

2017 REGULAR SESSION

**Acts and Joint Resolutions**

of the

GENERAL ASSEMBLY  
OF THE STATE OF SOUTH CAROLINA

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Columbia, S.C. 29211

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Be it enacted by the General Assembly of the State of South Carolina:

**Medical expense policy, optional intoxicants and narcotics exclusion inapplicable**

SECTION 1. Subarticle 1, Article 3, Chapter 71, Title 38 of the 1976 Code is amended by adding:

“Section 38-71-380. (A) For purposes of this section, ‘medical expense policy’ means an accident and sickness insurance policy that provides hospital, medical, and surgical expense coverage.

(B) The provisions of Section 38-71-370(9) may not be used with respect to a medical expense policy.

(C) This section applies to policies issued or renewed after December 31, 2017.”

**Time effective**

SECTION 2. This act takes effect upon approval by the Governor.

Ratified the 15<sup>th</sup> day of May, 2017.

Approved the 19<sup>th</sup> day of May, 2017.

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**No. 43**

(R64, S61)

**AN ACT TO AMEND SECTION 1-11-720, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO ELIGIBILITY FOR PARTICIPATION IN THE STATE HEALTH PLAN, SO AS TO ALLOW EMPLOYEES AND RETIREES, AND THEIR DEPENDENTS, OF ANY POLITICAL SUBDIVISION OF THE STATE TO PARTICIPATE IN THE STATE HEALTH PLAN.**

Be it enacted by the General Assembly of the State of South Carolina:

**Participation in the State Health Plan**

SECTION 1. Section 1-11-720(A) of the 1976 Code, as last amended by Act 31 of 2011, is further amended by adding an appropriately numbered item at the end to read:

“( ) a political subdivision of the State of South Carolina, or a governmental agency or instrumentality of such a political subdivision.”

**Time effective**

SECTION 2. This act takes effect upon approval by the Governor.

Ratified the 15<sup>th</sup> day of May, 2017.

Approved the 19<sup>th</sup> day of May, 2017.

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**No. 44**

(R65, S114)

**AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 61-2-185 SO AS TO ALLOW NONPROFIT ORGANIZATIONS TO APPLY FOR SPECIAL NONPROFIT EVENT LICENSES TO ALLOW THEM TO SOLICIT AND ACCEPT DONATIONS OF ALCOHOL TO BE SOLD FOR ON-PREMISES CONSUMPTION UNDER CERTAIN CIRCUMSTANCES, TO PRESCRIBE A PROCESS FOR SUPPLIERS AND WHOLESALERS TO WORK TOGETHER TO PROVIDE DONATED ALCOHOL FOR LICENSED NONPROFIT EVENTS, TO ALLOW SUPPLIERS TO FURNISH EQUIPMENT AND TRAINED REPRESENTATIVES TO SERVE AND POUR ALCOHOL AT LICENSED NONPROFIT EVENTS, AND DEFINE NECESSARY TERMS.**

Be it enacted by the General Assembly of the State of South Carolina:

**Alcohol, special nonprofit event licenses, donations of alcohol, requirements, definitions**

SECTION 1. Chapter 2, Title 61 of the 1976 Code is amended by adding:

“Section 61-2-185. (A) A nonprofit organization may apply for a special nonprofit license. A special nonprofit event is an event for which a nonprofit organization solicits and accepts donations of alcohol to be sold for on-premises consumption. A nonprofit organization applying for a special nonprofit event license must meet the following requirements:

(1) The organization must be a nonprofit organization registered and in good standing with the South Carolina Secretary of State as a domestic nonprofit organization.

(2) The nonprofit organization must not hold a biennial permit or license issued pursuant to Title 61 for on-premises or off-premises consumption.

(3) A special nonprofit event must last no longer than seventy-two consecutive hours. For the purpose of this section, an event may take place at more than one location where the nonprofit organization has control of the premises for the special nonprofit event. For multiple locations to constitute one event, the location must be in the same county.

(4) The nonprofit organization must have a reputation for peace and good order in its community, and the principals must be of good character.

(5) The nonprofit organization must obtain a special nonprofit event license from the department. A nonprofit organization shall not be licensed to hold more than four special nonprofits in one calendar year.

(B)(1) A nonprofit organization seeking a special nonprofit event license application must submit an application, as promulgated by the department, that satisfies the requirements set forth in Section 61-2-90, and that includes notice to local law enforcement, and may require criminal background checks, together with a nonrefundable license fee of forty dollars.

(2) The department must deny an application that does not contain the information required on the application and the license fee.

(C) For purposes of this section only:

(1) ‘Alcohol’ means beer, ale, porter, and other similar malt or fermented beverages, wine not in excess of twenty-one percent alcohol, alcoholic liquors, or any other type of alcoholic beverage that contains

any amount of alcohol and is used as a beverage for human consumption. It does not include alcohol that is not registered as a brand in this State and it does not include alcohol that is made at home for home consumption.

(2) 'Supplier' means a manufacturer, producer, vintner, brewer, micro-brewer, importer, distiller, or micro-distiller of alcohol, authorized to do business in this State.

(D) For a special nonprofit event only, a supplier or wholesaler of alcohol may donate alcohol to a nonprofit organization for sale and on-premises consumption at a special nonprofit event, without violation of Section 61-4-735, Section 61-4-940, or Chapter 6, Title 61 subject to the following requirements:

(1)(a) All alcohol provided to the nonprofit organization from a supplier or a wholesaler for the special nonprofit event must be transferred through a wholesaler licensed in this State that is authorized by an applicable supplier to sell alcohol to retailers.

(b) Up to three calendar days prior to the event, the alcohol may be picked up by the nonprofit organization from the applicable wholesaler's warehouse, upon presentation of the special nonprofit event license, or the alcohol may be delivered to the event premises by the applicable wholesaler, if the nonprofit organization is in control of the event premises at the time of delivery, and upon presentation of the special nonprofit event license.

(c) Except as provided in subsection (E)(1), where applicable, the provisions of Article 13, Chapter 4, Title 61 concerning territorial agreements, operate.

(2) The wholesaler shall pay the appropriate state excise taxes to the department on the donated alcohol.

(3) A wholesaler that chooses to donate alcohol to the special nonprofit event may:

(a) provide alcohol previously purchased from the supplier and invoice the appropriate supplier for the cost of the alcohol, together with the excise taxes paid or to be paid by the wholesaler; or

(b) receive delivery of the donated alcohol from the supplier and bill the supplier for the excise tax paid or to be paid by the wholesaler.

(4) The wholesaler that is providing the alcohol must present an invoice to the nonprofit organization that includes:

(a) a listing of the types of alcohol and the alcohol brands that have been donated to the event;

(b) the wholesaler's regular price to retailers for the alcohol so donated; and

(c) the name and address of the supplier or wholesaler that has donated the alcohol.

(5) The wholesaler shall transfer the donated alcohol to the nonprofit organization only after presentation of the original special nonprofit event license, as issued by the department, and the delivery of the wholesaler's invoice to the nonprofit organization.

(6) For sales of nondonated alcohol from a wholesaler to the nonprofit organization for use and on-premises consumption at the special nonprofit event, the provisions of Section 61-4-30 and Section 61-6-1300 apply.

(7) The nonprofit organization licensed to hold the special nonprofit event is responsible for maintaining any and all invoices for alcohol donated or purchased for the event. The invoices must be available at the event upon request of the division.

(E)(1) In addition to the donations of alcohol, a nonprofit organization may solicit from and a supplier may provide, without violation of Section 61-4-735, Section 61-4-940, or Chapter 6, Title 61, the following, with or without charge, for use at a special nonprofit event:

(a) individual employees, agents, owners, or members of a supplier to pour and serve alcohol, if each of these individuals has received training from an alcohol education training program recognized by the department and posted on the department's website;

(b) point of sale advertising specialties, as defined by federal law and regulations; and

(c) equipment used to dispense alcohol for sale for on-premises consumption.

(2) A wholesaler of alcohol shall not provide individual employees, owners, or members of a wholesaler to pour or serve alcohol at a special nonprofit event. A wholesaler of alcohol is prohibited from providing any services not authorized by Section 61-4-735, Section 61-4-940, or Section 61-6-1300.

(F)(1) For brands of beer that are registered in the State, but have not yet been assigned to a wholesaler for the territory where the special nonprofit event is to be held, a producer or importer may deliver the beer to a willing wholesaler who operates in the territory where the event is to be held, along with the appropriate excise tax and proof that the brand has been registered in the State, and the wholesaler may provide such delivered beer for the event.

(2) Brewpubs may donate beer that is brewed at the brewpub to a nonprofit organization holding a special nonprofit event pursuant to the requirements of this section. The brewpub must deliver the donated



beer, together with the appropriate state excise tax, to a willing wholesaler that operates in the territory where the special nonprofit event is to be held and the wholesaler shall transfer the donated beer to the nonprofit organization in accordance with the provisions of this section.

(3) Donations pursuant to this subsection and delivery by the producer, importer, or brewpub shall not operate as an assignment of territory to the wholesaler and shall not be considered violations of Article 13 or Article 17, Chapter 4, Title 61.”

#### **Time effective**

SECTION 2. This act becomes effective six months after approval by the Governor.

Ratified the 15<sup>th</sup> day of May, 2017.

Approved the 19<sup>th</sup> day of May, 2017.

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#### **No. 45**

(R66, S116)

**AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 61-2-145 SO AS TO REQUIRE THAT A PERSON PERMITTED OR LICENSED TO SELL BEER, WINE, OR ALCOHOLIC LIQUORS FOR ON-PREMISES CONSUMPTION SHALL MAINTAIN LIABILITY INSURANCE WITH COVERAGE OF AT LEAST ONE MILLION DOLLARS DURING THE PERIOD OF THE PERMIT OR LICENSE.**

Be it enacted by the General Assembly of the State of South Carolina:

**Alcoholic beverages, liability insurance coverage required, on-premises consumption**

SECTION 1. Chapter 2, Title 61 of the 1976 Code is amended by adding:

“Section 61-2-145. (A) In addition to all other requirements, a person licensed or permitted to sell alcoholic beverages for on-premises consumption, which remains open after five o’clock p.m. to sell alcoholic beverages for on-premises consumption, is required to maintain a liquor liability insurance policy or a general liability insurance policy with a liquor liability endorsement for a total coverage of at least one million dollars during the period of the biennial permit or license. Failure to maintain this coverage constitutes grounds for suspension or revocation of the permit or license.

(B) The department shall add this requirement to all applications and renewals for biennial permits or licenses to sell alcoholic beverages for on-premises consumption, in which the permittees and licensees remain open and sell alcoholic beverages for on-premises consumption after five o’clock p.m. Each applicant or person renewing its license or permit, to whom this requirement applies, shall provide the department with documentation of a liquor liability insurance policy or a general liability insurance policy with a liquor liability endorsement in the required amounts.

(C) Each insurer writing liquor liability insurance policies or general liability insurance policies with a liquor liability endorsement to a person licensed or permitted to sell alcoholic beverages for on-premises consumption, in which the person so licensed or permitted remains open to sell alcoholic beverages for on-premises consumption after five o’clock p.m., must notify the department in a manner prescribed by department regulation of the lapse or termination of the liquor liability insurance policy or the general liability insurance policy with a liquor liability endorsement.

(D) For the purposes of this section, the term ‘alcoholic beverages’ means beer, wine, alcoholic liquors, and alcoholic liquor by the drink as defined in Chapter 4, Title 61, and Chapter 6, Title 61.”

### **Time effective**

SECTION 2. This act takes effect on July 1, 2017, and any person applying for a new biennial permit or license for on-premises consumption under Title 61 after this date must comply with the provisions of this act at the time of the application. A person renewing a biennial permit or license under Title 61 after this date must comply with the provisions of this act at the time of the renewal.

Ratified the 15<sup>th</sup> day of May, 2017.

Approved the 19<sup>th</sup> day of May, 2017.

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No. 46

(R67, S173)

**AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 23-23-55 SO AS TO PROVIDE THAT A CLASS 1-LE, CLASS 2-LCO, OR CLASS 3-SLE LAW ENFORCEMENT OFFICER MUST COMPLETE CONTINUING LAW ENFORCEMENT EDUCATION CREDITS IN MENTAL HEALTH OR ADDICTIVE DISORDERS DURING THE RECERTIFICATION PERIOD, AND TO PROVIDE THE CONTENT OF THE TRAINING; TO AMEND SECTION 23-23-80, AS AMENDED, RELATING TO THE LAW ENFORCEMENT TRAINING COUNCIL AND CRIMINAL JUSTICE ACADEMY, SO AS TO PROVIDE THAT THE LAW ENFORCEMENT TRAINING COUNCIL IS AUTHORIZED TO PROVIDE TRAINING FOR OFFICERS TO RECOGNIZE TRAUMA AND STRESS-RELATED DISORDERS IN OTHER OFFICERS AND RECOMMEND PARTICIPATION IN THE LAW ENFORCEMENT ASSISTANCE PROGRAM FOR OFFICERS INVOLVED IN AN INCIDENT RESULTING IN DEATH OR SERIOUS BODILY INJURY; AND TO AMEND SECTION 23-3-65, RELATING TO THE LAW ENFORCEMENT ASSISTANCE PROGRAM, SO AS TO PROVIDE THAT ONE PURPOSE OF THE PROGRAM IS TO PROVIDE COUNSELING SERVICES TO OFFICERS EXPERIENCING STRESS-RELATED DISORDERS.**

Be it enacted by the General Assembly of the State of South Carolina:

**Continuing law enforcement education credits**

SECTION 1. Chapter 23, Title 23 of the 1976 Code is amended by adding:

“Section 23-23-55. A law enforcement officer who is Class 1-LE, Class 2-LCO, or Class 3-SLE certified in this State is required to complete Continuing Law Enforcement Education Credits (CLEEC) in mental health or addictive disorders over a three-year recertification period. The number of required annual CLEEC hours in mental health or addictive disorders shall be determined by the council, but must be included in the forty CLEEC hours required over the three-year recertification period. The training must be provided or approved by the academy and must include, but is not limited to, the following curriculum: crime scene response, crisis situation response in which an individual is experiencing a mental health or addictive disorder crisis, Fourth Amendment issues, incident report writing, determination of primary aggressors, dual arrests, victim and offender dynamics, victims’ resources, victims’ rights issues, interviewing techniques, mental health courts and mental health court programs, offender treatment programs, and recognition of special needs populations.”

### **Trauma and stress-related disorder training**

SECTION 2. Section 23-23-80 of the 1976 Code, as last amended by Act 225 of 2014, is further amended to read:

“Section 23-23-80. The South Carolina Law Enforcement Training Council is authorized to:

(1) receive and disburse funds, including those hereinafter provided in this chapter;

(2) accept any donations, contributions, funds, grants, or gifts from private individuals, foundations, agencies, corporations, or the state or federal governments, for the purpose of carrying out the programs and objectives of this chapter;

(3) consult and cooperate with counties, municipalities, agencies, or official bodies of this State or of other states, other governmental agencies, and with universities, colleges, junior colleges, and other institutions, concerning the development of police training schools, programs, or courses of instruction, selection, and training standards, or other pertinent matters relating to law enforcement;

(4) publish or cause to be published manuals, information bulletins, newsletters, and other materials to achieve the objectives of this chapter;

(5) make such regulations as may be necessary for the administration of this chapter, including the issuance of orders directing public law enforcement agencies to comply with this chapter and all regulations so promulgated;

(6) certify and train qualified candidates and applicants for law enforcement officers and provide for suspension, revocation, or restriction of the certification, in accordance with regulations promulgated by the council;

(7) require all public entities or agencies that employ or appoint law enforcement officers to provide records in the format prescribed by regulation of employment information of law enforcement officers;

(8) provide by regulation for mandatory continued training of certified law enforcement officers, this training to be completed within each of the various counties requesting this training on a regional basis; and

(9) provide by regulation for mandatory continued training of certified law enforcement officers to recognize post-traumatic stress disorder and other trauma and stress-related disorders in other officers. The council also is authorized to establish a mechanism to recommend participation in the South Carolina Law Enforcement Assistance Program (SC LEAP) for officers involved in an incident resulting in death or serious bodily injury.”

#### **Trauma and stress-related disorder counseling**

SECTION 3. Section 23-3-65 of the 1976 Code is amended to read:

“Section 23-3-65. The South Carolina Law Enforcement Division shall administer the South Carolina Law Enforcement Assistance Program (SC LEAP). The purpose of this program includes, but is not limited to, responding to and providing counseling services to all requesting law enforcement agencies and departments in the State which have experienced deaths or other tragedies involving law enforcement officers or other employees as well as providing counseling services to law enforcement officers experiencing post-traumatic stress disorder and other trauma and stress-related disorders, and providing any other critical incident support services for all South Carolina law enforcement agencies and departments upon their request. The SC LEAP also may utilize local critical incident support service providers including, but not limited to, chaplains, mental health professionals, and law enforcement peers. In consultation with the professional staff of the SC LEAP and the South Carolina Law Enforcement Chaplains’ Association, the South Carolina Criminal Justice Academy shall develop a course of training for the critical incident stress debriefing and peer support team.”

**Time effective**

SECTION 4. This act takes effect upon approval by the Governor.

Ratified the 15<sup>th</sup> day of May, 2017.

Approved the 19<sup>th</sup> day of May, 2017.

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**No. 47**

(R68, S234)

**AN ACT TO AMEND SECTION 44-61-160, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE CONFIDENTIALITY OF INFORMATION AND DATA COLLECTED OR PREPARED BY EMERGENCY MEDICAL SERVICES, SO AS TO MAKE THE IDENTITIES OF PATIENTS AND EMERGENCY MEDICAL TECHNICIANS SUBJECT TO SUBPOENA IN JUDICIAL PROCEEDINGS; AND TO AMEND SECTION 44-61-340, AS AMENDED, RELATING TO THE CONFIDENTIALITY OF INFORMATION AND DATA COLLECTED AS PART OF THE EMERGENCY MEDICAL SERVICES FOR CHILDREN PROGRAM, SO AS TO MAKE CONFORMING CHANGES.**

Be it enacted by the General Assembly of the State of South Carolina:

**Emergency medical services, subpoena exception to data confidentiality**

SECTION 1. Section 44-61-160(A) of the 1976 Code, as last amended by Act 157 of 2010, is further amended to read:

“(A)The identities of patients and emergency medical technicians mentioned, referenced, or otherwise appearing in information and data collected or prepared by emergency medical services must be treated as confidential. The identities of these persons are not available to the public under the Freedom of Information Act. However, the identities of patients and emergency medical technicians and information and data collected or prepared by emergency medical services are subject to

subpoena in any administrative, civil, or criminal proceeding and may be released by court order. An individual in attendance at a proceeding must not be required to testify as to the identity of a patient except pursuant to court order. A person, medical facility, or other organization providing or releasing information in accordance with this article must not be held liable in a civil or criminal action for divulging confidential information unless the individual or organization acted in bad faith or with malicious purpose. However, the name of emergency medical technicians, and information and data collected or prepared by emergency medical services must be released to the patient upon his request. In the event the patient is incapacitated or deceased, the name of emergency medical technicians, information, and data collected or prepared by emergency medical services must be released to the patient's immediate family, the patient's legal guardian, or the patient's legal representative upon their request."

**Emergency Medical Services for Children Program, subpoena exception to data confidentiality**

SECTION 2. Section 44-61-340(A) of the 1976 Code, as last amended by Act 157 of 2010, is further amended to read:

“(A)The identities of patients and emergency medical technicians mentioned, referenced, or otherwise appearing in information or data collected or prepared by the EMSC Program must be treated as confidential. The identities of these persons are not available to the public under the Freedom of Information Act. However, the identities of patients and emergency medical technicians and information and data collected or prepared by emergency medical services are subject to subpoena in any administrative, civil, or criminal proceeding and may be released by court order. An individual in attendance at a proceeding shall not be required to testify as to the identity of a patient except pursuant to court order. A person, medical facility, or other organization providing or releasing information in accordance with this article must not be held liable in a civil or criminal action for divulging confidential information unless the individual or organization acted in bad faith or with malicious purpose. However, the name of emergency medical technicians, and information and data collected or prepared by emergency medical services must be released to the patient or the patient's legal guardian upon request. In the event the patient is incapacitated or deceased, the name of emergency medical technicians, information, and data collected or prepared by emergency medical

services must be released to the patient's immediate family, the patient's legal guardian, or the patient's legal representative upon their request."

**Time effective**

SECTION 3. This act takes effect upon approval by the Governor.

Ratified the 15<sup>th</sup> day of May, 2017.

Approved the 19<sup>th</sup> day of May, 2017.

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**No. 48**

(R69, S254)

**AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, SO AS TO ENACT THE "OWN RISK AND SOLVENCY ASSESSMENT ACT" BY ADDING ARTICLE 8 TO CHAPTER 13, TITLE 38 SO AS TO EXPRESS THE PURPOSE OF THIS ACT, TO DEFINE NECESSARY TERMS, TO REQUIRE AN INSURER TO MAINTAIN A RISK MANAGEMENT FRAMEWORK FOR CERTAIN PURPOSES, TO REQUIRE AN INSURER OR INSURANCE GROUP OF WHICH AN INSURER IS A MEMBER TO CONDUCT AN OWN RISK AND SOLVENCY ASSESSMENT (ORSA) ON NO LESS THAN AN ANNUAL BASIS, TO REQUIRE AN INSURER OR INSURANCE GROUP TO SUBMIT AN ORSA REPORT TO THE DIRECTOR OF THE DEPARTMENT OF INSURANCE AND TO DESCRIBE WHAT THE REPORT MUST CONTAIN, TO PROVIDE EXEMPTIONS FROM THE REPORTING PROVISIONS IN CERTAIN CIRCUMSTANCES AND TO ALLOW AN INSURER TO APPLY FOR A WAIVER UNDER CERTAIN CIRCUMSTANCES, TO ESTABLISH THAT THE ORSA REPORT BE PREPARED IN A MANNER CONSISTENT WITH THE ORSA GUIDANCE MANUAL, TO PROVIDE THAT ALL DOCUMENTS, MATERIALS, AND INFORMATION CREATED UNDER THE OWN RISK AND SOLVENCY ASSESSMENT ACT ARE CONFIDENTIAL, TO PROHIBIT THE DIRECTOR OR ANYONE WHO RECEIVES ORSA-RELATED INFORMATION FROM TESTIFYING IN A PRIVATE CIVIL**



**ACTION CONCERNING THE CONFIDENTIAL INFORMATION, TO PERMIT THE DIRECTOR TO TAKE CERTAIN ACTIONS CONCERNING HIS REGULATORY DUTIES, TO PROVIDE A PENALTY FOR AN INSURER WHO FAILS TO FILE THE ORSA SUMMARY REPORT, AND TO SET AN EFFECTIVE DATE FOR THE PROVISIONS OF THIS ACT; AND TO AMEND SECTION 38-21-10, AS AMENDED, RELATING TO DEFINED TERMS FOR THE INSURANCE HOLDING COMPANY REGULATORY ACT, SO AS TO DEFINE THE TERM "SUPERVISORY COLLEGE".**

Be it enacted by the General Assembly of the State of South Carolina:

**Own Risk and Solvency Assessment, submission requirements, exemptions, confidentiality, penalties**

SECTION 1. Chapter 13, Title 38 of the 1976 Code is amended by adding:

“Article 8

Own Risk and Solvency Assessment

Section 38-13-810. (A) The purpose of this act is to provide the requirements for maintaining a risk management framework and completing an Own Risk and Solvency Assessment (ORSA) and provide guidance and instructions for filing an ORSA Summary Report with the insurance director of this State.

(B) The requirements of this article apply to all insurers domiciled in this State unless exempt pursuant to Section 38-13-860.

(C) The General Assembly finds and declares that an ORSA Summary Report contains confidential and sensitive information related to an insurer or insurance group's identification of risks material and relevant to the insurer or insurance group filing the report. This information includes proprietary and trade secret information that has the potential for harm and competitive disadvantage to the insurer or insurance group if the information is made public. It is the intent of the General Assembly that:

(1) an ORSA Summary Report, including all documents, materials, or other information related to its preparation, is a confidential document filed with the director and only may be shared as stated in this article;

(2) an ORSA Summary Report will be used to assist the director in the performance of his duties; and

(3) in no event may an ORSA Summary Report and its accompanying documents be subject to public disclosure.

(D) Nothing in this section prohibits an order from a court of competent jurisdiction requiring an insurance company that is subject to this article to produce an ORSA Summary Report.

Section 38-13-820. For purposes of this article, the term:

(1) 'Director' means the Director of the Department of Insurance.

(2) 'Insurance group' means insurers and affiliates included within an insurance holding company system.

(3) 'Insurer' has the same meaning as set forth in Section 38-1-20, except the term does not include agencies, authorities, or instrumentalities of the United States, its possessions and territories, the Commonwealth of Puerto Rico, the District of Columbia, or a state or political subdivision of a state.

(4) 'Own Risk and Solvency Assessment' or 'ORSA' means a confidential internal assessment, appropriate to the nature, scale, and complexity of an insurer or insurance group, conducted by that insurer or insurance group of the material and relevant risks associated with the insurer or insurance group's current business plan, and the sufficiency of capital resources to support those risks.

(5) 'ORSA Guidance Manual' means the current version of the Own Risk and Solvency Assessment Guidance Manual developed and adopted by the National Association of Insurance Commissioners (NAIC) and as amended from time to time. A change in the ORSA Guidance Manual is effective on January first of the following calendar year in which the changes have been adopted by the NAIC.

(6) 'ORSA Summary Report' means a confidential high-level summary of an insurer or insurance group's ORSA.

Section 38-13-830. An insurer shall maintain a risk management framework to assist the insurer with identifying, assessing, monitoring, managing, and reporting on its material and relevant risks. This requirement may be satisfied if the insurance group of which the insurer is a member maintains a risk management framework applicable to the operations of the insurer.

Section 38-13-840. Subject to Section 38-13-860, an insurer, or the insurance group of which the insurer is a member, regularly shall conduct an ORSA consistent with a process comparable to the ORSA

Guidance Manual. The ORSA must be conducted no less than annually but also when significant changes to the risk profile of the insurer or the insurance group of which the insurer is a member occur.

Section 38-13-850. (A) Upon the director's request, and no more than once each year, an insurer shall submit to the director an ORSA Summary Report or a combination of reports that contain the information described in the ORSA Guidance Manual, applicable to the insurer and/or the insurance group of which it is a member. Notwithstanding a request from the director, if the insurer is a member of an insurance group, the insurer shall submit the reports required by this subsection if the director is the lead state director of the insurance group as determined by the procedures within the Financial Analysis Handbook adopted by the National Association of Insurance Commissioners.

(B) The reports must include a signature of the insurer or insurance group's chief risk officer or other executive having responsibility for the oversight of the insurer's enterprise risk management process attesting to the best of his belief and knowledge that the insurer applies the enterprise risk management process described in the ORSA Summary Report and that a copy of the report has been provided to the insurer's board of directors or other appropriate committees.

(C) An insurer may comply with subsection (A) by providing the most recent and substantially similar reports provided by the insurer or another member of an insurance group of which the insurer is a member to the commissioner of another state or to a supervisor or regulator of a foreign jurisdiction, if that report provides information that is comparable to the information described in the ORSA Guidance Manual. A report in a language other than English must be accompanied by a translation of that report into the English language.

Section 38-13-860. (A) An insurer is exempt from the requirements of this article if the:

(1) insurer has annual direct written and unaffiliated assumed premiums, including international direct and assumed premium but excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, of less than five hundred million dollars; and

(2) insurance group of which the insurer is a member has annual direct written and unaffiliated assumed premiums including international direct and assumed premiums, but excluding premiums

reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, of less than one billion dollars.

(B) If an insurer qualifies for exemption pursuant to item (1) of subsection (A), but the insurance group of which the insurer is a member does not qualify for exemption pursuant to item (2) of subsection (A), the ORSA Summary Report that is required pursuant to Section 38-13-850 must include every insurer within the insurance group. This requirement may be satisfied by the submission of more than one ORSA Summary Report for a combination of insurers provided the combination of reports includes every insurer within the insurance group.

(C) If an insurer does not qualify for exemption pursuant to item (1) of subsection (A), but the insurance group of which it is a member qualifies for exemption pursuant to item (2) of subsection (A), the only ORSA Summary Report that may be required pursuant Section 38-13-850 is the report applicable to that insurer.

(D) An insurer that does not qualify for exemption pursuant to subsection (A) may apply to the director for a waiver from the requirements of this article based upon unique circumstances. In deciding whether to grant the insurer's request for waiver, the director may consider the type and volume of business written, ownership and organizational structure, and any other factor the director considers relevant to the insurer or insurance group of which the insurer is a member. If the insurer is part of an insurance group with insurers domiciled in more than one state, the director shall coordinate with the lead state commissioner and with the other domiciliary commissioners in considering whether to grant the insurer's request for a waiver.

(E) Notwithstanding the exemptions stated in this section, the director may require an insurer to maintain a risk management framework, conduct an ORSA, and file an ORSA Summary Report:

(1) based on unique circumstances including, but not limited to, the type and volume of business written, ownership, and organizational structure, federal agency requests, and international supervisor requests;

(2) if the insurer has risk-based capital for a company action level event as set forth in Section 38-9-330, meets one or more of the standards of an insurer deemed to be in hazardous financial condition as defined in Section 38-5-120 or otherwise exhibits qualities of a troubled insurer as determined by the director.

(F) If an insurer that qualifies for an exemption pursuant to subsection (A) subsequently no longer qualifies for that exemption due to premium changes as reflected in the insurer's most recent annual statement or in the most recent annual statements of the insurers within the insurance group of which the insurer is a member, the insurer has one

year following the year the threshold is exceeded to comply with the requirements of this article.

Section 38-13-870. (A) The ORSA Summary Report must be prepared consistent with the ORSA Guidance Manual, subject to the requirements of subsection (B). Documentation and supporting information must be maintained and made available upon examination or upon request by the director.

(B) The review of the ORSA Summary Report and additional requests for information must be made using similar procedures currently used in the analysis and examination of multistate or global insurers and insurance groups.

Section 38-13-880. (A) Documents, materials, or other information, including the ORSA Summary Report, in the possession or control of the department that are obtained by, created by, or disclosed to the director or another person under this article, are recognized by this State as being proprietary and to contain trade secrets. All such documents, materials, or other information are confidential by law and privileged, are not subject to Section 30-4-10, subpoena, discovery, and are not admissible as evidence in a private civil action. However, the director is authorized to use the documents, materials, or other information in furtherance of a regulatory or legal action brought as a part of the director's official duties. The director may not otherwise make the documents, materials, or other information public without the prior written consent of the insurer.

(B) The director or a person who received documents, materials, or other ORSA-related information, through examination or otherwise, while acting under the authority of the director or with whom such documents, materials, or other information are shared pursuant to this article may not be permitted or required to testify in a private civil action concerning confidential documents, materials, or information subject to subsection (A).

(C) To assist in the performance of his regulatory duties, the director:

(1) may, upon request, share documents, materials, or other ORSA-related information, including the confidential and privileged documents, materials, or information subject to subsection (A), including proprietary and trade secret documents and materials with other state, federal, and international financial regulatory agencies, including members of a supervisory college as defined in Section 38-21-10(10), with the NAIC and with any third-party consultants designated by the director, provided that the recipient agrees in writing

to maintain the confidentiality and privileged status of the ORSA-related documents, materials, or other information and has verified in writing the legal authority to maintain confidentiality;

(2) may receive documents, materials, or other ORSA-related information, including otherwise confidential and privileged documents, materials, or information, including proprietary and trade-secret information or documents, from regulatory officials of other foreign or domestic jurisdictions, including members of a supervisory college as defined in Section 38-21-10(10) and from the NAIC, and shall maintain as confidential or privileged any documents, materials, or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material, or information; and

(3) shall enter into a written agreement with the NAIC or a third-party consultant governing sharing and use of information provided pursuant to this article, consistent with this subsection that:

(a) specifies procedures and protocols regarding the confidentiality and security of information shared with the NAIC or a third-party consultant pursuant to this article, including procedures and protocols for sharing by the NAIC with other state regulators from states in which the insurance group has domiciled insurers, provided, the agreement must provide that the recipient agrees in writing to maintain the confidentiality and privileged status of the ORSA-related documents, materials, or other information and has verified in writing the legal authority to maintain confidentiality;

(b) specifies that ownership of information shared with the NAIC or a third-party consultant pursuant to this article remains with the director and that the NAIC's or a third-party consultant's use of the information is subject to the direction of the director;

(c) prohibits the NAIC or third-party consultant from storing the information in a permanent database after the underlying analysis is completed;

(d) requires prompt notice to be given to an insurer whose confidential information in the possession of the NAIC or a third-party consultant pursuant to this article is subject to a request or subpoena to the NAIC or a third-party consultant for disclosure or production;

(e) requires the NAIC or a third-party consultant to consent to intervention by an insurer in a judicial or administrative action in which the NAIC or a third-party consultant may be required to disclose confidential information about the insurer shared with the NAIC or a third-party consultant pursuant to this article; and

(f) provides for the insurer's written consent in the case of an agreement involving a third-party consultant.

(D) The sharing of information and documents by the director pursuant to this article does not constitute a delegation of regulatory authority or rulemaking. The director is solely responsible for the administration, execution, and enforcement of the provisions of this article.

(E) No waiver of an applicable privilege or claim of confidentiality in the documents, proprietary, and trade-secret materials or other ORSA-related information may occur as a result of disclosure of this ORSA-related information or documents to the director under this section or as a result of sharing authorized in this article.

(F) Documents, materials, or other information in the possession or control of the NAIC or a third-party consultant pursuant to this article are:

- (1) confidential by law and privileged;
- (2) not subject to Section 30-4-10;
- (3) not subject to subpoena; and
- (4) not subject to discovery or admissible as evidence in a private civil action.

Section 38-13-890. An insurer who, without just cause, fails to timely file the ORSA Summary Report shall, after notice and hearing, pay a penalty of one thousand dollars for each day's delay, to be recovered by the director. The penalty funds recovered must be paid into the General Revenue Fund of this State. The maximum penalty under this section is thirty thousand dollars. The director may reduce the penalty if the insurer demonstrates to the director that the imposition of the penalty would constitute a financial hardship to the insurer.

Section 38-13-900. The requirements of this act become effective on January 1, 2018. The first filing of an ORSA Summary Report must take place in 2018 pursuant to Section 38-13-850."

### **Supervisory College defined**

SECTION 2. Section 38-21-10 of the 1976 Code, as last amended by Act 2 of 2015, is further amended to read:

"Section 38-21-10. In this chapter, unless the context otherwise requires:

(1) An 'affiliate' of, or person 'affiliated' with, a specific person means a person who directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with the person specified.

(2) The term 'control' (including the terms 'controlling', 'controlled by', and 'under common control with') means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control is presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing ten percent or more of the voting securities of any other person. This presumption may be rebutted by a showing made in the manner provided by Section 38-21-220 that control does not exist in fact. The director or his designee may determine, after furnishing all persons in interest notice and opportunity to be heard and making specific findings of fact to support his determination, that control exists in fact, notwithstanding the absence of a presumption to that effect.

(3) An 'insurance holding company system' consists of two or more affiliated persons, one or more of which is an insurer.

(4) The term 'insurer' has the same meaning as set forth in Section 38-1-20 except that it does not include (a) agencies, authorities, or instrumentalities of the United States, its possessions and territories, the Commonwealth of Puerto Rico, the District of Columbia, or a state or political subdivision of a state or (b) nonprofit medical and hospital service associations.

(5) A 'person' means an individual, a corporation, a partnership, an association, a joint stock company, a trust, an unincorporated organization, any similar entity, or any combination of the foregoing acting in concert.

(6) A 'securityholder' of a specified person is one who owns any security of that person, including common stock, preferred stock, debt obligations, and any other security convertible into or evidencing the right to acquire any of the foregoing.

(7) A 'subsidiary' of a specified person is an affiliate controlled by that person directly or indirectly through one or more intermediaries.

(8) The term 'voting security' includes any security convertible into or evidencing a right to acquire a voting security.

(9) 'Enterprise risk' means an activity, circumstance, event, or series of events involving one or more affiliates of an insurer that, if not



remedied promptly, likely is to have a material adverse effect upon the financial condition or liquidity of the insurer or its insurance holding company system as a whole, including, but not limited to, anything that would cause the insurer's risk-based capital to fall into company action level as provided in Section 38-9-330 or would cause the insurer to be in hazardous financial condition as provided in Section 38-5-120.

(10) A 'supervisory college' is a meeting or joint meeting of insurance regulators or supervisors with company officials where the topic of discussion is regulatory oversight of one specific insurance group that is writing significant amounts of insurance in other jurisdictions. It may involve detailed discussions about financial data, corporate governance, and enterprise risk management functions. Supervisory colleges are intended to facilitate the oversight of internationally active insurance companies at the group level."

### **Severability**

SECTION 3. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this act, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

### **Time effective**

SECTION 4. This act takes effect on January 1, 2018.

Ratified the 15<sup>th</sup> day of May, 2017.

Approved the 19<sup>th</sup> day of May, 2017.

