems necessary for proper regulation, supervision and taxation of the industry, including criteria by which licenses will be denied or revoked on the basis of information obtained through background checks; (6) a provision that no person under the age of twenty-one is allowed to play the machines or receive any compensation or pay-out from the machines.

H.3626 provides for an approval process for the video poker regulations which differs from the standard course by which state departments and agencies submit proposed regulations for approval under the Administrative Procedures Act. The joint resolution waives the drafting notice and public notice requirements and directs the Department of Revenue to promulgate the regulations and submit them to the General Assembly by April 1, 1999. If a committee to which the regulations are assigned determines that any changes are needed, the Department must withdraw and resubmit the amended regulations within twenty days. The regulations are to be considered approved on June 3, 1999, unless the General Assembly enacts a Joint Resolution approving the regulations at an earlier date or a Joint Resolution disapproving these regulations is introduced in the General Assembly on or before June 3, 1999, by the committee to which the regulations were referred. In promulgating the regulations, the Department of Revenue must stipulate that they are to have an effective date of July 1, 1999. The Department of Revenue is directed to implement the monitoring requirement for video gaming machines no later than May 31, 1999.

The House gave final reading to **S.294** and enrolled the bill for ratification. Under current law, the Division for Review of the Foster Care of Children is required to provide recommendations to the General Assembly with regard to foster care policies, procedures, and deficiencies of public and private agencies which arrange for foster care of children. This bill provides that these recommendations must also be provided to the Governor.

The House adopted the Judiciary Committee amendment for **H.3035** and sent the bill to the Senate. This bill, as amended, authorizes a municipal court judge to order restitution in an amount that the municipal judge deems appropriate. In arriving at the amount, the bill requires a municipal judge to determine and itemize the actual amount of damage or loss in the order. Additionally, the municipal judge is authorized to set an appropriate payment

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schedule. The bill also allows a municipal judge to hold a party in contempt for failure to pay restitution ordered, if the municipal judge finds that the party has the ability to pay.

H.3035, as amended, places the same responsibilities on a magistrate who orders a defendant to pay restitution. The bill requires a magistrate to determine and itemize the actual amount of damage or loss in the order, and allows a magistrate to set an appropriate payment schedule. The bill allows a magistrate to hold a party in contempt for failure to pay restitution ordered, if the magistrate finds that the party has the ability to pay. The bill also provides that a magistrate's order of restitution may be appealed separately from an appeal relating to the conviction.

The House amended and sent to the Senate **H.3056** which pertains to jury service in magistrate's court. Currently, a person is not required to serve on a jury in magistrate's court more than once during a three-month period. Under **H.3056**, as amended, a person would not be required to serve on a jury in magistrate's court more than once every calendar year.

The House approved and sent to the Senate **H.3338**. This bill provides that a law enforcement officer (1) who has probable cause to believe a child is being concealed from his legal custodian, and (2) who is attempting to return the child to his or her legal custodian, may enter a dwelling, building or other structure, or vehicle and use reasonable means to recover and return the child to his or her legal custodian.

The House approved and sent to the Senate **H.3310**. This bill expands the jurisdiction of county police officers when they pursue offenders that violate a county ordinance or state statute.

The House approved and sent to the Senate **H.3329**. This bill amends statutes relating to mechanic's liens. The bill clarifies the term "prevailing party" for the purpose of awarding attorney's fees. Under this bill, if a defendant does not make a written offer of settlement, then the value of the defendant's counterclaim is considered to be a negative offer of settlement. Also, if the defendant has not asserted a counterclaim, then, under this bill, the defendant's offer of settlement is considered to be zero.

The House approved and sent to the Senate **H.3375**, a bill relating to public defender corporations. **H.3375** provides that the board of directors of a defender corporation is not liable for a loss resulting from an act or omission of a public defender or other employee of the corporation, if the public defender or employee (1) acted within the scope of his or her official duties, and (2) acted in good faith.

The House approved and sent to the Senate **H.3345**, a bill which authorizes the Department of Natural Resources to issue statewide individual tags for taking antlerless deer. Such statewide tags do not apply to properties receiving antlerless deer quota permits.

The House approved and sent to the Senate **H.3360**. This joint resolution authorizes the SC Forestry Commission to retain expenses reimbursed to it by the Federal Emergency Management Agency through the state of Florida so that these funds may be used for the travel expenses and repair and maintenance of fire protection equipment involved in South Carolina's assistance during the Florida forest fire emergency of 1998.

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The House approved and sent to the Senate **H.3643**, a bill which provides that, with certain exceptions, no motor in excess of twenty horsepower shall be used on any vessel operated on Tugalo Lake.

The House amended and gave second reading to **H.3625**, a joint resolution to appropriate from fiscal year 1997-98 surplus funds sixteen million dollars to the South Carolina State Ports Authority for the Charleston Harbor Dredging Project.

The House amended and gave second reading to **H.3079**, a bill which revises requirements on the manufacture, possession, and sale of machine guns or military firearms.

The House rejected **H.3107**, a bill designating the spotted salamander as the official state amphibian.

SENATE FLOOR

On Tuesday, March 2, **H.3346** was amended, read the third time, and returned to the House with amendments. This bill authorizes the Charleston County Park, Recreation and Tourism District to provide for and maintain gold courses.

On Tuesday the following bills were read for the third time and ordered sent to the House:

- **S.324** a bill that clarifies that a nonprofit corporation may serve as a trustee of a trust in which it has a beneficial interest
- **S.476** a bill which prohibits the removal or renaming of certain monuments located on public property without a β vote of each branch of the General Assembly

On Tuesday the Senate adopted a committee amendment and gave second reading with notice of general amendments to **S.337**, a bill relating to life insurance.

On Tuesday the Senate amended and gave second reading to **S.424** a bill prohibiting the Department of Public Safety from selling photographs or digitized images contained in a person's driver's license record.

On Wednesday, March 3, **S.41** a bill that allows delivery of beer or wine in a sealed container by retail permits under certain circumstances was read the third time and ordered sent to the House.

On Wednesday **S.102**, which creates the "South Carolina Drug Dealer Liability Act," was amended, read the third time, and ordered sent to the House.

On Wednesday **S.263**, a bill relating to interstate speed limits, was read for the second time with notice of general amendments.

Additionally, on Wednesday the Senate adopted a committee amendment and gave second reading to **S.80**, a bill which creates the South Carolina Community Development Financial Institutions Commission.

On Thursday, March 4, **H.3567** a bill relating to the distribution of foundation monies by the Spartanburg County Education Oversight Committee, was read for the third time and having

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received three readings in both Houses, it was ordered that the title be changed to that of an Act and enrolled for ratification.

On Thursday, March 4, **H.3429**, a concurrent resolution relating to school days missed by students in Spartanburg County, was read the third time and ordered returned to the House with amendments.

On Thursday the following bills and joint resolutions were read the third time and ordered sent to the House:

- **S.97** a bill that requires the General Assembly to annually appropriate a state salary supplement for coroners
- **S.181** a bill that establishes a kinship foster care program to encourage the placement of children removed from their homes into the homes of relatives
- **S.328** a bill that amends provisions in the Horizontal Property Act relating to how nonprofit long-term care retirement centers or life care facilities may waive the horizontal property regime
- **S.357** a bill that expands the jurisdiction of county police authorities when they pursue offenders who violate a county ordinance or state statute
- **S.29** a joint resolution relating to insurance motor vehicle insurance
- **S.264** a bill relating to the Department of Health and Environmental Control providing products for the treatment of eligible school children with head lice
- **S.539** a bill relating to insurance
- **S.540** a bill authorizing the Budget and Control Board to let for bids any automobile liability reinsurance contract pursuant to the South Carolina Consolidated Procurement Code

On Thursday **S.562**, a bill relating to facilities established to provide radiation therapy, was given second reading with notice of general amendments:

On Thursday the following bills were given second reading:

- **H.3558** a bill that requires all Dorchester County School Trustees to be elected at the general election beginning in the year 2000
- **S.564** a bill relating to the hunting of migratory waterfowl on Lake Murray
- **S.177** a bill designating the "spiritual" as the official music of the state
- **S.376** a bill that exempts county sheriffs' departments and municipal law enforcement departments from liability when escorting funeral processions
- **S.404** a bill that increases from five to fifteen the minimum hours a person may be required to perform litter-gathering labor or other form of public service, if convicted of the offense of littering

Also on Thursday the Senate amended and gave a second reading to **S.388** a bill requiring medical or emergency medical personnel to report the existence of a gunshot wound or any other wound indicating violence.

On Thursday the Senate made **S.45**, a bill pertaining to Hate Crimes, a Special Order.

HOUSE COMMITTEE ACTION

AGRICULTURE, NATURAL RESOURCES, AND ENVIRONMENTAL AFFAIRS

The full Agriculture, Natural Resources, and Environmental Affairs Committee did not meet.

EDUCATION AND PUBLIC WORKS

The full Education and Public Works Committee did not meet this week.

JUDICIARY

The Judiciary Committee gave a favorable report with amendment to **H.3379**, "The Magistrate's Court Reform Act of 1999." As introduced, this bill requires a magistrate appointed to office after January 1, 2000 to have a four-year baccalaureate degree (although a grandfathering provision exempts any magistrate serving on January 1, 2000 from this provision). The bill as introduced provides that the South Carolina Court Administration, in cooperation with the technical college system, must administer an eligibility exam to test the basic skills of persons seeking an initial appointment as a magistrate after January 1, 2000. The senatorial delegation under the bill as introduced must use the results of the eligibility exams to assist in its selection of nominees (the Governor appoints magistrates with the advice and consent of the Senate). Persons may be exempted from taking the examination if certain prescribed educational equivalency requirements have been met.

As introduced, the bill requires magistrates to observe 10 trials before presiding over a trial. Magistrates would be paid by the state through the South Carolina Court Administration, and counties would be prohibited from supplementing the salaries of magistrates. The bill as introduced establishes three base categories for salaries, depending on the population of the county where the magistrate is located. Magistrates in counties of 150,000 or more would be paid 55% of a circuit court judge's salary; for counties between 50,000 and 149,000, magistrates would be paid 45% of a circuit judges salary; and for counties below 50,000, magistrates would be paid 35% of a circuit court judge's salary. Under the bill as introduced, magistrates would not be paid 100% of the base salary until after four years in office.

As introduced, the bill increases the fee in magistrates court for issuing a summons and complaint in a civil action and for giving judgment from \$25 to \$45, increases the fee for proceedings by a landlord against a tenant from \$10 to \$20, and raises the costs charged by the court for writing bad checks from a maximum of \$20 to a maximum of \$41. The bill, as introduced, raises the fee for the party applying for a warrant to a maximum \$41 if the case is dismissed for lack of prosecution (current law provides a maximum \$20 liability). The bill, as introduced, allows concurrent civil jurisdiction for magistrates on specified legal actions that do not involve over \$7,500 (as opposed to the current cap of \$5,000 on these itemized legal actions).

The Judiciary Committee's proposed amendment to H.3379 was not available at the time of printing of the Legislative Update.