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## No. 49

(R70, S271)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 24-3-220 SO AS TO ESTABLISH A PROCEDURE TO ALLOW AN INMATE WHO THE DEPARTMENT HAS DETERMINED IS NOT A SECURITY RISK AND CONFINED IN A DEPARTMENT OF CORRECTIONS' FACILITY TO ATTEND THE FUNERAL SERVICE OF CERTAIN INDIVIDUALS OR VISIT CERTAIN INDIVIDUALS WHILE THEY ARE HOSPITALIZED, TO PROVIDE FOR THE TRANSPORTATION OF THE INMATE AND TO PROVIDE THAT UNDER CERTAIN CIRCUMSTANCES, THE DEPARTMENT SHALL NOTIFY THE VICTIM AND RELATIVES OF THE VICTIMS OF THE CRIME COMMITTED BY THE INMATE; AND TO AMEND SECTION 24-3-210, RELATING TO FURLOUGHS FOR QUALIFIED INMATES, SO AS TO DELETE THE PROVISION THAT ALLOWS AN INMATE TO ATTEND THE FUNERAL OF CERTAIN PERSONS.

Be it enacted by the General Assembly of the State of South Carolina:

**Inmate privileges**

SECTION 1. Article 1, Chapter 3, Title 24 of the 1976 Code is amended by adding:

“Section 24-3-220. (A) Notwithstanding another provision of law, when the parent or parent substitute identified on an inmate’s visitation list, sibling, spouse, child, grandparent, or grandchild of an inmate becomes seriously ill to the point of imminent death, or dies, and when the department has determined that there is no security risk to the public or institution, an inmate must be offered the choice either to attend the person’s viewing or funeral service or, prior to the person’s death, to visit the person in the hospital. The location of the viewing, funeral, or hospital visit must be in South Carolina.

(B) The department must verify the person’s relationship to the inmate and the person’s illness or death.

(C) The department shall provide the necessary security and transportation for the inmate. The department also may engage the

services of the sheriff or any other certified law enforcement officer in order to provide the necessary security and transportation for the inmate. The department, sheriff, or other certified law enforcement officer that provides security and transportation for the inmate may collect the actual cost for security and transportation. The charge may not exceed the actual expense incurred by the department, sheriff, or other law enforcement agency. The charge must be collected in advance from a third party on behalf of the inmate or, if no third party pays, through a deduction from the inmate's trust account.

(D) When applicable, the department shall notify the victim of the crime of which the inmate was convicted, or adjudicated guilty of committing, and notify the relatives of the victim who have applied for notification, as provided in Section 16-3-1530.”

### **Inmate privileges**

SECTION 2. Section 24-3-210(A)(5) of the 1976 Code is amended to read:

“(5) visit a spouse, child (including stepchild, adopted child, or child as to whom the prisoner, though not a natural parent, has acted in the place of a parent), parent (including a person, though not a natural parent, who has acted in the place of a parent), brother, or sister.”

### **Time effective**

SECTION 3. This act takes effect upon approval by the Governor.

Ratified the 15<sup>th</sup> day of May, 2017.

Approved the 19<sup>th</sup> day of May, 2017.

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### **No. 50**

(R71, S275)

**AN ACT TO AMEND SECTION 61-4-1515, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO BREWERIES, SAMPLES AND SALES FOR ON- AND OFF-PREMISES CONSUMPTION, SO AS TO PROVIDE THAT**

**A BREWERY BREWING AND SELLING BEER ON ITS PERMITTED PREMISES IN THIS STATE MAY APPLY FOR A PERMIT TO SELL ALCOHOLIC LIQUOR BY THE DRINK FOR CONSUMPTION WITHIN A SPECIFIED AREA UNDER CERTAIN CONDITIONS; AND TO AMEND SECTION 61-4-1720, RELATING TO BREWPUB PERMITS IN LIEU OF OTHER REQUIRED PERMITS, SO AS TO PROVIDE THAT A BREWPUB THAT BECOMES A BREWERY MUST RELINQUISH ITS BREWPUB PERMIT IN ACCORDANCE WITH THE REQUIREMENTS OF SECTION 61-4-1515.**

Be it enacted by the General Assembly of the State of South Carolina:

**Breweries, ability to apply for permit to sell alcoholic liquor by the drink under certain circumstances**

SECTION 1. Section 61-4-1515 of the 1976 Code, as last amended by Act 223 of 2014, is further amended to read:

“Section 61-4-1515. (A) A brewery permitted in this State is authorized to offer samples of beer to consumers on its permitted premises, provided that the beer is brewed on the permitted premises with an alcoholic content of twelve percent by weight, or less, subject to the following conditions:

(1) sales to or samplings by consumers must be held in conjunction with a tour by the consumer of the permitted premises and the entire brewing process utilized at the permitted premises;

(2) sales or samplings shall not be offered or made to, or allowed to be offered, made to, or consumed by an intoxicated person or a person who is under the age of twenty-one;

(3)(a) no more than a total of forty-eight ounces of beer brewed at the permitted premises, including amounts of samples offered and consumed with or without cost, shall be sold to a consumer for on-premises consumption within a twenty-four hour period; and

(b) of that forty-eight ounces of beer available to be sold to a consumer within a twenty-four hour period, no more than sixteen ounces of beer with an alcoholic weight of above eight percent, including any samples offered and consumed with or without cost, shall be sold to a consumer for on-premises consumption within a twenty-four hour period;

(4) a brewery must develop and use a system to monitor the amounts and types of beer sampled or sold to a consumer for on-premises consumption;

(5) a brewery must sell the beer at the permitted premises at a price approximating retail prices generally charged for identical beverages in the county where the permitted premises are located;

(6) a brewery must remit appropriate taxes to the Department of Revenue for beer sales in an amount equal to and in a manner required for excise taxes assessed by the department. A brewery also must remit appropriate sales and use taxes and local hospitality taxes;

(7) a brewery must post information that states the alcoholic content by weight of the various types of beer available in the brewery and the penalties for convictions for:

- (a) driving under the influence;
- (b) unlawful transport of an alcoholic container; and
- (c) unlawful transfer of alcohol to minors.

And, the information shall be in signage that must be posted at each entrance, each exit, and in places in a brewery seen during a tour;

(8) a brewery must provide department or DAODAS approved alcohol enforcement training for the employees who serve beer on the permitted premises to consumers for on-premises consumption, so as to prevent and prohibit unlawful sales, transfer, transport, or consumption of beer by persons who are under the age of twenty-one or who are intoxicated; and

(9) a brewery must maintain a liquor liability insurance policy or a general liability insurance policy with a liquor liability endorsement in the amount of at least one million dollars for the biennial period for which it is permitted. Within ten days of receiving its biennial permit, a brewery must send proof of this insurance to the State Law Enforcement Division and to the Department of Revenue, where the proof of insurance information shall be retained with the department's alcohol beverage licensing section.

(B)(1) In addition to the sampling and sales provisions set forth in subsection (A), a brewery permitted in this State is authorized to sell beer produced on its permitted premises to consumers on site for on-premises consumption within an area of its permitted and licensed premises approved by the rules and regulations of the Department of Health and Environmental Control governing eating and drinking establishments and other food service establishments. These establishments also may apply for a retail on-premises consumption permit for the sale of beer and wine not produced on the licensed premises that has been purchased

from a wholesaler through the three-tier distribution chain set forth in Sections 61-4-735 and 61-4-940.

(2) In addition to a retail on-premises consumption permit for the sale of beer and wine as authorized in this subsection, a brewery that has a Department of Health and Environmental Control approved and licensed food establishment on its premises as provided in subsection (B)(1) may apply for a license to sell alcoholic liquor by the drink for on-premises consumption within a specified area of its licensed or permitted premises physically partitioned from the brewing operation and designated for the purpose of engaging substantially and primarily in the preparation and serving of meals. The brewery must:

(a) maintain compliance with all provisions of Section 61-6-1610 and all other provisions of Chapter 6 regulating the purchase and sale by food establishments of alcoholic liquor by the drink for on-premises consumption not inconsistent with other provisions of this section;

(b) not sell or allow the consumption of alcoholic liquor by the drink on that part of the brewery's premises designated and permitted for the brewing operation;

(c) maintain the books, records, and bank accounts of the restaurant operation separately from the books, records, and bank accounts of the brewing operation, and allocate expenses common to both operations in a manner the brewery considers reasonable, when applicable; and

(d) maintain a physical partition between the brewing and food establishment operations. The physical partition may be a permanent wall or a divider permanently affixed to the premises in a manner that the general public may not freely enter the brewing operation, and may contain a door or doors which remain locked during hours when the brewery is not in operation.

(C) The department shall terminate and a brewery shall surrender each permit and license issued to the brewery pursuant to subsection (B) immediately following inspection, determination, and report by the division to the department that brewing operations have ceased on the brewery's permitted premises. This includes the food establishment permits and licenses. Following reinstatement of brewing operations on the formerly permitted premises, a brewery may re-apply for the applicable permits and licenses authorized by subsection (B).

(D) The sale of beer that is brewed on the licensed premises for on-premises consumption pursuant to subsection (B) must comply with the following provisions:

(1) all provisions of subsection (A) shall apply to sales under subsection (B) and this subsection, except subsection (A)(1), (3), and (4);

(2) the brewery must comply with all state and local laws concerning hours of operation applicable to eating and drinking establishments and other food service establishments holding permits to sell beer and wine for on-premises consumption;

(3) the brewery must comply with the discount pricing provisions of Section 61-4-160, applicable to persons holding permits to sell beer and wine for on-premises consumption;

(4) the brewery must sell the beer at a price approximating retail prices generally charged for identical beverages by on-premises retailers in the county where the licensed premises are located; and

(5) a wholesaler must not provide and a brewery must not accept services, equipment, fixtures, or free beer prohibited by Section 61-4-940(B), except those items authorized by Section 61-4-940(C). Changes to the brewery laws pursuant to subsection (B) and this subsection do not alter or amend the structure of the three-tier laws of this State, and the wholesalers and the breweries must not discriminate in pricing at the producer or wholesaler levels.

(E) A brewery located in this State is authorized to sell beer on its permitted premises for off-premises consumption, provided that the sealed beer was brewed on the brewery's permitted premises with an alcohol content of fourteen percent by weight or less, subject to the following conditions:

(1) the maximum amount of beer that may be sold to an individual per day for off-premises consumption shall be equivalent to two hundred eighty-eight ounces in total;

(2) the beer only shall be sold in conjunction with a tour by the consumer of the permitted premises and the entire brewing process utilized at the permitted premises;

(3) the beer sold is for personal use only and must not be resold;

(4) the beer must not be sold to anyone holding a retail beer and wine license for the purpose of resale in their establishment;

(5) the brewery must sell the beer at the permitted premises at a price approximating retail prices generally charged for identical beverages in the county where the permitted premises are located; and

(6) the brewery must remit taxes to the Department of Revenue for beer sales in an amount equal to and in a manner required for taxes assessed by Section 12-21-1020 and Section 12-21-1030. The brewery also must remit appropriate sales and use taxes and local hospitality taxes.

(F) A brewpub permitted pursuant to Article 17, which is a retailer for purposes of Sections 61-4-735(D) and 61-4-940(D), may make application to the department for a brewery permit and the permits and licenses authorized pursuant to subsection (B) for the brewpub's existing permitted premises. For these applications, the department shall waive newspaper notice and sign posting requirements, except the requirements shall not be waived for an alcoholic liquor by the drink application if the brewpub does not possess this license at the time of application. Excluding operations authorized pursuant to subsection (B), the department must not approve an application if the applicant or any principal or person acting directly or indirectly on behalf of the applicant would have ownership or financial interest in a wholesale or retail beer, wine, or alcoholic liquor operation following the issuance of the brewery permit. Contemporaneous with obtaining the brewery and applicable permits or licenses authorized pursuant to subsection (B), the applicant shall surrender the brewpub permit and the alcoholic liquor by the drink license previously issued for the premises.

(G) In addition to other applicable fines or penalties, a person permitted as a brewery in this State who violates the provisions of this section must be assessed a fine of five hundred dollars for a first violation. For a second violation that occurs within three years of the first violation, a person must be assessed an additional five hundred dollars. For subsequent violations within a three-year period, the department must suspend the brewery permit for a period of not less than thirty days. The revenue from the fines established in this section must be directed to the State Law Enforcement Division for supplementing funds required for the regulation and enforcement of this section."

### **Brewpubs, permit relinquished when becomes a brewery**

SECTION 2. Section 61-4-1720 of the 1976 Code is amended to read:

"Section 61-4-1720. The brewpub permit provided for in this article is in lieu of a permit required for the manufacture of beer or sale of beer and wine including, but not limited to, a brewer's and retailer's permit. The sale of alcoholic liquors for consumption on the premises by the drink requires an appropriate license which may be issued to the holder of a brewpub permit who meets all other qualifications for the license under this title. A brewpub that becomes a brewery pursuant to Section 61-4-1515 must relinquish its brewpub permit in accordance with the requirements of that section."



**Time effective**

SECTION 3. This act takes effect upon approval by the Governor.

Ratified the 15<sup>th</sup> day of May, 2017.

Approved the 19<sup>th</sup> day of May, 2017.

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**No. 51**

(R72, S321)

**AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING CHAPTER 14 TO TITLE 56 SO AS TO ESTABLISH PROCEDURES THAT REGULATE THE RELATIONSHIP BETWEEN RECREATIONAL VEHICLE MANUFACTURERS, DISTRIBUTORS, AND DEALERS OF RECREATIONAL VEHICLES; TO AMEND SECTION 56-15-10, AS AMENDED, RELATING TO CERTAIN TERMS AND THEIR DEFINITIONS REGARDING THE REGULATION OF MOTOR VEHICLE MANUFACTURERS, DISTRIBUTORS, AND DEALERS, SO AS TO REVISE THE DEFINITION OF THE TERM "MOTOR VEHICLE" AND TO DELETE THE TERM "MOTOR HOME" AND ITS DEFINITION; TO REPEAL ARTICLE 5, CHAPTER 17, TITLE 31 RELATING TO THE SALE OF TRAVEL TRAILERS; AND TO PROVIDE THAT THE DEPARTMENT OF MOTOR VEHICLES MAY PROMULGATE REGULATIONS FOR ENFORCEMENT OF THE PROVISIONS OF CHAPTER 14, TITLE 56.**

Whereas, it is the intent of the General Assembly to protect the public health, safety, and welfare of the residents of the State by regulating the relationship between recreational vehicle dealers, manufacturers and suppliers, maintaining competition, and providing consumer protection and fair trade; and

Whereas, it is the intent of the General Assembly that the provisions of this act be applied to manufacturer/dealer agreements entered into on or after January 1, 2018. Now, therefore,

Be it enacted by the General Assembly of the State of South Carolina:

**Regulation of manufacturers, distributors, and dealers of recreational vehicles**

SECTION 1. Title 56 of the 1976 Code is amended by adding:

“CHAPTER 14

Regulation of Manufacturers, Distributors  
and Dealers of Recreational Vehicles

Section 56-14-10. As used in this chapter:

(1) ‘Area of sales responsibility’ means the geographical area, agreed to by the dealer and the manufacturer in the manufacturer/dealer agreement, within which area the dealer has the exclusive right to display or sell the manufacturer’s new recreational vehicles of a particular line make to the retail public.

(2) ‘Dealer’ means any person, firm, corporation, or business entity licensed or required to be licensed under this chapter to sell new recreational vehicles to the retail public. The term includes a ‘recreational vehicle dealer’ and a ‘new recreational vehicle dealer’ as used in this chapter. This definition does not include:

(a) receivers, trustees, administrators, executors, guardians, or other persons appointed by or acting under the judgment or order of any court;

(b) a public official conducting the official duty of his office;

(c) persons disposing of motor vehicles acquired for their own use and used in good faith and not for the purpose of avoiding the provisions of law. Any person who effects or attempts to effect the sale of more than five recreational vehicles in any calendar year is considered a dealer or wholesaler, as appropriate, for purposes of this chapter;

(d) finance companies or other financial institutions who sell repossessed recreational vehicles and insurance companies who sell recreational vehicles owned as an incident to payments made under policies of insurance.

(3) ‘Department’ means the South Carolina Department of Motor Vehicles.

(4) ‘Factory campaign’ means an effort on the part of a warrantor to contact recreational vehicle owners or dealers in order to address a part or equipment issue.

(5) 'Family member' means a spouse, child, grandchild, parent, sibling, niece, nephew, or the spouse thereof.

(6) 'Line make' means a specific series of recreational vehicle products that:

(a) are identified by a common series trade name or trademark;

(b) are targeted to a particular market segment, as determined by their decor, features, equipment, size, weight, and price range;

(c) have lengths and interior floor plans that distinguish the recreational vehicles from other recreational vehicles with substantially the same decor, equipment, features, price, and weight;

(d) belong to a single, distinct classification of recreational vehicle product type having a substantial degree of commonality in the construction of the chassis, frame, and body; and

(e) the manufacturer/dealer agreement authorizes a dealer to sell.

(7) 'Manufacturer' means any person, firm, corporation, or business entity that engages in the manufacturing of recreational vehicles.

(8) 'Manufacturer/dealer agreement' means a written agreement or contract entered into between a manufacturer and a dealer that fixes the rights and responsibilities of the parties and pursuant to which the dealer sells new recreational vehicles.

(9) 'New recreational vehicle' means a recreational vehicle that has never been sold to the retail public nor titled or registered in any state.

(10) 'Person' means a natural person, corporation, partnership, trust, or other entity, and in case of an entity, includes any other entity in which it has a majority interest or effectively controls, as well as the individual officers, directors, and other persons in active control of the activities of each such entity.

(11) 'Proprietary part' means any part manufactured by or for and sold exclusively by the manufacturer.

(12) 'Recreational vehicle' means a motorhome, travel trailer, fifth-wheel trailer, or folding camping trailer designed to provide temporary living quarters for recreational, camping, or travel use, as defined herein.

(13) 'Motorhome' means a self-propelled vehicle designed to provide temporary living quarters for recreational, camping, or travel use that complies with all applicable federal vehicle regulations. The unit must contain at least four of the following permanently installed independent life support systems which meet the NFPA 1192 Standard for Recreational Vehicles:

(a) a cooking facility with an on-board fuel source;

(b) a potable water supply system that includes at least a sink, a faucet, and a water tank with an exterior service supply connection;

- (c) a toilet with exterior evacuation;
- (d) a gas or electric refrigerator;
- (e) a heating or air conditioning system with an on-board power or fuel source separate from the vehicle engine; or
- (f) an electric power system.

(14) 'Travel trailer' means a vehicle mounted on wheels designed to provide temporary living quarters for recreational, camping, or travel use that complies with all applicable federal vehicle regulations and is of such size and weight as to not require a special highway movement permit when towed by a motorized vehicle.

(15) 'Fifth-wheel trailer' means a vehicle mounted on wheels designed to provide temporary living quarters for recreational, camping, or travel use that complies with all applicable federal vehicle regulations and is of such size and weight as to not require a special highway movement permit when towed by a motorized vehicle equipped with a towing mechanism that is mounted above or forward of the tow vehicle's rear axle.

(16) 'Folding camping trailer' means a vehicle mounted on wheels designed to provide temporary living quarters for recreational, camping, or travel use that complies with all applicable federal vehicle regulations and is constructed with collapsible partial side walls that fold for towing by another vehicle.

(17) 'Supplier' means any person, firm, corporation, or business entity that engages in the manufacturing of recreational vehicle parts, accessories, or components.

(18) 'Transient customer' means a customer who is temporarily traveling through a dealer's area of sales responsibility.

(19) 'Warrantor' means any person, firm, corporation, or business entity, including any manufacturer or supplier that provides a written warranty to the consumer in connection with a new recreational vehicle or a part, accessory, or component. The term does not include service contracts, mechanical or other insurance, or extended warranties sold for separate consideration by a dealer or other person not controlled by a manufacturer.

Section 56-14-20. Any person who engages directly or indirectly in purposeful contacts within this State in connection with the offering or advertising for sale or has business dealings with respect to a recreational vehicle within this State shall be subject to the provisions of this chapter and shall be subject to the jurisdiction of the courts of this State upon service of process in accordance with the provisions of Chapter 9, Title 15.

Section 56-14-25. This chapter does not apply to park model trailers built to American National Standards Institute (ANSI) Standard A119.5.

Section 56-14-30. (A) Before engaging in business as a recreational vehicle dealer in this State, a person first must make application to the Department of Motor Vehicles for a license. Each license issued expires on the last day of the month twelve months from the date of issue, the 'licensing period', and must be displayed prominently at the established place of business. The fee for the license is fifty dollars. The license applies to only one place of business of the applicant and is not transferable to another person or place of business.

(B) A licensed South Carolina recreational vehicle dealer may exhibit and sell recreational vehicles, as defined by Section 56-14-10, at fairs, recreational or sports shows, vacation shows, and other similar events or shows upon obtaining a temporary dealer's license in the manner required by this section. No other exhibitions may be allowed, except as may be permitted by this section. Any recreational vehicle displayed must be owned by the dealer holding the temporary license. Before exhibiting and selling recreational vehicles at temporary locations, the dealer shall first make application to the department for a license. To be eligible for a temporary license, a dealer shall hold a valid recreational vehicle dealer's license issued pursuant to this chapter. Every temporary dealer's license issued is valid for a period not to exceed ten consecutive days and must be prominently displayed at the temporary place of business. No dealer may purchase more than six temporary licenses in any one licensing period. The fee for each temporary license issued is twenty dollars. A temporary license applies to only one dealer operating in a temporary location and is not transferable to any other dealer or location.

(C) The provisions of this section may not be construed as allowing the sale of any type of motor vehicles other than recreational vehicles at authorized temporary locations.

(D) A person who fails to secure either a temporary or a permanent license as required in this chapter is guilty of a misdemeanor and, upon conviction, must be fined:

(1) not less than fifty dollars or more than two hundred dollars or imprisoned for not more than thirty days for the first offense;

(2) not less than two hundred dollars or more than one thousand dollars or imprisoned for not more than six months, or both, for the second offense; and

(3) not less than one thousand dollars or more than ten thousand dollars or imprisoned for not more than two years, or both, for the third or any subsequent offense.

(E) For purposes of this section, the sale of each recreational vehicle constitutes a separate offense. The Department of Motor Vehicles shall enforce the provisions contained in this section.

(F) Nothing in this section shall be construed to prevent a licensed recreational vehicle dealer from providing vehicles for demonstration or test driving purposes.

Section 56-14-40. (A) Before a license as a recreational vehicle dealer is issued, an applicant shall file an application with the department and provide information the department may require including, but not limited to, the name and addresses of individuals who own or control ten percent or more of the interest in the business.

(B) Each applicant shall furnish a surety bond in the penal amount of thirty thousand dollars on a form prescribed by the department. A new bond or a proper continuation certificate must be delivered to the department annually before a dealer's license may be renewed. A dealer's license expires immediately upon expiration or termination of a dealer's bond. The bond must be given to the department and executed by the applicant, as principal, and by a corporate surety company authorized to do business in this State, as surety. The bond must be conditioned upon the applicant or licensee complying with the statutes applicable to the license and as indemnification for loss or damage suffered by an owner of a recreational vehicle, or his legal representative, by reason of fraud practiced or fraudulent representation made in connection with the sale or transfer of a recreational vehicle by a licensed recreational vehicle dealer or the dealer's agent acting for the dealer, or within the scope of employment of the agent or loss or damage suffered by reason of the violation by the dealer or his agent of any provisions of this chapter. An owner or his legal representative who suffers the loss or damage has a right of action against the dealer and against the dealer's surety upon the bond and may recover damages as provided in this chapter. However, regardless of the number of years a bond remains in effect, the aggregate liability of the surety for claims is limited to thirty thousand dollars on each bond and to the amount of the actual loss incurred. The surety may terminate its liability under the bond by giving the department thirty days' written notice of its intent to cancel the bond. The cancellation does not affect liability incurred or accrued before the cancellation.

(C) If, during a license year, there is a change in the information a dealer gave the department in obtaining or retaining a license, the licensee must report the change to the department within thirty days on a form prescribed by the department.

(D) If a licensee ceases to be a recreational vehicle dealer, he shall notify the department within ten days and return any license and all dealer license plates.

Section 56-14-50. No recreational vehicle dealer may be issued or allowed to maintain a recreational vehicle dealer's license unless:

(1) The dealer maintains a bona fide place of business for selling or exchanging recreational vehicles, which must be the principal business conducted from the location. A bona fide place of business includes a permanent, enclosed building, not excluding a permanently installed mobile home containing at least ninety-six square feet of floor space, occupied by the owner or operator and easily accessible by the public, at which a permanent business of bartering, trading, or selling recreational vehicles or displaying vehicles for bartering, trading, or selling is conducted, wherein the public may contact the owner or operator at all reasonable times and in which must be kept and maintained the books, records, and files required by this chapter.

(2) The business must display a permanent sign identifying the business with letters at least six inches in height, clearly readable from the nearest major avenue of traffic.

(3) The business must have a reasonable area or lot to properly display recreational vehicles.

Section 56-14-60. (A) Each recreational vehicle dealer must maintain complete records of each transaction under which a recreational vehicle is transferred for a period of not less than four years from the date of the transaction. The records must include the name and address of the person or persons from whom the recreational vehicle was acquired and the date of the transaction; a description of the vehicle, when transferred; the name and address of the person to whom the recreational vehicle was transferred; and the date of the transaction. The description of the recreational vehicle must include the vehicle identification number, make, model, type, and, if a motor home, the odometer readings at the time the recreational vehicle was transferred to and from the dealer. Upon reasonable notice, these records must be made available to the department for inspection.

(B) The records must be maintained in a reasonably organized fashion. Any records which are illegible or incapable of being accurately

interpreted by either the record keeper or the department are not in compliance with this section.

(C) A dealer who fails to keep or make available to the department required records upon reasonable request, is guilty of a misdemeanor and, upon conviction, must be fined not less than fifty dollars nor more than two hundred dollars or imprisoned for not more than thirty days. The failure to keep or make available records on each separate recreational vehicle constitutes an offense.

Section 56-14-70. A license may be denied, suspended, or revoked if the applicant or licensee or an agent of the applicant or licensee is determined by the department to have:

- (a) made a material misstatement in the application for the license;
- (b) violated any provision of this chapter;
- (c) been found by a court of competent jurisdiction to have committed any fraud connected with the sale or transfer of a vehicle;
- (d) employed fraudulent devices, methods, or practices in connection with meeting the requirements placed on dealers by the laws of this State;
- (e) been convicted of any violation of law involving the acquisition or transfer of a title to a vehicle or of any violation of law involving tampering with, altering, or removing vehicle identification numbers or markings;
- (f) been found by a court of competent jurisdiction to have violated any federal or state law regarding the disconnecting, resetting, altering, or other unlawful tampering with a vehicle odometer, including the provisions of 49 U.S.C. 32701 - 32711 (Title 49, Subtitle VI, Part C, Chapter 327);
- (g) refused or failed to comply with the department's reasonable requests to inspect or copy the records, books, and files of the dealer or failed to maintain records of each vehicle transaction as required by this chapter or by state and federal law pertaining to odometer records; or
- (h) given, loaned, or sold a vehicle dealer license plate to any person or otherwise to have allowed the use of any dealer license plate in any way not authorized by Section 56-3-2320. Any dealer license plate issued to a dealer pursuant to Section 56-3-2320 which is determined by the department to be improperly displayed on any vehicle or in the possession of any unauthorized person is prima facie evidence of a violation of this section by the dealer to whom the license plate was originally issued.

The department shall notify the licensee or applicant in writing at the mailing address provided in his application of its intention to deny,



suspend, or revoke his license at least twenty days in advance and shall inform the licensee of his right to request a contested case hearing with the Office of Motor Vehicle Hearings in accordance with the rules of procedure for the Administrative Law Court and pursuant to the Administrative Procedures Act of this State. A licensee desiring a hearing shall file a request in writing with the Office of Motor Vehicle Hearings within ten days of receiving notice of the proposed denial, suspension, or revocation of his dealer's or wholesaler's license.

Upon a denial, suspension, or revocation of a license, the licensee shall immediately return to the department the license and all dealer license plates.

Section 56-14-80. (A) A manufacturer or distributor may not sell a recreational vehicle in this State to or through a dealer without having first entered into a manufacturer/dealer agreement with a dealer signed by both parties.

(B) The manufacturer shall designate the area of sales responsibility exclusively assigned to a dealer in the manufacturer/dealer agreement and may not contract with another dealer for sale of the same line make in the designated area for the duration of the agreement.

(C) The area of sales responsibility may be reviewed or changed with the consent of both parties not less than twelve months after the execution of the manufacturer/dealer agreement.

(D) A recreational vehicle dealer may not sell a new recreational vehicle in this State without having first entered into a manufacturer/dealer agreement with a manufacturer or distributor signed by both parties.

Section 56-14-90. (A) A manufacturer, directly or through any authorized officer, agent, or employee, may terminate, cancel, or fail to renew a manufacturer/dealer agreement with good cause and the provisions contained in Section 56-14-110 do not apply.

(B) The manufacturer has the burden of showing good cause for terminating, canceling, or failing to renew a manufacturer/dealer agreement with a dealer.

(C) For purposes of determining whether there is good cause for the proposed action, any of the following factors may be considered:

- (1) the extent of the affected dealer's penetration in the area of sales responsibility;
- (2) the nature and extent of the dealer's investment in its business;
- (3) the adequacy of the dealer's service facilities, equipment, parts, supplies, and personnel;

- (4) the effect of the proposed action on the community;
- (5) the extent and quality of the dealer's service under recreational vehicle warranties;
- (6) the dealer's failure to follow agreed upon procedures or standards related to the overall operation of the dealership; and
- (7) the dealer's performance under the terms of its manufacturer/dealer agreement.

(D) Except as otherwise provided in this section, a manufacturer or distributor shall provide a dealer with at least ninety days prior written notice of termination, cancellation, or nonrenewal of the manufacturer/dealer agreement.

(1) The notice must state all reasons for the proposed termination, cancellation, or nonrenewal and must further state that if, within thirty days following receipt of the notice, the dealer provides to the manufacturer a written notice of intent to cure all claimed deficiencies, the dealer will then have ninety days following receipt of the original notice to rectify the deficiencies.

(2) If the deficiencies are rectified within ninety days, the manufacturer's notice is voided. If the dealer fails to provide the notice of intent to cure the deficiencies or fails to cure the deficiencies in the prescribed time period, the termination, cancellation, or nonrenewal takes effect as provided in the original notice.

(3) The notice period may be reduced to thirty days if the manufacturer's grounds for termination, cancellation, or nonrenewal are due to any of the following good cause factors:

- (a) a dealer or one of its owners being convicted of, or entering a plea of nolo contendere to, a felony;
- (b) the abandonment or closing of the business operations of the dealer for ten consecutive business days unless the closing is due to an act of God, strike, labor difficulty, or other cause over which the dealer has no control;
- (c) a significant misrepresentation by the dealer materially affecting the business relationship;
- (d) a suspension or revocation of the dealer's license, or refusal to renew the dealer's license, by the department; or
- (e) a material violation of this chapter which is not cured within thirty days after the written notice by the manufacturer.

(4) The notice provisions contained in this subsection do not apply if the reason for termination, cancellation, or nonrenewal is the dealer's insolvency, the occurrence of an assignment for the benefit of creditors, or bankruptcy.

Section 56-14-100. (A) A dealer may terminate or cancel its manufacturer/dealer agreement with or without good cause by giving the manufacturer thirty day's written notice. If the termination or cancellation is for good cause, the notice must state all reasons for the proposed termination or cancellation and must further state that if, within thirty days following receipt of the notice, the manufacturer provides to the dealer a written notice of intent to cure all claimed deficiencies, the manufacturer will then have ninety days following receipt of the original notice to rectify the deficiencies. If the deficiencies are rectified within ninety days, the dealer's notice is voided. If the manufacturer fails to provide the notice of intent to cure the deficiencies or fails to cure the deficiencies in the time period prescribed, the termination or cancellation shall take effect as provided in the original notice.

(B) If the dealer terminates, cancels, or fails to renew the manufacturer/dealer agreement without good cause, the terms of Section 56-14-110 do not apply. If the dealer terminates, cancels, or fails to renew the manufacturer/dealer agreement with good cause, Section 56-14-110 shall apply. If the dealer terminates for cause and has new and untitled inventory on hand subject to the termination then the inventory may be sold pursuant to Section 56-14-110.

(C) The dealer has the burden of showing good cause. Any of the following items shall be deemed 'good cause' for the proposed termination, cancellation, or nonrenewal action by a dealer:

- (1) a manufacturer being convicted of, or entering a plea of nolo contendere to, a felony;
- (2) the business operations of the manufacturer have been abandoned or closed for ten consecutive business days, unless the closing is due to an act of God, strike, labor difficulty, or other cause over which the manufacturer has no control;
- (3) a significant misrepresentation by the manufacturer materially affecting the business relationship;
- (4) a material violation of this chapter which is not cured within thirty days after written notice by the dealer;
- (5) a declaration by the manufacturer of bankruptcy, insolvency, or the occurrence of an assignment for the benefit of creditors or bankruptcy.

Section 56-14-105. (A) If the dealer terminates or cancels the manufacturer/dealer agreement for good cause and the manufacturer fails to cure the claimed deficiencies, the manufacturer shall, at the election of the dealer and within forty-five days after termination, cancellation, or nonrenewal, repurchase:

(1) all new, untitled recreational vehicles to which the dealer can show clear title and that were acquired from the manufacturer or distributor within twelve months before the effective date of the notice of termination, cancellation, or nonrenewal that have not been used, except for demonstration purposes, and that have not been altered or damaged, at one hundred percent of the net invoice cost, including transportation, less applicable rebates and discounts to the dealer. In the event any of the vehicles repurchased pursuant to this subsection are damaged, but do not trigger a consumer disclosure requirement, the amount due the dealer shall be reduced by the cost to repair the vehicle. Damage prior to delivery to the dealer that is disclosed at the time of delivery will not disqualify repurchase under this provision;

(2) all undamaged accessories and proprietary parts sold to the dealer for resale within the twelve months prior to termination, cancellation, or nonrenewal, if accompanied by the original invoice, at one hundred five percent of the original net price paid to the manufacturer or distributor to compensate the dealer for handling, packing, and shipping the parts; and

(3) any properly functioning diagnostic equipment, special tools, current signage, and other equipment and machinery at one hundred percent of the dealer's net cost plus freight, destination, delivery, and distribution charges and sales taxes, if any, if the items were purchased by the dealer within five years before termination, cancellation, or nonrenewal, upon the manufacturer's or distributor's request, and which the dealer meets the burden of establishing, and can no longer be used in the normal course of the dealer's ongoing business.

(B) If recreational vehicles of a line make that was subject to a terminated dealer agreement are not repurchased or required to be repurchased by the manufacturer, the dealer may continue to sell such recreational vehicles that were subject to the terminated dealer agreement and were in the dealer's inventory on the effective date of the termination until those recreational vehicles are no longer in the dealer's inventory.

Section 56-14-110. (A) If a dealer desires to make a change in ownership by the sale of the business assets, stock transfer, or otherwise, the dealer shall give the manufacturer written notice at least fifteen business days before the closing, including all supporting documentation as may be reasonably required by the manufacturer to determine if an objection to the sale may be made. In the absence of a breach by the selling dealer of its dealer agreement or this chapter, the manufacturer

shall not object to the proposed change in ownership unless the prospective transferee:

(1) has previously been terminated by the manufacturer for breach of its dealer agreement;

(2) has been convicted of a felony or any crime of fraud, deceit, or moral turpitude;

(3) lacks any license required by law;

(4) does not have an active line of credit sufficient to purchase a manufacturer's product; or

(5) has undergone in the last ten years bankruptcy, insolvency, a general assignment for the benefit of creditors, or the appointment of a receiver, trustee, or conservator to take possession of the transferee's business or property.

(B) If the manufacturer objects to a proposed change of ownership, the manufacturer shall give written notice of its reasons to the dealer within ten business days after receipt of the dealer's notification and complete documentation. The manufacturer has the burden of proof with regard to its objection. If the manufacturer does not give timely notice of its objection, the change or sale shall be deemed approved.

(C) It is unlawful for a manufacturer to fail to provide a dealer an opportunity to designate, in writing, a family member as a successor to the dealership in the event of the death, incapacity, or retirement of the dealer. It is unlawful to prevent or refuse to honor the succession to a dealership by a family member of the deceased, incapacitated, or retired dealer unless the manufacturer has provided to the dealer written notice of its objections within ten days after receipt of the dealer's modification of the dealer's succession plan. In the absence of a breach of the dealer agreement, the manufacturer may object to the succession for the following reasons only:

(1) conviction of the successor of a felony or any crime of fraud, deceit, or moral turpitude;

(2) bankruptcy or insolvency of the successor during the past ten years;

(3) prior termination by the manufacturer of the successor for breach of a dealer agreement;

(4) the successor lacks an active line of credit sufficient to purchase the manufacturer's recreational vehicles; or

(5) the successor lacks any license required by law.

(D) The manufacturer has the burden of proof regarding its objection. However, a family member may not succeed to a dealership if the succession involves, without the manufacturer's consent, a relocation of

the business or an alteration of the terms and conditions of the manufacturer/dealer agreement.

Section 56-14-120. (A) Each warrantor shall:

(1) specify in writing each of its dealer obligations, if any, for preparation, delivery, and warranty service on its products;

(2) compensate the dealer for warranty service required of the dealer by the warrantor; and

(3) provide the dealer the schedule of compensation to be paid and the time allowances for the performance of any work and service. The schedule of compensation must include reasonable compensation for diagnostic work as well as warranty labor.