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The Judiciary Committee gave a favorable recommendation with amendment to **H.3153**. As introduced, the bill creates The South Carolina Drug Treatment Court Program (Program). The Program is designed to help create local drug treatment court programs throughout the state. Drug treatment programs use a non-adversarial approach to provide participants with access to drug and alcohol treatment and rehabilitation services. The bill, as introduced, requires offenders to contribute to the costs of substance abuse treatment received while in the Program. This bill, as introduced, does not confer a right or an expectation of a right to treatment for an offender within the criminal justice system.

As introduced, **H.3153**, provides that the Program will have a director and an advisory committee. Under the bill as introduced, the director of the Program will be the director of the Sentencing Guidelines Commission. The Chairmen of the Senate and House Judiciary Committees will appoint the members of the advisory committee. The bill, as introduced, outlines the responsibilities and duties of the director and the advisory committee.

As introduced, **H.3153** creates The Drug Treatment Court Program Fund (Fund). The director in consultation with the advisory committee will administer the Fund and award grants to help create and continue local drug treatment court programs. The bill, as introduced, provides guidelines for grant applications.

As introduced, **H.3153** authorizes circuit solicitors to form local drug treatment court management committees. The local drug treatment court management committees are charged with developing guidelines and procedures for the operation of the local drug treatment programs.

The Judiciary Committee's proposed amendment rewrites the bill. However, nothing in the proposed amendment confers a right or an expectation of a right to treatment for an offender within the criminal justice system. Furthermore, nothing in the proposed amendment creates a right for an offender to participate in a drug treatment court program.

The proposed amendment establishes The South Carolina Drug Treatment Court Office within the South Carolina Court Administration. The proposed amendment requires that drug treatment court programs must operate in a manner consistent with guidelines promulgated by the State Drug Treatment Court Advisory Committee (Committee). When promulgating guidelines, the Committee must consider the following:

- Drug treatment courts will integrate alcohol and drug treatment services with justice system case processing in a nonadversarial setting
- Public safety concerns and the rights of victims should be considered in formulating criteria for eligibility
- Eligible participants should be identified early and placed in a drug treatment court program with opt-out provisions and waivers established to address due process issues
- Drug treatment court programs will provide access to a continuum of alcohol, drug, and other related treatment and rehabilitation services
- Abstinence will be monitored by frequent testing
- A coordinated strategy will govern the drug treatment court programs responses to participant compliance
- Ongoing judicial interaction with participants is essential

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- Monitoring and evaluation will measure the achievement of program goals and gauge effectiveness
- Continuing interdisciplinary education will promote effective drug treatment court planning, implementation, and operations
- Forging partnerships among drug treatment court programs, public agencies, and community based organizations will generate local support and enhance the effectiveness

The Committee is charged with (1) developing criteria for eligibility and other procedural and substantive guidelines for the operation of the drug treatment court programs, and (2) developing and implementing an evaluation model to evaluate the effectiveness of the drug treatment court programs. The Department of Alcohol and Other Drug Abuse Services is charged with developing guidelines for treatment services, but the guidelines must be submitted to the Committee for consideration.

The director of the South Carolina Drug Treatment Office will chair the Committee. Under the proposed amendment, the South Carolina Court Administration is responsible for hiring the director. The remainder of the Committee will be composed of the following:

- A circuit court judge with experience in adult drug treatment court programs, designated by the Chief Justice
- A family court judge with experience in juvenile or abuse and neglect drug treatment court programs, designated by the Chief Justice
- A circuit solicitor designated by the President of the South Carolina Solicitor's Association
- A member of the defense bar, recommended by the South Carolina Association of Criminal Defense Lawyers and appointed by the Chief Justice
- Director of the Department of Justice or his or her designee
- Director of the Department of Alcohol and Other Drug Abuse Services or his or her designee
- Director of the Department of Probation, Parole, and Pardon Services or his or her designee
- Director of the Department of Social Services or his or her designee
- Director of the Department of Mental Services or his or her designee
- Member of the general public selected by the Chairman of the Senate Judiciary Committee
- Member of the general public selected by the Chairman of the House Judiciary Committee
- Attorney General or his or her designee

The Judiciary Committee's proposed amendment establishes the Drug Treatment Court Fund, an account that is separate from the General Fund of the state. The proposed amendment provides that all earnings from investments must remain with the separate account fund. The director will administer the funds at the direction of the Committee. Under the proposed amendment, grants will be awarded from this fund to implement and continue drug treatment court programs. The award of grants (1) will be based on guidelines set forth by the Committee, and (2) will generally be awarded to the most comprehensive and feasible plans providing for the implementation of drug treatment court programs. The proposed amendment details information that must be included in a grant application.

Under the Judiciary Committee's proposed amendment, solicitors that establish a drug treatment court program must form at least one local drug treatment court management committee. However, solicitors are authorized to form a local committee for each county in

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the circuit that establishes a drug treatment court program. Local committees are charged with developing guidelines and procedures for the operation and evaluation of the local drug treatment court, but the proposed amendment prohibits local committee guidelines from being inconsistent with statewide guidelines. Local committee must include the following members:

- At least two members of the judiciary
 - Circuit solicitor or his or her designee
 - Public defender or his or her designee
 - Member of the private criminal defense bar
 - Representative from the Clerk of Court's Office
-
- Probation officer or community specialist
 - Local law enforcement officer
 - Representative from the county substance abuse authority
 - Director of the local drug treatment court program, if applicable
 - Any other persons selected by the local committee

Under the Judiciary Committee's proposed amendment, the Chief Justice has the sole authority to (1) appoint and remove drug treatment court judges at the recommendation of local committees, and (2) to prescribe their powers, jurisdiction, and authority. Persons appointed as drug treatment court judges are exempt from judicial screening requirements. Under this proposed amendment, drug treatment court judges may receive an annual stipend and reimbursement for mileage and other ordinary expenses.