(B) Time allowances for the diagnosis and performance of warranty labor must be reasonable for the work to be performed. In the determination of what constitutes reasonable compensation under this section, the principal factors to be given consideration shall be the actual wage rates being paid by the dealer, and the actual retail labor rate being charged by the recreational vehicle dealers in the community in which the dealer is doing business. The compensation of a dealer for warranty labor may not be less than the lowest retail labor rates actually charged by the dealer for like nonwarranty labor as long as such rates are reasonable.

(C) The warrantor shall reimburse the dealer for any warranty part at actual wholesale cost plus a minimum thirty percent handling charge and the cost, if any, of freight to return such part to the warrantor.

(D) Warranty audits of dealer records may be conducted by the warrantor on a reasonable basis, and dealer claims for warranty compensation may not be denied except for cause, such as performance of nonwarranty repairs, material noncompliance with the warrantor's published policies and procedures, lack of material documentation, fraud, or misrepresentation.

(E) The dealer shall submit warranty claims within forty-five days after completing work.

(F) The dealer immediately shall notify the warrantor verbally or in writing if the dealer is unable to perform any warranty repairs within ten days of receipt of verbal or written complaints from a consumer.

(G) The warrantor shall disapprove warranty claims in writing within forty-five days after the date of submission by the dealer in the manner and form prescribed by the warrantor. Claims not specifically disapproved in writing within forty-five days shall be construed to be approved and must be paid within sixty days of submission.

(H) It is a violation of this chapter for any warrantor to:

(1) fail to perform any of its warranty obligations with respect to its warranted products;

(2) fail to include, in written notices of factory campaigns to recreational vehicle owners and dealers, the expected date by which necessary parts and equipment, including tires and chassis or chassis parts, will be available to dealers to perform the campaign work. The warrantor may ship parts to the dealer to effect the campaign work, and, if such parts are in excess of the dealer's requirements, the dealer may return unused parts to the warrantor for credit after completion of the campaign;

(3) fail to compensate any of its dealers for authorized repairs effected by the dealer on recreational vehicles or products damaged in manufacture or transit to the dealer, if the carrier is designated by the warrantor;

(4) fail to compensate any of its dealers in accordance with the schedule of compensation provided to the dealer pursuant to this section if performed in a timely and competent manner;

(5) intentionally misrepresent in any way to purchasers of recreational vehicles that warranties with respect to the manufacture, performance, or design of the vehicle are made by the dealer as warrantor or cowarrantor; or

(6) require the dealer to make warranties to customers in any manner related to the manufacture of the recreational vehicle.

(I) It is a violation of this chapter for any dealer to:

(1) fail to perform predelivery inspection functions, as specified by the warrantor, in a competent and timely manner;

(2) fail to perform warranty service work authorized by the warrantor in a competent and reasonably timely manner on any transient customer's vehicle of a line make sold or serviced by that dealer;

(3) fail to accurately document the time spent completing each repair, the total number of repair attempts conducted on a single unit, and the number of repair attempts for the same repair conducted on a single vehicle;

(4) fail to notify the warrantor within ten days of a second repair attempt which impairs the use, value, or safety of the vehicle;

(5) fail to maintain written records, including a consumer's signature, regarding the amount of time a unit is stored for the consumer's convenience during a repair; or

(6) make fraudulent warranty claims or misrepresent the terms of any warranty.

Section 56-14-130. (A) Notwithstanding the terms of any manufacturer/dealer agreement, it is a violation of this chapter for:

(1) a warrantor to fail to indemnify and hold harmless its dealer against any losses or damages to the extent such losses or damages are caused by the negligence or wilful misconduct of the warrantor. A new recreational vehicle dealer may not be denied indemnification for failing to discover, disclose, or remedy a defect in the design or manufacturing of a new recreational vehicle. A new recreational vehicle dealer may be denied indemnification if the new recreational vehicle dealer fails to remedy a known and announced defect in accordance with the written instructions of a warrantor for whom the new recreational vehicle dealer is obligated to perform warranty service. A new recreational vehicle dealer shall provide to the warrantor a copy of any pending law suit or similar proceeding in which allegations are made that are covered by this subsection within ten days after receiving such suit. Notwithstanding anything to the contrary, this subsection shall continue to apply even after the new recreational vehicle is titled; and

(2) a new recreational vehicle dealer to fail to indemnify and hold harmless its warrantor against any losses or damages to the extent that the losses or damages are caused by the negligence or wilful misconduct of the new recreational vehicle dealer. A warrantor shall provide to a new recreational vehicle dealer a copy of any pending law suit or similar proceeding in which allegations are made that are covered by this subsection within ten days after receiving such suit. Notwithstanding anything to the contrary, this subsection shall continue to apply even after the new recreational vehicle is titled.

Section 56-14-140. (A) Whenever a new recreational vehicle is damaged prior to transit to the dealer or is damaged in transit to the dealer and the carrier or means of transportation has been selected by the manufacturer, the dealer shall notify the manufacturer of the damage within the timeframe specified in the manufacturer/dealer agreement and:

(1) request from the manufacturer authorization to replace the components, parts, and accessories damaged or otherwise correct the damage; or

(2) reject the vehicle within the timeframe set forth in subsection (D).

(B) If the manufacturer refuses or fails to authorize repair of such damage within ten days after receipt of notification, or if the dealer rejects the recreational vehicle because of damage, ownership of the new recreational vehicle shall revert to the manufacturer.



(C) The dealer shall exercise due care in custody of the damaged recreational vehicle, but the dealer shall have no other obligations, financial or otherwise, with respect to that recreational vehicle.

(D) The time frame for inspection and rejection by the dealer must be part of the manufacturer/dealer agreement and may not be less than two business days after the physical delivery of the recreational vehicle.

(E) Any recreational vehicle that has, at the time of delivery to the dealer, an unreasonable amount of miles on its odometer, as determined by the dealer, may be subject to rejection by the dealer and reversion of the vehicle to the manufacturer. In no instance shall a dealer deem an amount less than the distance between the dealer and the manufacturer's factory or point of distribution, plus one hundred miles, as unreasonable.

Section 56-14-150. (A) A manufacturer may not coerce or attempt to coerce a dealer to:

- (1) purchase a product that the dealer did not order;
- (2) enter into an agreement with the manufacturer; or
- (3) enter into an agreement that requires the dealer to submit its disputes to binding arbitration or otherwise waive rights or responsibilities provided under this chapter.

(B) As used in this section, the term 'coerce' includes, but is not limited to, threatening to terminate, cancel, or not renew a manufacturer/dealer agreement without good cause or threatening to withhold product lines the dealer is entitled to purchase pursuant to the manufacturer/dealer agreement or delay product delivery as an inducement to amending the manufacturer/dealer agreement.

Section 56-14-160. (A) A dealer, manufacturer, or warrantor injured by another party's violation of this chapter may bring a civil action in circuit court to recover actual damages. The court shall award attorney's fees and costs to the prevailing party in such an action. Venue for any civil action authorized by this section shall be in any county in this State in which the dealer's business is located. In an action involving more than one dealer, venue may be in any county in this State in which any dealer that is party to the action is located.

(B) Prior to bringing suit under this section, the party bringing suit for an alleged violation shall serve a written demand for mediation upon the offending party. The demand for mediation shall be served upon the other party via certified mail at the address stated within the manufacturer/dealer agreement between the parties. The demand for mediation shall contain a brief statement of the dispute and the relief sought by the party filing the demand.

(C) Within twenty days after the date a demand for mediation is served, the parties shall mutually select an independent certified mediator and meet with that mediator for the purpose of attempting to resolve the dispute. The meeting place shall be in this State in a location selected by the mediator. The mediator may extend the date of the meeting for good cause shown either party or upon stipulation of both parties.

(D) The service of a demand for mediation under this section shall toll the time for the filing of any complaint, petition, protest, or other action under this chapter until representatives of both parties have met with a mutually selected mediator for the purpose of attempting to resolve the dispute. If a complaint, petition, protest, or other action is filed before that meeting, the court shall enter an order suspending the proceeding or action until the mediation meeting has occurred and may, upon written stipulation of all parties to the proceeding or action that they wish to continue to mediate under this section, enter an order suspending the proceeding or action for as long a period as the court considers appropriate.

(E) The parties to the mediation shall bear their own costs for attorney's fees and divide equally the cost of the mediator.

(F) In addition to the remedies provided in this section and notwithstanding the existence of any additional remedy at law, a manufacturer, or warrantor, or a dealer is authorized to make application to a circuit court for the grant, upon a hearing and for cause shown, of a temporary or permanent injunction, or both, restraining any person from acting as a dealer without being properly licensed, from violating or continuing to violate any of the provisions of this chapter, or from failing or refusing to comply with the requirements of this chapter. Such injunction shall be issued without bond. A single act in violation of the provisions of this chapter shall be sufficient to authorize the issuance of an injunction.”

#### **Definition of “motor vehicle” revised**

SECTION 2. Section 56-15-10(a) of the 1976 Code is amended to read:

“(a) ‘Motor vehicle’ means any motor driven vehicle required to be registered pursuant to Section 56-3-110. This definition does not include motorcycles, or new recreational vehicles as defined in Section 56-14-10.”

**The term “motor home” deleted**

SECTION 3. Section 56-15-10(q) of the 1976 Code is amended to read:

“(q) Reserved.”

**Severability clause**

SECTION 4. If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application and, to this end, the provisions of this act are declared severable.

**Repeal**

SECTION 5. Article 5, Chapter 17, Title 31 of the 1976 Code is repealed.

**Promulgation of regulations**

SECTION 6. The department is authorized to promulgate regulations for the enforcement of the provisions of Chapter 14, Title 56.

**Time effective**

SECTION 7. This act takes effect six months after approval by the Governor and applies to manufacturer/dealer agreements entered into on or after July 1, 2018.

Ratified the 15<sup>th</sup> day of May, 2017.

Approved the 19<sup>th</sup> day of May, 2017.

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**No. 52**

(R73, S325)

**AN ACT TO AMEND SECTION 43-33-310, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO ADVOCACY FOR**

**HANDICAPPED CITIZENS, INC., SO AS TO REVISE LEGISLATIVE FINDINGS TO REFLECT THE CHANGE OF THE ORGANIZATION'S NAME TO "PROTECTION AND ADVOCACY FOR PEOPLE WITH DISABILITIES, INC.", AND TO MAKE TECHNICAL CHANGES; TO AMEND SECTIONS 43-33-330 AND 43-33-340, BOTH RELATING TO THE OPERATION OF THE SOUTH CAROLINA PROTECTION AND ADVOCACY SYSTEM FOR THE HANDICAPPED, INC., SO AS TO REFLECT THE CHANGE OF THE ORGANIZATION'S NAME TO "PROTECTION AND ADVOCACY FOR PEOPLE WITH DISABILITIES, INC.", AND TO MAKE TECHNICAL CHANGES; TO AMEND SECTION 43-33-350, RELATING TO THE POWERS AND DUTIES OF THE SOUTH CAROLINA PROTECTION AND ADVOCACY SYSTEM FOR THE HANDICAPPED, INC., SO AS TO REFLECT THE CHANGE OF THE ORGANIZATION'S NAME TO "PROTECTION AND ADVOCACY FOR PEOPLE WITH DISABILITIES, INC.", AND TO PROVIDE THAT THE ORGANIZATION SHALL ADMINISTER THE CLIENT ASSISTANCE PROGRAM; TO AMEND SECTIONS 43-33-370, 43-33-380, AND 43-33-400, ALL RELATING TO THE OPERATION OF SOUTH CAROLINA PROTECTION AND ADVOCACY SYSTEM FOR THE HANDICAPPED, INC., SO AS TO REFLECT THE CHANGE OF THE ORGANIZATION'S NAME TO "PROTECTION AND ADVOCACY FOR PEOPLE WITH DISABILITIES, INC.", AND TO MAKE TECHNICAL CHANGES; TO AMEND SECTION 1-11-10, AS AMENDED, RELATING TO CERTAIN AGENCIES TRANSFERRED TO THE DEPARTMENT OF ADMINISTRATION, SO AS TO MAKE CONFORMING CHANGES; AND TO REPEAL SECTION 43-33-320 RELATING TO THE TRANSFER OF FUNCTIONS TO THE SOUTH CAROLINA PROTECTION AND ADVOCACY SYSTEM FOR THE HANDICAPPED, INC.**

Whereas, in Act 121 of 2014, the South Carolina Restructuring Act of 2014, many offices and programs located within the former Office of Executive Policy and Programs were devolved upon the Department of Administration; and

Whereas, Act 121 of 2014 recognized that the various offices and programs within the Office of Executive Policy and Programs would be more appropriately administered by entities other than the Department

of Administration and therefore directed the Department of Administration to report to the General Assembly concerning the appropriate placement of those offices and programs; and

Whereas, the Department of Administration's report recommended that the administration of the Client Assistance Program should be devolved upon Protection and Advocacy for People with Disabilities, Inc., formerly known as the South Carolina Protection and Advocacy System for the Handicapped, Inc.; and

Whereas, the General Assembly concurs with the Department of Administration's recommendation with regard to the Client Assistance Program, and this act implements that recommendation. Now, therefore,

Be it enacted by the General Assembly of the State of South Carolina:

**Protection and Advocacy for People with Disabilities, Inc., formerly known as Advocacy for Handicapped Citizens, Inc., legislative findings**

SECTION 1. Section 43-33-310 of the 1976 Code is amended to read:

“Section 43-33-310. The General Assembly finds that by executive order in 1977 the Governor designated an eleemosynary corporation now known as ‘Protection and Advocacy for People with Disabilities, Inc.’, as the organization to perform the function of advocate for citizens with developmental disabilities as required by Section 113 of Public Law 94-103, as amended, and that organization has been performing that function and has qualified for certain assistance under Section 113 of Public Law 94-103, as amended.

It is the purpose of this act to permanently establish as advocate under Section 113 of Public Law 94-103, as amended, an eleemosynary corporation now known as ‘Protection and Advocacy for People with Disabilities, Inc.’ It is the further purpose of this act to express the desire of the General Assembly that Protection and Advocacy for People with Disabilities, Inc. exercise protection and advocacy functions not only for the citizens of South Carolina with developmental disabilities but also for all other citizens of the State with disabilities.”

**Protection and Advocacy for People with Disabilities, Inc., formerly known as the South Carolina Protection and Advocacy System for the Handicapped, Inc., governance**

SECTION 2. Section 43-33-330 of the 1976 Code is amended to read:

“Section 43-33-330. Protection and Advocacy for People with Disabilities, Inc. is governed by a board consisting of a minimum of twelve members and a maximum of sixteen members. Four members must be appointed by the Governor, one member from each of the system’s four regions. Eight members must be elected by the board upon recommendation by the system’s nominating committee which shall consult with advocacy groups of the State representing persons with disabilities. Members shall serve for terms of four years and until their successors are appointed and qualify. Vacancies must be filled in the original manner for the unexpired portion of the term. A vacancy must be filled not later than sixty days after the date on which the vacancy occurs. Up to four members who serve as chair of advisory councils or committees to the system may be elected by the board to serve ex officio as considered appropriate to the needs of the system or as mandated by law. No appointed board member may serve more than two successive four-year terms.

The board may change its corporate name in the same manner as any other nonprofit corporation, and if the board changes its corporate name, the powers and duties of Protection and Advocacy for People with Disabilities, Inc. are considered to be the powers and duties of the successor nonprofit corporation.”

**Protection and Advocacy for People with Disabilities, Inc., definitions**

SECTION 3. Section 43-33-340 of the 1976 Code is amended to read:

“Section 43-33-340. As used in this article, unless the context requires otherwise:

(1) ‘System’ means Protection and Advocacy for People with Disabilities, Inc.

(2) ‘Developmental disability’ means a severe, chronic disability of a person which:

(a) is attributable to a mental or physical impairment or combination of mental and physical impairments;

(b) is manifested before the person attains age twenty-two;

(c) is likely to continue indefinitely;

(d) results in substantial functional limitations in three or more of the following areas of major life activity: (i) self-care, (ii) receptive and expressive language, (iii) learning, (iv) mobility, (v) self-direction, (vi) capacity for independent living, and (vii) economic sufficiency;

(e) reflects the person's need for a combination and sequence of special, interdisciplinary or generic services, individualized supports, or other forms of assistance that are of lifelong or extended duration and are individually planned and coordinated.

(3) 'Person with a developmental disability' means a person who has a developmental disability and who receives or is entitled to receive a combination and sequence of special, interdisciplinary or generic services, individualized supports, or other forms of assistance that are of lifelong or extended duration and are individually planned and coordinated within the State.

(4) 'Person with a disability' means a person defined by Section 2-7-35.

(5) 'Complaint' means an oral or written allegation by a person with a developmental or other disability, the parent or legal guardian of such person, a state agency or any other responsible person to the effect that the person with a developmental or other disability is being subjected to injury or deprivation with regard to his health, safety, welfare, rights or level of care.

(6) 'Abuse' means the definition defined by Section 43-30-20.

(7) 'Threatened abuse' means the definition defined by Section 43-30-20.

(8) 'Ombudsman' means the office provided for pursuant to Section 43-38-10, et seq."

**Protection and Advocacy for People with Disabilities, Inc., duty to administer Client Assistance Program**

SECTION 4. Section 43-33-350 of the 1976 Code is amended to read:

"Section 43-33-350. The system has the following powers and duties:

(1) It shall protect and advocate for the rights of all persons with a developmental or other disability, including the requirements of Section 113 of Public Law 94-103, Section 105 of Public Law 99-319, and Section 112 of Public Law 98-221, all as amended, and for the rights of other persons with disabilities by pursuing legal, administrative, and

other appropriate remedies to insure the protection of the rights of these persons.

(2) It may investigate complaints by or on behalf of any person with a developmental or other disability.

(3) It may establish a priority for the delivery of protection and advocacy services according to the type, severity, and number of disabilities of the person making a complaint or on whose behalf a complaint has been made.

(4) It may conduct team advocacy inspections of a facility providing residence to a person with a developmental or other disability. Inspections must be completed by the system's staff and trained volunteers. Team advocacy inspections are unannounced visits to review the living conditions of a residential facility, including the plans of care for individuals in a residential care facility and a community mental health center day program. Only the coordinator of the team advocacy project or the coordinator's designee is authorized to perform reviews of plans of care. The system shall prepare a report based on the inspection which must be submitted to the South Carolina Department of Health and Environmental Control and State Department of Mental Health.

(5) It shall administer the Client Assistance Program, as established pursuant to 29 U.S.C. Section 732."

**Protection and Advocacy for People with Disabilities, Inc., duty to investigate complaints**

SECTION 5. Section 43-33-370 of the 1976 Code is amended to read:

"Section 43-33-370. Upon (A) the receipt of a written request to investigate a complaint that has been signed by a person with a developmental or other disability, his parent, legal guardian, any relative or a state agency; or upon (B) the receipt of a complaint of abuse or threatened abuse to a person with a developmental or other disability who is not capable of giving informed consent for the system to investigate the complaint and who does not have a parent or legal guardian to sign a written request to investigate the complaint, the system may:

(1) Interview any member of the staff of the program or facility which is providing or did provide treatment, services or habilitation to the person making the complaint or on whose behalf the complaint is made.

(2) Inspect and copy any documents, records, files, books, charts or other writings which are maintained in the regular course of business by



the program or facility and which bear upon the subject matter of the individual complaint, except for the individual medical, treatment or other personal records of other persons in the program or facility.

(3) Request the assistance of any rights protection or advocacy services provided by the program or facility.

(4) Refer a complaint to the ombudsman, law enforcement agencies or any other public or private programs or facilities, as it deems appropriate.”

**Protection and Advocacy for People with Disabilities, Inc., confidentiality requirements**

SECTION 6. Section 43-33-380 of the 1976 Code is amended to read:

“Section 43-33-380. The system shall not disclose the name or identity of any person, complainant, witness or subject of a complaint or any information or writing relating thereto unless the person or his parent or legal guardian authorizes in writing the release of such information but the system may make such disclosures as may be necessary to protect or advocate for the rights of the concerned person with a developmental or other disability.”

**Protection and Advocacy for People with Disabilities, Inc., cooperation with other state agencies**

SECTION 7. Section 43-33-400 of the 1976 Code is amended to read:

“Section 43-33-400. All departments, officers, agencies and institutions of the State shall cooperate with the system in carrying out its duties. Notwithstanding any other provision of law, all departments, officers, agencies and institutions of the State may, on the behalf of a person with a developmental or other disability, request the system to provide protection and advocacy services. Notwithstanding any other provision of law, any program or facility shall permit the system to inspect and copy any record or documents provided for in Section 43-33-370(2).”

**Department of Administration programs, transfer of the Client Assistance Program from the department**

SECTION 8. Section 1-11-10(A)(9) of the 1976 Code, as last amended by Act 121 of 2014, is further amended to read:

“(9) Reserved;”

### **Repeal**

SECTION 9. Section 43-33-320 is repealed.

### **Transfer of administration of the Client Assistance Program to Protection and Advocacy for People with Disabilities, Inc.**

SECTION 10. The Governor shall take all actions necessary pursuant to 29 U.S.C. Section 732 to designate Protection and Advocacy for People with Disabilities, Inc., formerly known as the South Carolina Protection and Advocacy System for the Handicapped, Inc., as the South Carolina administrator of the Client Assistance Program.

### **Appropriations to Client Assistance Program**

SECTION 11. Authorized appropriations and the assets and liabilities of the Client Assistance Program are transferred to and become part of Protection and Advocacy for People with Disabilities, Inc., formerly known as the South Carolina Protection and Advocacy System for the Handicapped, Inc.

### **Time effective**

SECTION 12. This act takes effect upon approval by the Governor. Protection and Advocacy for People with Disabilities, Inc., formerly known as the South Carolina Protection and Advocacy System for the Handicapped, Inc., shall administer the Client Assistance Program upon the completion of all necessary filings with the federal government.

Ratified the 15<sup>th</sup> day of May, 2017.

Approved the 19<sup>th</sup> day of May, 2017.

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## No. 53

(R76, S411)

**AN ACT TO AMEND SECTION 59-53-1410, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE CENTRAL CAROLINA TECHNICAL COLLEGE COMMISSION, SO AS TO INCREASE THE NUMBER OF MEMBERS APPOINTED FROM KERSHAW COUNTY AND TO INCREASE THE TOTAL NUMBER OF COMMISSION MEMBERS ACCORDINGLY.**

Be it enacted by the General Assembly of the State of South Carolina:

**Commission member from Kershaw County added**

SECTION 1. Section 59-53-1410 of the 1976 Code, as last amended by Act 13 of 2009, is further amended to read:

“Section 59-53-1410. There is created the Central Carolina Technical College Commission representing the counties of Clarendon, Kershaw, Lee, and Sumter. The commission is a body politic and corporate consisting of twelve members. Each member must be appointed by the Governor, upon the recommendation of a majority of the legislative delegation of the member’s respective county, and each member must be a qualified registered elector of the county represented. Six members must be appointed from Sumter County. Three members must be appointed from Kershaw County. Two members must be appointed from Clarendon County. One member must be appointed from Lee County. The terms of all members are for four years and until their successors are appointed and qualified. A vacancy must be filled in the manner of the original appointment for the unexpired portion of the term only. The commission shall organize by electing one of its members as chairman, one as vice chairman, and one as secretary. The terms of appointees expire July first of the appropriate year.”

**Time effective**

SECTION 2. This act takes effect upon approval by the Governor.

Ratified the 15<sup>th</sup> day of May, 2017.

Approved the 19<sup>th</sup> day of May, 2017.

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**No. 54**

(R80, S462)

**AN ACT TO AMEND SECTION 59-39-100, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE UNIFORM DIPLOMA FOR GRADUATES OF ACCREDITED HIGH SCHOOLS, SO AS TO PROVIDE PERSONALIZED PATHWAYS FOR STUDENTS TO EARN THE DIPLOMA AND TO PROVIDE RELATED COURSE OF STUDY-BASED ENDORSEMENTS STUDENTS MAY EARN, TO REVISE THE COURSEWORK STUDENTS ENTERING NINTH GRADE DURING THE 2018-2019 SCHOOL YEAR MUST EARN FOR GRADUATION, TO PROVIDE THIS REVISED COURSEWORK REQUIREMENT MUST SUPPORT THE PROFILE OF THE GRADUATE, TO PROVIDE FOR A UNIFORM EMPLOYABILITY CREDENTIAL AVAILABLE FOR CERTAIN STUDENTS WITH DISABILITIES AS AN ALTERNATIVE TO DIPLOMA PATHWAYS, AND TO PROVIDE THE STATE DEPARTMENT OF EDUCATION SHALL MONITOR NUMBERS OF DIPLOMAS AND EMPLOYABILITY CREDENTIALS EARNED BY STUDENTS AND BIANNUALLY REPORT SUCH NUMBERS TO THE STATE BOARD OF EDUCATION AND THE GENERAL ASSEMBLY.**

Be it enacted by the General Assembly of the State of South Carolina:

**Diploma requirements revised, alternate credential created, reporting**

SECTION 1. Section 59-39-100 of the 1976 Code, as last amended by Act 49 of 2005, is further amended to read:

“Section 59-39-100. (A) Diplomas issued to graduates of accredited high schools within this State must be uniform in every respect and

particularly as to color, size, lettering, and marking. In accordance with Section 59-59-10, et seq., districts and schools shall provide students with personalized pathways for earning the uniform diploma, and students may earn endorsements based upon their course of study, which may be represented by seals added to the student's uniform diploma. The State Board of Education shall promulgate regulations establishing these pathways and endorsements.

(B) Beginning with students entering the ninth grade in School Year 1997-1998, the number of units required for a high school diploma was increased to twenty-four units. To support the Profile of the Graduate, for students entering the ninth grade beginning with the 2018-2019 School Year, the twenty-four units required are as prescribed in this section and in regulation by the State Board of Education.

(1) Students will continue to be required to earn the units of credit as prescribed in regulation and, when applicable, be offered national industry certifications or credentials.

(2) Coursework must be aligned with a student's personalized diploma pathway. The State Board of Education shall promulgate regulations that outline the process and procedures for approval of courses to personalize pathways based on students' postsecondary plans and include an annually updated course activity coding manual listing approved courses. The individualized graduation planning process must plan each student's personalized pathway based on his postsecondary plans.

(C) The State Board of Education, through the Department of Education and in collaboration with the Vocational Rehabilitation Department, the Department of Employment and Workforce, businesses, and stakeholders shall develop criteria for a uniform state-recognized employability credential that is aligned to the program of study for students with a disability whose Individualized Education Program (IEP) team determines, and agrees in writing, that a diploma pathway would not provide a free appropriate public education. The State Board of Education, in conjunction with the department, shall develop a rubric and guidelines to identify and assess the employability skills of the students, based on appropriate standards established. The credentials must be uniform in size, shape, and design.

(D) The department shall monitor the number of diplomas and employability credentials earned by students and shall report to the State Board of Education and the General Assembly biannually by February 15, beginning in 2020.

(E) Nothing in this section prohibits local school boards of trustees from awarding recognition to students who complete additional units and credits beyond those required by this section.”

**Time effective**

SECTION 2. This act takes effect with students entering ninth grade beginning with the 2018-2019 School Year.

Ratified the 15<sup>th</sup> day of May, 2017.

Approved the 19<sup>th</sup> day of May, 2017.

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**No. 55**

(R81, S463)

**AN ACT TO AMEND SECTION 38-1-20, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO DEFINITIONS USED IN TITLE 38, SO AS TO INCLUDE CERTAIN FORMS OF DISABILITY INSURANCE IN THE DEFINITION FOR THE TERM “SURPLUS LINES INSURANCE”; AND TO AMEND SECTION 38-43-100, AS AMENDED, RELATING TO INSURANCE PRODUCER LICENSING, SO AS TO AUTHORIZE THE SOUTH CAROLINA LAW ENFORCEMENT DIVISION TO RETAIN FINGERPRINTS FOR USE IN IDENTIFICATION PURPOSES.**

Be it enacted by the General Assembly of the State of South Carolina:

**Surplus lines insurance definition, disability insurance above benefit limit included**

SECTION 1. Section 38-1-20(56) of the 1976 Code, as last amended by Act 137 of 2016, is further amended to read:

“(56) ‘Surplus lines insurance’ means insurance in this State of risks located or to be performed in this State, permitted to be placed through a licensed broker, or a licensed broker as provided in Section 38-45-10(8)(b)(ii), with a nonadmitted insurer eligible to accept the

insurance, other than reinsurance, wet marine and transportation insurance, insurance independently procured, and life and health insurance and annuities. Excess and stop-loss insurance coverage upon group life, accident, and health insurance or upon a self-insured's life, accident, and health benefits program and disability insurance in excess of any benefit limit available from an admitted insurer may be approved as surplus lines insurance.”

### **Insurance producer licensing, SLED retains fingerprints**

SECTION 2. Section 38-43-100 of the 1976 Code, as last amended by Act 194 of 2016, is further amended to read:

“Section 38-43-100. (A) Business may not be done by the applicant except following issuance of a producer's license, and the license may not be issued until the director or his designee has determined that the applicant is qualified as an insurance producer, generally, and is particularly qualified for the line of business in which the applicant proposes to engage. The department shall promulgate regulations setting forth qualifying standards of producers as to all lines of business and shall require the producer applicant to stand a written examination. For the purpose of interstate reciprocity, the department shall identify by bulletin which limited lines insurance are approved in South Carolina and which are exempt from examination. A bank, finance company, or other company handling credit transactions operating in this State and utilizing one or more credit life or accident and health or credit property producers in a particular geographical area who are licensed without having taken the written examination is required to have readily available at least one credit life or accident and health or credit property producer to answer customers' questions concerning credit life, credit accident and health insurance, or credit property, or any combination of these.

(B) A resident individual applying for an insurance producer license shall pass an examination. The examination must test the knowledge of the individual concerning the lines of authority for which application is made, the duties and responsibilities of an insurance producer, and the insurance laws and regulations of this State. The examination required by this section must be developed and conducted under regulations prescribed by the director or his designee.

(C) The director or his designee may make arrangements, including contracting with an outside testing service, for administering licensing examinations.

(D) Each individual applying for a licensing examination shall remit a nonrefundable examination fee as required by the licensing exam administrator.

(E) An individual who fails to appear for the examination as scheduled or fails to pass the examination, shall reapply for an examination and remit all required fees and forms before being rescheduled for another examination.

(F) A person applying for a resident insurance producer license or a person applying on behalf of the applicant shall make application to the director or his designee on the Uniform Application and declare under penalty of refusal, suspension, or revocation of the license that the statements made in the application are true, correct, and complete to the best of the applicant's knowledge and belief. Before approving the application, the director or his designee shall find that the applicant:

(1) is at least eighteen years of age;

(2) is a person of good moral character and has not been convicted of a felony or any crime involving moral turpitude within the last ten years that is a ground for denial, suspension, or revocation as provided for in Section 38-43-130;

(3) has paid the fees provided for in Section 38-43-80; and

(4) has successfully passed the examination or examinations for the line or lines of insurance for which the person has applied.

(5) Before a license is issued to an applicant or is renewed permitting him to act as a resident producer, the applicant shall comply with the licensing and renewal requirements set forth in this section and by regulation. In addition to those licensing requirements, the applicant shall:

(a) furnish a complete set of his fingerprints to the director or his designee; and

(b) undergo a state criminal records check, supported by his fingerprints, by the South Carolina Law Enforcement Division (SLED) and a national criminal records check, supported by his fingerprints, by the Federal Bureau of Investigation (FBI). The results of these criminal records checks must be reported to the department. SLED is authorized to retain the fingerprints for use in identification purposes including, but not limited to, unsolved latent prints. The cost associated with the criminal history records checks must be borne by the applicant. The applicant's fingerprints must be certified by a law enforcement officer authorized by SLED.

(G) The individual's producer license must contain the licensee's name, address, personal identification number, the date of issuance, the



line or lines of authority, and other information the director or his designee considers necessary.

(H) An agency acting as an insurance producer is required to obtain an insurance producer license. Application must be made using the Uniform Business Entity Application. Before approving the application, the director or his designee shall find that:

(1) the agency has paid the fees as prescribed by Section 38-43-80; and

(2) the agency has designated a licensed producer or other person responsible for the business entity's compliance with the insurance laws, rules, and regulations of this State.

(I) The director or his designee may require any documents reasonably necessary to verify the information contained in an application.

(J) The agency's license must contain the licensee's name, address, personal identification number, the date of issuance, and other information the director or his designee considers necessary.

(K) Each insurer that sells, solicits, or negotiates any form of credit insurance shall provide to each individual whose duties include selling, soliciting, or negotiating credit insurance, a program of instruction that has been filed with the director or his designee."

#### **Time effective**

SECTION 3. This act takes effect upon approval by the Governor.

Ratified the 15<sup>th</sup> day of May, 2017.

Approved the 19<sup>th</sup> day of May, 2017.

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#### **No. 56**

(R82, S480)

**AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 59-53-600 SO AS TO DEVOLVE TEMPORARILY THE POWERS, DUTIES, AND OBLIGATIONS OF THE DENMARK TECHNICAL COLLEGE AREA COMMISSION UPON THE STATE BOARD FOR TECHNICAL AND COMPREHENSIVE EDUCATION, TO**

**REQUIRE THE STATE BOARD TO ISSUE QUARTERLY STATUS REPORTS AND TO STUDY THE MOST EFFECTIVE, EFFICIENT DELIVERY OF TECHNICAL COLLEGE EDUCATION OPPORTUNITIES IN CERTAIN COUNTIES; AND TO REPEAL THIS SECTION ON NOVEMBER 1, 2018.**

Be it enacted by the General Assembly of the State of South Carolina:

**Denmark Technical College**

SECTION 1. Article 8, Chapter 53, Title 59 of the 1976 Code is amended by adding:

“Section 59-53-600. (A) Notwithstanding any provision of law to the contrary, during the time period beginning May 1, 2017, and ending November 1, 2018, all powers, duties, and obligations vested in the Denmark Technical College Area Commission, as provided in this article, are devolved upon and become the powers, duties, and obligations of the State Board for Technical and Comprehensive Education. The state board shall consult with and receive input from the Denmark Technical College Area Commission. On November 1, 2018, all powers, duties, and obligations vested in the state board pursuant to this section shall revert back to the Denmark Technical College Area Commission.

(B) During the eighteen-month period beginning on May 1, 2017, the state board shall provide quarterly status reports to the Chairman of the Senate Finance Committee and the Chairman of the House Ways and Means Committee concerning its activities in relation to Denmark Technical College, its operations, financial standing, recruitment and retention of students, actions taken to stabilize the college, and any other matters the state board deems relevant.

(C) In addition to other activities undertaken by the state board pursuant to this section, the state board shall study the most effective, efficient delivery of technical college educational opportunities to Allendale, Bamberg, and Barnwell Counties. The committee shall seek the input of stakeholders in the service area, including stakeholders from local governments, school districts, and area businesses and economic development organizations. The committee shall report its findings and recommendations no later than February 1, 2018. The report shall be submitted to the state board, the Chairman of the Senate Finance Committee, the Chairman of the House Ways and Means Committee, and the Governor.”

**Repeal**

SECTION 2. Section 59-53-600 is repealed November 1, 2018.

**Time effective**

SECTION 3. This act takes effect upon approval of the Governor.

Ratified the 15<sup>th</sup> day of May, 2017.

Approved the 19<sup>th</sup> day of May, 2017.

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**No. 57**

(R85, S488)

**AN ACT TO AMEND SECTION 56-3-2320, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE ISSUANCE OF MOTOR VEHICLE DEALER LICENSE PLATES, SO AS TO PROVIDE THAT A DEALER LICENSE PLATE MAY BE USED BY A PERSON WHOSE VEHICLE IS BEING SERVICED OR REPAIRED BY THE DEALERSHIP, PROVIDED THE VEHICLE DISPLAYING THE LICENSE PLATE IS PART OF A MANUFACTURER PROGRAM AND THE PLATE IS GIVEN TO THE PERSON BY THE DEALER AT NO CHARGE TO THE CONSUMER FOR NOT MORE THAN THIRTY DAYS, AND TO PROVIDE THAT A DEALER MAY BE ISSUED TWO PLATES FOR THE FIRST FIFTEEN VEHICLES SOLD DURING THE PRECEDING YEAR AND A DEALER PARTICIPATING IN A MANUFACTURER PROGRAM MAY BE ISSUED TWO ADDITIONAL PLATES FOR EACH FIFTEEN VEHICLES SOLD BEYOND THE INITIAL TWENTY DURING THE PRECEDING YEAR.**

Be it enacted by the General Assembly of the State of South Carolina:

**Dealer license plates**

SECTION 1. Section 56-3-2320(A) of the 1976 Code, as last amended by Act 253 of 2012, is further amended to read:

“Section 56-3-2320. (A)(1) Upon application being made and the required fee being paid to the Department of Motor Vehicles, the department may issue dealer license plates to a licensed motor vehicle dealer. The license plates, notwithstanding other provisions of this chapter to the contrary, may be used exclusively on motor vehicles owned by, assigned, or loaned for test driving purposes to the dealer when operated on the highways of this State by the dealer, its corporate officers, its employees, a prospective purchaser of the motor vehicle, or a person whose vehicle is being serviced or repaired by the dealer. The use by a prospective purchaser is limited to seven days, and the dealer shall provide the prospective purchaser with a dated demonstration certificate. A dealer license plate may be used by a person whose vehicle is being serviced or repaired by the dealership, provided that the vehicle displaying the license plate is part of a manufacturer program and given to the person by the dealer at no charge to the consumer. The use of a dealer license plate by the consumer for service and repair is limited to thirty days. The demonstration certificate for a prospective customer must be approved by the department. Dealer plates must not be used to operate wreckers or service vehicles in use by the dealer nor to operate vehicles owned by the dealer that are leased or rented by the public. No dealer plates may be issued by the department unless the dealer furnishes proof in a form acceptable to the department that he has a retail business license as required by Chapter 36, Title 12 and has made at least twenty sales of motor vehicles in the twelve months preceding his application for a dealer plate. The sales requirement may be waived by the department if the dealer has been licensed for less than one year. For purposes of this section, the transfer of ownership of a motor vehicle between the same individual or corporation more than one time is considered as only one sale. Multiple transfer of motor vehicles between licensed dealers for the purpose of meeting eligibility requirements for motor vehicle dealer plates is prohibited.

(2) A dealer may be issued two plates for the first fifteen vehicles sold during the preceding year and one additional plate for each fifteen vehicles sold beyond the initial twenty during the preceding year. A dealer participating in a manufacturer program may be issued two additional plates for each fifteen vehicles sold beyond the initial twenty during the preceding year. For good cause shown, the department in its

discretion may issue extra plates. If the dealer has been licensed less than one year, the department shall issue a number of license plates based on an estimated number of sales for the coming year. The department may increase or decrease the number of plates issued based on actual sales made.

(3) The cost of each dealer plate issued is twenty dollars.

(4) Upon application to the department, a public or private school, college, or university, the United Service Organization South Carolina, the American Red Cross, or an economic development entity created or sanctioned by the county where the entity is located, may be issued a license plate to be used on vehicles loaned or rented to the school, college, university, the United Service Organization South Carolina, the American Red Cross, or economic development entity by a licensed motor vehicle dealer. The plate must be a personalized plate designed by the department. The cost of each plate issued is two hundred dollars, of which one hundred sixty dollars must be remitted by the department to the county in which the school, college, university, chapter of the United Service Organization South Carolina, chapter of the American Red Cross, or economic development entity is located. Each plate is valid for two years, and there is no limit on the number of plates which may be issued, except in the case of an economic development entity where only one plate per entity is allowed.

(5) A dealer license plate is allowed on a motor vehicle which the dealer lends to a public or private school for use in a driver education program. A plate used for this purpose may be obtained without fee and without regard to the limit on plates issued pursuant to this section. When the motor vehicle is no longer used for driver education, the dealer shall surrender the plate to the department.

(6) Notwithstanding the provisions of this section, a dealer exclusively selling heavy duty trucks at retail is eligible to obtain license plates for exclusive use on the heavy duty trucks regardless of the number of trucks sold by him during the preceding required number of months. These license plates for trucks must be noted with a distinct and separate identification and used only on heavy duty trucks. For purposes of this section, heavy duty trucks include trucks having a gross vehicle weight of sixteen thousand pounds or greater.”

#### **Time effective**

SECTION 2. This act takes effect upon approval by the Governor.

Ratified the 15<sup>th</sup> day of May, 2017.

Approved the 19<sup>th</sup> day of May, 2017.

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**No. 58**

(R91, S637)

**AN ACT TO AMEND SECTION 7-7-490, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE DESIGNATION OF VOTING PRECINCTS IN SPARTANBURG COUNTY, SO AS TO ADD ANDERSON MILL BAPTIST, D. R. HILL MIDDLE SCHOOL, HOPE, LYMAN ELEMENTARY, AND TRINITY PRESBYTERIAN PRECINCTS; TO REMOVE THE FRIENDSHIP BAPTIST PRECINCT; AND TO REDESIGNATE THE MAP NUMBER ON WHICH THE NAMES OF THESE PRECINCTS MAY BE FOUND AND MAINTAINED BY THE REVENUE AND FISCAL AFFAIRS OFFICE.**

Be it enacted by the General Assembly of the State of South Carolina:

**Spartanburg County voting precincts, precincts added, precinct removed, and map number redesignated**

SECTION 1. Section 7-7-490 of the 1976 Code is amended to read:

“Section 7-7-490. (A) In Spartanburg County there are the following voting precincts:

Abner Creek Baptist  
Anderson Mill Baptist  
Anderson Mill Elementary  
Arcadia Elementary  
Beaumont Methodist  
Beech Springs Intermediate  
Ben Avon Methodist  
Bethany Baptist  
Bethany Wesleyan  
Boiling Springs Elementary  
Boiling Springs High School  
Boiling Springs Intermediate

Boiling Springs Jr. High  
Boiling Springs 9th Grade  
Canaan  
Cannons Elementary  
Carlisle Fosters Grove  
Carlisle Wesleyan  
Cavins Hobbysville  
C.C. Woodson Recreation  
Cedar Grove Baptist  
Chapman Elementary  
Chapman High School  
Cherokee Springs Fire Station  
Chesnee Elementary  
Cleveland Elementary  
Clifdale Elementary  
Converse Fire Station  
Cooley Springs Baptist  
Cornerstone Baptist  
Cowpens Depot Museum  
Cowpens Fire Station  
Croft Baptist  
Cross Anchor Fire Station  
Cudd Memorial  
D. R. Hill Middle School  
Daniel Morgan Technology Center  
Drayton Fire Station  
Duncan United Methodist  
Eastside Baptist  
Ebenezer Baptist  
Enoree First Baptist  
E.P. Todd Elementary  
Fairforest Elementary  
Fairforest Middle School  
Gable Middle School  
Glendale Fire Station  
Gramling Methodist  
Greater St. James  
Hayne Baptist  
Hendrix Elementary  
Holly Springs Baptist  
Hope  
Jesse Bobo Elementary

Jesse Boyd Elementary  
Lake Bowen Baptist  
Landrum High School  
Landrum United Methodist  
Lyman Elementary  
Lyman Town Hall  
Mayo Elementary  
Morningside Baptist  
Motlow Creek Baptist  
Mt. Calvary Presbyterian  
Mt. Moriah Baptist  
Mt. Zion Full Gospel Baptist  
Oakland Elementary  
Pacolet Elementary School  
Park Hills Elementary  
Pauline Glenn Springs Elementary  
Pelham Fire Station  
Poplar Springs Fire Station  
Powell Saxon Una  
R.D. Anderson Vocational  
Rebirth Missionary Baptist  
Reidville Elementary  
Reidville Fire Station  
River Ridge Elementary  
Roebuck Bethlehem  
Roebuck Elementary  
Southside Baptist  
Spartanburg High School  
Startex Fire Station  
St. John's Lutheran  
Swofford Career Center  
Travelers Rest Baptist  
Trinity Methodist  
Trinity Presbyterian  
Victor Mill Methodist  
Wellford Fire Station  
Holy Communion  
West View Elementary  
White Stone Methodist  
Whitlock Jr. High  
Woodland Heights Recreation Center  
Woodruff Elementary



Woodruff Fire Station  
Woodruff Leisure Center

(B) Precinct lines defining the precincts in subsection (A) are as shown on the official map on file with the Revenue and Fiscal Affairs Office, and as shown on copies provided to the Board of Voter Registration and Elections of Spartanburg County by the Revenue and Fiscal Affairs Office designated as document P-83-17.

(C) Polling places for the precincts listed in subsection (A) must be determined by the Board of Voter Registration and Elections of Spartanburg County with the approval of a majority of the Spartanburg County Legislative Delegation.”

**Time effective**

SECTION 2. This act takes effect on July 1, 2017.

Ratified the 15<sup>th</sup> day of May, 2017.

Approved the 19<sup>th</sup> day of May, 2017.

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**No. 59**

(R92, S651)

**AN ACT TO AMEND SECTION 7-7-120, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE DESIGNATION OF VOTING PRECINCTS IN BERKELEY COUNTY, SO AS TO ADD CARNES CROSS ROAD 3, PIMLICO 1, AND PIMLICO 2 PRECINCTS; AND TO REDESIGNATE THE MAP NUMBER ON WHICH THE NAMES OF THESE PRECINCTS MAY BE FOUND AND MAINTAINED BY THE REVENUE AND FISCAL AFFAIRS OFFICE.**

Be it enacted by the General Assembly of the State of South Carolina:

**Berkeley County voting precincts, precincts added, map number redesignated**

SECTION 1. Section 7-7-120 of the 1976 Code, as last amended by Act 82 of 2015, is further amended to read:

“Section 7-7-120. (A) In Berkeley County there are the following voting precincts:

Alvin  
Bethera  
Beverly Hill  
Bonneau  
Bonneau Beach  
Central  
Cainhoy  
Cane Bay  
Carnes Cross Road 1  
Carnes Cross Road 2  
Carnes Cross Road 3  
Cordesville  
Cross  
Daniel Island 1  
Daniel Island 2  
Daniel Island 3  
Daniel Island 4  
Devon Forest 1  
Devon Forest 2  
Discovery  
Eadytown  
Foster Creek 1  
Foster Creek 2  
Foster Creek 3  
Foxbank  
Hanahan 1  
Hanahan 2  
Hanahan 3  
Hanahan 4  
Hanahan 5  
Harbour Lake  
Hilton Cross Roads  
Howe Hall 1  
Howe Hall 2  
Huger  
Jamestown  
Lebanon  
Liberty Hall  
Macedonia

McBeth  
Medway  
Moncks Corner 1  
Moncks Corner 2  
Moncks Corner 3  
Moncks Corner 4  
Moultrie  
Old 52  
Pimlico 1  
Pimlico 2  
Pinopolis  
Royle  
Russellville  
Sangaree 1  
Sangaree 2  
Sangaree 3  
Sedgefield 1  
Sedgefield 2  
Seventy Eight  
Shulerville  
St. James  
St. Stephen 1  
St. Stephen 2  
Stone Lake  
Stratford 1  
Stratford 2  
Stratford 3  
Stratford 4  
Stratford 5  
The Village  
Tramway  
Wassamassaw 1  
Wassamassaw 2  
Weatherstone  
Westview 1  
Westview 2  
Westview 3  
Westview 4  
Whitesville 1  
Whitesville 2  
Yellow House

(B) The precinct lines defining the precincts provided in subsection (A) are as shown on the official map prepared by and on file with the Revenue and Fiscal Affairs Office designated as document P-15-17 and as shown on copies provided to the Board of Voter Registration and Elections of Berkeley County.

(C) The polling places for the precincts provided in this section must be established by the Board of Voter Registration and Elections of Berkeley County subject to the approval of a majority of the Senators and a majority of the House members of the Berkeley County Delegation.”

#### **Time effective**

SECTION 2. This act takes effect upon approval by the Governor.

Ratified the 15<sup>th</sup> day of May, 2017.

Approved the 19<sup>th</sup> day of May, 2017.

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#### **No. 60**

(R93, H3041)

**AN ACT TO AMEND SECTION 40-57-115, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO CRIMINAL BACKGROUND CHECKS REQUIRED FOR INITIAL LICENSURES BY THE REAL ESTATE COMMISSION, SO AS TO REQUIRE THESE BACKGROUND CHECKS FOR LICENSURE RENEWALS AND TO REQUIRE BACKGROUND CHECKS TO BE FINGERPRINT-BASED; TO AMEND SECTION 40-57-340, RELATING TO LICENSURE RENEWAL REQUIREMENTS FOR REAL ESTATE SALESPERSONS, BROKERS, AND BROKERS-IN-CHARGE, SO AS TO MAKE CONFORMING CHANGES; TO AMEND SECTION 40-57-710, RELATING TO GROUNDS FOR LICENSE DENIAL AND DISCIPLINE, SO AS TO INCLUDE FAILURE TO DISCLOSE CIVIL JUDGMENTS BROUGHT ON GROUNDS OF FRAUD, MISREPRESENTATION, OR DECEIT; AND TO AMEND SECTION 40-57-510, RELATING TO PROPERTY MANAGERS AND PROPERTY MANAGERS-IN-CHARGE, SO AS TO**

**REQUIRE FINGERPRINT-BASED BACKGROUND CHECKS FOR APPLICANTS AND EVERY THIRD RENEWAL, AND TO PROVIDE LICENSEES BE PLACED ON INACTIVE STATUS FOR FAILING TO SUBMIT TO REQUIRED CRIMINAL BACKGROUND CHECKS.**

Be it enacted by the General Assembly of the State of South Carolina:

**Fingerprint-based background checks required, application extended to renewals**

SECTION 1. Section 40-57-115 of the 1976 Code, as last amended by Act 170 of 2016, is further amended to read:

“Section 40-57-115. In addition to other requirements established by law and for the purpose of determining an applicant’s eligibility for licensure as a salesman, broker, broker-in-charge, property manager, and property manager-in-charge, the commission shall require initial applicants and applicants for licensure renewal to submit to a state fingerprint-based criminal records check, to be conducted by the State Law Enforcement Division (SLED), and a national criminal records check, supported by fingerprints, by the FBI. Costs of conducting a criminal records check must be borne by the applicant. The commission shall keep information received pursuant to this section confidential, except that information relied upon in denying licensure may be disclosed as necessary to support the administrative action.”

**Criminal background checks every third renewal**

SECTION 2. Section 40-57-340 of the 1976 Code, as last amended by Act 170 of 2016, is further amended to read:

“Section 40-57-340. (A) As a condition of active license renewal:

(1) A broker or salesperson shall submit to a criminal background check upon every third renewal as required for initial applicants pursuant to Section 40-57-115 and shall provide proof of satisfactory completion biennially of ten hours of continuing education in courses. The ten hours must include a minimum of four hours of instruction in mandated topics.

(2) A broker-in-charge shall submit to a criminal background check upon every third renewal as required for initial applicants pursuant to Section 40-57-115 and shall provide proof of satisfactory completion biennially of ten hours of continuing education in courses approved by

the commission. The ten hours must include a minimum of four hours of instruction in mandated topics for a broker or salesperson license and four hours of continuing education must be in advanced real estate topics designed for brokers-in-charge.

(3) A license must be renewed biennially coinciding with the licensees' continuing education deadline. Approximately one-half of the licensees must renew in even-numbered years and the remainder in odd-numbered years.

(B) Exempt from the biennial continuing education required by subsection (A) are a:

(1) salesperson who successfully completes a post-licensing course or takes a broker course is exempt for the renewal period during which the course was taken;

(2) licensee while on inactive status;

(3) nonresident broker or salesperson who has successfully satisfied the continuing education requirements in their jurisdiction of residence may be exempt with approval of the commission; or

(4) broker or salesperson with a minimum of twenty-five years of licensure may apply to be granted an experience-based partial continuing education waiver, and upon granting of the waiver, is required to complete only the mandatory four hour core course biennially to maintain active licensure. A broker-in-charge who has been granted a partial continuing education waiver is required to take the four hour core course and the mandated four hour broker-in-charge course biennially. A licensee who previously has been granted a full continuing education waiver by the commission is exempt from the continuing education requirements of this chapter.

(C) A broker or salesperson who takes more than the required number of hours during a two-year period may not carry forward any excess hours to another renewal period.

(D) A broker or salesperson who fails to submit to criminal background check requirements of this section or complete the continuing education requirements of this section by the date of license renewal may renew by submitting applicable fees but immediately must be placed on inactive status. The license may be reactivated upon proof of completion of required continuing education and payment of applicable fees or submission to a criminal background check and payment of applicable fees, whichever remedies the deficiency that caused the licensee to be placed on inactive status.

(E) In accordance with regulations, providers electronically shall transmit to the commission student continuing education and qualifying

course records. The commission shall maintain an accurate and secure database of student records.

(F) A prelicensing and continuing education course is eligible for distance learning. Certification by the Association of Real Estate License Law Officials (ARELLO) or its subsidiary, the International Distance Education Certification Center (IDECC), is required.

(G) The commission shall qualify for continuing education credit designation and certification programs of nationally recognized real estate organizations and associations. The commission may qualify for continuing education credit other than courses currently approved for continuing credit including, but not limited to, courses offered by the South Carolina Bar Association, South Carolina Forestry Board, and the South Carolina Appraisers Board.

(H) Notwithstanding another provision of law, the commission shall qualify for continuing education credit courses that are related to real estate technology, professional development, and business ethics.”

### **License denials and discipline**

SECTION 3. Section 40-57-710(A) of the 1976 Code, as last amended by Act 170 of 2016, is further amended by adding a new item to read:

“(29) fails to disclose civil judgments brought on grounds of fraud, misrepresentation, or deceit.”

### **Property manager and property managers-in-charge**

SECTION 4. Section 40-57-510 of the 1976 Code, as added by Act 170 of 2016, is amended by adding appropriately numbered new subsections to read:

“( ) As a condition for and before applying to the commission for licensure renewal, a property manager or property manager-in-charge shall submit to a criminal background check upon every third renewal as required for initial applicants pursuant to Section 40-57-115.

( ) A property manager or property manager-in-charge who fails to submit to criminal background check requirements of this section by the date of license renewal may renew by submitting applicable fees but immediately must be placed on inactive status. The license may be reactivated upon proof of submission to a criminal background check.”

**Time effective**

SECTION 5. This act takes effect three years after approval by the Governor.

Ratified the 15<sup>th</sup> day of May, 2017.

Approved the 19<sup>th</sup> day of May, 2017.

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**No. 61**

(R94, H3132)

**AN ACT TO AMEND CHAPTER 71, TITLE 44, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO HOSPICE PROGRAMS, SO AS TO ADD DEFINITIONS; TO ESTABLISH CERTAIN LICENSING REQUIREMENTS; TO PROVIDE FOR THE REGISTRATION OF MULTIPLE OFFICE LOCATIONS OF LICENSED HOSPICES; TO PROVIDE FOR EXPANSION OF HOSPICE SERVICE AREAS; TO REQUIRE THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL TO APPROVE APPLICATIONS FOR REGISTRATION OF MULTIPLE OFFICE LOCATIONS AND FOR EXPANSION OF HOSPICE SERVICE AREAS, WITH EXCEPTIONS; TO AUTHORIZE THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL TO DENY, SUSPEND, OR REVOKE APPROVALS UNDER CERTAIN CIRCUMSTANCES; TO PROVIDE FOR THE DISPOSAL OF A DECEASED PATIENT'S UNUSED CONTROLLED SUBSTANCES IN CERTAIN CIRCUMSTANCES; AND FOR OTHER PURPOSES.**

Be it enacted by the General Assembly of the State of South Carolina:

**Quality Hospice Programs Act, licensing and regulation**

SECTION 1. Chapter 71, Title 44 of the 1976 Code is amended to read:



## “CHAPTER 71

## Quality Hospice Programs Act

Section 44-71-10. This chapter may be cited as the ‘Quality Hospice Programs Act’.

Section 44-71-20. As used in this chapter:

(1) ‘Board’ means the South Carolina Board of Health and Environmental Control.

(2) ‘Department’ means the South Carolina Department of Health and Environmental Control.

(3) ‘Hospice’ means a centrally administered, interdisciplinary health care program, which provides a continuum of medically supervised palliative and supportive care for the terminally ill patient and the family including, but not limited to, outpatient and inpatient services provided directly or through written agreement. Inpatient services include, but are not limited to, services provided by a hospice in a licensed hospice facility.

Admission to a hospice program of care is based on the voluntary request of the hospice patient alone or in conjunction with designated family members.

(4) ‘Hospice facility’ means an institution, place, or building in which a licensed hospice provides room, board, and appropriate hospice services on a twenty-four hour basis to individuals requiring hospice care pursuant to the orders of a physician.

(5) ‘Licensee’ means the individual, corporation, or public entity with whom rests the ultimate responsibility for maintaining approved standards for the hospice or hospice facility.

(6) ‘Multiple location’ means a properly registered additional site, other than the licensed primary office, from which a parent hospice organization provides hospice services. ‘Multiple location’ does not mean a ‘work station’ as defined in item (9).

(7) ‘Parent hospice’ means a properly licensed hospice that, in addition to its primary office, also provides hospice services from a multiple location as defined in item (6).

(8) ‘Primary office’ means the main office of a hospice program from which a parent hospice provides hospice services to patients and their families and from which a parent hospice performs oversight, administrative, and coordination of care duties for any multiple location.

(9) ‘Work station’ means a site operated within the licensed service area of a hospice solely for the convenience of the staff where they may

conduct activities including, but not limited to, completing paperwork, checking messages, or storing equipment. These work stations must not have signage with an address or operating hours, must not be advertised, and must not be open to the public for any reason, such as to distribute supplies or to receive referrals.

Section 44-71-30. (A) No person, private or public organization, political subdivision, or other governmental agency may establish, conduct, or maintain a hospice or represent itself as a hospice without first obtaining a license from the department.

(B) A license obtained pursuant to this section is effective for a twelve-month period following the date of issue.

(C) The license must prescribe by county the geographic area authorized to be served. A hospice that wishes to expand its licensed service area to include additional counties shall first obtain approval from the department confirming that, pursuant to Section 44-71-40(C), the hospice has properly filed the application to amend its license to include the additional counties within the prescribed geographic area authorized to be served.

(D) A license issued under this chapter is not assignable or transferable and is subject to suspension or revocation at any time for failure to comply with this chapter.

(E) The department shall publish a current list of all licensed hospices on its website. The information to be published must include, but not be limited to, the licensee's primary office as well as any and all registered multiple locations. In addition, the information also must include a list of all counties served by the licensee's primary office and any and all multiple locations.

Section 44-71-35. (A) A hospice may not establish, operate, or maintain a multiple location or represent itself as such without first registering the multiple location with the department and receiving approval of the registration from the department confirming that, pursuant to Section 44-71-40(B), the hospice has properly filed the application to amend its license to include the multiple location. Upon approval by the department, a multiple location must be listed on the license of the parent hospice.

(B) A registration may be filed at any time and is effective until the expiration of the license of the parent hospice that is in effect at the time of the initial approval of the multiple location. The registration and approval of a multiple location is effective for a period running coterminous with the parent hospice's license, and the registration and

approval of a multiple location must be reviewed by the department annually at the time of the parent hospice's license renewal and as a part of that process as prescribed by the department in regulation.

(C) The application for registration of a multiple location must prescribe by county the geographic area authorized to be served. Upon approval of the registration by the department, the license of the parent hospice must be amended to include the multiple location as required in subsection (A) as well as any additional counties within the prescribed geographic area authorized to be served.

(D) A multiple location approval granted pursuant to this chapter is not assignable or transferable and is subject to suspension or revocation at any time for failure to comply with this chapter.

Section 44-71-40. (A) A person, private or public organization, political subdivision, or other governmental agency desiring to obtain a license shall file with the department an application on a form prescribed, prepared, and furnished by the department.

(B) Any hospice desiring to obtain approval for the registration of a multiple location shall file with the department an application on a form prescribed, prepared, and furnished by the department.

(C) Any hospice desiring to expand its licensed service area of its primary office or one or more of its registered multiple locations to include additional counties shall first file with the department an application on a form prescribed, prepared, and furnished by the department.

Section 44-71-50. The department is authorized to establish reasonable fees to be used in the administration of the program.

Section 44-71-60. The department shall promulgate regulations which define needs, services, and standards for the care, treatment, health, safety, welfare, and comfort of patients and their families served by hospices, including hospice facilities, primary offices, and multiple locations, and for the maintenance and operation of hospices, including hospice facilities, primary offices, and multiple locations, which will promote safe and adequate care and treatment of the patients and their families.

Section 44-71-65. Notwithstanding any other provision of law, a hospice facility, primary office, and multiple location must comply with the regulations promulgated by the department pursuant to this chapter

and are not subject to regulations pertaining to the licensure and regulation of nursing homes or community residential care facilities.

Section 44-71-70. (A) The department is authorized to issue, deny, suspend, or revoke licenses in accordance with regulations promulgated pursuant to this section. Such regulations must include hearing procedures related to denial, suspension, or revocation of licenses.

(B) The department is authorized to deny, suspend, or revoke approvals of multiple locations in accordance with regulations promulgated pursuant to this section when there is evidence or reason to believe that any of the following requirements and conditions are not being met:

(1) the parent hospice is properly licensed, operating in accordance with all South Carolina laws and regulations;

(2) the multiple location will provide the full scope of hospice services in all geographical areas listed on the license;

(3) the multiple location will share administration, supervision, and services with the parent hospice; and

(4) the multiple location will be included in the quality improvement activities of the parent hospice.

(C) The department shall approve a request to expand the service area of a parent hospice to include additional counties only when the additional counties are requested in a properly filed application as required by Section 44-71-40(C).

(D) Regulations pertaining to the denial, suspension, or revocation of approvals must include hearing procedures related to denial, suspension, or revocation of licenses.

Section 44-71-80. (A) Each hospice for which a license has been issued must be inspected by an authorized representative of the department at least once a year for the purpose of ensuring that the provisions of this chapter are being followed. For hospices whose licensees include multiple locations, the department shall rotate those inspections among each location.

(B) All hospices shall complete and return a joint annual report to the department and the Revenue and Fiscal Affairs Office on a form prescribed by the department within a time period specified by the department or the Revenue and Fiscal Affairs Office. In the development of this form, the department shall incorporate input from hospice providers to ensure the report captures data on all services that are to be provided by hospices.

Section 44-71-85. (A) Upon the death of a patient receiving outpatient services from a hospice, ownership of unused medications related to the care of the patient constituting Schedule II, III, IV, or V controlled substances under 21 C.F.R. Part 1308 shall transfer to the hospice for immediate disposal. Each hospice providing outpatient services shall establish a written procedure to ensure safe disposal of unused controlled substances at the time of a patient's death. Upon the death of a patient receiving outpatient services, in the presence of a witness, the hospice nurse shall record in the medical record the name and quantity of each unused controlled substance. The hospice nurse then shall conduct immediate disposal at the site of care by complying with Environmental Protection Agency and Drug Enforcement Administration guidelines for safe disposal or immediate mail-back to a collector registered pursuant to 21 C.F.R. Section 1317.40. If conducting immediate disposal at the site of care, the nurse should perform the disposal in the presence of a witness, who shall sign a document indicating their witnessing of the disposal. If participating in immediate mail-back to a registered collector, the hospice nurse shall deposit the unused medications into the mail-back envelope and seal the envelope at the site of outpatient services. Hospice employees must not remove any medications from the site of outpatient services other than to conduct immediate mail-back to a registered collector. The hospice nurse shall record the method of disposal in the medical record.

(B) For the purpose of disposing unused medication constituting a Schedule II, III, IV, or V controlled substance under 21 C.F.R. Part 1308, a hospice facility is a 'long-term care facility' as defined by 21 C.F.R. Section 1300.01. The hospice facility shall dispose of unused Schedule II, III, IV, and V controlled substances in accordance with 21 C.F.R. Sections 1317.30 and 1317.80.

Section 44-71-90. Hospices must not discriminate based on age, sex, race, color, religion, or source of payment, location of patient, acceptance or provision of goods and services to patients or potential patients.

Section 44-71-95. Nothing in this chapter may be construed to prohibit a health care facility from providing hospice services through contractual arrangements with a licensed hospice operation.

Section 44-71-100. Hospices may not participate in, or offer, or imply an offer to participate in the practice known generally as rebate, kickbacks, or fee-splitting arrangements.

Section 44-71-110. Any person who violates the provisions of this chapter is guilty of a misdemeanor and, upon conviction, shall be fined not to exceed five hundred dollars or imprisoned for a period not to exceed six months or both.”

**Time effective**

SECTION 2. This act takes effect upon approval by the Governor.

Ratified the 15<sup>th</sup> day of May, 2017.

Approved the 19<sup>th</sup> day of May, 2017.

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**No. 62**

(R95, H3137)

**AN ACT TO AMEND SECTIONS 61-6-1140 AND 61-6-1150, CODE OF LAWS OF SOUTH CAROLINA, 1976, BOTH RELATING TO TASTINGS AND RETAIL SALES OF ALCOHOLIC LIQUORS AT LICENSED PREMISES OF A MICRO-DISTILLERY OR MANUFACTURER, SO AS TO REVISE THE OUNCE AMOUNT OF ALCOHOLIC LIQUORS DISPENSED AT LICENSED PREMISES AND TO REVISE THE SALE AT RETAIL OF ALCOHOLIC LIQUORS AT LICENSED PREMISES AND TO ALLOW MIXERS TO BE USED IN TASTINGS; TO AMEND SECTION 61-6-1035, RELATING TO SAMPLING OF WINES, SO AS TO ALLOW MIXERS TO BE USED IN TASTINGS; TO AMEND SECTIONS 61-6-140 AND 61-6-150, BOTH RELATING TO ALCOHOLIC LIQUOR RETAIL LICENSES AND THE LIMIT ON THE NUMBER OF LICENSES THAT MAY BE ISSUED, SO AS TO PROVIDE THAT THE DEPARTMENT OF REVENUE SHALL NOT ISSUE MORE THAN THREE RETAIL DEALER LICENSES; TO REPEAL SECTIONS 61-6-140 AND 61-6-150 RELATING TO ALCOHOLIC LIQUOR RETAIL LICENSES AND THE LIMIT ON THE NUMBER OF LICENSES THAT MAY BE ISSUED, AND SECTION 61-4-960(A)(13) RELATING TO THE PROHIBITION ON TASTINGS HELD IN CONJUNCTION WITH A TASTING IN**

**A RETAIL ALCOHOLIC LIQUOR STORE, THAT IS ADJACENT TO AND LICENSED IN THE SAME NAME OF THE RETAIL PERMIT AUTHORIZING THE SALE OF BEER ON APRIL 5, 2018; AND TO AMEND SECTION 61-4-1515, RELATING TO BREWERIES AND SAMPLES AND SALES OF BEER, SO AS TO DELETE THE TERM "LICENSED" AND REPLACE IT WITH THE TERM "PERMITTED" THROUGHOUT AND DELETE REFERENCES ALLOWING FOR SAMPLINGS.**

Be it enacted by the General Assembly of the State of South Carolina:

**Alcoholic liquors, micro-distillery tastings, quantity allowed increased, mixers authorized**

SECTION 1. Section 61-6-1140 of the 1976 Code, as added by Act 11 of 2009, is amended to read:

"Section 61-6-1140. A holder of a valid micro-distillery or manufacturer license issued by the State may permit tastings and retail sales of the alcoholic liquors produced at the licensed premises subject to the following limitations and any other limitations provided in this subarticle:

- (1) tastings by and sales to consumers must be held in conjunction with a tour by the consumer of the on-site licensed premises;
- (2) the micro-distillery or manufacturer shall establish appropriate protocols to ensure that a consumer sold or served alcoholic liquors pursuant to this section is not under twenty-one years of age and that a consumer shall not attend more than one tasting in a day;
- (3) the micro-distillery or manufacturer may not dispense more than three ounces to an individual consumer in one day;
- (4) tastings and sales may occur only between the hours of nine a.m. and seven p.m., Monday through Saturday;
- (5) the micro-distillery or manufacturer may charge for alcoholic liquors consumed at a tasting, but must collect and remit the liquor by the drink excise tax pursuant to the provisions of Chapter 33, Title 12;
- (6) the micro-distillery or manufacturer may provide mixers, which must be nonalcoholic and carry zero percent of alcohol by weight, in conjunction with the tasting, but the micro-distillery or manufacturer may not charge for the mixers;
- (7) tastings may not occur in conjunction with the service of food in a restaurant setting; and

(8) only brands of alcoholic liquors actually manufactured, distilled, or fermented at and distributed to wholesalers from the licensed premises may be sold or offered for tasting.”

**Alcoholic liquors, micro-distillery tastings, mixers, minors prohibited in tasting facility**

SECTION 2. Section 61-6-1150 of the 1976 Code, as added by Act 11 of 2009, is amended to read:

“Section 61-6-1150. Authorization by this section of sales and tastings at licensed premises of a micro-distillery or manufacturer is expressly intended for the promotion of education regarding production of alcoholic liquors in the State and not to create competition between producers and retailers. A holder of a valid micro-distillery or manufacturer license issued by the State may:

- (1) sell in any quantities the alcoholic liquors produced at the licensed premises to a wholesaler licensed by the State;
- (2) transport in any quantities the alcoholic liquors produced at the licensed premises out of state for sale outside of the State;
- (3) sell at retail at the licensed premises the alcoholic liquors produced at the licensed premises, but only if the labels for the bottles are marked ‘not for resale’;
- (4) sell at retail no more than the equivalent of three 750-milliliter bottles of alcoholic liquors to a consumer in one business day;
- (5) not allow consumption on the licensed premises of alcoholic liquors sold by the bottle at the licensed premises;
- (6) maintain pricing of the alcoholic liquors sold at the licensed premises at a price approximating retail prices generally charged for identical alcoholic liquors in the county where the on-site premises is located;
- (7) in addition to the sale of alcoholic liquors as authorized by this section, sell items promoting the brand or brands of alcoholic liquors produced at that location in a room on the licensed premises separate from the locations of the tastings;
- (8) not sell or store goods, wares, or merchandise in or from the room in which alcoholic liquors are sold or tasted;
- (9) store mixers used, but not sold, in conjunction with tastings; and
- (10) not allow minors into the portion of the facility where tastings are occurring.”



**Wine, sampling, mixers authorized**

SECTION 3. Section 61-6-1035 of the 1976 Code is amended by adding appropriately numbered items to read:

“( ) Mixers, which must be nonalcoholic and carry zero percent of alcohol by weight, may be provided in conjunction with the tasting, but the mixers must be provided free of charge.

( ) Store mixers used, but not sold, in conjunction with tastings.”

**Alcoholic liquors, retail dealer licenses, three retail dealer license limit, repeal**

SECTION 4. A. Section 61-6-140 of the 1976 Code is amended to read:

“Section 61-6-140. To promote adequate law enforcement, regulatory measures, health care costs, and associated impacts on the health, safety, and welfare of the state’s residents resulting from the anticipated sales of liquor, and to curb relationships and practices calculated to stimulate sales and impair the state’s policy favoring trade stability and the promotion of temperance, in determining whether a political subdivision is adequately served pursuant to Section 61-6-170, and to provide for an orderly provision of retail dealer licenses, the issuance of retail dealer licenses must be governed pursuant to the following requirements:

(1) The department shall not issue more than three retail dealer licenses to one licensee, and the licensee must be eligible for a license for each store pursuant to Section 61-6-110.

(2) The limitation of no more than three retail dealer licenses to one licensee does not apply to a person having an interest in retail liquor stores as of July 1, 1978.

(3) The General Assembly finds that the issuance of multiple retail dealer licenses pursuant to this section should exist only for a time certain to serve and promote the policies set forth in this section. It is the intent of the General Assembly to provide for a sunset provision on the limitation of three retail dealer licenses held by one licensee as enacted by this section. The provisions of this section are therefor repealed on April 5, 2018.”

B. Section 61-6-150 of the 1976 Code is amended to read:

“Section 61-6-150. No person, directly or indirectly, individually or as a member of a partnership or an association, as a member or stockholder of a corporation, or as a relative to a person by blood or marriage within the second degree, may have any interest whatsoever in a retail liquor store licensed under this section except the three stores covered by his retail dealer’s licenses, as provided for in Section 61-6-140. The prohibitions in this section do not apply to a person having an interest in retail liquor stores on July 1, 1978. It is the intent of the General Assembly to provide for a sunset provision on the limitation of three retail dealer licenses held by one licensee as enacted by this section. The provisions of this section are therefor repealed on April 5, 2018.”

C. The provisions contained in this SECTION are effective upon the signature of the Governor. Sections 61-6-140, 61-6-150 and 61-4-960(A)(13) are repealed effective April 5, 2018.

### **One subject**

SECTION 5. The General Assembly finds that all the provisions contained in this act relate to one subject as required by Section 17, Article III of the South Carolina Constitution, 1895, in that each provision relates directly to or in conjunction with other sections relating to the subject of premises licensed to sell alcoholic liquors to consumers.

The General Assembly further finds that a common purpose or relationship exists among the sections, representing a potential plurality but not disunity of topics, notwithstanding that reasonable minds might differ in identifying more than one topic contained in the act.

### **Breweries, samples on sales of beer, sampling provisions deleted**

SECTION 6. Section 61-4-1515(A) of the 1976 Code, as last amended by Act 36 of 2013, is amended to read:

“(A) A brewery permitted in this State is authorized to sell beer to consumers on its permitted premises, provided that the beer is brewed on the permitted premises with an alcoholic content of twelve percent by weight, or less, subject to the following conditions:

(1) sales to consumers must be held in conjunction with a tour by the consumer of the permitted premises and the entire brewing process utilized at the permitted premises;

(2) sales shall not be offered or made to, or allowed to be offered, made to, or consumed by an intoxicated person or a person who is under the age of twenty-one;

(3)(a) no more than a total of forty-eight ounces of beer brewed at the permitted premises, shall be sold to a consumer for on-premises consumption within a twenty-four hour period; and

(b) of that forty-eight ounces of beer available to be sold to a consumer within a twenty-four hour period, no more than sixteen ounces of beer with an alcoholic weight of above eight percent, including any samples offered and consumed with or without cost, shall be sold to a consumer for on-premises consumption within a twenty-four hour period;

(4) a brewery must develop and use a system to monitor the amounts and types of beer sampled or sold to a consumer for on-premises consumption;

(5) a brewery must sell the beer at the permitted premises at a price approximating retail prices generally charged for identical beverages in the county where the permitted premises are located;

(6) a brewery must remit appropriate taxes to the Department of Revenue for beer sales in an amount equal to and in a manner required for excise taxes assessed by the department. A brewery also must remit appropriate sales and use taxes and local hospitality taxes;

(7) a brewery must post information that states the alcoholic content by weight of the various types of beer available in the brewery and the penalties for convictions for:

- (a) driving under the influence;
- (b) unlawful transport of an alcoholic container; and
- (c) unlawful transfer of alcohol to minors.