The proposed amendment provides that offenders must contribute to the cost of their substance abuse treatment received while in the drug treatment court program.

The Judiciary Committee adjourned before discussing the following bills that were on the March 2 agenda:

- **H.3293** relating to the definition of the term "committee" in relation to campaign practices
- **S.352** relating to the qualifications of Senators and Members of the House of Representatives
- **H.3500** relating to members of a municipal or county election commission
- **H.3356** relating to the sale of a public body of any records, public or otherwise
- **H.3420** relating to firearms

LABOR, COMMERCE AND INDUSTRY

The full Labor, Commerce and Industry Committee did not meet this week.

MEDICAL, MILITARY, PUBLIC AND MUNICIPAL AFFAIRS

The full 3-M Committee gave a favorable report on **H.3335**. This bill will permit a driver's license or driver's permit applicant voluntarily to disclose a permanent medical condition and organ and tissue donor information on his license or permit. This information must be indicated by a symbol on the license or permit and maintained as part of the driver's record. This information must be available, upon request, to law enforcement, EMS, hospital

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personnel. Information about the license holder's organ and tissue donor status must also be available, upon request, to the S.C. Donor Referral Network.

The committee gave a favorable report to **H.3427**. This bill revises the requirements for reinstatement of an occupational therapy or occupational therapy assistant license if the license has been inactive for at least three years. Current law requires these applicants

for reinstatement to pass an examination in addition to completing continuing education and supervised practice. This bill will make the examination conditional based on the number of years the license has been inactive. The board is in the process of promulgating regulations that will require an applicant to pass an examination only if the license has been inactive ten or more years.

The committee gave a favorable report to **S.294**, a bill relating to the Division for Foster Care Review (a division of the Governor's Office). This division is supported by a seven member board appointed by the Governor. State law requires the board annually to submit a report to the General Assembly on recommendations regarding foster care policies, procedures and deficiencies of agencies that arrange for foster care of children. This bill will require the board to submit the same report to the Governor.

The committee recommitted **H.3240** back to subcommittee. This bill revises the definition of "surgical treatment" under the state's laws governing the practice of podiatry so as to confer upon podiatrists the authority to amputate toes.

WAYS AND MEANS

The full Ways and Means Committee met this week to finalize recommendations on the 1999-2000 Budget. Highlights of those recommendations were included in last week's *Update*. The Ways and Means Committee will present budget briefings to members of other standing committees this week, in anticipation of House floor debate (scheduled to begin March 15).

The full committee also considered two other bills this week. The committee gave a favorable recommendation with amendment to **H.3028**. As introduced, this bill adds to the *SC Code* a property tax exemption for one personal motor vehicle owned or leased by a person who is legally blind. The bill also provides a definition of "legally blind." The committee recommended adding to the bill an amendment to the current section of the *SC Code* which provides a property tax exemption for one personal motor vehicle owned or leased by a legal guardian of a minor who is blind or required to use a wheelchair. The recommended amendment adds language to that section providing that the exemption is provided for such vehicles if the vehicle is *used to transport* such minors. The committee also recommended amending that section to provide a property tax exemption for a vehicle used to transport a family member who has been adjudicated incompetent by reason of mental retardation.

The committee gave a favorable recommendation with amendments to **H.3081**, and adopted it as a committee bill (**H.3677**). **H.3081** proposes an amendment to the SC Constitution authorizing a lottery conducted only by the State, with no more than six percent of total

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lottery revenues used for lottery administration and at least fifty percent of such revenues awarded in prizes. The remaining revenues would be credited to a

separate "Education Improvement Account," with all account proceeds to be used only for education improvements as provided by the General Assembly. The proposed amendment would be submitted to the voters at the next general election for representatives.

H.3677, the committee bill, proposes amending the SC Constitution so as to allow lotteries conducted only by the state, with the lottery revenues first being used to pay operating expenses and prizes and the remaining revenues credited to a separate "Education Lottery Account." No specific percentages for use of the revenue (i.e., for administration or for prizes) are included in the committee bill. Earnings on the "Education Lottery Account" would be credited to the account, and all account proceeds would be used only for education as provided by the General Assembly.

BILLS INTRODUCED IN THE HOUSE THIS WEEK

AGRICULTURE, NATURAL RESOURCES, AND ENVIRONMENTAL AFFAIRS

H.3652 LICENSING AND REGULATION OF FORESTERS Rep. Young-Brickell
This bill revises the statutes pertaining to the licensure and regulation of foresters so as to conform them to the uniform statutory and organizational framework established for professional and occupational licensing boards. The bill makes various other revisions, including revising the procedure for use of an escrow account.

H.3654 AIRBOATS Rep. Gourdine
This bill eliminates the restrictions on the operation of airboats which pertain specifically to the freshwater-saltwater dividing line on public waters and a specified portion of Lake Marion and Santee Swamp. The bill provides that it is unlawful to operate an airboat on the waters of this State during the period of from one hour after legal sunset to legal sunrise and anytime during the season for hunting waterfowl.

EDUCATION AND PUBLIC WORKS

H.3679 REQUIREMENTS FOR WELFARE RECIPIENTS Rep. T. Brown
This bill requires a welfare recipient to attend one scheduled meeting each semester with at least one teacher of each of the recipient's children, and requires the parent and the school principal to sign a form in duplicate at the time of the parent and teacher visit. The bill provides that if a welfare recipient fails to comply with these provisions, the recipient's welfare must be terminated for one month. The bill provides that a recipient, under certain circumstances, may apply for a waiver from the requirements of the bill. The bill requires notification to the recipient before termination of welfare, and provides for a recipient to appeal the termination.

H.3683 REQUIREMENTS FOR PUBLIC SCHOOL EMPLOYEES Rep. Hinson

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This bill requires that all persons applying for any employment within any public school must submit fingerprints for the purpose of a background investigation and a criminal history check. The bill provides that fees for fingerprinting will be paid by the applicant.

JUDICIARY

**H.3628 FEES AND COSTS COLLECTED BY CLERKS OF COURT, REGISTERS
OF**

DEEDS, OR COUNTY TREASURERS Rep. Harrison

This bill increases the fee for filing, indexing, enrolling, and entering a foreign judgment and affidavit from fifty-five to seventy dollars.

**H.3629 REDUCTION OF AN INMATE'S SENTENCE FOR HOURS SPENT
WORKING AT LITTER CONTROL Rep. Ott**

This bill provide that (1) an inmate is entitled to a reduction of seven days in the term of his or her sentence for every forty-eight hours spent working at litter control, and (2) this credit is independent of other credits an inmate may earn.

**H.3630 PROHIBITING FOSTER CARE PLACEMENT, CUSTODY, RELATIVE
CARE, ADOPTIVE PLACEMENT, OR GUARDIANSHIP WITH CERTAIN
PERSONS Rep. Allison**

This bill amends *South Carolina Code of Laws* §20-7-1642, relating to prohibiting foster care placement with certain persons, so as to expand prohibited placement to include custody, relative care, adoptive placement, or guardianship.

**H.3631 NONCUSTODIAL PARENT'S ACCESS TO RECORDS AND TO
PARTICIPATE IN SCHOOL ACTIVITIES Rep. Allison**

Under this bill, a court may prohibit a noncustodial parent's access and right to obtain records and participate in school activities, if the noncustodial parent

- has been convicted or pled guilty or nolo contendere to a crime in which the custodial parent or the child was the victim
- has been found by the court to have perpetrated abuse or neglect against the child or domestic violence against the spouse or child
- had an order for protection from domestic violence issued against him or her where the custodial parent or child was the victim.

H.3632 DEFINITION OF "MILITARY FIREARM" Rep. Loftis

This bill amends the definition of "military firearm" so as to exclude semi-automatic pistols, rifles, and shotguns from the definition.

**H.3634 LIABILITY OF PROPERTY OWNERS WHEN A FIREFIGHTING AGENCY
UTILIZES WATER FOR FIREFIGHTING PURPOSES FROM A SOURCE
OF WATER ON REAL PROPERTY Rep. Sharpe**

When a firefighting agency utilizes water for firefighting purposes from a source of water on real property, under this bill the owner of real property may not be held liable for death or injury to persons or property.

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H.3635 DONATIONS TO THE COMMISSION OF FORESTRY Rep. Sharpe

H.3635 permits the Commission of Forestry to accept donations of new or used equipment. This bill also has provisions detailing the use and disposition of donated equipment.

This bill exempts a donor or donor organization from criminal penalties or civil liability when donating new or used equipment that is apparently fit for use by humans and for its intended purpose. However, the bill does not provide immunity when the death or injury caused to persons or property is caused by gross negligence, recklessness, or intentional misconduct.

The bill also provides the Commission of Forestry, the State Forester, and their agents, officers, and employees with immunity from liability for injuries or death resulting from defects in donated or loaned equipment. However, the bill does not provide immunity when the death or injury caused to persons or property is caused by gross negligence, recklessness, or intentional misconduct.

H.3640 DESTRUCTION OF CRIMINAL RECORDS Rep. Harrison

When a person's criminal charge has been discharged, dismissed, or when the person has been found innocent of a criminal charge, this bill requires the clerk of court to destroy certain records. Also under the bill, the clerk of court is prohibited from retaining certain records.

H.3651 BURGLARY Rep. Maddox

This bill amends the crime of burglary so as to delete the requirement that a person who commits burglary must intend to commit a crime within the dwelling or building that is burglarized.

H.3655 PENALTIES FOR FAILING TO STOP WHEN SIGNALLED BY A LAW ENFORCEMENT VEHICLE Rep. Wilkins

Currently, a first offense for failing to stop when signaled by a law enforcement vehicle, where no great bodily injury or death resulted from the violation, is considered a misdemeanor. Upon conviction an individual must be fined not less than \$500 or imprisoned not less than 90 days or more than three years, and the person's driver's license must be suspended for at least 30 days. Under this bill, the person would be considered guilty of a felony, must be fined not less than \$500 or imprisoned for not less than one year nor more than five years. Also under this bill, the person's driver's license must be suspended for a mandatory period of one year. This bill deletes provisions from *South Carolina Code of Laws* §56-5-750 that allow for the expunging of records of the arrest and conviction of a person who has been convicted of a first offense violation.

Currently, for a second offense for failing to stop when signaled by a law enforcement vehicle the person's driver's license must be revoked for a period of one year. Under this bill, the person's driver's license must be suspended for a period of five years from the date of conviction.

H.3656 COMMON LAW MARRIAGE Rep. Littlejohn

This bill abolishes common law marriage in South Carolina after June 30, 1999. However, a common law marriage in effect on June 30, 1999 continues to be valid and not affected by this bill.

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When a court is called upon to adjudicate the validity of a common law marriage on or after July 1, 1999, this bill requires that the proof of the common law marriage must be clear and convincing to the satisfaction of the court.