And, the information shall be in signage that must be posted at each entrance, each exit, and in places in a brewery seen during a tour;

(8) a brewery must provide department or DAODAS approved alcohol enforcement training for the employees who serve beer on the permitted premises to consumers for on-premises consumption, so as to prevent and prohibit unlawful sales, transfer, transport, or consumption of beer by persons who are under the age of twenty-one or who are intoxicated; and

(9) a brewery must maintain a liquor liability insurance policy or a general liability insurance policy with a liquor liability endorsement in the amount of at least one million dollars for the biennial period for which it is permitted. Within ten days of receiving its biennial permit, a brewery must send proof of this insurance to the State Law Enforcement Division and to the Department of Revenue, where the proof of

insurance information shall be retained with the department's alcohol beverage licensing section.”

**Breweries, samples on sales of beer, sampling provisions deleted**

SECTION 7. Section 61-4-1515(B)(1) of the 1976 Code, as added by Act 223 of 2014, is amended to read:

“(B)(1) In addition to the sales provisions set forth in subsection (A), a brewery permitted in this State is authorized to sell beer produced on its permitted premises to consumers on site for on-premises consumption within an area of its permitted and licensed premises approved by the rules and regulations of the Department of Health and Environmental Control governing eating and drinking establishments and other food service establishments. These establishments also may apply for a retail on-premises consumption permit for the sale of beer and wine not produced on the licensed premises that has been purchased from a wholesaler through the three-tier distribution chain set forth in Section 61-4-735 and Section 61-4-940.”

**Time effective**

SECTION 8. This act takes effect upon approval by the Governor.

Ratified the 15<sup>th</sup> day of May, 2017.

Approved the 19<sup>th</sup> day of May, 2017.

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**No. 63**

(R96, H3176)

**AN ACT TO AMEND SECTION 15-41-30, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO AN INDIVIDUAL RETIREMENT ACCOUNT BEING EXEMPT FROM ATTACHMENT, LEVY, AND SALE, SO AS TO DELETE THE PROVISION THAT THE EXEMPTION APPLIES ONLY TO THE EXTENT THAT IS PERMITTED IN SECTION 522(d) OF THE FEDERAL BANKRUPTCY CODE.**

Be it enacted by the General Assembly of the State of South Carolina:

**Individual retirement accounts, federal bankruptcy law qualification deleted**

SECTION 1. Section 15-41-30(A)(13) of the 1976 Code, as last amended by Act 153 of 2012, is further amended to read:

“(13) The debtor’s right to receive individual retirement accounts as described in Sections 408(a) and 408A of the Internal Revenue Code, individual retirement annuities as described in Section 408(b) of the Internal Revenue Code, and accounts established as part of a trust described in Section 408(c) of the Internal Revenue Code. A claimed exemption may be reduced or eliminated by the amount of a fraudulent conveyance into the individual retirement account or other plan. For purposes of this item, ‘Internal Revenue Code’ has the meaning provided in Section 12-6-40(A). The interest of an individual under a retirement plan shall be exempt from creditor process and is an exception to Section 15-41-35. The exemption provided by this section shall be available whether such individual has an interest in the retirement plan as a participant, beneficiary, contingent annuitant, alternate payee, or otherwise.”

**Time effective**

SECTION 2. This act takes effect upon approval by the Governor.

Ratified the 15<sup>th</sup> day of May, 2017.

Approved the 19<sup>th</sup> day of May, 2017.

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**No. 64**

(R97, H3215)

**AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 16-17-770 SO AS TO CREATE THE OFFENSE OF IMPERSONATING A LAWYER AND PROVIDE GRADUATED PENALTIES.**

Be it enacted by the General Assembly of the State of South Carolina:

**Impersonating a lawyer, penalties**

SECTION 1. Article 7, Chapter 17, Title 16 of the 1976 Code is amended by adding:

“Section 16-17-770. (A) It is unlawful for a person other than a lawyer, who is licensed to practice law in this State or in another state or jurisdiction in the United States and not disbarred or suspended from the practice of law in any state or jurisdiction, to represent to any person that he is a lawyer for the purpose of soliciting business, obtaining anything of value, or providing legal advice or assistance. A person who violates the provisions of this section:

(1) for a first offense, is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned for not more than one year, or both;

(2) for a second offense, is guilty of a misdemeanor and, upon conviction, must be fined not more than two thousand five hundred dollars or imprisoned for not more than three years, or both; and

(3) for a third or subsequent offense, is guilty of a felony and, upon conviction, must be fined not more than five thousand dollars or imprisoned for not more than five years, or both.

(B) The provisions of this section do not alter the provisions of Chapter 5, Title 40, regulating the practice of law.”

**Time effective**

SECTION 2. This act takes effect upon approval by the Governor.

Ratified the 15<sup>th</sup> day of May, 2017.

Approved the 19<sup>th</sup> day of May, 2017.

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**No. 65**

(R100, H3256)

**AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING ARTICLES 140, 143, 141, AND**

**142 TO CHAPTER 3, TITLE 56 SO AS TO PROVIDE THAT THE DEPARTMENT OF MOTOR VEHICLES MAY ISSUE PALMETTO CROSS SPECIAL LICENSE PLATES, POWERING THE PALMETTO STATE SPECIAL LICENSE PLATES, LEGION OF MERIT SPECIAL LICENSE PLATES, AND VIRGINIA TECH SPECIAL LICENSE PLATES, RESPECTIVELY; AND TO AMEND SECTION 56-3-8400, AS AMENDED, RELATING TO THE LIONS CLUB SPECIAL LICENSE PLATES, SO AS TO SPECIFY TO WHOM THE LICENSE PLATES MAY BE ISSUED.**

Be it enacted by the General Assembly of the State of South Carolina:

**Palmetto Cross Special License Plate**

SECTION 1. Chapter 3, Title 56 of the 1976 Code is amended by adding:

“Article 140

‘Palmetto Cross’ Special License Plates

Section 56-3-14010. The department may issue no more than three permanent special motor vehicle license plates to a recipient of the Palmetto Cross Medal for use on his private passenger motor vehicles, as defined in Section 56-3-630, or motorcycles as defined in Section 56-3-20, registered in his name. There is no fee for the issuance of up to two license plates, and not more than three license plates may be issued to a person. The fee for the third plate is the regular motor vehicle registration fee contained in Article 5, Chapter 3 of this title and a special motor vehicle license fee of thirty dollars. The application for a special license plate must include proof that the applicant is a recipient of the Palmetto Cross Medal.

Section 56-3-14020. (A) The special license plates must be of the same size as regular motor vehicle license plates, upon which must be imprinted on the left side of the plates the distinctive Palmetto Cross Medal insignia with numbers and designs determined by the Department of Motor Vehicles.

(B) If a person who qualifies for the special license plate issued under this article also qualifies for the handicapped license plate issued pursuant to Section 56-3-1960(1), then the license plate issued pursuant

to this section also shall include the distinguishing symbol used on license plates issued pursuant to Section 56-3-1960(1).

Section 56-3-14030. A license plate issued pursuant to this article may be transferred to another vehicle of the same weight class owned by the same person upon application being made and approved by the Department of Motor Vehicles. It is unlawful for any person to whom the special license plate has been issued to knowingly permit it to be displayed on any vehicle except the one authorized by the department.

Section 56-3-14040. The provisions of this article do not affect the registration and licensing of motor vehicles as required by other provisions of this chapter but are cumulative to them. Any person violating the provisions of this article or any person who fraudulently gives false or fictitious information in any application for a special license plate, as authorized in this article, conceals a material fact, or otherwise commits a fraud in any application or in the use of any special license plate issued is guilty of a misdemeanor and, upon conviction, must be punished by a fine of not more than one hundred dollars or by imprisonment for not more than thirty days.”

### **Powering the Palmetto State Special License Plate**

SECTION 2. Chapter 3, Title 56 of the 1976 Code is amended by adding:

“Article 143

#### **‘Powering the Palmetto State’ Special License Plates**

Section 56-3-14310. (A) The Department of Motor Vehicles may issue ‘Powering the Palmetto State’ special license plates to owners of private passenger carrying motor vehicles, as defined in Section 56-3-630, and motorcycles, as defined in Section 56-3-20, registered in their names. The fee for each special license plate is the regular motor vehicle license fee set forth in Article 5, Chapter 3, Title 56. The Electric Cooperatives of South Carolina, Inc., shall submit to the department for its approval the proposed design it desires to be used for this special license plate honoring the work of South Carolina’s electrical linemen.

(B) Each special license plate must be of the same size and general design as regular motor vehicle license plates. Each special license plate



must be issued or revalidated for a biennial period that expires twenty-four months from the month the special license plate is issued.

(C) The guidelines for the production, collection, and distribution of fees for a special license plate under this section must meet the requirements of Section 56-3-8100.”

### **Legion of Merit Special License Plate**

SECTION 3. Chapter 3, Title 56 of the 1976 Code is amended by adding:

#### “Article 141

#### ‘Legion of Merit’ Special License Plates

Section 56-3-14110. (A) The department may issue a ‘Legion of Merit’ special motor vehicle license plate for use on a private passenger motor vehicle or motorcycle registered in this State in a person’s name who is a recipient of the Legion of Merit award. An application for this special motor vehicle license plate must include official documentation showing that the applicant is a recipient of the Legion of Merit award.

(B) The requirements for production and distribution of the plate are those set forth in Section 56-3-8100. The department shall imprint on the special license plates ‘Legion of Merit’ and the corresponding Legion of Merit medal.

(C) A license plate issued pursuant to this article may be transferred to another vehicle of the same weight class owned by the same person upon application being made and approved by the department. It is unlawful for a person to whom the plate has been issued to knowingly permit it to be displayed on any vehicle except the one authorized by the department.

(D) The provisions of this article do not affect the registration and licensing of motor vehicles as required by other provisions of this chapter but are cumulative to those other provisions. A person violating the provisions of this article or a person who (1) fraudulently gives false or fictitious information in any application for a special license plate, as authorized in this article, (2) conceals a material fact, or (3) otherwise commits fraud in the application or in the use of a special license plate issued is guilty of a misdemeanor and, upon conviction, must be punished by a fine of not more than one hundred dollars or by imprisonment for not more than thirty days, or both.”

**Lions Club Special License Plate**

SECTION 4. Section 56-3-8400 of the 1976 Code, as last amended by Act 275 of 2016, is further amended to read:

“Section 56-3-8400. (A) The Department of Motor Vehicles may issue ‘Lions Club’ special license plates to owners of private passenger motor vehicles, as defined in Section 56-3-630, and motorcycles, as defined in Section 56-3-20. The fee for this special license plate is the regular motor vehicle license fee contained in Article 5, Chapter 3 of this title which must be deposited in the state general fund and the special fee required by Section 56-3-2020 which must be placed by the Comptroller General into the State Highway Fund as established by Section 57-11-20, to be distributed as provided in Section 11-43-167. The license plates issued pursuant to this section must conform to a design agreed to by the department and the chief executive officer of the organization.

(B) Before the Department of Motor Vehicles produces and distributes a special license plate pursuant to this section, it must receive:

(1) four hundred prepaid applications for the special license plate or a deposit of four thousand dollars from the individual or organization seeking issuance of the license plate. If a deposit of four thousand dollars is made by an individual or organization pursuant to this section, the department must refund the four thousand dollars once an equivalent amount of license plate fees is collected for that organization’s license plate. If the equivalent amount is not collected within four years of the first issuance of the license plate, then the department must retain the deposit; and

(2) a plan to market the sale of the special license plate which must be approved by the department.

(C) If the department receives less than three hundred biennial applications and renewals for a particular special license plate, it shall not produce additional special license plates in that series. The department shall continue to issue special license plates of that series until the existing inventory is exhausted.”

**Virginia Tech Special License Plate**

SECTION 5. Chapter 3, Title 56 of the 1976 Code is amended by adding:

## “Article 142

## ‘Virginia Tech’ Special License Plates

Section 56-3-14210. (A) The Department of Motor Vehicles may issue ‘Virginia Tech’ special license plates to owners of private passenger carrying motor vehicles, as defined in Section 56-3-630, and motorcycles, as defined in Section 56-3-20, registered in their names. The fee for each special license plate is seventy dollars every two years, in addition to the regular motor vehicle license fee set forth in Article 5, Chapter 3, Title 56. Each license plate must be of the same size and general design as regular motor vehicle license plates. Each special license plate must be issued or revalidated for a biennial period that expires twenty-four months from the month the special license plate is issued.

(B) The fees collected in excess of the cost of producing the license plates must be distributed to the South Carolina Palmetto Chapter of Virginia Tech.

(C) The guidelines for the production, collection, and distribution of fees for a special license plate under this section must meet the requirements of Section 56-3-8100.”

**Time effective**

SECTION 6. This act takes effect upon approval by the Governor.

Ratified the 15<sup>th</sup> day of May, 2017.

Approved the 19<sup>th</sup> day of May, 2017.

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**No. 66**

(R101, H3289)

**AN ACT TO AMEND SECTION 56-5-1930, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE DISTANCE THAT MUST BE MAINTAINED BETWEEN VEHICLES TRAVELING ALONG A HIGHWAY, SO AS TO REVISE THE TERM “DRIVER” TO “OPERATOR” IN REGARD TO THESE VEHICLES, AND TO PROVIDE THAT THIS SECTION DOES**

**NOT APPLY TO THE OPERATOR OF ANY NONLEADING COMMERCIAL MOTOR VEHICLE SUBJECT TO FEDERAL MOTOR CARRIER SAFETY REGULATIONS AND TRAVELING IN A SERIES OF COMMERCIAL VEHICLES USING COOPERATIVE ADAPTIVE CRUISE CONTROL OR ANY OTHER AUTOMATED DRIVING TECHNOLOGY.**

Be it enacted by the General Assembly of the State of South Carolina:

**Exemption from section, terms revised**

SECTION 1. Section 56-5-1930 of the 1976 Code is amended to read:

“Section 56-5-1930. (A) The operator of a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of such vehicles and the traffic upon and the condition of the highway.

(B) The operator of any truck or motor vehicle drawing another vehicle when traveling upon a roadway outside of a business or residence district and which is following another truck or motor vehicle drawing another vehicle shall, whenever conditions permit, leave sufficient space so that an overtaking vehicle may enter and occupy such space without danger, except that this shall not prevent a truck or motor vehicle drawing another vehicle from overtaking and passing any vehicle or combination of vehicles.

(C) Motor vehicles being operated upon any roadway outside of a business or residence district in a caravan or motorcade whether or not towing other vehicles shall be so operated as to allow sufficient space between each such vehicle or combination of vehicles so as to enable any other vehicle to enter and occupy such space without danger. This provision shall not apply to funeral processions.

(D) This section does not apply to the operator of any nonleading commercial motor vehicle subject to Federal Motor Carrier Safety Regulations and traveling in a series of commercial vehicles using cooperative adaptive cruise control or any other automated driving technology.”

**Time effective**

SECTION 2. This act takes effect upon approval by the Governor.

Ratified the 15<sup>th</sup> day of May, 2017.

Approved the 19<sup>th</sup> day of May, 2017.

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**No. 67**

(R102, H3352)

**AN ACT TO AMEND SECTION 30-4-30, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO RIGHTS TO INSPECT PUBLIC RECORDS UNDER THE FREEDOM OF INFORMATION ACT, SO AS TO INCLUDE ELECTRONIC TRANSMISSIONS AMONG THE RECORD FORMATS AVAILABLE FOR INSPECTION, TO PROVIDE CERTAIN LIMITATIONS APPLICABLE TO PRISONERS, TO PROVIDE PUBLIC BODIES ARE NOT REQUIRED TO CREATE ELECTRONIC VERSIONS OF PUBLIC RECORDS TO FULFILL RECORDS REQUESTS, TO REVISE REQUIREMENTS CONCERNING RECORDS REQUEST FULFILMENT FEES, TO PERMIT PUBLIC BODIES TO CHARGE CERTAIN DEPOSITS BEFORE SEARCHING AND COPYING PUBLIC RECORDS IN RESPONSE TO RECORDS REQUESTS, AND TO REVISE THE TIME LIMITS AND MANNER FOR RESPONDING TO RECORDS REQUESTS AND COMPLYING WITH THE PROVISIONS OF THE ACT; TO AMEND SECTION 30-4-40, AS AMENDED, RELATING TO MATTERS EXEMPT FROM DISCLOSURE IN THE FREEDOM OF INFORMATION ACT, SO AS TO REVISE PROVISIONS CONCERNING LAW ENFORCEMENT RECORDS; TO AMEND SECTION 30-4-50, RELATING TO CATEGORIES OF MATTERS DECLARED TO BE PUBLIC INFORMATION IN THE FREEDOM OF INFORMATION ACT, SO AS TO INCLUDE LAW ENFORCEMENT VEHICLE-MOUNTED VIDEOS AND AUDIO RECORDINGS OF CERTAIN INCIDENTS INVOLVING LAW ENFORCEMENT OFFICERS, TO PROVIDE PROCEDURES THROUGH WHICH ENFORCEMENT MAY**

SEEK EXEMPTION OF DISCLOSURE OF THE RECORDINGS FROM THE CIRCUIT COURT IF THERE IS CLEAR AND CONVINCING EVIDENCE OF SPECIFIC HARM FROM THE RELEASE OF THE RECORDINGS, AND TO PROVIDE REQUIREMENTS FOR RELATED COURT ORDERS; TO AMEND SECTION 30-4-100, RELATING TO EQUITABLE REMEDIES AVAILABLE UNDER THE FREEDOM OF INFORMATION ACT, SO AS TO INCLUDE TIME CONSTRAINTS WITHIN WHICH DETERMINATIVE HEARINGS ON THE REQUESTS FOR RELIEF MUST BE MADE; TO AMEND SECTION 30-4-110, RELATING TO PENALTIES FOR VIOLATIONS OF THE FREEDOM OF INFORMATION ACT, SO AS TO REMOVE CRIMINAL PENALTIES, AND TO PROVIDE RIGHTS AND REMEDIES OF PUBLIC BODIES FROM WHOM REQUESTS ARE MADE AND PERSONS WITH SPECIFIC INTERESTS IN EXEMPT INFORMATION FOR WHICH DISCLOSURE IS SOUGHT, AMONG OTHER THINGS; AND TO AMEND SECTION 30-2-50, RELATING TO THE PROHIBITION ON OBTAINING PERSONAL INFORMATION FROM A STATE AGENCY FOR COMMERCIAL SOLICITATION, SO AS TO EXTEND THE PROHIBITION TO INFORMATION OBTAINED FROM LOCAL GOVERNMENTS AND POLITICAL SUBDIVISIONS OF THE STATE.

Be it enacted by the General Assembly of the State of South Carolina:

**FOIA, electronic records, prisoner rights, fees, deposits**

SECTION 1. Section 30-4-30 of the 1976 Code is amended to read:

“Section 30-4-30. (A)(1) A person has a right to inspect, copy, or receive an electronic transmission of any public record of a public body, except as otherwise provided by Section 30-4-40, or other state and federal laws, in accordance with reasonable rules concerning time and place of access. This right does not extend to individuals serving a sentence of imprisonment in a state or county correctional facility in this State, in another state, or in a federal correctional facility; however, this may not be construed to prevent those individuals from exercising their constitutionally protected rights, including, but not limited to, their right to call for evidence in their favor in a criminal prosecution under the South Carolina Rules of Criminal Procedure.

(2) A public body is not required to create an electronic version of a public record when one does not exist to fulfill a records request.

(B) The public body may establish and collect fees as provided for in this section. The public body may establish and collect reasonable fees not to exceed the actual cost of the search, retrieval, and redaction of records. The public body shall develop a fee schedule to be posted online. The fee for the search, retrieval, or redaction of records shall not exceed the prorated hourly salary of the lowest paid employee who, in the reasonable discretion of the custodian of the records, has the necessary skill and training to perform the request. Fees charged by a public body must be uniform for copies of the same record or document and may not exceed the prevailing commercial rate for the producing of copies. Copy charges may not apply to records that are transmitted in an electronic format. If records are not in electronic format and the public body agrees to produce them in electronic format, the public body may charge for the staff time required to transfer the documents to electronic format. However, members of the General Assembly may receive copies of records or documents at no charge from public bodies when their request relates to their legislative duties. The records must be furnished at the lowest possible cost to the person requesting the records. Records must be provided in a form that is both convenient and practical for use by the person requesting copies of the records concerned, if it is equally convenient for the public body to provide the records in this form. Documents may be furnished when appropriate without charge or at a reduced charge where the agency determines that waiver or reduction of the fee is in the public interest because furnishing the information can be considered as primarily benefiting the general public. Fees may not be charged for examination and review to determine if the documents are subject to disclosure. A deposit not to exceed twenty-five percent of the total reasonably anticipated cost for reproduction of the records may be required prior to the public body searching for or making copies of records.

(C) Each public body, upon written request for records made under this chapter, shall within ten days (excepting Saturdays, Sundays, and legal public holidays) of the receipt of the request, notify the person making the request of its determination and the reasons for it; provided, however, that if the record is more than twenty-four months old at the date the request is made, the public body has twenty days (excepting Saturdays, Sundays, and legal public holidays) of the receipt to make this notification. This determination must constitute the final opinion of the public body as to the public availability of the requested public record, however, the determination is not required to include a final

decision or express an opinion as to whether specific portions of the documents or information may be subject to redaction according to exemptions provided for by Section 30-4-40 or other state or federal laws. If the request is granted, the record must be furnished or made available for inspection or copying no later than thirty calendar days from the date on which the final determination was provided, unless the records are more than twenty-four months old, in which case the public body has no later than thirty-five calendar days from the date on which the final determination was provided. If a deposit as provided in subsection (B) is required by the public body, the record must be furnished or made available for inspection or copying no later than thirty calendar days from the date on which the deposit is received, unless the records are more than twenty-four months old, in which case the public body has no later than thirty-five calendar days from the date on which the deposit was received to fulfill the request. The full amount of the total cost must be paid at the time of the production of the request. If written notification of the determination of the public body as to the availability of the requested public record is neither mailed, electronically transmitted, nor personally delivered to the person requesting the document within the time set forth by this section, the request must be considered approved as to nonexempt records or information. Exemptions from disclosure as set forth in Section 30-4-40 or by other state or federal laws are not waived by the public body's failure to respond as set forth in this subsection. The various response, determination, and production deadlines provided by this subsection are subject to extension by written mutual agreement of the public body and the requesting party at issue, and this agreement shall not be unreasonably withheld.

(D) The following records of a public body must be made available for public inspection and copying during the hours of operations of the public body, unless the record is exempt pursuant to Section 30-4-40 or other state or federal laws, without the requestor being required to make a written request to inspect or copy the records when the requestor appears in person:

- (1) minutes of the meetings of the public body for the preceding six months;
- (2) all reports identified in Section 30-4-50(A)(8) for at least the fourteen-day period before the current day;
- (3) documents identifying persons confined in a jail, detention center, or prison for the preceding three months; and



(4) all documents produced by the public body or its agent that were distributed to or reviewed by a member of the public body during a public meeting for the preceding six-month period.

(E) A public body that places the records in a form that is both convenient and practical for use on a publicly available Internet website is deemed to be in compliance with the provisions of subsection (D), provided that the public body also shall produce documents pursuant to this section upon request.”

### **FOIA, exemptions, law enforcement records**

SECTION 2. Section 30-4-40(a)(2) and (3) of the 1976 Code is amended to read:

“(2) Information of a personal nature where the public disclosure thereof would constitute unreasonable invasion of personal privacy. Information of a personal nature shall include, but not be limited to, information as to gross receipts contained in applications for business licenses, information relating to public records which include the name, address, and telephone number or other such information of an individual or individuals who are handicapped or disabled when the information is requested for person-to-person commercial solicitation of handicapped persons solely by virtue of their handicap, and any audio recording of the final statements of a dying victim in a call to 911 emergency services. Any audio of the victim’s statements must be redacted prior to the release of the recording unless the privacy interest is waived by the victim’s next of kin. This provision must not be interpreted to restrict access by the public and press to information contained in public records.

(3) Records, video or audio recordings, or other information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information:

(A) would interfere with a prospective law enforcement proceeding;

(B) would deprive a person of a right to a fair trial or an impartial adjudication;

(C) would constitute an unreasonable invasion of personal privacy;

(D) would disclose the identity of a confidential source, including a state, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by criminal law

enforcement authority in the course of a criminal investigation, by an agency conducting a lawful security intelligence investigation, or information furnished by a confidential source;

(E) would disclose current techniques and procedures for law enforcement investigations or prosecutions, or would disclose current guidelines for law enforcement investigations or prosecutions if such disclosure would risk circumvention of the law;

(F) would endanger the life or physical safety of any individual;

(G) would disclose any contents of intercepted wire, oral, or electronic communications not otherwise disclosed during a trial.”

### **FOIA, inclusions, law enforcement records, judicial relief**

SECTION 3. Section 30-4-50 of the 1976 Code is amended to read:

“Section 30-4-50. (A) Without limiting the meaning of other sections of this chapter, the following categories of information are specifically made public information subject to the restrictions and limitations of Sections 30-4-20, 30-4-40, and 30-4-70 of this chapter:

(1) the names, sex, race, title, and dates of employment of all employees and officers of public bodies;

(2) administrative staff manuals and instructions to staff that affect a member of the public;

(3) final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;

(4) those statements of policy and interpretations of policy, statute, and the Constitution which have been adopted by the public body;

(5) written planning policies and goals and final planning decisions;

(6) information in or taken from any account, voucher, or contract dealing with the receipt or expenditure of public or other funds by public bodies;

(7) the minutes of all proceedings of all public bodies and all votes at such proceedings, with the exception of all such minutes and votes taken at meetings closed to the public pursuant to Section 30-4-70;

(8) reports which disclose the nature, substance, and location of any crime or alleged crime reported as having been committed. Where a report contains information exempt as otherwise provided by law, the law enforcement agency may delete that information from the report;

(9) notwithstanding any other provision of the law, data from a video or audio recording made by a law enforcement vehicle-mounted

recording device or dashboard camera that involves an officer involved incident resulting in death, injury, property damage, or the use of deadly force.

(a) A law enforcement or public safety agency may apply to the circuit court for an order to prevent the disclosure of the video or audio recording data. Notice of the request and of the hearing must be provided to the person seeking the record. A hearing must be requested within fifteen days (excepting Saturdays, Sundays, and legal public holidays) of the receipt of the request for disclosure and the hearing shall be held in-camera.

(b) The court may order the recording data not be disclosed upon a showing by clear and convincing evidence that the recording is exempt from disclosure as specified in Section 30-4-40(a)(3) and that the reason for the exemption outweighs the public interest in disclosure. A court may order the recording data be edited to redact specific portions of the data and then released, upon a showing by clear and convincing evidence that portions of the recording are not exempt from disclosure as specified in Section 30-4-40(a)(3).

(c) A court order to withhold the release of recording data under this section must specify a definite time period for the withholding of the release of the recording data and must include the court's findings.

(d) A copy of the order shall be made available to the person requesting the release of the recording data.

(10) statistical and other empirical findings considered by the Legislative Audit Council in the development of an audit report.

(B) No information contained in a police incident report or in an employee salary schedule revealed in response to a request pursuant to this chapter may be utilized for commercial solicitation. Also, the home addresses and home telephone numbers of employees and officers of public bodies revealed in response to a request pursuant to this chapter may not be utilized for commercial solicitation. However, this provision must not be interpreted to restrict access by the public and press to information contained in public records.”

### **FOIA, equitable remedies, time constraints for court hearings**

SECTION 4. Section 30-4-100 of the 1976 Code is amended to read:

“Section 30-4-100. (A) A citizen of the State may apply to the circuit court for a declaratory judgment, injunctive relief, or both, to enforce the provisions of this chapter in appropriate cases if the application is made no later than one year after the date of the alleged violation or one year

after a public vote in public session, whichever comes later. Upon the filing of the request for declaratory judgment or injunctive relief related to provisions of this chapter, the chief administrative judge of the circuit court must schedule an initial hearing within ten days of the service on all parties. If the hearing court is unable to make a final ruling at the initial hearing, the court shall establish a scheduling order to conclude actions brought pursuant to this chapter within six months of initial filing. The court may extend this time period upon a showing of good cause. The court may order equitable relief as it considers appropriate, and a violation of this chapter must be considered to be an irreparable injury for which no adequate remedy at law exists.

(B) If a person or entity seeking relief under this section prevails, he may be awarded reasonable attorney's fees and other costs of litigation specific to the request. If the person or entity prevails in part, the court may in its discretion award him reasonable attorney's fees or an appropriate portion of those attorney's fees."

#### **FOIA, penalties, criminal penalties removed, remedies**

SECTION 5. Section 30-4-110 of the 1976 Code is amended to read:

"Section 30-4-110. (A) A public body may file a request for hearing with the circuit court to seek relief from unduly burdensome, overly broad, vague, repetitive, or otherwise improper requests, or where it has received a request but it is unable to make a good faith determination as to whether the information is exempt from disclosure.

(B) If a request for disclosure may result in the release of records or information exempt from disclosure under Section 30-4-40(a)(1), (2), (4), (5), (9), (14), (15), or (19), a person or entity with a specific interest in the underlying records or information shall have the right to request a hearing with the court or to intervene in an action previously filed.

(C) If a person or entity seeking relief under this section prevails, the court may order:

- (1) equitable relief as he considers appropriate;
- (2) actual or compensatory damages; or
- (3) reasonable attorney's fees and other costs of litigation specific to the request, unless there is a finding of good faith. The finding of good faith is a bar to the award of attorney's fees and costs.

(D) If a court determines that records are not subject to disclosure, the determination constitutes a finding of good faith on the part of the public body or public official, and acts as a complete bar against the

award of attorney's fees or other costs to the prevailing party should the court's determination be reversed on appeal.

(E) If the person or entity prevails in part, he may be awarded reasonable attorney's fees or other costs of litigation specific to the request, or an appropriate portion thereof, unless otherwise barred.

(F) If the court finds that the public body has arbitrarily and capriciously violated the provisions of this chapter by refusal or delay in disclosing or providing copies of a public record, it may, in addition to actual or compensatory damages or equitable relief, impose a civil fine of five hundred dollars."

### **Disclosable personal information, commercial solicitation use, local governments**

SECTION 6. Section 30-2-50 of the 1976 Code is amended to read:

"Section 30-2-50. (A) A person or private entity shall not knowingly obtain or use personal information obtained from a state agency, a local government, or other political subdivision of the State for commercial solicitation directed to any person in this State.

(B) Each state agency, local government, and political subdivision of the State shall provide a notice to all requestors of records pursuant to this chapter and to all persons who obtain records pursuant to this chapter that obtaining or using public records for commercial solicitation directed to any person in this State is prohibited.

(C) All state agencies, local governments, and political subdivisions of the State shall take reasonable measures to ensure that no person or private entity obtains or distributes personal information obtained from a public record for commercial solicitation.

(D) A person knowingly violating the provisions of subsection (A) is guilty of a misdemeanor and, upon conviction, must be fined an amount not to exceed five hundred dollars or imprisoned for a term not to exceed one year, or both."

### **Severability**

SECTION 7. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this act, and each and every section, subsection, paragraph, subparagraph,

sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

**Time effective**

SECTION 8. This act takes effect upon approval by the Governor.

Ratified the 15<sup>th</sup> day of May, 2017.

Approved the 19<sup>th</sup> day of May, 2017.

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**No. 68**

( R103, H3406)

**AN ACT TO AMEND ACT 95 OF 2013, RELATING TO THE MAINTENANCE TAX IMPOSED BY THE WORKERS' COMPENSATION COMMISSION ON SELF-INSURERS, SO AS TO DELETE AN UNCODIFIED PROVISION THAT TERMINATES THE ACT FIVE YEARS AFTER ITS EFFECTIVE DATE; AND TO AMEND SECTION 12-21-2420, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO ADMISSIONS TAX EXEMPTIONS, SO AS TO INCLUDE THE AMOUNT THAT AN ACCREDITED COLLEGE OR UNIVERSITY REQUIRES A SEASON TICKET HOLDER TO PAY TO A NONPROFIT ATHLETIC BOOSTER ORGANIZATION THAT IS EXEMPT FROM FEDERAL INCOME TAXATION IN ORDER TO RECEIVE THE RIGHT TO PURCHASE ATHLETIC EVENT TICKETS.**

Be it enacted by the General Assembly of the State of South Carolina:

**Effective date for Act 95 of 2013 revised**

SECTION 1. Section 2 of Act 95 of 2013 is amended to read:

“SECTION 2. This act takes effect July 1, 2017, and must be terminated five years after the effective date of the act unless otherwise

authorized by the General Assembly. Beginning on July 1, 2014, and on each July first thereafter, the South Carolina Workers' Compensation Commission must report to the Chairman of House Ways and Means Committee, the Chairman of Senate Finance Committee, and the Governor the amount of money the agency has received in the previous fiscal year pursuant to this act."

#### **Admissions tax exemptions, time effective**

SECTION 2. A. Section 12-21-2420 of the 1976 Code, as last amended by Act 242 of 2014, is further amended by adding an appropriately lettered new item at the end to read:

"( ) any amount that an accredited college or university requires a season ticket holder to pay to a nonprofit athletic booster organization that is exempt from federal income taxation in order to receive the right to purchase athletic event tickets."

B. This SECTION takes effect July 1, 2017.

#### **Severability**

SECTION 3. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this act, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

#### **Time effective**

SECTION 4. This act takes effect upon approval of the Governor.

Ratified the 15<sup>th</sup> day of May, 2017.

Approved the 19<sup>th</sup> day of May, 2017.

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## No. 69

(R104, H3429)

**AN ACT TO AMEND SECTION 15-41-30, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO PROPERTY EXEMPT FROM BANKRUPTCY PROCEEDINGS OR ATTACHMENT, LEVY, AND SALE, SO AS TO REVISE EXEMPTIONS IN BANKRUPTCY.**

Be it enacted by the General Assembly of the State of South Carolina:

**Bankruptcy, exemptions revised**

SECTION 1. Section 15-41-30(A) of the 1976 Code, as last amended by Act 153 of 2012, is further amended to read:

“(A) The following real and personal property of a debtor domiciled in this State is exempt from attachment, levy, and sale under any mesne or final process issued by a court or bankruptcy proceeding:

(1)(a) The debtor’s aggregate interest, not to exceed fifty thousand dollars in value, in real property or personal property that the debtor or a dependent of the debtor uses as a residence, in a cooperative that owns property that the debtor or a dependent of the debtor uses as a residence, or in a burial plot for the debtor or a dependent of the debtor, except that the aggregate value of multiple homestead exemptions allowable with respect to a single living unit may not exceed one hundred thousand dollars. If there are multiple owners of such a living unit exempt as a homestead, the value of the exemption of each individual owner may not exceed his fractional portion of one hundred thousand dollars.

(b) In addition to the aggregate interest as provided in subsection (A)(1)(a), a surviving spouse may also exempt the aggregate interest to which the surviving spouse succeeded by inheritance, testamentary transfer, or nonprobate transfer on the death of the decedent spouse, not to exceed fifty thousand dollars. For purposes of this subsection, a surviving spouse means a spouse married to the decedent at the time of death, who is entitled to the homestead property tax exemption as provided in Section 12-37-250, who has not remarried, and who is living in the residence or cooperative that is used as a residence.

(2) The debtor’s interest, not to exceed five thousand dollars in value, in one motor vehicle.



(3) The debtor's interest, not to exceed four thousand dollars in aggregate value in household furnishings, household goods, wearing apparel, appliances, books, animals, crops, or musical instruments, that are held primarily for the personal, family, or household use of the debtor or a dependent of the debtor.

(4) The debtor's aggregate interest, not to exceed one thousand dollars in value, in jewelry held primarily for the personal, family, or household use of the debtor or a dependent of the debtor.

(5) The debtor's aggregate interest in cash and other liquid assets to the extent of a value not exceeding five thousand dollars, except that this exemption is available only to an individual who does not claim a homestead exemption. The term 'liquid assets' includes deposits, securities, notes, drafts, unpaid earnings not otherwise exempt, accrued vacation pay, refunds, prepayments, and other receivables.

(6) The debtor's aggregate interest, not to exceed one thousand five hundred dollars in value, in any implements, professional books, or tools of the trade of the debtor or the trade of a dependent of the debtor.

(7) The debtor's aggregate interest in any property, not to exceed five thousand dollars in value of an unused exemption amount to which the debtor is entitled pursuant to subsection (A), items (1) through (6).

(8) Any unmaturred life insurance contract owned by the debtor, other than a credit life insurance contract.

(9) The debtor's aggregate interest, not to exceed in value four thousand dollars less any amount of property of the estate transferred in the manner specified in Section 542(d) of the Bankruptcy Code of 1978, in any accrued dividend or interest under, or loan value of, any unmaturred life insurance contract owned by the debtor under which the insured is the debtor or an individual of whom the debtor is a dependent.

(10) Professionally prescribed health aids for the debtor or a dependent of the debtor.

(11) The debtor's right to receive or property that is traceable to:

(a) a social security benefit, unemployment compensation, or a local public assistance benefit;

(b) a veteran's benefit;

(c) a disability benefit, except as provided in Section 15-41-33, or an illness or unemployment benefit;

(d) alimony, support, or separate maintenance; or

(e) a payment under a stock bonus, pension, profit sharing, annuity, or similar plan or contract on account of illness, disability, death, age, or length of service, unless:

(i) the plan or contract was established by or under the auspices of an insider that employed the debtor at the time the debtor's rights under the plan or contract arose;

(ii) the payment is on account of age or length of service; and

(iii) the plan or contract does not qualify under Sections 401(a), 403(a), 403(b), or 409 of the Internal Revenue Code of 1954 (26 U.S.C. 401(a), 403(a), 403(b), or 409).