On or after July 1, 1999 in order to be valid a marriage must (1) be between persons legally entitled to marry, (2) be solemnized as provided in *South Carolina Code of Laws* §20-1-20, and (3) follow the issuance of a license as provided in *South Carolina Code of Laws* §20-1-210 *et seq.*

S.324 NONPROFIT CORPORATIONS SERVING AS TRUSTEE OF A FUND

Sen. Russell

This bill amends *South Carolina Code of Laws* §33-31-302, relating to the general powers of a nonprofit corporation under the South Carolina Nonprofit Corporation Act of 1994, so as to clarify that a nonprofit corporation may serve as a trustee of a trust in which it has a beneficial interest. This bill further provides that a nonprofit corporate trustee of a trust in which it has a beneficial interest is not conducting a trust business with regard to that trust.

S.476 REMOVAL OR RENAMING OF MEMORIALS AND MONUMENTS LOCATED ON PUBLIC PROPERTY

Sen. Ford

This bill prohibits the removal or renaming of certain monuments and memorials located on public property without a β vote of each branch of the General Assembly.

H.3667 PROBATE JUDGES

Rep. J. Smith

This bill provides that a candidate for the office of probate judge must

- be a citizen of the United States
- be a qualified elector of the county in which he or she seeks to be judge
- meet the constitutional requirements for persons elected to the office
- be at least thirty years old
- be a licensed attorney for at least five years

This bill further provides that a probate judge serving on July 1, 1999 or seeking reelection after this date, need not meet these qualifications.

H.3668 COMMON LAW MARRIAGE

Rep. J. Smith

This bill abolishes common law marriage in South Carolina after June 30, 1999. However, a common law marriage in effect on June 30, 1999 continues to be valid and not affected by this bill.

When a court is called upon to adjudicate the validity of a common law marriage on or after July 1, 1999, this bill requires that the proof of the common law marriage must be clear and convincing to the satisfaction of the court.

On or after July 1, 1999 in order to be valid a marriage must (1) be between persons legally entitled to marry, (2) be solemnized as provided in *South Carolina Code of Laws* §20-1-20, and (3) follow the issuance of a license as provided in *South Carolina Code of Laws* §20-1-210 *et seq.*

H.3669 LICENSE FOR CONSUMPTION OF ALCOHOLIC LIQUORS IN PRIVATE NONPROFIT AND NONRESIDENTIAL CLUBS

Rep. Davenport

This bill requires a private nonprofit club or organization to obtain a license from the Department of Revenue for the possession or consumption of alcoholic liquors on its premises. This bill outlines the criteria for the license and amends *South Carolina Code of*

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Laws 61-6-1620, relating to the restrictions on minibottle licensees, so as to conform these provisions to the requirements of this new license.

H.3670 GRADUATED SCALE OF POINTS ASSIGNED TO VARIOUS MOTOR VEHICLE VIOLATIONS Rep. Fleming

This bill allows a person charged with certain violations to pay a fine in lieu of having the points associated with the violation assessed against his or her driving record.

H.3672 PROXIMITY REQUIREMENTS FOR ESTABLISHMENTS AND PLACES OF BUSINESS WITH LIQUOR LICENSES Rep. Fleming

This bill amends *South Carolina Code of Laws* 61-6-120, relating to the proximity requirements for establishments and places of business with liquor licenses, so as to extend these requirements to child day-care facilities. The bill revises the method of measuring for these requirements so as to provide that measurements must be made only along legal pedestrian and vehicular travel routes.

This bill defines the term "child day-care facility" as an establishment required to be licensed or registered pursuant to Subarticle 11, Article 13, Chapter 7 of Title 20 of the *South Carolina Code of Laws*. Under the bill, the term also includes facilities for which licensing is voluntary.

H.3673 OPERATING A MOTOR VEHICLE WHILE UNDER THE INFLUENCE OF ALCOHOL Rep. Simrill

Under this bill, it is unlawful to operate a motor vehicle with an alcohol concentration of ten one-hundredths of one percent or more. This bill provides that a person who has an alcohol concentration of ten one-hundredths of one percent or more is conclusively presumed to have an illegal alcohol concentration.

S.41 DELIVERY OF BEER OR WINE IN A SEALED CONTAINER Sen. McConnell

This bill allows the delivery of beer or wine in a sealed container by retail permit holders to a consumer that is at least twenty-one years of age at a location other than the licensed premises.

Under this bill, the person receiving the delivery must sign a receipt for the delivery. The delivery receipt must include the following information:

- the date of birth of the person receiving the delivery
- the date of birth of the consumer
- the document numbers for the form of identification provided

The bill requires the permit holder to retain a copy of the delivery receipt for at least 180 days. Additionally, this bill requires the person making the delivery to be at least twenty-one years of age.

S.102 "SOUTH CAROLINA DRUG DEALER LIABILITY ACT" Sen. Passailaigue

This bill provides a civil remedy for damages to persons in a community injured by an individual's use of illegal controlled substances. The bill establishes a cause of action against drug dealers for damages for monetary, non-economic, and physical losses incurred as a result of an individual's use of an illegal controlled substance.

H.3682 JUVENILE PROBATION Rep. Hinson

This bill authorizes the family court to extend probation to a juvenile's nineteenth birthday. Under this bill, the family court is authorized to assess a fee against the juvenile during this extension. Additionally, this bill requires the Department of Juvenile Justice to report to the

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General Assembly on the fiscal impact of such extensions of probation during fiscal year 1999-2000.

LABOR, COMMERCE AND INDUSTRY

H.3636 INSURANCE SOLD BY AUTOMOBILE RENTAL COMPANIES Rep. Cato

This bill provides that an agent or employee of an automobile rental company may sell automobile collision insurance coverage and other types of applicable automobile insurance without being considered an insurance agent under state law. Such an employee or agent would, therefore, be exempt from continuing education and other requirements imposed upon insurance agents.

H.3637 REGISTRATION OF A MOTOR VEHICLE BY A NONRESIDENT OWNER Rep. Kirsh

This bill revises the conditions for the in-state operation of a privately owned and operated passenger vehicle of a nonresident. The bill provides that the nonresident owner or operator of a motor vehicle which is not registered in this state must respond to inquiry by the auditor of any county in which public records show the nonresident owns or leases real or personal property with a sworn written statement which provides specified details about the vehicles owned or operated and affirms that he has not established domicile in the county. Penalties for violation are the same as are provided for failure to pay required personal property tax on motor vehicles. An individual who files a false sworn statement or willfully fails to comply with the inquiry of the auditor is guilty of a misdemeanor and subject to: (1) a fine of not more than one thousand dollars and/or imprisonment for not more than one year; and (2) payment of twice the amount of all personal property taxes which would be due on the vehicle as if lawfully registered.

H.3671 INTERCEPTION OF WIRE, ELECTRONIC, AND ORAL COMMUNICATIONS Rep. Fleming

This bill provides conditions under which it is unlawful to intercept, or attempt to intercept, wire, electronic, or oral communications. The bill specifically provides for individuals and entities who may lawfully intercept such communications, including agents of the Federal Communications Commission. Penalties are provided for violations. The bill also provides that it is unlawful to manufacture, transport, possess, sell or advertise for sale certain equipment which is designed for the surreptitious interception of wire, electronic, or oral communications. Penalties are provided. The bill provides that the contents of unlawfully intercepted wire, electronic, or oral communications may not be used as evidence in any trial, hearing, or other proceeding before any court, grand jury, department, officer, agency, regulatory body, legislative committee, or other authority of the State. The bill establishes conditions under which law enforcement officers may lawfully intercept wire, electronic, or oral communications in the course of their official investigations. The bill establishes a procedure by which an individual whose wire, electronic, or oral communication is unlawfully intercepted or disclosed may recover damages through a civil action. The bill authorizes the Attorney General to initiate a civil action in circuit court when it appears that an individual is engaged in, or about to engage in, a felony violation of this legislation. The Attorney General and Chief of the State Law Enforcement Division shall establish a course of training in the legal and technical aspects of wiretapping and electronic surveillance, and establish regulations for training and recertification of law enforcement officers.

H.3676 EMPLOYEE ACCESS TO PERSONNEL RECORDS Rep. Cobb-Hunter

This bill states that an employee has the right to examine and obtain copies of the contents of his personnel record at any reasonable time. An employee does not have the right, under

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this legislation, to inspect investigative records on possible criminal offenses, letters of reference, test documents other than cumulative test scores, or personal information about other employees. An employer must comply with an employee's request to examine his personnel record within ten days of receipt. The bill establishes conditions for the examination and copying of personnel records, provides a procedure for including within the file a written rebuttal where the employee disagrees with information found in the file, and requires an employer to maintain a complete file on an employee for at least three years after termination of the employee. The bill establishes penalties for an employer's failure to comply. An employer may not discharge or discriminate against an employee who asserts that an employer has violated these provisions. Penalties are provided for employers who discharge or discriminate against an employee in violation of the legislation.

H.3680 CREDIT AND DEBIT CARDS ISSUED BY FINANCIAL INSTITUTIONS

Rep. Sandifer

This bill provides that a bank or other financial organization issuing a credit or debit card may not hold or block from the underlying account or line of credit more than one hundred percent of the amount or value of a purchase or transaction entered into by the cardholder or other authorized user of the credit or debit card.

MEDICAL, MILITARY, PUBLIC AND MUNICIPAL AFFAIRS

H.3681 REINSTATEMENT OF THE CEMETERY BOARD Rep. Knotts

This bill reinstates the South Carolina Cemetery Board and further provides for the regulation of cemetery companies under the Secretary of State. The bill repeals the regulatory provisions for cemetery companies found under Chapter 55 of Title 39.

WAYS AND MEANS

H.3627 VIDEO GAMES MACHINE TAX/MOTOR VEHICLE TAX RELIEF Rep. Townsend

This bill imposes a twenty percent tax on net income from certain licensed coin-operated machines, and provides for collection and enforcement of the tax. The bill requires that the tax be credited to a Motor Vehicle Tax Relief Fund, and used to roll back school operating millage imposed on certain personal motor vehicles. Taxes levied for bonded indebtedness and payments pursuant to lease purchase agreements for capital construction are excluded, and property exempted from taxation as provided in this bill is considered taxable property for purposes of bonded indebtedness.

H.3633 ERRORS IN STATE RETIREMENT SYSTEM RECORDS Rep. Wilkins

This bill amends the *SC Code* regarding correction of an error in records of the State Retirement System by adding specific requirements that must be met before the System is obligated to correct a member's record and before the correction takes effect. The bill also adds a provision to the *SC Code* requiring that an employer's request to correct a member's record must be made within two years of the commission of the error by the employer.

H.3637 MOTOR VEHICLE REGISTRATION Rep. Kirsh

This bill provides that a nonresident owner or operator of a nonregistered motor vehicle must respond to an inquiry from the auditor of any county in which public records show the

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nonresident owns or leases real or personal property with a sworn written statement which includes information regarding any vehicle owned or operated by the non-resident. The information which must be provided by the nonresident includes a description of each vehicle; registration location for each vehicle; date each vehicle was first owned or operated by the nonresident; and an affirmation that the nonresident has not established domicile in the county. The bill also provides penalties for violation of these provisions.