(12) The debtor's right to receive or property that is traceable to:

(a) an award under a crime victim's reparation law;

(b) a payment on account of the bodily injury of the debtor or of the wrongful death or bodily injury of another individual of whom the debtor was or is a dependent; or

(c) a payment under a life insurance contract that insured the life of an individual of whom the debtor was a dependent on the date of that individual's death, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor.

(13) The debtor's right to receive individual retirement accounts as described in Sections 408(a) and 408A of the Internal Revenue Code, individual retirement annuities as described in Section 408(b) of the Internal Revenue Code, and accounts established as part of a trust described in Section 408(c) of the Internal Revenue Code. A claimed exemption may be reduced or eliminated by the amount of a fraudulent conveyance into the individual retirement account or other plan. For purposes of this item, 'Internal Revenue Code' has the meaning provided in Section 12-6-40(A). The interest of an individual under a retirement plan shall be exempt from creditor process to the same extent permitted in Section 522(d) under federal bankruptcy law and is an exception to Section 15-41-35. The exemption provided by this section shall be available whether such individual has an interest in the retirement plan as a participant, beneficiary, contingent annuitant, alternate payee, or otherwise.

(14) The debtor's interest in a pension plan qualified under the Employee Retirement Income Security Act of 1974, as amended.

(15) The debtor's aggregate interest, not to exceed three thousand dollars in value in any rifle, shotgun, pistol, or any combination not to exceed three firearms."

### **Time effective**

SECTION 2. This act takes effect upon approval by the Governor.

Ratified the 15<sup>th</sup> day of May, 2017.

Approved the 19<sup>th</sup> day of May, 2017.

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No. 70

(R105, H3488)

**AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING ARTICLE 7 TO CHAPTER 55, TITLE 38 SO AS TO ALLOW AN INSURER TO DELIVER, STORE, OR PRESENT EVIDENCE OF INSURANCE COVERAGE BY ELECTRONIC MEANS, TO ESTABLISH CERTAIN CONDITIONS THAT MUST BE MET BEFORE A NOTICE OR DOCUMENT MAY BE DELIVERED BY ELECTRONIC MEANS, TO REQUIRE THE INSURER TO DELIVER A HARDCOPY NOTICE OF CANCELLATION, NONRENEWAL, OR TERMINATION BY FIRST-CLASS MAIL IF THE INSURER KNOWS THE DOCUMENTS WERE NOT RECEIVED BY THE INSURED WHEN DELIVERED BY ELECTRONIC MEANS, TO REQUIRE THE PARTY TO VERIFY OR ACKNOWLEDGE RECEIPT OF THE ELECTRONICALLY DELIVERED NOTICE OR DOCUMENT IN CERTAIN CIRCUMSTANCES, TO PROVIDE THAT A WITHDRAWAL OF CONSENT DOES NOT AFFECT THE LEGAL EFFECTIVENESS, VALIDITY, OR ENFORCEABILITY OF THE NOTICE OR DOCUMENT, TO REQUIRE AN INSURER TO NOTIFY THE PARTY OF CERTAIN PRIVILEGES BEFORE SENDING ADDITIONAL NOTICES OR DOCUMENTS SUBJECT TO CONSENT TO RECEIVE CERTAIN NOTICES OR DOCUMENTS, TO ALLOW FOR A PARTY TO ELECTRONICALLY SIGN ELECTRONICALLY DELIVERED DOCUMENTS, TO REQUIRE THE INSURER TO RETAIN RECORDS, AND TO AUTHORIZE THE DIRECTOR TO PROMULGATE REGULATIONS TO IMPLEMENT THE PROVISIONS OF THIS SECTION.**

Be it enacted by the General Assembly of the State of South Carolina:

**Evidence of insurance, electronic documents authorized**

SECTION 1. Chapter 55, Title 38 of the 1976 Code is amended by adding:

“Article 7

Electronic Documents

Section 38-55-710. As used in this article:

(1) ‘Delivered by electronic means’ includes:

(a) delivery to an electronic mail address at which a party has consented to receive notices or documents; or

(b) placement on an electronic network or site accessible by means of the Internet, mobile application, computer, mobile device, tablet, or another electronic device, together with separate written notice of the placement that must be provided by electronic mail to the address at which the party has consented to receive notice or by another delivery method that has been consented to by the party.

(2) ‘Party’ means a recipient of a notice or document required as part of an insurance transaction, including, but not limited to, an applicant, an insured, a policyholder, or an annuity contract holder.

Section 38-55-720. (A) Subject to the provisions of subsection (C), notice to a party of another document required under applicable law in an insurance transaction or that is to serve as evidence of insurance coverage may be delivered, stored, and presented by electronic means if it meets the requirements of Chapter 6, Title 26, the South Carolina Uniform Electronic Transactions Act.

(B) Delivery of a notice or document pursuant to this section must be considered equivalent to the following delivery methods:

(1) first-class mail; and

(2) first-class mail, postage prepaid.

(C)(1) A notice or document may be delivered by electronic means by an insurer to a party if:

(a) the party has affirmatively consented to the method of delivery and has not withdrawn consent;

(b) the party, before giving consent, is provided with a clear and conspicuous statement informing the party of:

(i) the right or option of the party to have the notice or document provided or made available in paper or another non-electronic form at no additional cost;

(ii) the right of the party at any time to withdraw his consent to have a notice or document delivered by electronic means;

(iii) the specific notice or document or categories of notices or documents that may be delivered by electronic means during the course of the relationship between the insurer and the party;

(iv) the means, after consent is given, by which a party may obtain a paper copy of a notice or document delivered by electronic means at no additional cost; and

(v) the procedure a party must follow to withdraw consent to have a notice or document delivered by electronic means and to update information needed to contact the party electronically;

(c) the transmission or delivery method used for the electronic notice includes conspicuous language concerning its subject or purpose;

(d) the party:

(i) before giving consent, is provided with a statement of the hardware and software requirements for access to and retention of a notice or document delivered by electronic means; and

(ii) consents electronically, or confirms consent electronically, in a manner that reasonably demonstrates that the party can access information in the electronic form that will be used for notices or documents delivered by electronic means for which the party has given consent; and

(e) after consent of the party is given, if a change occurs in the hardware or software requirements needed to access or retain a notice or document delivered by electronic means that creates a material risk that the party will not be able to access or retain a subsequent notice or document to which the consent applies, then the insurer shall:

(i) provide the party with a statement of the revised hardware and software requirements for access to and retention of a notice or document delivered by electronic means; and

(ii) comply with the requirements of subsection (A).

(2) No insurer may cancel, refuse to issue, or refuse to renew a policy because the applicant or insured refuses to agree to receive mailings electronically pursuant to this subsection.

(D) A hardcopy of a notice of cancellation, notice of non-renewal, or notice of termination must be delivered by first-class mail, postage prepaid, to the last known mailing address of a party if the insurer knows that the notice of cancellation, notice of non-renewal, or notice of termination sent by electronic means was not received by the party. For the purposes of this subsection, the determination of whether an insurer sends, or a party receives, a notice of cancellation, notice of non-renewal, or notice of termination shall be governed by Section 26-6-150.

(E) This section does not affect requirements related to content or timing of any notice or document required under applicable law.

(F) If a provision of this title or other applicable law requiring a notice or document to be provided to a party expressly requires verification or acknowledgment of receipt of the notice or document, then the notice or document may be delivered by electronic means only if the method used provides for verification or acknowledgment of receipt.

(G) The legal effectiveness, validity, or enforceability of the underlying contract or policy of insurance executed by a party may not be denied solely because of the failure to obtain electronic consent or confirmation of consent of the party pursuant to subsection (C)(1)(d)(ii).

(H) A withdrawal of consent by a party:

(1) does not affect the legal effectiveness, validity, or enforceability of a notice or document delivered by electronic means to the party before the withdrawal of consent is effective; and

(2) is effective four business days after receipt of the withdrawal by the insurer.

(I) Failure by an insurer to comply with subsection (C)(1)(e) may be treated, at the election of the party, as a withdrawal of consent for purposes of this section.

(J) This section does not apply to a notice or document delivered by an insurer in an electronic form before the effective date of this section to a party who, before that date, had consented to receive notice or document in an electronic form otherwise allowed by law.

(K) If the consent of a party to receive certain notices or documents in an electronic form is on file with an insurer before the effective date of this section and if, pursuant to this section, an insurer intends to deliver additional notices or documents to the party in an electronic form, then, prior to delivering such additional notices or documents electronically, the insurer shall notify the party of:

(1) the notices or documents that may be delivered by electronic means under this section that were not previously delivered electronically; and

(2) the party's right to withdraw at any time consent to have notices or documents delivered by electronic means.

(L) If a provision of this title or applicable law requires a signature, notice, or document to be notarized, acknowledged, verified, or made under oath, then the requirement is satisfied if the electronic signature of the person authorized to perform those acts, together with all other information required to be included by the provision, is attached to or logically associated with the signature, notice, or document.

(M) This section may not be construed to modify, limit, or supersede the provisions of the federal Electronic Signatures in Global and National Commerce Act, Public Law 106-229, as amended. It is intended to provide an insurer additional options for the delivery of electronic notices and documents. An insurer choosing to use procedures outlined in ESIGN, UETA, or other applicable law or regulation governing such notice or documents must be considered to be in compliance with this section.

(N) An insurer delivering a notice or document by electronic means shall take appropriate and necessary measures reasonably calculated to ensure that the system for furnishing the notices of documents is secure and protects the confidentiality of information as defined by applicable law. An insurer who is in compliance with the Health Insurance Portability and Accountability Act, 45 C.F.R. 164.512(b), or the Gramm Leach Bliley Act, 16 C.F.R. 314.1, must be considered to be in compliance with this section.

(O) An insurer delivering a notice or other document pursuant to this article shall retain records in the manner provided in Sections 26-6-120, 38-13-120, 38-13-140, and 38-13-160.

(P) The director or his designee may promulgate, by bulletin, regulation, or order the requirements necessary to implement the provisions of this section.”

#### **Time effective**

SECTION 2. This act takes effect on January 1, 2018.

Ratified the 15<sup>th</sup> day of May, 2017.

Approved the 19<sup>th</sup> day of May, 2017.

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#### **No. 71**

(R106, H3601)

**AN ACT TO AMEND SECTION 50-9-665, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE ISSUANCE OF BEAR HUNTING TAGS BY THE DEPARTMENT OF NATURAL RESOURCES, SO AS TO DELETE LANGUAGE WHICH PROVIDES THAT IN GAME ZONES OTHER THAN**

**GAME ZONE 1, APPLICANTS FOR BEAR TAGS, UPON THE PAYMENT OF AN APPLICATION FEE, MUST BE CHOSEN BY RANDOM DRAWING WHICH ARE VALID FOR A SPECIFIED GAME ZONE; TO AMEND SECTION 50-11-430, AS AMENDED, RELATING TO THE HUNTING OF BEAR, SO AS TO DELETE STATUTORY LANGUAGE AUTHORIZING THE DEPARTMENT OF NATURAL RESOURCES TO ISSUE BEAR TAGS TO ALLOW THE HUNTING AND TAKING OF BEAR IN ANY GAME ZONE WHERE BEAR OCCUR, WITH SPECIAL PROVISIONS FOR GAME ZONES 2, 3, AND 4, TO PROVIDE THAT THE DEPARTMENT MUST PROMULGATE REGULATIONS TO SET THE CONDITIONS FOR TAKING OF BEAR, INCLUDING METHODS OF TAKE, AREAS, TIMES, LIMITS, SEASONS, AND OTHER CONDITIONS TO PROPERLY CONTROL THE HARVEST OF BEAR, TO PROVIDE OTHER PROVISIONS, PROCEDURES, AND REQUIREMENTS FOR THE HUNTING AND HARVESTING OF BEAR IN GAME ZONES 2, 3, AND 4, TO PROVIDE A REQUIREMENT THAT ANY BEAR TAKEN MUST BE TAGGED AND REPORTED TO THE DEPARTMENT BY MIDNIGHT OF THE DAY OF THE HARVEST, TO MAKE IT UNLAWFUL TO FAIL TO REPORT A BEAR HARVEST IN THE MANNER PROVIDED BY LAW, TO PROVIDE THAT THE MAGISTRATES COURT RETAINS JURISDICTION FOR OFFENSES MADE UNLAWFUL BY THIS SECTION; AND TO PROVIDE THAT THE DEPARTMENT, BY JULY 1, 2018, SHALL PROVIDE TO SPECIFIED RECIPIENTS A REPORT OF A ONE-YEAR STUDY INCLUDING, BUT NOT LIMITED TO, THE HARVEST SUMMARY OF BLACK BEAR IN GAME ZONES 1 THROUGH 4.**

Be it enacted by the General Assembly of the State of South Carolina:

**Provisions deleted**

SECTION 1. Section 50-9-665 of the 1976 Code, as last amended by Act 94 of 2013, is further amended to read:

“Section 50-9-665. (A) For the privilege of hunting bear, in addition to the required hunting license and big game permit the licensee must obtain a bear tag issued in his name, and the fee:



(1) for a resident is twenty-five dollars per tag, one dollar of which may be retained by the license sales vendor;

(2) for a nonresident is one hundred dollars per tag, two dollars of which may be retained by the license sales vendor.

(B) Youth under the age of sixteen are required to obtain youth tags for bear from the department at its designated licensing locations at no cost.”

### **Hunting and taking of bears, season, rules, limits, and requirements**

SECTION 2. Section 50-11-430 of the 1976 Code, as last amended by Act 227 of 2014, is further amended to read:

“Section 50-11-430. (A)(1) The open season for hunting and taking bear in Game Zone 1 for still gun hunts is October 17 through October 23; for party dog hunts is October 24 through October 30. A party dog hunt in Game Zone 1 may not exceed twenty-five participants per party and shall register with the department by September first. Party participants, except those not required to have licenses shall submit their hunting license number in order to register.

(2) In all other game zones, the General Assembly finds it in the best interest of the State to allow the taking of black bear under strictly controlled conditions and circumstances. The department may establish a bear management program that allows for hunting and selective removal of bear in order to provide for the sound management of the animals and to ensure the continued viability of the species. The department must promulgate regulations to set the conditions for taking, including methods of take, areas, times, limits, and seasons, and other conditions to properly control the harvest of bear.

(B) In Game Zones 2, 3, and 4 where the department declares an open season, the department shall determine an appropriate quota of tags to be issued in each game zone, or county within a game zone, and shall further promulgate regulations necessary to properly control the harvest of bear. The department may close an open season at any time, provided that the department gives at least twenty-four hours’ notice to the public of the closure.

(C) In Game Zones 2, 3, and 4 where the department declares an open season for hunting and taking bears on wildlife management areas, and all other areas under the ownership, control, or lease of the department, the season will be set by the department. The department may close an open season at any time, provided that the department gives at least twenty-four hours’ notice to the public of the closure.

(D) In order to properly implement the provisions of subsections (B) and (C), any bear taken must be tagged with a valid bear tag and reported by midnight of the day of the harvest to the department as prescribed. The tag must be attached to the bear as prescribed by the department before being moved from the point of kill.

(E) It is unlawful to:

(1) hunt, take, or attempt to take a bear except during the open season;

(2) possess an untagged bear;

(3) take more than one bear per person during all seasons. In Game Zone 1 a registered party dog hunt may take up to five bear per season per party; a person who has taken a bear during the season may participate in a registered party hunt as long as the hunting license shows the bear tag endorsement, but the person may not take another bear;

(4) take or attempt to take a sow bear with cubs;

(5) possess or transport a freshly killed bear or bear part except during the open season for hunting and taking bear. This prohibition does not apply to bear lawfully taken in other jurisdictions. The department may issue a special permit for possession or transportation of a freshly killed bear or bear part outside of the season;

(6) possess a captive bear except pursuant to a permit issued by the department. A violation of the terms of the permit may result in revocation or a civil penalty of up to five thousand dollars, or both. An appeal must be made in accordance with the Administrative Procedures Act;

(7) pursue bear with dogs; except during the open season for hunting and taking bear with dogs;

(8) hunt or take bear by the use or aid of bait; or attempt to hunt or take bear by use or aid of bait; hunt or take bear on or over a baited area. As used in this item:

(a) 'Bait' means salt or shelled, shucked, or unshucked corn, wheat or other grain, or other foodstuffs that could constitute a lure, attraction, or enticement for bear.

(b) 'Baiting' or 'to bait' means placing, depositing, exposing, distributing, or scattering bait.

(c) 'Baited area' means an area where bait is directly or indirectly placed, exposed, deposited, distributed, or scattered, and the area remains a baited area for ten days following complete removal of all bait. Nothing in this section prohibits the hunting and taking of bear on or over lands or areas that are not otherwise baited and where:

(i) there are standing crops on the field where grown, including crops grown for wildlife management purposes; or

(ii) shelled, shucked, or unshucked corn, wheat or other grain, or seeds that have been distributed or scattered solely as the result of a normal agricultural practice as prescribed by the Clemson University Extension Service or its successor;

(9) buy, sell, barter, or exchange or attempt to buy, sell, barter, or exchange a bear or bear part;

(10) take or attempt to take a bear from a watercraft or other water conveyance or molest, take, or attempt to take a bear while the bear is swimming in a lake or river;

(11) fail to report a bear harvest in the manner provided by law.

(F)(1) Each of the acts provided for in subsection (E) is a violation of this section and is a separate offense.

(2) A person violating the provisions of this section is guilty of a misdemeanor and, upon conviction, must be fined not more than two thousand five hundred dollars or imprisoned not more than sixty days, or both. Hunting and fishing privileges of a person convicted under the provisions of this section must be suspended for three years. In addition, each person convicted of a violation of this section shall pay restitution to the department of not less than one thousand five hundred dollars for each bear or bear part that is the subject of a violation of this section. The magistrates court retains concurrent jurisdiction for offenses contained in this section.”

### **Study and report**

SECTION 3. The department shall provide a report of a one-year study by July 1, 2018, to the Chairman of the Senate Fish, Game and Forestry Committee and the Chairman of the House Agriculture, Natural Resources and Environmental Affairs Committee. The report will include, but will not be limited to, the harvest summary of Black Bear in Game Zones 1-4.

### **Time effective**

SECTION 4. This act takes effect upon approval by the Governor.

Ratified the 15<sup>th</sup> day of May, 2017.

Approved the 19<sup>th</sup> day of May, 2017.

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## No. 72

(R108, H3665)

**AN ACT TO AMEND SECTION 50-5-1710, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO SIZE LIMITS FOR CERTAIN FISH THAT MAY BE LAWFULLY TAKEN, POSSESSED, LANDED, SOLD, OR PURCHASED, SO AS TO INCREASE THE SIZE LIMIT FOR FLOUNDER THAT MAY BE LAWFULLY TAKEN, POSSESSED, LANDED, SOLD, OR PURCHASED; AND TO AMEND SECTION 50-5-1705, AS AMENDED, RELATING TO CATCH LIMITS FOR CERTAIN FISH, SO AS TO REDUCE THE CATCH LIMIT FOR FLOUNDER.**

Be it enacted by the General Assembly of the State of South Carolina:

**Flounder size limit**

SECTION 1. Section 50-5-1710(B)(2) of the 1976 Code, as last amended by Act 7 of 2013, is further amended to read:

“(2) flounder (*Paralichthys*) of less than fifteen inches total length;”

**Flounder catch limit**

SECTION 2. Section 50-5-1705(G) of the 1976 Code, as last amended by Act 50 of 2013, is further amended to read:

“(G)It is unlawful for a person to take or possess more than ten flounder (*Paralichthys* species) taken by means of gig, spear, hook and line, or similar device in any one day, not to exceed twenty flounder in any one day on any boat.”

**Time effective**

SECTION 3. This act takes effect July 1, 2017.

Ratified the 15<sup>th</sup> day of May, 2017.

Approved the 19<sup>th</sup> day of May, 2017.

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**No. 73**

(R109, H3667)

**AN ACT TO AMEND SECTION 7-7-480, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE DESIGNATION OF VOTING PRECINCTS IN SALUDA COUNTY, SO AS TO REDESIGNATE THE MAP NUMBER ON WHICH THE NAMES OF THESE PRECINCTS MAY BE FOUND AND MAINTAINED BY THE REVENUE AND FISCAL AFFAIRS OFFICE.**

Be it enacted by the General Assembly of the State of South Carolina:

**Saluda County voting precinct map number redesignated**

SECTION 1. Section 7-7-480(B) of the 1976 Code, as last amended by Act 320 of 1994, is further amended to read:

“(B) The precinct lines defining the above precincts are as shown on official maps on file with the Revenue and Fiscal Affairs Office designated as document P-81-17 and as shown on certified copies provided to the State Election Commission and the Board of Voter Registration and Elections of Saluda County by the office.”

**Time effective**

SECTION 2. This act takes effect upon approval by the Governor.

Ratified the 15<sup>th</sup> day of May, 2017.

Approved the 19<sup>th</sup> day of May, 2017.

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## No. 74

(R110, H3719)

**AN ACT TO AMEND SECTION 48-35-50, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE STATE FORESTER'S AUTHORITY TO DIRECT THAT CERTAIN FIRES NOT BE STARTED, SO AS TO PROVIDE THAT THE STATE FORESTER MAY PROHIBIT ALL OPEN BURNING EXCEPT FIRES USED FOR NONRECREATIONAL PURPOSES; AND TO AMEND SECTION 48-35-60, RELATING TO PENALTIES ASSOCIATED WITH THE STARTING OF UNLAWFUL FIRES, SO AS TO REVISE THESE PENALTIES.**

Be it enacted by the General Assembly of the State of South Carolina:

**State Forester's authority to regulate fires**

SECTION 1. Section 48-35-50 of the 1976 Code is amended to read:

“Section 48-35-50. The State Forester may direct at any time, when deemed necessary in the interest of public safety, that fires covered by this chapter not be started. The State Forester also may prohibit all open burning regardless of whether a permit or notification is required, including campfires, bonfires, and other fires for recreational purposes. This prohibition shall not apply to fires used for nonrecreational purposes such as those for human warmth or for the preparation of food for immediate consumption.”

**Penalties**

SECTION 2. Section 48-35-60 of the 1976 Code is amended to read:

“Section 48-35-60. Any person violating the provisions of this chapter may be deemed guilty of a misdemeanor and, upon conviction, may be fined not more than two hundred dollars or imprisoned for not more than thirty days for a first offense. For any second or subsequent offense, a fine of not less than five hundred dollars or imprisonment for not more than sixty days, or both may be imposed in the discretion of the court. ‘Subsequent offense’, as used in this section, shall mean an offense committed within ten years of a previous offense.”

**Time effective**

SECTION 3. This act takes effect upon approval by the Governor.

Ratified the 15<sup>th</sup> day of May, 2017.

Approved the 19<sup>th</sup> day of May, 2017.

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**No. 75**

(R111, H3742)

**AN ACT TO AMEND SECTIONS 24-21-230 AND 24-21-280, BOTH AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE EMPLOYMENT, DUTIES, AND POWERS OF DEPARTMENT OF PROBATION, PAROLE AND PARDON SERVICES' AGENTS, HEARING OFFICERS, AND STAFF, SO AS TO PROVIDE THAT THE DIRECTOR OF THE DEPARTMENT MAY EMPLOY OFFENDER SUPERVISION SPECIALISTS, TO PROVIDE THAT THE DEPARTMENT SHALL PROMULGATE REGULATIONS REGARDING THE QUALIFICATIONS FOR THESE EMPLOYEES, AND PROCEDURES FOR CLASSIFYING OFFENDERS AS STANDARD AND LOW-RISK, AND TO PROVIDE THE DUTIES AND AUTHORITY OF AN OFFENDER SUPERVISION SPECIALIST.**

Be it enacted by the General Assembly of the State of South Carolina:

**Department of Probation, Parole and Pardon Services**

SECTION 1. Section 24-21-230 of the 1976 Code, as last amended by Act 273 of 2010, is further amended by adding the following appropriately lettered subsection at the end to read:

“( ) The director, in his discretion, may employ offender supervision specialists to oversee the supervision of standard and low-risk offenders. The department shall promulgate regulations for the qualifications of offender supervision specialists and procedures for classifying offenders as standard and low-risk offenders based on criminal risk factors.”

**Department of Probation, Parole and Pardon Services**

SECTION 2. Section 24-21-280 of the 1976 Code, as last amended by Act 154 of 2016, is further amended by adding the following appropriately lettered subsection at the end:

“( ) Offender supervision specialists have the same duties and authority granted to probation agents, except for the authority granted in subsection (B).”

**Time effective**

SECTION 3. This act takes effect upon approval by the Governor.

Ratified the 15<sup>th</sup> day of May, 2017.

Approved the 19<sup>th</sup> day of May, 2017.

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**No. 76**

(R112, H3817)

**AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 44-53-362 SO AS TO ALLOW PHARMACIES AND OTHER ENTITIES TO REGISTER AS A COLLECTOR TO RECEIVE CONTROLLED SUBSTANCES AS PART OF LAW ENFORCEMENT CONTROLLED SUBSTANCE TAKE-BACK EVENTS AND OPERATE CONTROLLED SUBSTANCE MAIL-BACK PROGRAMS AND TO REQUIRE THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL TO FACILITATE AND ENCOURAGE REGISTRATION AND PARTICIPATION.**

Whereas, unused medicines in the home are a problem contributing to substance abuse and overdose. According to a 2016 National Survey on Drug Use and Health, the majority of the nearly six and one-half million Americans who abused controlled prescription drugs in 2015, including the almost four million who abused prescription painkillers, obtained



those drugs from friends and family, including from a home medicine cabinet; and

Whereas, four out of five new heroin users began with painkillers. Almost thirty thousand people, seventy-eight people a day, died from overdosing on these controlled substances or heroin in 2014, according to the Centers for Disease Control and Prevention; and

Whereas, take-back events and mail-back programs offer a safe, simple, and anonymous way to keep dangerous prescription drugs out of the wrong hands and prevent substance abuse; and

Whereas, in 2014, federal regulations were promulgated that make the disposal of controlled prescription drugs easier for patients and their caregivers, and pave the way for pharmacies, hospitals, and clinics to partner with law enforcement to increase the collection of these medications as part of take-back events and mail-back programs. Now, therefore,

Be it enacted by the General Assembly of the State of South Carolina:

**Controlled substance take-back events and mail-back programs, collectors**

SECTION 1. Article 3, Chapter 53, Title 44 of the 1976 Code is amended by adding:

“Section 44-53-362. (A) A controlled substance manufacturer, distributor, or reverse distributor; a narcotic treatment program; a hospital or clinic with an onsite pharmacy; or a retail pharmacy operating in the State may apply to be registered as a collector by the federal Drug Enforcement Administration, pursuant to 21 C.F.R. 1317.40, to receive Schedule II, III, IV, and V controlled substances from an ultimate user, or a person entitled to dispose of an ultimate user decedent’s property, as part of law enforcement take-back events or collector mail-back programs. A collector must comply with any state and federal requirements to ensure the safe disposal of controlled substances and to prevent diversion of collected controlled substances, including as provided in 21 C.F.R. Part 1317.

(B) The Department of Health and Environmental Control shall develop guidance for pharmacies and other entities qualified to register as a collector to encourage participation. The department shall

coordinate with law enforcement, health care providers, and the U.S. Drug Enforcement Administration to encourage registration as a collector and to promote public awareness of controlled substance take-back events and mail-back programs.”

**Time effective**

SECTION 2. This act takes effect upon approval by the Governor.

Ratified the 15<sup>th</sup> day of May, 2017.

Approved the 19<sup>th</sup> day of May, 2017.

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**No. 77**

(R114, H3861)

**AN ACT TO AMEND SECTION 40-57-120, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE AUTHORITY OF THE REAL ESTATE COMMISSION TO RECOGNIZE NONRESIDENT REAL ESTATE LICENSES ON ACTIVE STATUS FROM OTHER JURISDICTIONS WHICH RECIPROCATATE, SO AS TO PROVIDE THE COMMISSION MAY ENTER INTO RECIPROCAL AGREEMENTS WITH REAL ESTATE REGULATORY AUTHORITIES OF OTHER JURISDICTIONS THAT PROVIDE WAIVERS OF EDUCATION REQUIREMENTS OR EXAMINATIONS IF THE COMMISSION CONSIDERS THE EDUCATION AND EXAMINATION REQUIREMENTS OF THE OTHER JURISDICTION TO BE SUBSTANTIALLY EQUIVALENT TO THE REQUIREMENTS OF THE COMMISSION.**

Be it enacted by the General Assembly of the State of South Carolina:

**Reciprocity agreements for nonresident licenses**

SECTION 1. Section 40-57-120(A) of the 1976 Code, as last amended by Act 170 of 2016, is further amended to read:

“Section 40-57-120. (A) The commission may recognize nonresident real estate licenses on active status from other jurisdictions only if the other jurisdiction recognizes South Carolina real estate licenses on active status. An applicant from another jurisdiction successfully shall complete the state portion of the applicable examination before license recognition will be acknowledged. The commission may enter into reciprocal agreements with real estate regulatory authorities of other jurisdictions that provide for waivers of education requirements or examinations if the commission considers the education and examination requirements of another jurisdiction to be substantially equivalent to the requirements of this chapter.”

**Time effective**

SECTION 2. This act takes effect upon approval by the Governor.

Ratified the 15<sup>th</sup> day of May, 2017.

Approved the 19<sup>th</sup> day of May, 2017.

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**No. 78**

(R115, H3864)

**AN ACT TO AMEND SECTIONS 56-5-6410 AND 56-5-6420, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE REQUIREMENT THAT CERTAIN CHILDREN MUST BE SECURED IN A CHILD PASSENGER RESTRAINT SYSTEM WHILE TRAVELING IN A MOTOR VEHICLE, AND THE TRANSPORTATION OF CHILDREN IN A VEHICLE WITH AN INSUFFICIENT NUMBER OF CHILD RESTRAINT DEVICES, SO AS TO REVISE THE AGE, WEIGHT, AND POSITION OF A CHILD WHO MUST BE SECURED IN A CHILD PASSENGER RESTRAINT SYSTEM, TO PROVIDE EXCEPTIONS WHEN MEDICALLY NECESSARY, AND TO INCLUDE TEMPORARY LIVING QUARTERS IN RECREATIONAL VEHICLES AS BEING CONSIDERED REAR PASSENGER SEATS.**

Whereas, motor vehicle crashes remain the leading cause of accidental death for children ages one to nineteen; and

Whereas, South Carolina's motor vehicle death rate per 100,000 is 20 as compared to a national average of 10.9; and

Whereas, each week approximately one South Carolina child seventeen years of age or younger dies from a preventable transportation-related incident; and

Whereas, a child riding unrestrained in a motor vehicle is the greatest risk factor for death and injury among child occupants; and

Whereas, child safety seats, when used correctly, can reduce fatalities by seventy-one percent for infants and fifty-four percent for toddlers; and

Whereas, the proper use of age- and size-appropriate child restraint systems is the most effective way to minimize injuries and fatalities to children. Now, therefore,

Be it enacted by the General Assembly of the State of South Carolina:

**Vehicle child restraints, ages, weights, and positions revised, medical exception, recreational vehicles**

SECTION 1. Section 56-5-6410 of the 1976 Code is amended to read:

“Section 56-5-6410. (A) Every driver of a motor vehicle (passenger car, pickup truck, van, or recreational vehicle) operated on the highways and streets of this State when transporting a child under eight years of age upon the public streets and highways of the State must properly secure the child in the vehicle as follows:

(1) An infant or child under two years of age must be properly secured in a rear-facing child passenger restraint system in a rear passenger seat of the vehicle until the child exceeds the height or weight limit allowed by the manufacturer of the child passenger restraint system being used.

(2) A child at least two years of age or a child under two years of age who has outgrown his rear-facing child passenger restraint system must be secured in a forward-facing child passenger restraint system with a harness in a rear passenger seat of the vehicle until the child exceeds the highest height or weight requirements of the forward-facing child passenger restraint system.

(3) A child at least four years of age who has outgrown his forward-facing child passenger restraint system must be secured by a belt-positioning booster seat in a rear seat of the vehicle until he can meet the height and fit requirements for an adult safety seat belt as described in item (4). The belt-positioning booster seat must be used with both lap and shoulder belts. A booster seat must not be used with a lap belt alone.

(4) A child at least eight years of age or at least fifty-seven inches tall may be restrained by an adult safety seat belt if the child can be secured properly by an adult safety seat belt. A child is properly secured by an adult safety seat belt if:

(a) the lap belt fits across the child's thighs and hips and not across the abdomen;

(b) the shoulder belt crosses the center of the child's chest and not the neck; and

(c) the child is able to sit with his back straight against the vehicle seat back cushion with his knees bent over the vehicle's seat edge without slouching.

(5) For medical reasons that are substantiated with written documentation from the child's physician, advanced nurse practitioner, or physician assistant, a child who is unable to be transported in a standard child passenger safety restraint system may be transported in a standard child passenger safety restraint system designed for his medical needs.

Any child restraint system of a type sufficient to meet the physical standards prescribed by the National Highway Traffic Safety Administration at the time of its manufacture is sufficient to meet the requirements of this article.

(B) For the purposes of this section, any portion of a recreational vehicle that is equipped with temporary living quarters shall be considered a rear passenger seat."

**Vehicle child restraints, vehicles lacking rear passenger seats, rear seating capacity exceeded**

SECTION 2. Section 56-5-6420 of the 1976 Code is amended to read:

"Section 56-5-6420. If a motor vehicle lacks a rear passenger seat or if all of its rear seating positions are occupied by children under eight years of age, a child under eight years of age may be transported in the front seat of the motor vehicle if the child is secured properly in an appropriate child passenger safety restraint system or belt-positioning booster seat as described in Section 56-5-6410(1), (2), or (3)."

**Time effective**

SECTION 3. This act takes effect upon approval by the Governor.

Ratified the 15<sup>th</sup> day of May, 2017.

Approved the 19<sup>th</sup> day of May, 2017.

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**No. 79**

(R116, H3898)

**AN ACT TO AMEND SECTION 63-9-780, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO ACCESS TO AND DISCLOSURE OF NONIDENTIFYING AND IDENTIFYING INFORMATION ABOUT ADOPTEES, BIOLOGICAL PARENTS, AND BIOLOGICAL SIBLINGS, SO AS TO APPLY ALSO TO BIOLOGICAL GRANDPARENTS, AND FOR OTHER PURPOSES.**

Be it enacted by the General Assembly of the State of South Carolina:

**Confidentiality of adoption records, exceptions**

SECTION 1. Section 63-9-780(D) and (E) of the 1976 Code is amended to read:

“(D) The provisions of this section must not be construed to prevent any adoption agency from furnishing to adoptive parents, biological parents, biological grandparents, biological siblings, or adoptees nonidentifying information when in the sole discretion of the chief executive officer of the agency the information would serve the best interests of the persons concerned either during the period of placement or at a subsequent time nor must the provisions of this article and Article 7 be construed to prevent giving nonidentifying information to any other person, party, or agency who in the discretion of the chief executive officer of the agency has established a sufficient reason justifying the release of that nonidentifying information. As used in this subsection

'nonidentifying information' includes, but is not limited to, the following:

- (1) the health and medical histories of the biological parents, biological grandparents, or biological siblings;
- (2) the health and medical history of the adoptee;
- (3) the adoptee's general family background without name references or geographical designations; and
- (4) the length of time the adoptee has been in the care and custody of the adoptive parent.

(E)(1) The public adoption agency responsible for the placement shall furnish to an adoptee the identity of the adoptee's biological parents, biological grandparents, and biological siblings and to the biological parents, biological grandparents, and biological siblings the identity of the adoptee under the following conditions:

(a) for an adoptee applying for identifying information about a biological parent or biological grandparent:

(i) the adoptee must be twenty-one years of age or older, and must apply in writing to the adoption agency for the information; and

(ii) the adoption agency must have a current file containing affidavits from the adoptee and the biological parent or biological grandparent, as applicable, agreeing to the disclosure of their identity to each other. The affidavit also must include a statement releasing the agency from any liability due to the disclosure. It is the responsibility of the person furnishing the affidavit to advise the agency of a change in his status, name, and address;

(b) for an adoptee applying for identifying information about a biological sibling:

(i) the adoptee and the biological sibling must be twenty-one years of age or older, and the adoptee must apply in writing to the adoption agency for the information; and

(ii) the adoption agency must have a current file containing affidavits from the adoptee and the biological sibling agreeing to the disclosure of their identity to each other. The affidavit also must include a statement releasing the agency from any liability due to the disclosure. It is the responsibility of the person furnishing the affidavit to advise the agency of a change in his status, name, and address;

(c) for a biological parent or biological grandparent applying for identifying information about an adoptee:

(i) the adoptee must be twenty-one years of age or older, and the biological parent or biological grandparent must apply in writing to the adoption agency for the information; and

(ii) the adoption agency must have a current file containing affidavits from the adoptee and the biological parent or biological grandparent, as applicable, agreeing to the disclosure of their identity to each other. The affidavit also must include a statement releasing the agency from any liability due to the disclosure. It is the responsibility of the person furnishing the affidavit to advise the agency of a change in his status, name, and address; and

(d) for a biological sibling applying for identifying information about an adoptee:

(i) the biological sibling and adoptee must be twenty-one years of age or older, and the biological sibling must apply in writing to the adoption agency for the information; and

(ii) the adoption agency must have a current file containing affidavits from the adoptee and the biological sibling, agreeing to the disclosure of their identity to each other. The affidavit also must include a statement releasing the agency from any liability due to the disclosure. It is the responsibility of the person furnishing the affidavit to advise the agency of a change in his status, name, and address.