H.3638 COUNTY PROHIBITION OF COIN-OPERATED/GAMING MACHINES Rep. Kirsh

This joint resolution proposes an amendment to the SC Constitution to allow a county, by ordinance and subject to majority approval of the county's voters in a regularly-scheduled election, to prohibit the operation or possession of coin-operated amusement or gaming machines or devices in that county. The joint resolution proposes that the proposed amendment be submitted to the voters at the next general election for representatives.

H.3641 DEVELOPMENT IMPACT FEES Rep. Harrison

This bill, cited as the "South Carolina Development Impact Fee Act," authorizes a qualifying county or municipality, under certain conditions, to impose a "development impact fee." As defined in the bill, a "development impact fee" or "impact fee" is a payment of money imposed as a condition of development approval to pay a proportionate share of the cost of system improvements needed to serve the people utilizing the improvements. The stated overall purpose of the bill is to avail counties and municipalities of an additional source of revenue to address growth issues.

The bill provides conditions which a governmental entity must meet before imposing an impact fee, including but not limited to preparation of a report estimating the effect of impact fees on the availability of affordable housing, and passage of an ordinance by a positive majority. The bill specifies a process which must precede adoption of such an ordinance, provides information which must be included in the ordinance, and provides for determination of the amount of the impact fee and for the effective date of the fee.

The bill allows local planning commissions (established under current law to undertake a continuing planning program for the growth, development, and redevelopment of the area within its jurisdiction) to establish a development impact fee advisory committee. The bill provides for the membership of this advisory committee and specifies the areas for which the committee's advice and recommendations are requested.

After receiving the advisory committee's recommendations, the local planning commission must recommend to the governmental entity a capital improvements plan, which the governmental entity may amend or alter. In general, the capital improvements plan identifies capital improvements for which development impact fees may be used as a funding source. The bill specifies certain information which must be included in the plan, and provides a process for adoption of an ordinance to approve it.

The bill provides for computation and payment of the impact fees, which may not exceed a proportionate share of the costs incurred by the governmental entity in providing system improvements to serve the new development. The bill also specifies structures and activities which are exempt from impact fees, and provides for administrative appeals, payment under protest, and mediation in the event of disagreement between the developer or fee payor and the governmental entity.

The bill limits the use of revenues from impact fees to system improvements within or for the benefit of the service area for which the impact fee was imposed. The bill also delineates

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circumstances under which an impact fee must be refunded, and provides the method for payment of any such refund. The bill also provides for fund sharing between the governmental entity and certain other units of government that have the responsibility of providing the service for which an impact fee may be imposed.

H.3642 PROPERTY TAX ON CERTAIN MOTOR VEHICLES Rep. Harrell

This joint resolution proposes two amendments to the SC Constitution, both proposals to be presented to the voters at the next general election for representatives. The first proposal would amend the SC Constitution so as to establish a new property tax classification for certain motor vehicles formerly taxed on an assessment equal to ten and one-half percent of fair market value, which must be assessed for property tax purposes at the rate of ten and one-half percent of the fair market value of the motor vehicle, or some lesser percentage of fair market value of the vehicle, including zero percent, that the governing body of the county establishes annually by ordinance. The second proposed amendment would allow the governing body of a county by ordinance to exempt from property tax all or a portion of the value of a motor vehicle registered in the county, and would allow the governing body to limit this exemption to specific classes of taxpayers.

H.3649 CLAIMS FOR JOB TAX CREDIT Rep. Tripp

This bill amends the statutory definition of "new job" for purposes of claiming the job tax credit by adding to the definition a job reinstated after the employer has rebuilt a facility due to involuntary conversion, by eminent domain, or condemnation, of a prior existing facility.

H.3663 PROPERTY TAX EXEMPTIONS Rep. Limehouse

This bill provides that an increase in the fair market value of owner-occupied residential property is exempt from property tax to the extent that the increase exceeds the value of permanent improvements and more than fifteen percent of the average increase in the assessed value of all taxable properties in the county in the year immediately preceding a countywide reassessment and the year of a countywide reassessment, so long as the property remains occupied by the same owner or by the owner's spouse. The bill also provides that the county assessor set the fair market value when the property is transferred, unless the transfer is between spouses.

H.3674 EXEMPTIONS FROM STATE SALES AND USE TAX Rep. Harrell

This bill exempts from the definition of "gross proceeds of sales," for purposes of the state sales and use tax, the sales price on sales which are uncollectible. The bill also provides a credit for taxes paid on uncollectible amounts, and requires that if the amount charged off is later paid in whole or in part to the taxpayer, taxes must be paid on the amounts collected.

H.3675 TAX INCREASE ON GAS AND DIESEL FUEL Rep. W. McLeod

This bill increases from sixteen cents a gallon to eighteen cents a gallon the tax on gasoline and diesel fuel, and limits the use of revenue from this increase to maintenance and repair of and improvements to the state's secondary roads. The bill also provides that if federal matching funds are available, no more than thirty percent of the fund may be used for maintenance and repair of and improvements to the state's primary roads.

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The *Legislative Update* is on the Worldwide Web. Visit the South Carolina General Assembly Home Page (www.lpittr.state.sc.us) and click on the "Quick Find Guide." On the next screen, click on "Legislative Updates." This will list all of the *Legislative Updates* by date. Click on the date you need.

SPECIAL NOTE: A cumulative index to the weekly issues of the *Legislative Update* has been added to the *Legislative Update* page on the Worldwide Web. Bills are listed in numerical order in this index. Each bill number is followed by a list of hypertext links (in chronological order) to every reference to that bill in any issue of the *Legislative Update* during the current session, 1999-2000. This is an easy way (just click on the links) to find summaries of bills introduced into the House and to follow the progress of a bill through House committees and on the floors of the House and Senate.