(2) The adoption agency shall establish and maintain a confidential register containing the names and addresses of the adoptees and the biological parents, biological grandparents, and biological siblings who have filed affidavits. It is the responsibility of a person whose name and address are in the register to provide the agency with his current name and address. The adoption agency shall release the identifying information requested pursuant to this subsection of only those adoptees, biological parents, biological grandparents, and biological siblings who have provided an affidavit pursuant to item (1).

(3) The adoptee and the biological parent, biological grandparent, or biological sibling, as applicable, shall undergo counseling by the adoption agency concerning the effects of the disclosure. The adoption agency may charge a fee for the services, but services must not be denied because of inability to pay.

(4) No disclosure may be made within thirty days after compliance with these conditions. The director of the adoption agency may waive the thirty-day period in extreme circumstances.

(5) The adoption agency may delay disclosure for twenty days from the expiration of the thirty-day period to allow time to apply to a court of competent jurisdiction to enjoin the disclosure for good cause shown.”



**Savings**

SECTION 2. The repeal or amendment by this act of any law, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

**Time effective**

SECTION 3. This act takes effect upon approval by the Governor.

Ratified the 15<sup>th</sup> day of May, 2017.

Approved the 19<sup>th</sup> day of May, 2017.

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**No. 80**

(R117, H3927)

**AN ACT TO AMEND SECTION 41-43-100, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE POWER OF THE STATE FISCAL ACCOUNTABILITY AUTHORITY TO ISSUE CERTAIN BONDS TO FINANCE INDUSTRIAL DEVELOPMENT PROJECTS UNDER THE SOUTH CAROLINA JOBS-ECONOMIC DEVELOPMENT FUND ACT, SO AS TO DELETE THE REQUIREMENT THAT THE AUTHORITY APPROVE INTEREST RATES ON SUCH BONDS AND TO SPECIFY APPROVAL OF SUCH INTEREST RATES BY THE SOUTH CAROLINA COORDINATING COUNCIL FOR ECONOMIC DEVELOPMENT IS NOT REQUIRED; TO AMEND SECTION 41-43-110, AS AMENDED, RELATING TO THE POWER OF THE AUTHORITY TO ISSUE**

**CERTAIN BONDS UNDER THE SOUTH CAROLINA JOBS-ECONOMIC DEVELOPMENT FUND ACT, SO AS TO MAKE CONFORMING CHANGES, TO PROVIDE THE AUTHORITY ANNUALLY SHALL REPORT RELATED ACTIVITIES TO THE JOINT BOND REVIEW COMMITTEE, AND TO PROVIDE THE AUTHORITY SHALL PUBLISH LISTS OF BONDS APPROVED BY THE AUTHORITY AND RELEVANT INFORMATION ON ITS WEBSITE; AND TO MAKE THE PROVISIONS OF THIS ACT EFFECTIVE JUNE 1, 2017.**

Be it enacted by the General Assembly of the State of South Carolina:

**Approval of Coordinating Council for Economic Development not required**

SECTION 1. Section 41-43-100 of the 1976 Code, as last amended by Act 121 of 2014, is further amended to read:

“Section 41-43-100. In addition to other powers vested in the authority by existing laws, the authority has all powers granted the counties and municipalities of this State pursuant to the provisions of Chapter 29, Title 4, including the issuance of bonds by the authority and the refunding of bonds issued under that chapter. The authority may issue bonds upon receipt of a certified resolution by the county or municipality in which the project, as defined in Chapter 29, Title 4, is or will be located, containing the findings pursuant to Section 4-29-60 and evidence of a public hearing held not less than fifteen days after publication of notice in a newspaper of general circulation in the county in which the project is or will be located. The authority may combine for the purposes of a single offering bonds to finance more than one project. The interest rate of bonds issued pursuant to this section is not subject to approval by the South Carolina Coordinating Council for Economic Development.”

**Approval of Coordinating Council for Economic Development not required, reports, publication of bond lists**

SECTION 2. Section 41-43-110(A) of the 1976 Code, as last amended by Act 121 of 2014, is further amended to read:

“(A) The authority may issue bonds to provide funds for any program authorized by this chapter. The bonds authorized by this chapter are limited obligations of the authority. The principal and interest are payable solely out of the revenues derived by the authority. The bonds issued do not constitute an indebtedness of the State or the authority within the meaning of any state constitutional provision or statutory limitation. They are an indebtedness payable solely from a revenue producing source or from a special source that does not include revenues from any tax or license. The bonds do not constitute nor give rise to a pecuniary liability of the State or the authority or a charge against the general credit of the authority or the State or taxing powers of the State and this fact must be plainly stated on the face of each bond. The bonds may be executed and delivered at any time as a single issue or from time to time as several issues, may be in such form and denominations, may be of such tenor, may be in coupon or registered form, may be payable in such installments and at such time, may be subject to terms of redemption, may be payable at such place, may bear interest at such rate payable at such place and evidenced in such manner, and may contain such provisions not inconsistent herewith, all of which are provided in the resolution of the authority authorizing the bonds. Subject to approval by the South Carolina Coordinating Council for Economic Development as to their issuance and sale, any bonds issued under this section may be sold at public or private sale as may be determined to be most advantageous. The bonds may be sold at public or private sale and, if by private sale, the authority shall designate the syndicate manager or managers. The authority may pay all expenses, premiums, insurance premiums, and commissions which it considers necessary from proceeds of the bonds or program funds in connection with the sale of bonds. The interest rate of bonds issued pursuant to this section is not subject to approval by the South Carolina Coordinating Council for Economic Development. The authority shall report its activities undertaken pursuant to this subsection to the Joint Bond Review Committee. The report shall be due annually on July thirty-first. The authority also shall publish on its website a complete list of bonds authorized by the authority pursuant to this subsection. The list shall include information concerning the authorized bonds that the authority deems relevant.”

**Time effective**

SECTION 3. This act takes effect June 1, 2017.

Ratified the 15<sup>th</sup> day of May, 2017.

Approved the 19<sup>th</sup> day of May, 2017.

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No. 81

(R119, H4033)

**AN ACT TO AMEND SECTION 56-5-1535, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO SPEEDING IN WORK ZONES AND PENALTIES ASSOCIATED WITH SPEEDING IN WORK ZONES, SO AS TO DELETE THIS PROVISION, TO CREATE THE OFFENSE OF “ENDANGERMENT OF A HIGHWAY WORKER”, TO PROVIDE A PENALTY FOR THIS OFFENSE AND TO PROVIDE DEFINITIONS FOR THE TERMS “HIGHWAY WORK ZONE” AND “HIGHWAY WORKER”; TO AMEND SECTION 56-1-720, RELATING TO THE POINT SYSTEM ESTABLISHED FOR THE EVALUATION OF THE DRIVING RECORD OF PERSONS OPERATING MOTOR VEHICLES, SO AS TO PROVIDE THAT THE OFFENSE OF ENDANGERMENT OF A HIGHWAY WORKER RESULTING IN NO INJURY IS A TWO POINT VIOLATION, THE OFFENSE OF ENDANGERMENT OF A HIGHWAY WORKER IN WHICH INJURY RESULTS IS A FOUR POINT VIOLATION, AND TO DELETE THE OFFENSE OF FAILING TO GIVE A SIGNAL OR GIVING IMPROPER SIGNAL FOR STOPPING, TURNING, OR SUDDENLY DECREASING SPEED AS A FOUR POINT VIOLATION; TO REPEAL SECTION 56-5-1536 RELATING TO DRIVING IN TEMPORARY WORK ZONES AND PENALTIES FOR UNLAWFUL DRIVING IN TEMPORARY WORK ZONES; AND TO AMEND SECTION 56-5-2150, RELATING TO TURNING, STOPPING, AND REDUCING THE SPEED OF A MOTOR VEHICLE AND THE SIGNALS REQUIRED TO BE USED FOR THESE ACTIONS, SO AS TO PROVIDE A PENALTY FOR A VIOLATION OF THIS PROVISION.**

Be it enacted by the General Assembly of the State of South Carolina:

**Highway work zones**

SECTION 1. Section 56-5-1535 of the 1976 Code is amended to read:

“Section 56-5-1535. (A) A person commits endangerment of a highway worker if the person is operating a motor vehicle within a highway work zone at anytime one or more highway workers are in the highway work zone and in proximity to the area where the act or omission occurs and the person:

(1) drives through or around a work zone in any lane not clearly designated for use by motor vehicles traveling through or around a work zone; or

(2) fails to obey traffic control devices erected for the purpose of controlling the flow of motor vehicles through the work zone for any reason other than:

(a) an emergency;

(b) the avoidance of an obstacle; or

(c) the protection of the health and safety of another person.

(B)(1) A person who violates the endangerment of a highway worker provision where the highway worker suffers no physical injury must be fined not more than one thousand dollars and not less than five hundred dollars.

(2) A person who violates the endangerment of a highway worker provision where the highway worker suffers physical injury and the violation was the sole proximate cause of the injury must be fined not more than two thousand dollars and not less than one thousand dollars.

(3) A person who violates the endangerment of a highway worker provision where the highway worker suffers great bodily injury, as defined in Section 56-5-2945(B), and the violation was the sole proximate cause of the injury must be fined not more than five thousand dollars and not less than two thousand dollars.

(C) A person who violates Section 56-5-1535(A) must have two points assessed against his motor vehicle operating record or four points assessed against his motor vehicle operating record if an injury to the highway worker occurred at the time of the incident and the violation is the sole proximate cause of the injury.

(D) Any fine imposed pursuant to this section is mandatory and may not be waived or reduced below the minimum as provided in subsection (B). Sixty-five percent of the fine must be remitted to the Treasurer and deposited in a special account, separate and apart from the general fund, designated for use by the Department of Public Safety to be used for work zone enforcement. Twenty-five percent of the fine must be

deposited in the State Highway Fund and designated for use by the Department of Transportation to hire off-duty state, county, or municipal police officers to monitor construction or maintenance zones. Ten percent of the fine must be remitted to the county governing body in which the charge was disposed, or the municipality if the charge was disposed in municipal court.

(E) No person shall be cited for endangerment of a highway worker for any act or omission otherwise constituting a violation under this section if the act or omission results, in whole or in part, from mechanical failure of the person's motor vehicle or from the negligence of a highway worker or another person.

(F) For purposes of this section:

(1) 'Highway work zone' means an area of a roadway, bridge, shoulder, median, or associated right of way, where construction, maintenance, utility work, accident response, or other incident response is being performed. The work zone must be marked by signs, channeling devices, barriers, pavement markings, or work vehicles, and extends from the first traffic control device erected for purposes of controlling the flow of motor vehicles through the work zone, including signs reducing the normal speed limit, to the 'END ROAD WORK' sign or the last temporary traffic control device. The signs, channeling devices, barriers, pavement markings, or work vehicles must meet state Department of Transportation standards, the provisions of Section 56-5-4700, or National Fire Protection (NFPA) standards, and must be installed properly.

(2) 'Highway worker' means a person who is required to perform work in highway work zones, including:

- (a) a person who performs maintenance, repair, or construction;
- (b) a person who operates a truck, loader, or other equipment;
- (c) a person who performs any other related maintenance work, as required;
- (d) a public safety officer who enforces work zone-related transportation management or traffic control;
- (e) a law enforcement officer who conducts traffic control or enforcement operations; and
- (f) an officer or firefighter, an emergency medical services provider, or any other authorized person who removes hazards or who responds to accidents and other incidents.

(G) Magistrates and municipal court judges have exclusive jurisdiction pursuant to this section."

**Moving violations**

SECTION 2. Section 56-1-720 of the 1976 Code is amended to read:

“Section 56-1-720. There is established a point system for the evaluation of the operating record of persons to whom a license to operate motor vehicles has been granted and for the determination of the continuing qualifications of these persons for the privileges granted by the license to operate motor vehicles. The system shall have as its basic element a graduated scale of points assigning relative values to the various violations in accordance with the following schedule:

VIOLATION	POINTS
Reckless driving	6
Passing stopped school bus	6
Hit-and-run, property damages only	6
Driving too fast for conditions, or speeding:	
(1) No more than 10 m.p.h. above the posted limits	2
(2) More than 10 m.p.h. but less than 25 m.p.h. above the posted limits	4
(3) 25 m.p.h. or above the posted limits	6
Disobedience of any official traffic control device	4
Disobedience to officer directing traffic	4
Failing to yield right-of-way	4
Driving on wrong side of road	4
Passing unlawfully	4
Turning unlawfully	4
Driving through or within safety zone	4
Failing to give signal or giving improper signal for stopping, turning, or suddenly decreased speed	4
Shifting lanes without safety precaution	2
Improper dangerous parking	2
Following too closely	4
Failing to dim lights	2
Operating with improper lights	2
Operating with improper brakes	4
Operating a vehicle in unsafe condition	2
Driving in improper lane	2
Improper backing	2
Endangerment of a highway worker, no injury	2
Endangerment of a highway worker, injury results	4”

**Repeal**

SECTION 3. Section 56-5-1536 of the 1976 Code is repealed.

**Savings clause**

SECTION 4. The repeal or amendment by this act of any law, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

**Moving violations**

SECTION 5. A. Section 56-1-720 of the 1976 Code is amended to read:

“Section 56-1-720. There is established a point system for the evaluation of the operating record of persons to whom a license to operate motor vehicles has been granted and for the determination of the continuing qualifications of these persons for the privileges granted by the license to operate motor vehicles. The system shall have as its basic element a graduated scale of points assigning relative values to the various violations in accordance with the following schedule:

VIOLATION	POINTS
Reckless driving	6
Passing stopped school bus	6
Hit-and-run, property damages only	6
Driving too fast for conditions, or speeding:	
(1) No more than 10 m.p.h. above the posted limits	2
(2) More than 10 m.p.h. but less than 25 m.p.h. above the posted limits	4



(3) 25 m.p.h. or above the posted limits	6
Disobedience of any official traffic control device	4
Disobedience to officer directing traffic	4
Failing to yield right of way	4
Driving on wrong side of road	4
Passing unlawfully	4
Turning unlawfully	4
Driving through or within safety zone	4
Shifting lanes without safety precaution	2
Improper dangerous parking	2
Following too closely	4
Failing to dim lights	2
Operating with improper lights	2
Operating with improper brakes	4
Operating a vehicle in unsafe condition	2
Driving in improper lane	2”

B. Section 56-5-2150 of the 1976 Code is amended to read:

“Section 56-5-2150. (A) No person shall turn a vehicle or move right or left upon a roadway unless and until such movement can be made with reasonable safety nor without giving an appropriate signal as provided for in this section.

(B) A signal of intention to turn or move right or left when required shall be given continuously during not less than the last one hundred feet traveled by the vehicle before turning.

(C) No person shall stop or suddenly decrease the speed of a vehicle without first giving an appropriate signal in the manner provided herein to the driver of any vehicle immediately to the rear when there is opportunity to give such signal.

(D) The signals required on vehicles by subsection (B) of Section 56-5-2180, shall not be flashed on one side only on a disabled vehicle, flashed as a courtesy or ‘do pass’ signal to operators of other vehicles approaching from the rear, nor be flashed on one side only of a parked vehicle except as may be necessary for compliance with this section.

(E) A person who violates the provisions of this section must be fined twenty-five dollars, all or part of which may not be suspended. In addition no court costs, assessments, surcharges, or points may be assessed against the person or his driving record.”

C. The repeal or amendment by this SECTION of any law, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of this SECTION, all laws repealed or amended by this SECTION must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this SECTION, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

#### **Time effective**

SECTION 6. This act takes effect upon approval by the Governor.

Ratified the 15<sup>th</sup> day of May, 2017.

Approved the 19<sup>th</sup> day of May, 2017.

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#### **No. 82**

(R120, H4178)

**AN ACT TO AMEND SECTION 7-7-420, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE DESIGNATION OF VOTING PRECINCTS IN NEWBERRY COUNTY, SO AS TO REDESIGNATE THE MAP NUMBER ON WHICH THE NAMES OF THESE PRECINCTS MAY BE FOUND AND MAINTAINED BY THE REVENUE AND FISCAL AFFAIRS OFFICE AND TO CORRECT OUTDATED REFERENCES TO THE REVENUE AND FISCAL AFFAIRS OFFICE.**

Be it enacted by the General Assembly of the State of South Carolina:

**Newberry County voting precinct map number redesignated**

SECTION 1. Section 7-7-420(B) of the 1976 Code, as last amended by Act 74 of 2005, is further amended to read:

“(B) The precinct lines defining the precincts provided in subsection (A) in Newberry County are as shown on the official map prepared by and on file with the Revenue and Fiscal Affairs Office designated as document P-71-17 and as shown on copies of the official map provided by the office to the State Election Commission and the Board of Voter Registration and Elections of Newberry County.”

**Time effective**

SECTION 2. This act takes effect upon approval by the Governor.

Ratified the 15<sup>th</sup> day of May, 2017.

Approved the 19<sup>th</sup> day of May, 2017.

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**No. 83**

(R121, H4179)

**AN ACT TO AMEND SECTION 7-7-30, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE DESIGNATION OF VOTING PRECINCTS IN ABBEVILLE COUNTY, SO AS TO ADD THE SMITHVILLE PRECINCT, TO REDESIGNATE THE MAP NUMBER ON WHICH THE NAMES OF THESE PRECINCTS MAY BE FOUND AND MAINTAINED BY THE REVENUE AND FISCAL AFFAIRS OFFICE, AND TO CORRECT OUTDATED REFERENCES TO THE REVENUE AND FISCAL AFFAIRS OFFICE.**

Be it enacted by the General Assembly of the State of South Carolina:

**Abbeville County voting precincts, precinct added and map number redesignated**

SECTION 1. Section 7-7-30 of the 1976 Code, as last amended by Act 130 of 1995, is further amended to read:

“Section 7-7-30. (A) In Abbeville County there are the following voting precincts:

- Abbeville No. 1
- Abbeville No. 2
- Abbeville No. 3
- Abbeville No. 4
- Antreville
- Broadmouth
- Calhoun Falls
- Cold Springs
- Donalds
- Due West
- Hall’s Store
- Keowee
- Lowndesville
- Lebanon
- Smithville

(B) The precinct lines defining the precincts identified in subsection (A) are as shown on map document P-01-17 and filed with the clerk of court of the county and the State Election Commission as provided and maintained by the Revenue and Fiscal Affairs Office.

(C) The polling places for the voting precincts in Abbeville County must be determined by the Board of Voter Registration and Elections of Abbeville County with the approval of a majority of the Abbeville County Legislative Delegation.”

**Time effective**

SECTION 2. This act takes effect upon approval by the Governor.

Ratified the 15<sup>th</sup> day of May, 2017.

Approved the 19<sup>th</sup> day of May, 2017.

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No. 84

(R122, H4183)

**AN ACT TO AMEND SECTION 7-7-190, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE DESIGNATION OF VOTING PRECINCTS IN CLARENDON COUNTY, SO AS TO REDESIGNATE THE MAP NUMBER ON WHICH THE NAMES OF THESE PRECINCTS MAY BE FOUND AND MAINTAINED BY THE REVENUE AND FISCAL AFFAIRS OFFICE AND TO CORRECT OUTDATED REFERENCES TO THE REVENUE AND FISCAL AFFAIRS OFFICE.**

Be it enacted by the General Assembly of the State of South Carolina:

**Clarendon County voting precinct map number redesignated**

SECTION 1. Section 7-7-190(C) of the 1976 Code, as last amended by Act 254 of 2008, is further amended to read:

“(C)The precinct lines defining the precincts as provided in subsection (A) are as shown on the official map prepared by and on file with the Revenue and Fiscal Affairs Office designated as document P-27-17.”

**Time effective**

SECTION 2. This act takes effect upon approval by the Governor.

Ratified the 15<sup>th</sup> day of May, 2017.

Approved the 19<sup>th</sup> day of May, 2017.

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No. 85

(R123, H4204)

**AN ACT TO AMEND SECTION 7-7-290, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE DESIGNATION OF VOTING PRECINCTS IN GREENWOOD**

**COUNTY, SO AS TO ADD THE ANGEL OAKS CROSSING AND GRAHAM'S GLEN PRECINCTS, TO REDESIGNATE THE MAP NUMBER ON WHICH THE NAMES OF THESE PRECINCTS MAY BE FOUND AND MAINTAINED BY THE REVENUE AND FISCAL AFFAIRS OFFICE, AND TO CORRECT OUTDATED REFERENCES TO THE REVENUE AND FISCAL AFFAIRS OFFICE.**

Be it enacted by the General Assembly of the State of South Carolina:

**Greenwood County voting precincts, precincts added, map number redesignated**

SECTION 1. Section 7-7-290 of the 1976 Code, as last amended by Act 142 of 2014, is further amended to read:

“Section 7-7-290. (A) In Greenwood County there are the following voting precincts:

Angel Oaks Crossing  
Graham's Glen  
Greenwood No. 1  
Greenwood No. 2  
Greenwood No. 3  
Greenwood No. 4  
Greenwood No. 5  
Greenwood No. 6  
Greenwood No. 7  
Greenwood No. 8  
Glendale  
Harris  
Laco  
Ninety Six  
Ninety Six Mill  
Ware Shoals  
Hodges  
Cokesbury  
Coronaca  
Greenwood High  
Georgetown  
Sandridge  
Callison  
Bradley

Troy  
Epworth  
Verdery  
New Market  
Emerald  
Airport  
Emerald High  
Civic Center  
Riley  
Shoals Junction  
Greenwood Mill  
Stonewood  
Mimosa Crest  
Lower Lake  
Pinecrest  
Maxwellton Pike  
New Castle  
Rutherford Shoals  
Liberty  
Biltmore Pines  
Marshall Oaks  
Sparrows Grace  
Mountain Laurel  
Allie's Crossing  
Gideon's Way  
Parson's Mill

(B) The precinct lines defining the precincts in subsection (A) are as shown on the official map designated as document P-47-17 on file with the Revenue and Fiscal Affairs Office and as shown on copies provided to the Board of Voter Registration and Elections of Greenwood County. The official map may not be changed except by act of the General Assembly.

(C) The Board of Voter Registration and Elections of Greenwood County shall designate the polling places of each precinct.”

**Time effective**

SECTION 2. This act takes effect upon approval by the Governor.

Ratified the 15<sup>th</sup> day of May, 2017.

Approved the 19<sup>th</sup> day of May, 2017.

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**No. 86**

(R57, H3531)

**AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING CHAPTER 2 TO TITLE 47 SO AS TO DEFINE CERTAIN TERMS, TO PROHIBIT CERTAIN PERSONS FROM OWNING, POSSESSING, IMPORTING, PURCHASING, OR SELLING A LARGE WILD CAT, NON-NATIVE BEAR, OR GREAT APE, TO PROVIDE FOR THE ENFORCEMENT OF THIS CHAPTER AND EXEMPTIONS FROM THE PROVISIONS OF THIS CHAPTER, TO AUTHORIZE CONFISCATION OF THESE ANIMALS UNDER CERTAIN CIRCUMSTANCES, AND TO PROVIDE THAT LOCAL GOVERNMENTAL BODIES MAY ADOPT ORDINANCES THAT REGULATE THE POSSESSION OF THESE ANIMALS, TO REGULATE THE TREATMENT OF THESE ANIMALS, AND TO PROVIDE A PENALTY FOR VIOLATIONS; AND TO AMEND SECTION 47-5-50, RELATING TO THE PROHIBITION OF THE SALE OF WILD CARNIVORES AS PETS AND THE SALE OF DOMESTICATED FERRETS, SO AS TO FURTHER PROVIDE FOR THE REGULATION OF THE PUBLIC DISPLAY, SHOWING, OR EXHIBITION OF CERTAIN WILD CARNIVORES, PRIMATES, OR OTHER ANIMALS.**

Whereas, South Carolina is home to one of the nation's preeminent wildlife preserves which is also a top tourist attraction and an interactive educational experience, attracting thousands of visitors annually and playing a significant role supporting the local economy of Myrtle Beach; and

Whereas, biodiversity has great value to human welfare; and



Whereas, biodiversity has been threatened by habitat loss around the globe and it is necessary to protect endangered and threatened species; and

Whereas, qualified, captive breeding programs play a critical role in the conservation of threatened and endangered species; and

Whereas, animal ambassadors play a vital role in generating millions of dollars to support international conservation efforts of threatened and endangered species; and

Whereas, the human spirit benefits greatly from the ability to interact with and observe wildlife; and

Whereas, it is imperative that the General Assembly protects critical conservation efforts and the welfare of vulnerable, threatened, and endangered species and protects the public against potential safety risks relating to big cats, non-native bears, and great apes in captivity. Now, therefore,

Be it enacted by the General Assembly of the State of South Carolina:

**Large wild cats, non-native bears, and great apes**

SECTION 1. Title 47 of the 1976 Code is amended by adding:

“CHAPTER 2

Large Wild Cats, Non-Native Bears and Great Apes

Section 47-2-10. As contained in this chapter:

(1) ‘Animal control authority’ means the agency designated by a city or county to administer ordinances regulating, restricting, or prohibiting the possession of large wild cats, non-native bears, and great apes. The animal control agency may be a municipal or county animal control agency, county sheriff, or other designated agency.

(2) ‘Large wild cat, non-native bear and great ape’ means one of the following types of animals of the order Carnivora or Primate, and any hybrids of these animals:

(a) Family Felidae, Genus panthera - all lions, tigers, leopards, jaguars, cougars, cheetahs, snow leopards, and clouded leopards;

(b) Family Ursidae - all bears that are not native to South Carolina and not subject to oversight by the South Carolina Department of Natural Resources; and

(c) Family Hominidae - all great apes; to include all species of chimpanzees, gorillas, and orangutans.

(3) 'Person' means any individual, partnership, corporation, organization, trade, or professional association, firm, limited liability company, joint venture, association, trust, estate, or any other legal entity, and any employee, agent, or representative of the entity.

(4) 'Possessor' means any person who owns, possesses, keeps, harbors, brings into the State, acts as a custodian of, or has custody or control of, a large wild cat, non-native bear, or great ape.

Section 47-2-20. (A) The provisions of this chapter do not apply to:

(1) duly incorporated nonprofit animal protection organizations, such as humane societies and shelters, housing a large wild cat, non-native bear or great ape temporarily at the written request of the animal control authority or acting under the authority of this chapter;

(2) federal or state wildlife enforcement officers acting under the scope of their authority;

(3) animal control or law enforcement agencies or officers acting under the authority of this chapter;

(4) veterinary hospitals, clinics, veterinarians, and persons employed at such facilities under the direction of a veterinarian who are actively treating a large wild cat, non-native bear, or great ape in their professional capacity as a veterinarian or employee of such facility;

(5) a university, college, laboratory, or other research facility holding a Class R registration under the Animal Welfare Act, 7 U.S.C. Section 2131, et seq., as amended;

(6) any person who possesses a valid United States Department of Agriculture Class A, B, or C license in good standing and is in compliance with the United States Department of Agriculture Animal Welfare Act regulations and standards as of January 1, 2018. This person may keep and acquire new large wild cats, non-native bears, or great apes;

(7) any person who obtains a valid United States Department of Agriculture Class A, B, or C license and is in compliance with the United States Department of Agriculture Animal Welfare Act regulations and standards after January 1, 2018, may keep and acquire large wild cats, non-native bears, or great apes after that date, and must comply with the applicable provisions of this chapter;

(8) circuses that are incorporated and hold a Class C license under the Animal Welfare Act, 7 U.S.C. Section 2131, et seq., as amended, that are temporarily in this State, and that offer performances by live animals, clowns, and acrobats for public entertainment; and

(9) an intermediate handler, as defined by the Animal Welfare Act, 7 U.S.C. Section 2136, et seq., acting as a registered agent for a USDA license, pursuant to the Captive Wildlife Safety Act, shall be permitted to transport regulated species through this State, provided the animal is at all times maintained within a confinement sufficient to prevent the animal from escaping.

Section 47-2-30. (A) Except as otherwise provided in this chapter, it is unlawful for a person to import into, possess, keep, purchase, have custody or control of, breed, or sell within this State, by any means, a large wild cat, non-native bear, or great ape, including transactions conducted via the Internet.

(B) A person in legal possession of a large wild cat, non-native bear, or great ape prior to January 1, 2018, and who is the legal possessor of the animal, may keep possession of the animal for the remainder of the animal's life, subject to the following conditions:

(1) on or before January 1, 2018, the possessor of a large wild cat, non-native bear, or great ape shall register with the animal control authority for the city or county in which the animal is located. The registration shall include the person's name, address, telephone number, a complete inventory of each large wild cat, non-native bear, or great ape that the person possesses, a photograph or microchip number for each animal, the address for the site at which each animal is located, and the payment to the animal control authority of a one-time fee of five hundred dollars per site at which a large wild cat, non-native bear, or great ape is to be located, and an annual fee of one hundred dollars per large wild cat, non-native bear, or great ape located at that site to cover the costs of enforcement of this chapter. A possessor shall have a continuing obligation to promptly notify the animal control authority with jurisdiction of any material changes to the information required for registration;

(2) the possessor shall prepare and submit to the animal control authority at the time of payment of the fee required by item (1) a contingency plan to protect first responders by providing for the quick and safe recapture of the large wild cat, non-native bear, or great ape in the event of an escape;

(3) the possessor shall maintain veterinary records, acquisition papers for the animal, or other documents or records that establish that the person possessed the animal prior to January 1, 2018;

(4) the possessor shall present paperwork described in item (3) to an animal control or law enforcement authority upon request;

(5) the possessor shall comply with the basic standards for housing exotic animals and protecting the public under the federal Animal Welfare Act, 7 U.S.C. Section 2131, et seq., as amended, and the regulations adopted pursuant to that act, and shall allow the animal control authority access to the animal's housing in order to ensure that the animal is properly cared for and poses no risk of unauthorized contact with the public;

(6) the possessor shall notify the animal control authority, the local sheriff's department, and police department, if applicable, immediately upon discovery that the large wild cat, non-native bear, or great ape has escaped. The possessor of the animal shall be liable for any and all costs associated with the escape, capture, and disposition of a registered animal; and

(7) the possessor shall comply with any and all applicable federal, state, or local law, rule, regulation, ordinance, permit, or other permission regarding ownership of large wild cats, non-native bears, and great apes. Failure to comply with any law, rule, regulation, ordinance, permit, or other permission constitutes a violation of this chapter.

Section 47-2-40. (A) An animal control authority or other person authorized to enforce the provisions of this chapter may confiscate a large wild cat, non-native bear, or great ape when:

(1) the animal control authority or other person designated under this chapter has probable cause to believe that the large wild cat, non-native bear, or great ape was acquired or is being held in contravention of this chapter;

(2) the large wild cat, non-native bear, or great ape poses an immediate, imminent danger to the health and safety of the public; or

(3) the large wild cat, non-native bear, or great ape is in imminent danger of loss of life as a result of the action or inaction of the possessor as determined by a veterinarian.

(B) A large wild cat, non-native bear, or great ape that is confiscated under this section must be returned to the possessor if the animal control authority or law enforcement officer establishes that the possessor had legal possession of the animal pursuant to this chapter, the return does not pose a public safety or health risk, and the animal is determined not

to be in poor health and condition as a result of the action or inaction of the possessor.

(C) The animal control authority or other persons authorized to enforce this chapter shall serve notice upon the possessor in person or by regular and certified mail, return receipt requested, notifying the possessor of the confiscation, that the possessor is responsible for payment of reasonable costs for caring and providing for the animal during the confiscation and that the possessor must meet the requirements of subsection (B) in order for the animal to be returned to the possessor.

(D) If a large wild cat, non-native bear, or great ape that is confiscated under this section is not returned to the possessor, the animal control authority or other persons designated under this chapter shall release the animal to a facility exempted pursuant to this chapter or an out-of-state facility.

(E) If a large wild cat, non-native bear, or great ape escapes or is released and poses an immediate threat to public safety, the animal control authority or other persons designated under this chapter may exercise judgment in attempting to recapture, contain, or destroy the animal.

Section 47-2-50. A city or county may adopt an ordinance governing large wild cat, non-native bear, or great ape that is more restrictive than this chapter. However, nothing in this chapter requires a city or county to adopt an ordinance to be in compliance with this chapter.

Section 47-2-60. (A) The animal control authority and its staff and agents, local law enforcement agents, state law enforcement agents, and county sheriffs are authorized and empowered to enforce the provisions of this chapter.

(B) The possessor of a large wild cat, non-native bear, or great ape, at all reasonable times, shall allow the animal control authority or other persons designated by this chapter to enter the premises where the animal is being kept to ensure compliance with this chapter.

Section 47-2-70. A person who violates this chapter must be fined not more than one thousand dollars or imprisoned for not more than thirty days for a first offense, and must be fined not more than five thousand dollars or imprisoned for not more than ninety days for a second offense.”

**Public displays or exhibitions**

SECTION 2. Section 47-5-50(D) of the 1976 Code is amended to read:

“(D) This section does not apply to the sale, purchase, donation, or transfer of ownership of carnivores between publicly owned zoos or animal dealers located in this State and licensed by the United States Department of Agriculture (USDA) under the Animal Welfare Act on the effective date of this chapter. These exemptions do not allow for the sale, purchase, donation, or transfer of ownership to private individuals in this State. Any public displays, showings, or exhibitions of wild carnivores, primates, or any other animal will default to the Animal Welfare Act 9 C.F.R. 2.131- Handling of Animals.”

**Severability**

SECTION 3. If any part of this chapter is determined to be unconstitutional or unenforceable, it shall not affect the constitutionality or enforceability of any other part.

**Time effective**

SECTION 4. This act takes effect January 1, 2018, and applies to acts committed on or after that date.

Ratified the 9<sup>th</sup> day of May, 2017.

Approved the 10<sup>th</sup> day of May, 2017.

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**No. 87**

(R34, S415)

**AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 62-1-112 SO AS TO CLARIFY THE PROBATE COURT’S AUTHORITY TO IMPOSE PENALTIES FOR CONTEMPT AND TO GRANT A MOTION FOR A PARTY TO PROCEED IN FORMA PAUPERIS; TO AMEND SECTION 8-21-800, RELATING TO RELIEF FROM FILING FEES, COURT COSTS, AND PROBATE COSTS, SO AS**

**TO CLARIFY THAT THE PROBATE JUDGE MAY WAIVE FILING FEES FOR INDIGENT PERSONS IN THE SAME MANNER AS OTHER CIVIL CASES; TO AMEND SECTION 62-1-302, AS AMENDED, RELATING TO SUBJECT MATTER JURISDICTION AND CONCURRENT JURISDICTION WITH FAMILY COURT, SO AS TO CLARIFY THE COURT'S JURISDICTION IN MATTERS INVOLVING THE ESTABLISHMENT, ADMINISTRATION, OR TERMINATION OF A SPECIAL NEEDS TRUST FOR DISABLED INDIVIDUALS AND TO REVISE OUTDATED TERMINOLOGY; TO AMEND SECTION 62-1-401, AS AMENDED, RELATING TO NOTICE, SO AS TO AUTHORIZE NOTICE TO BE MADE BY A QUALIFYING COMMERCIAL DELIVERY SERVICE AND IS SIMILAR TO NOTICE BY REGISTERED MAIL OR CERTIFIED MAIL; TO STRIKE PARTS 1, 2, 3, 4, AND 7, ARTICLE 5, TITLE 62, AND TO ADD NEW AND REVISED PROVISIONS RELATING TO THE PROTECTION OF PERSONS UNDER DISABILITY AND THEIR PROPERTY, SO AS TO PROMOTE UNIFORMITY AMONG THE STATE'S FORTY-SIX PROBATE COURTS, TO SAFEGUARD ADEQUATE DUE PROCESS PROTECTIONS FOR THE STATE'S ALLEGED INCAPACITATED INDIVIDUALS, TO ELIMINATE OVERRELIANCE UPON RESTRICTIVE FULL OR PLENARY GUARDIANSHIPS, TO REDUCE THE COSTS OF PROCEEDINGS, TO ESTABLISH CONSISTENCY BETWEEN GUARDIANSHIP AND CONSERVATORSHIP PROCEEDINGS, AND TO CREATE AN ADEQUATE SYSTEM FOR MONITORING GUARDIANS AND CONSERVATORS.**

Be it enacted by the General Assembly of the State of South Carolina:

**Probate Court's authority to impose penalties for contempt and to allow a party to proceed in forma pauperis**

SECTION 1. Part 1, Article 1, Title 62 of the 1976 Code is amended by adding:

“Section 62-1-112. The inherent power of the court to impose penalties for contempt extends to all filing requirements, proceedings, judgments, and orders of the court. The court has the power to grant a motion to proceed in forma pauperis.”

## REPORTER'S COMMENTS

This section was enacted in 2017 to clarify the probate court's authority to impose penalties for contempt and to grant a motion for a party to proceed in forma pauperis.

**Probate Court may waive filing fees for indigent persons in the same manner as other civil cases**

SECTION 2. Section 8-21-800 of the 1976 Code is amended to read:

“Section 8-21-800. The Probate Judge may relieve any party to a proceeding in the Probate Court from court costs in the manner provided in Section 8-21-140, but relief from filing fees and other probate costs is prohibited, except as provided in Section 8-21-810.

(1) The Probate Judge pursuant to Rule 3(b), SCRCP and Section 62-1-112, shall grant waivers of filing fees for indigent persons in the same manner as other civil cases.

(2) The Probate Judge may relieve any party to a proceeding in the Probate Court from court costs related to fees of a notary public as provided in Section 8-21-140.

(3) The Probate Judge is prohibited from waiving fees or court costs associated with the value of an estate or conservatorship as provided in Section 8-21-770(B), except as provided in Section 8-21-810.”

## REPORTER'S COMMENTS

The 2017 amendment to this section clarifies that the Probate Judge may waive filing fees for indigent persons, the same as in other civil cases. While much of the jurisdiction of the Probate Court involves estates or protective orders, where waiving of filing fees would be inappropriate. However, in actions for guardianship, the litigants may be indigent and should have access to the courts and the Probate Court should be able to waive the fees upon a showing of indigency.

**Subject matter jurisdiction of Probate Court**

SECTION 3. Section 62-1-302 of the 1976 Code, as last amended by Act 100 of 2013, is further amended to read:

“Section 62-1-302. (a) To the full extent permitted by the Constitution, and except as otherwise specifically provided, the probate



court has exclusive original jurisdiction over all subject matter related to:

(1) estates of decedents, including the contest of wills, construction of wills, determination of property in which the estate of a decedent or a protected person has an interest, and determination of heirs and successors of decedents and estates of protected persons, except that the circuit court also has jurisdiction to determine heirs and successors as necessary to resolve real estate matters, including partition, quiet title, and other actions pending in the circuit court;

(2) subject to Part 7, Article 5:

(i) protective proceedings and guardianship proceedings under Article 5;

(ii) gifts made pursuant to the South Carolina Uniform Gifts to Minors Act under Article 5, Chapter 5, Title 63;

(iii) matters involving the establishment, administration, or termination of a special needs trust for disabled individuals;

(3) trusts, inter vivos or testamentary, including the appointment of successor trustees;

(4) the issuance of marriage licenses, in form as provided by the Bureau of Vital Statistics of the Department of Health and Environmental Control; record, index, and dispose of copies of marriage certificates; and issue certified copies of the licenses and certificates;

(5) the performance of the duties of the clerk of the circuit and family courts of the county in which the probate court is held when there is a vacancy in the office of clerk of court and in proceedings in eminent domain for the acquisition of rights of way by railway companies, canal companies, governmental entities, or public utilities when the clerk is disqualified by reason of ownership of or interest in lands over which it is sought to obtain the rights of way; and

(6) the involuntary commitment of persons suffering from mental illness, intellectual disability, alcoholism, drug addiction, and active pulmonary tuberculosis.

(b) The court's jurisdiction over matters involving wrongful death or actions under the survival statute is concurrent with that of the circuit court and extends only to the approval of settlements as provided in Sections 15-51-41 and 15-51-42 and to the allocation of settlement proceeds among the parties involved in the estate.

(c) The probate court has jurisdiction to hear and determine issues relating to paternity, common-law marriage, and interpretation of marital agreements in connection with estate, trust, guardianship, and conservatorship actions pending before it, concurrent with that of the family court pursuant to Section 63-3-530.

(d) Notwithstanding the exclusive jurisdiction of the probate court over the foregoing matters, any action or proceeding filed in the probate court and relating to the following subject matters, on motion of a party, or by the court on its own motion, made not later than ten days following the date on which all responsive pleadings must be filed, must be removed to the circuit court and in these cases the circuit court shall proceed upon the matter de novo:

(1) formal proceedings for the probate of wills and for the appointment of general personal representatives;

(2) construction of wills;

(3) actions to try title concerning property in which the estate of a decedent or protected person asserts an interest;

(4) matters involving the internal or external affairs of trusts as provided in Section 62-7-201, excluding matters involving the establishment of a 'special needs trust' as described in Article 7;

(5) actions in which a party has a right to trial by jury and which involve an amount in controversy of at least five thousand dollars in value; and

(6) actions concerning gifts made pursuant to the South Carolina Uniform Gifts to Minors Act, Article 5, Chapter 5, Title 63.

(e) The removal to the circuit court of an action or proceeding within the exclusive jurisdiction of the probate court applies only to the particular action or proceeding removed, and the probate court otherwise retains continuing exclusive jurisdiction.

(f) Notwithstanding the exclusive jurisdiction of the probate court over the matters set forth in subsections (a) through (c), if an action described in subsection (d) is removed to the circuit court by motion of a party, or by the probate court on its own motion, the probate court may, in its discretion, remove any other related matter or matters which are before the probate court to the circuit court if the probate court finds that the removal of such related matter or matters would be in the best interest of the estate or in the interest of judicial economy. For any matter removed by the probate court to the circuit court pursuant to this subsection, the circuit court shall proceed upon the matter de novo."

#### REPORTER'S COMMENTS

This section clearly states the subject matter jurisdiction of the probate court. It should be noted that the probate court has 'exclusive original jurisdiction' over the matters enumerated in this section. This means, when read with the other Code provisions (such as subsection (c) of this section and Section 62-3-105), that matters within the original

jurisdiction of the probate court must be brought in that court, subject to certain provisions made for removal to the circuit court by the probate court or on motion of any party.

Concurrent jurisdiction has been granted to the probate court to hear and determine issues relating to paternity, common-law marriage, and interpretation of marital agreements in connection with estate, trust, guardianship, and conservatorship actions pending before it, concurrent with that of the family court, pursuant to Section 63-3-530, but no concurrent jurisdiction exists which allows the family court to decide issues regarding the care, custody, and control of an adult.

Section 63-1-40(1) of the South Carolina Children's Code defines a "child" as a person under the age of eighteen. Section 63-1-40(2) of the Children's Code defines a "Guardian" as a person who legally has the care and management of a child. Section 62-5-101(1) of the S.C. Probate Code defines an "adult" as an individual who has attained the age of eighteen or who, if under eighteen, is married or has been emancipated by a court of competent jurisdiction.

Therefore, the exclusive jurisdiction to appoint a guardian and/or conservator for an adult rests with the probate court, pursuant to Section 62-1-302(a)(2)(i). Accordingly, when a parent or other individual was granted custody of an incapacitated individual in a family court order entered during minority, the family court does not have any continuing jurisdiction to enter further orders regarding the care, custody, or control of that person beyond the age of eighteen. (The family court's authority over the custody and care of adults is pursuant to the Omnibus Adult Protection Act, Section 43-35-5 et seq.) In such a situation, the parent or custodial guardian wishing to retain or gain custody of an incapacitated young adult must file a guardianship action pursuant to Section 62-5-303 of the South Carolina Probate Code.

However, if the family court issued an order during the minority of an adult which directs an individual to pay child support pursuant to Section 63-3-530(17), the family court retains exclusive jurisdiction to make decisions regarding support beyond the age of eighteen when there are physical or mental disabilities of the child, as long as those mental or physical disabilities continue. So, even if a parent or custodial guardian was granted support for an incapacitated adult during his minority, even though a guardianship action has been filed in the probate court, the parent or custodial guardian can still go before a judge of the family court to seek modification or other redress regarding the issue of child support for the incapacitated adult. Any support paid to an individual beyond the age of eighteen, as a result of a family court order entered pursuant

to Section 63-5-503(17), is the property of the conservatorship, and it should be paid to and managed by the conservator.

The language of this section is similar to Section 14-23-1150 of the 1976 Code, which in item (a) provides that probate judges are to have jurisdiction as provided in Sections 62-1-301 and 62-1-302, and other applicable sections of this South Carolina Probate Code.

The 2013 amendments added “determination of property in which the estate of a decedent or protected person has an interest” to subsection (a)(1), substantially rewrote subsections (a)(2), (d)(3), and (d)(4), and added subsection (f) which allows the probate court to remove any pending matter to circuit court in the event a party or the court removes a related matter pursuant to subsection (d), even if that pending matter is not otherwise covered by the removal provisions of (d).

The 2017 amendments re-wrote the introductory sentence of (a)(2) and removed “subject to” in order to make the language more clear. In addition, (a)(2)(iii) was added, which deals with the probate court’s exclusive jurisdiction in matters involving special needs trusts for disabled individuals.

### **Petitioner’s notice requirements**

SECTION 4. Section 62-1-401 of the 1976 Code is amended to read:

“Section 62-1-401. (a) If notice of a hearing on a petition is required and, except for specific notice requirements as otherwise provided, the petitioner shall cause notice of the time and place of hearing of a petition to be given to any interested person or his attorney if he has appeared by attorney or requested that notice be sent to his attorney. Notice must be given:

(1) by mailing a copy of the notice at least twenty days before the time set for the hearing by certified, registered, or ordinary first class mail, or by a commercial delivery service that meets the requirements to be considered a designated delivery service in accordance with 26 U.S.C. Section 7502(f)(2) addressed to the person being notified at the post office address given in his demand for notice, if any, or at his office or place of residence, if known;

(2) by delivering a copy of the notice to the person being notified personally at least twenty days before the time set for the hearing; or

(3) if the address or identity of any person is not known and cannot be ascertained with reasonable diligence by publishing a copy of the notice in the same manner as required by law in the case of the

publication of a summons for an absent defendant in the court of common pleas.

(b) The court for good cause shown may provide for a different method or time of giving notice for any hearing.

(c) Proof of the giving of notice shall be made on or before the hearing and filed in the proceeding.

(d) Notwithstanding a provision to the contrary, the notice provisions in this section do not, and are not intended to, constitute a summons that is required for a petition.”

#### REPORTER’S COMMENTS

This section provides that, where notice of hearing on a petition is required, the petitioner shall give notice to any interested person or his attorney (1) by mailing or commercial delivery at least twenty days in advance of the hearing, or (2) by personal delivery at least twenty days in advance of the hearing, or (3) if the person’s address or identity is not known and cannot be ascertained, by publication as in the court of common pleas.

Under this Code, when a petition is filed with the court, the court is to fix a time and place of hearing and it is then the responsibility of the petitioner to give notice as provided in Section 62-1-401. See, for example, Sections 62-3-402 and 62-3-403.

The 2010 amendment added subsection (d) to clarify and avoid confusion that previously existed regarding the notice provisions in this section. The effect of the 2010 amendment was intended to make it clear that the notice provisions in this section are not intended to and do not constitute a summons, which is required for a petition in formal proceedings. See 2010 amendments to certain definitions in S.C. Code Section 62-1-201 and also see Sections 14-23-280, 62-1-304, and Rules 1 and 81, SCRPC.

The 2017 amendment authorizes notice to be made by a qualifying commercial delivery service and is similar to notice by registered mail or certified mail.

#### **Protected persons and their property**

SECTION 5. A.Parts 1, 2, 3, 4, Article 5, Title 62 of the 1976 Code are amended to read:

“Former Section	Recodified Section
62-5-101	62-5-101

62-5-102(a)	62-5-201
62-5-102(b)	62-5-102
62-5-103	62-5-103
62-5-104	62-5-309(c)
62-5-105	62-5-104
	62-5-105 (new)
62-5-106 (A)	62-5-101
62-5-106 (B)	62-5-306, 62-5-307 (A), 62-5-428
	62-5-106 (new)
	62-5-107 (new)
62-5-201	62-5-201
62-5-301	62-5-301
62-5-302	62-5-302
62-5-303	62-5-303, 62-5-303A, 62-5-303B, 62-5-303C, 62-5-303D
62-5-304	62-5-304
	62-5-304A (new)
62-5-305	62-5-305
62-5-306	62-5-306
62-5-307	62-5-307, 62-5-307A
62-5-308	removed
62-5-309(A)	62-5-303A
62-5-309(B)	62-5-303C
62-5-310	62-5-108
62-5-311	62-5-308
62-5-312	62-5-309
62-5-313	62-5-310
62-5-401(1)	62-5-402
62-5-401(2)	62-5-403
62-5-402	62-5-426, see also 62-5-201
62-5-403	62-5-401
62-5-404	62-5-403
62-5-405	62-5-403A, 62-5-403C
62-5-406	62-5-403C
62-5-407(a)	62-5-402
62-5-407(b)	62-5-403B, 62-5-403C, 62-5-403D
	62-5-407 (new)
62-5-408	62-5-107, 62-5-108, 62-5-404, 62-5-405, 62-5-414, 62-5-422, 62-5-423
62-5-409	62-5-405
62-5-410	62-5-408
62-5-411	62-5-409

62-5-412	62-5-410
62-5-413	62-5-411
	62-5-413 (new)
62-5-414	62-5-105, 62-5-412
62-5-415	62-5-428
62-5-416	62-5-428
62-5-417	62-5-414
62-5-418	62-5-415
62-5-419	62-5-416
62-5-420	62-5-417
62-5-421	62-5-418
62-5-422	62-5-419
62-5-423	62-5-420
	62-5-421 (new)
62-5-424	62-5-422
62-5-425	62-5-423
62-5-426	62-5-404, 62-5-428
62-5-427	62-5-425
62-5-428	62-5-426
62-5-429	62-5-427
62-5-430	62-5-428
62-5-431	62-5-429
62-5-432	62-5-430
	62-5-432 (new)
62-5-433	62-5-433
62-5-434	removed
62-5-435	removed
62-5-436	62-5-431

## Part 1

## General Provisions

## GENERAL COMMENT

The 2017 amendments to the conservatorship and guardianship sections of Article 5 of the Probate Code were drafted and proposed during a time when the Uniform Law Commission was in the process of amending the Uniform Guardianship and Protective Proceedings Act. Many of the changes are based not only upon the 1997 Uniform Guardianship and Protective Proceedings Act, but also by the study and research being done in anticipation of a new version of the Uniform Act, anticipated to

be proposed by the Uniform Law Commission sometime in 2017. Some of the anticipated revisions to the Uniform Act are included in these revisions.

The goals of the 2017 amendments, specific to this South Carolina version of the Uniform Act, include promoting uniformity among forty-six probate courts in the state, ensuring adequate due process protections for the alleged incapacitated individual, eliminating overreliance upon restrictive full or plenary guardianships, reducing costs of proceedings, establishing more consistency between guardianship and conservatorship proceedings, and creating a sufficient system for monitoring guardians and conservators.

The 2017 amendments made no significant changes to Part 5 or Part 7 of Article 5, Title 62.

Section 62-5-101. Unless otherwise apparent from the context, in this article:

(1) 'Adult' means an individual who has attained the age of eighteen or who, if under eighteen, is married or has been emancipated by a court of competent jurisdiction.

(2) 'Alleged incapacitated individual' means:

(a) an adult for whom a protective order is sought;

(b) an adult for whom the appointment of a guardian is sought; or

(c) an adult for whom a determination of incapacity is sought.

(3) 'Conservator' means a person appointed by the court to manage the estate of a protected person.

(4) 'Counsel for alleged incapacitated individual' means a person authorized to practice law in the State of South Carolina who represents the alleged incapacitated individual in a guardianship proceeding or a protective proceeding. Counsel shall represent the expressed wishes of the alleged incapacitated individual to the extent consistent with the rules regulating the practice of law in the State of South Carolina.

(5) 'Court' means the probate court.

(6) 'Disabled' means the medically determinable physical or mental impairment of a minor or an adult as defined by 42 U.S.C. Section 1382c, as amended.

(7) 'Emergency' means circumstances that are likely to result in substantial harm to the alleged incapacitated individual's health, safety, or welfare or in substantial economic loss to the alleged incapacitated individual.

(8) 'Foreign conservator' means a conservator or a person with the powers of a conservator of another jurisdiction.



(9) 'Guardian' means a person appointed by the court as guardian, but excludes one who is a guardian ad litem. A guardian shall make decisions regarding the ward's health, education, maintenance, and support.

(10) 'Guardian ad litem' means a person licensed in the State of South Carolina in law, social work, nursing, medicine, or psychology, or who has completed training to the satisfaction of the court, and who has been appointed by the court to advocate for the best interests of the alleged incapacitated individual.

(11) 'Guardianship proceeding' means a formal proceeding to determine if an adult is an incapacitated individual or in which an order for the appointment of a guardian for an adult is sought or has been issued.

(12) 'Incapacitated individual' means an individual who, for reasons other than minority, has been adjudicated as incapacitated.

(13) 'Incapacity' means the inability to effectively receive, evaluate, and respond to information or make or communicate decisions such that a person, even with appropriate, reasonably available support and assistance cannot:

(a) meet the essential requirements for his physical health, safety, or self-care, necessitating the need for a guardian; or

(b) manage his property or financial affairs or provide for his support or for the support of his legal dependents, necessitating the need for a protective order.

(14) 'Less restrictive alternative' means the provision of support and assistance as defined in this section which maximizes the alleged incapacitated individual's capacity for self-determination and autonomy in lieu of a guardianship or conservatorship.

(15) 'Net aggregate amount' means the total sum of payments due to a minor or incapacitated individual after subtracting all outstanding reimbursements and relevant deductions.

(16) 'Party' means the alleged incapacitated individual, ward, protected person, petitioner, guardian, conservator, or any other person allowed by the court to be a party in a guardianship proceeding or protective proceeding, including those listed in Section 62-5-303, Section 62-5-402, and Section 62-5-403.

(17) 'Person' means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government or governmental subdivision, agency, or instrumentality, public corporation, or any other legal or commercial entity.

(18) 'Protected person' means an individual for whom a conservator has been appointed or other protective order has been issued.

(19) 'Protective order' means an order appointing a conservator or relating to the management of the property of:

- (a) an incapacitated individual;
- (b) a minor;
- (c) a person who is confined, detained by a foreign power, or who has disappeared; or
- (d) a person who is disabled and in need of a court order to create and establish a special needs trust for such person's benefit.

(20) 'Protective proceeding' means a judicial proceeding in which a protective order is sought or has been issued.

(21) 'Record' means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(22) 'State' means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, a federally recognized Indian tribe, or any territory or insular possession subject to the jurisdiction of the United States.

(23) 'Supports and assistance' includes:

(a) systems in place for the alleged incapacitated individual to make decisions in advance or to have another person to act on his behalf, including, but not limited to, having an agent under a durable power of attorney, a health care power of attorney, a trustee under a trust, a representative payee to manage social security funds, a Declaration of Desire for Natural Death (living will), a designated health care decision maker under Section 44-66-30, or an educational representative designated under Section 55-33-310 to Section 55-33-370; and

(b) reasonable accommodations that enable the alleged incapacitated individual to act as the principal decision-maker, including, but not limited to, using technology and devices; receiving assistance with communication; having additional time and focused discussion to process information; providing tailored information oriented to the comprehension level of the alleged incapacitated individual; and accessing services from community organizations and governmental agencies.

(24) 'Ward' means an adult for whom a guardian has been appointed.

#### REPORTER'S COMMENTS

Section 62-5-101 defines certain terms which are used in Article 5. However, in 2017 the definition section of Article 5 was revised to add definitions to clarify the code to promote consistency. Some of the definitions were to clarify some of the most significant changes in the

guardianship and conservatorship sections of Article V, including separating the role of the guardian ad litem from the role of the attorney, ensuring that rights are only removed as a last resort to protect an incapacitated individual or his property, and establishing consistency between the guardianship sections and conservatorship sections.

‘Counsel for the alleged incapacitated individual’ is an attorney who represents the wishes of the alleged incapacitated individual, whether or not those wishes may be in his best interests. In the event counsel cannot communicate with his client with or without supports and assistance in order to determine what the client wishes, counsel may move the court to allow him to withdraw from representation, as set forth in Section 62-5-303B(C).

A definition of ‘disabled’ was added to allow for the court to create a special needs trust for an individual who is disabled, but not incapacitated.

The 2017 amendments added a definition of ‘emergency’ to clarify that an emergency petition should only be granted when there is a substantial risk to the alleged incapacitated individual’s life or property. The 2017 definition acknowledges that an emergency petition for a protective order is appropriate.

The definition of ‘guardian ad litem’ is expanded to include nonattorneys and clarify that the guardian ad litem will not be acting as counsel for the alleged incapacitated individual. The role and duties of the guardian ad litem are expanded in the revisions to ensure that an adequate investigation happens prior to appointment; therefore, the guardian ad litem must have training that satisfies the court.

The definition of ‘incapacity’ and ‘incapacitated individual’ have changed significantly. These definitions are modified versions of the definition contained in the Uniform Guardianship and Protective Proceedings Act (1997) drafted by the Uniform Law Commission. The requirement that the person be unable to make ‘responsible’ decisions is deleted, as is the requirement that the person have an impairment by reason of a specified disability or other cause, a requirement which may have led the trier of fact to focus unduly on the nature of the respondent’s disabling condition, as opposed to the respondent’s actual ability to effectively receive and evaluate information. The 2017 definition is based upon an individual’s ability to understand and evaluate choices rather than the individual’s disability. The definition of incapacity acknowledges that many individuals need both accommodations and supports and assistance in order to make a decision. Therefore, an individual is not incapacitated even though he may need help with making decisions, take longer to make decisions, require more

explanation to make decisions, or have difficulty communicating the decision. If the individual can make his own decisions with supports and assistance, then the individual is not incapacitated. A finding that an individual displays poor judgment alone shall not be considered sufficient evidence that the individual is incapacitated within the meaning of this definition. In addition, the definition acknowledges that the capacity must be limited to the extent the individual cannot adequately provide for his health or safety necessitating the need for a guardian or cannot adequately manage his financial affairs necessitating a need for a protective order. Under this definition, a guardianship would not be necessary for an individual whose health, safety, well-being, or property is not at risk of harm.

'Less restrictive alternatives' are to be explored and considered, and guardianship is appropriate only when the alternatives are not available or appropriate, as noted by Sections 62-5-303(B)(6) and 62-5-403(B)(6). For example, an individual may have access to a representative payee to manage his social security funds. This would be a less restrictive alternative to a conservatorship to manage those funds. Likewise, an individual may be able to make his own decisions regarding health care by having a relative attend doctor's appointments and assist him in understanding the information being presented at those appointments. This support is a less restrictive alternative to guardianship. Those alternatives which maximize the alleged incapacitated individual's self-determination must be ruled out prior to appointment of a guardian or conservator.

'Supports and assistance' are defined to acknowledge that any person may have planned in advance for their incapacity or have a system already in place to address his need to rely upon another to make decisions. These systems are listed, and they are all considered less restrictive alternatives which maximize the individual's self-determination, whether planned in advance or relied upon as an alternative to guardianship or conservatorship. The definition also acknowledges that reasonable accommodations must be made for people who are alleged to be incapacitated, but who in fact have the means to independently make decisions if they are able to access accommodations that assist them in making decisions.

'Net aggregate amount' was defined to clarify how calculations are to be made in Sections 62-5-103, 62-5-104, 62-5-423, and 62-5-428. For example, the facility of payment provision, Section 62-5-103, could be used to distribute sixteen thousand dollars to the minor in income, if after deducting taxes, the amount actually distributed was less than fifteen thousand dollars. Payments can be spread throughout the year, but

dividing more than fifteen thousand dollars into multiple payments does not eliminate the need for a protective order.

A ‘party’ in the action includes not only the petitioner and the alleged incapacitated individual, but may also include a person who is allowed by the court to intervene in the proceeding.

Sections 62-5-433, 62-5-504, and 62-5-431 contain definitions that relate only to those sections. Section 62-5-702 contains additional definitions that relate only to Part 7.

Section 62-5-102. When both guardianship proceedings and protective proceedings as to the same person are commenced or pending in the same court, the proceedings may be consolidated.

#### REPORTER’S COMMENTS

The 2017 amendments to this section moved the jurisdiction provisions to Section 62-5-201. The 2017 amendments kept the provision which allows guardianship and conservatorship proceedings to be consolidated when they involve the same alleged incapacitated individual and are in the same court.

Section 62-5-103. (A) A person under a duty to pay or deliver money or personal property to a minor or incapacitated individual may perform this duty in amounts not exceeding a net aggregate amount of fifteen thousand dollars each year by paying or delivering the money or property to the conservator for the minor or incapacitated person, if the person under a duty to pay or deliver money or personal property has actual knowledge that a conservator has been appointed or an appointment is pending. If the person under a duty to pay or deliver money or personal property to a minor or incapacitated person does not have actual knowledge that a conservator has been appointed or that appointment of a conservator is pending, the person may pay or deliver the money or property in amounts not exceeding a net aggregate of fifteen thousand dollars each year to:

- (1) a person having the care and custody of the minor or incapacitated individual with whom the minor or incapacitated individual resides;
- (2) a guardian of the minor or an incapacitated individual; or
- (3) a financial institution incident to a deposit in a federally insured savings account in the sole name of the minor or for the minor under the Uniform Gifts to Minors Act and giving notice of the deposit to the minor.

(B) The persons, other than a financial institution under subsection (A)(3) above, receiving money or property for a minor or incapacitated individual, serve as fiduciaries subject to fiduciary duties, and are obligated to apply the money for the benefit of the minor or incapacitated individual with due regard to:

(1) the size of the estate, the probable duration of the minority or incapacity, and the likelihood that the minor or incapacitated individual, at some future time, may be able to manage his affairs and his estate;

(2) the accustomed standard of living of the minor or incapacitated individual and members of his household; and

(3) other funds or resources used or available for the support or any obligation to provide support for the minor or incapacitated individual.

(C) The persons may not pay themselves except by way of reimbursement for out-of-pocket expenses for goods and services necessary for the minor's or incapacitated individual's support. Money or other property received on behalf of a minor or incapacitated individual may not be used by a person to discharge a legal or customary obligation of support that may exist between that person and the minor or incapacitated individual. Excess sums must be preserved for future benefit of the minor or incapacitated individual, and any balance not used and property received for the minor or incapacitated individual must be turned over to the minor when he attains majority or is emancipated by court order; or, to the incapacitated individual when he has been readjudicated as no longer incapacitated. Persons who pay or deliver in accordance with provisions of this section are not responsible for the proper application of the money or personal property. If the net aggregate amount exceeds fifteen thousand dollars, a conservatorship shall be required.

(D) An employer may fulfill his duties to a minor or incapacitated individual by delivering a check to or depositing payment into an account in the name of the minor or incapacitated employee.

#### REPORTER'S COMMENTS

The 2017 amendments changed this section in the following ways:

(1) The structure of the section was changed to make it more organized by breaking the information down into smaller subsections.

(2) The amendments clarified when a person under a duty to pay money or deliver personal property to a minor or incapacitated individual must do so to a conservator. If an appointment of a conservator is pending, the person under a duty to pay or deliver with

actual knowledge of the pending appointment should notify the court of its duty or hold the money or property until the order appointing a conservator is issued. The amendments further specify what persons or institutions other than a conservator may accept the money or property;

(3) The amount that can be paid to a minor or incapacitated individual by a person under a duty to pay money or deliver personal property to a minor or incapacitated individual was increased from ten thousand dollars to fifteen thousand dollars to reflect changes in the cost of living and present-day value of money versus when this section was enacted in 1986;

(4) Subsection (C) was created, which included language from the previous version of this section, and a sentence was added to the end of the paragraph that specifically states that if the net aggregate amount exceeds fifteen thousand dollars a conservatorship is required; and

(5) Subsection (D) was created, which includes language that makes it clear that any employer may fulfill his duty to a minor or incapacitated individual by delivering or depositing payment into an account in the name of the minor or incapacitated employee.

Section 62-5-104. If a patient of a state mental health facility has no legally appointed conservator, the Director of the Department of Mental Health or his designee, may receive and accept, for the use and benefit of the patient, assets which may be due the patient by inheritance, gift, pension, or otherwise with a net aggregate amount not exceeding fifteen thousand dollars in one calendar year. The director or his designee may act as conservator for the patient and his endorsement or receipt discharges the obligor for any assets received. Upon receipt, the director or his designee shall apply the assets for the proper maintenance, use, and benefit of the patient. In the event the patient dies leaving an unexpended balance of assets in the hands of the director or his designee, the director or his designee shall apply the balance first to the funeral expenses of the patient, and any balance remaining must be held by the director or his designee for a period of six months; if within that period, the director or his designee is not contacted by the personal representative of the deceased patient, the balance of the assets may be applied to the maintenance and medical care account of the deceased patient. The director or his designee must, within thirty days following the death of the patient, notify the court in the county in which the patient resided at the time of admission to the department's facility of the death of the patient and provide a list of any property belonging to the patient and held by the department. Upon appointment of a conservator for a patient of a state mental health facility, the director shall deliver any

assets of the protected person to the conservator and provide an accounting of the management of those assets.

#### REPORTER'S COMMENTS

The 2017 amendment increased the amount that the S.C. Department of Mental Health can receive on behalf of a patient from \$10,000.00 to \$15,000.00, consistent with the increase in the amount in Section 62-5-103.

Section 62-5-105. (A) In a formal proceeding, the court, as justice and equity may require, may award costs and expenses, including reasonable attorney's fees, to any party, to be paid by another party or from the assets of a ward or protected person who is the subject of a formal proceeding.

(B) If not otherwise compensated for services rendered, the court-appointed guardian ad litem, counsel for the alleged incapacitated individual, counsel for the minor, and designated examiner are entitled to reasonable compensation, as determined by the court.

(C) Unless the court issues an order stating otherwise, petitioners are responsible for their own attorney's fees and costs, as well as the other costs and expenses of the action.

#### REPORTER'S COMMENTS

The 2017 amendment added Section 62-5-105 and was created to not only address the allocation of fees, but to incorporate language that was previously included in Section 62-5-414 regarding compensation and expenses.

Prior to the 2017 amendment, the only section in the Probate Code that specifically granted authority to the court to award fees and costs was Section 62-1-111, which was enacted in 2013, effective January 2014. The language in this section makes it clear that the court also has the authority to award fees and costs in guardianship and conservatorship matters. See Section 62-7-1004 for a similar provision in the S.C. Trust Code.

This section, consistent with South Carolina case law, clarifies that the petitioner is responsible for his own fees and costs in an action, unless there is a contractual agreement dictating who pays or there is a court order stating who is responsible for payment. In addition, in a guardianship and/or conservatorship matter there are other costs and expenses that must be paid. *Dowaliby v. Chambless*, 344 S.C. 558, 544



S.E.2d 646 (Ct. App. 2001) allows payment of certain costs and expenses from the funds of the incapacitated individual, other than those that are statutorily permitted, if the action brought results in a finding of incapacity and the bringing of the action has benefitted the incapacitated individual. However, if the court did not find it appropriate to order that such costs and expenses be paid from the funds of the incapacitated individual, there was a need for specific statutory language and clarity as to who was responsible for such payment.

Section 62-5-106. (A) Once a guardian ad litem is appointed by the court, pursuant to Section 62-5-303B or Section 62-5-403B, the responsibilities and duties of the guardian ad litem include, but are not limited to:

(1) acting in the best interest of the alleged incapacitated individual;

(2) conducting an independent investigation to determine relevant facts and filing a written report with recommendations at least forty-eight hours prior to the hearing, unless excused or required earlier by the court. The investigation must include items listed in subitems (a) through (i) and also may include items listed in subitems (j) through (m), as appropriate or as ordered by the court:

(a) obtaining and reviewing relevant documents;

(b) meeting with the alleged incapacitated individual, at least once within thirty days following appointment, or within such time as the court may direct;

(c) investigating the residence or proposed residence of the alleged incapacitated individual;

(d) interviewing all parties;

(e) discerning the wishes of the alleged incapacitated individual;

(f) identifying less restrictive alternatives to guardianship and conservatorship;

(g) reviewing a criminal background check on the proposed guardian or conservator;

(h) reviewing a credit report on the proposed conservator;

(i) interviewing the person whose appointment is sought to ascertain the:

(i) proposed fiduciary's knowledge of the fiduciary's duties, requirements, and limitations; and

(ii) steps the proposed fiduciary intends to take or has taken to identify and meet the needs of the alleged incapacitated individual;

(j) consulting with persons who have a significant interest in the welfare of the alleged incapacitated individual or knowledge relevant to the case;

(k) contacting the Department of Social Services to investigate any action concerning the alleged incapacitated individual or the proposed fiduciary;

(l) determining the financial capabilities and integrity of the proposed conservator including, but not limited to:

(i) previous experience in managing assets similar to the type and value of the alleged incapacitated individual's assets;

(ii) plans to manage the alleged incapacitated individual's assets; and

(iii) whether the proposed conservator has previously borrowed funds or received financial assistance or benefits from the alleged incapacitated individual;

(m) interviewing any persons known to the guardian ad litem having knowledge of the alleged incapacitated individual's financial circumstances or the integrity and financial capabilities of the conservator, or both, and reviewing pertinent documents;

(3) advocating for the best interests of the alleged incapacitated individual by making specific recommendations regarding resources as may be appropriate and available to benefit the alleged incapacitated individual, the appropriateness of the appointment of a guardian or conservator, and any limitations to be imposed;

(4) avoiding conflicts of interest, impropriety, or self-dealing. A guardian ad litem shall not accept or maintain appointment if the performance of his duties may be materially limited by responsibilities to another person or by his own interests;

(5) participating in all court proceedings including discovery unless all parties waive the requirement to appear or the court otherwise excuses participation;

(6) filing with the court and delivering to each party a copy of the guardian ad litem's report; and

(7) moving for any necessary temporary relief to protect the alleged incapacitated individual from abuse, neglect, abandonment, or exploitation, or to address other emergency needs of the alleged incapacitated individual.

(B) Notes of a guardian ad litem are discoverable only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of his case and that the party is unable without undue hardship to obtain the substantial equivalent of the materials by other means.

(C) The report of the guardian ad litem shall include all relevant information obtained in his investigation. The report shall contain facts including:

- (1) the date and place of the meeting with the alleged incapacitated individual;
- (2) a description of the alleged incapacitated individual;
- (3) known medical diagnoses of the alleged incapacitated individual including the nature, cause, and degree of the incapacity and the basis for the findings;
- (4) description of the condition of the alleged incapacitated individual's current place of residence including address and factors affecting safety;
- (5) identification of persons with significant interest in the welfare of the alleged incapacitated individual;
- (6) any prior action by the Department of Social Services or law enforcement concerning the alleged incapacitated individual or the proposed fiduciary of which the guardian ad litem is aware;
- (7) a statement as to any prior relationship between the guardian ad litem and the petitioner, alleged incapacitated individual, or other party to the action;
- (8) a description of the current care and treatment needs of the alleged incapacitated individual; and
- (9) any other information relevant to the matter.

(D) The report shall contain recommendations including:

- (1) whether a guardian or conservator is needed;
- (2) the propriety and suitability of the proposed fiduciary after consideration of his geographic location, his familial or other relationship, his ability to carry out the duties of the proposed fiduciary, his commitment to promoting the welfare of the alleged incapacitated individual, his financial capabilities and integrity, his potential conflicts of interests, the wishes of the alleged incapacitated individual, and the recommendations of the relatives of the alleged incapacitated individual;
- (3) approval or disapproval by the alleged incapacitated individual of the proposed fiduciary;
- (4) an evaluation of the future care and treatment needs of the alleged incapacitated individual;
- (5) if there is a proposed residential plan for the alleged incapacitated individual, whether that plan is in the best interest of the alleged incapacitated individual;
- (6) a recommendation regarding any rights in Section 62-5-304A, which should be retained by the alleged incapacitated individual;

- (7) whether the matter should be heard in a formal hearing even if all parties are in agreement; and
  - (8) any other recommendations relevant to the matter.
- (E) The court in its discretion may extend or limit the responsibilities or authority of the guardian ad litem.

#### REPORTER'S COMMENTS

The 2017 amendments were added this section to provide guidance with specificity for the responsibilities and duties of the guardian ad litem as part of the guardianship and conservatorship process to insure that the highest level of integrity and dignity was applied to the process. In doing so, the alleged incapacitated individual's best interests would be protected to the maximum extent possible while establishing evidence of the alleged incapacitated individual's capacity to manage his personal and financial matters and at what level he may require assistance or can manage using a less restrictive alternative. These provisions have incorporated some of the previous responsibilities of the visitor in these proceedings. The duties and responsibilities of the guardian ad litem as set forth also provide a paradigm for addressing potential legal issues which may arise in the course of the guardian ad litem's appointment. Section 62-5-106 is also broad enough to allow the court to instruct the guardian ad litem on issues which have not been stated in any of the provisions of this section that could be unforeseen. This section further addresses how hearings should be treated whether in an informal or formal manner, and allows the court discretion in extending or limiting the express authority of a guardian ad litem in conformity with the authority originally granted to the guardian ad litem. The notes of the guardian ad litem are to be treated in the same manner as materials made in preparation for trial and are generally not discoverable unless the party seeking discovery can meet the test. For example, if the guardian ad litem interviewed a neighbor of the alleged incapacitated person, and that neighbor moved out of state before the party had a chance to conduct their own interview, then the party seeking the notes of the interview could potentially show a need for the notes and an inability to get that information except from the guardian ad litem.

Section 62-5-107. Unless an order of the court specifies otherwise, a finding of incapacity is not a determination that the protected person or ward lacks testamentary capacity or the capacity to create, amend, or revoke a revocable trust.

## REPORTER'S COMMENTS

The 2017 amendments to this section expand former Section 62-5-408(4) to clarify that an adjudication of incapacity is not a determination of the protected person's testamentary capacity and codifies the common law distinction between incapacity and testamentary capacity. See e.g., *In re Estate of Weeks*, 329 S.C. 251, 495 S.E. 2d 454 (Ct. App. 1997).

In addition, this section authorizes the court to make a specific determination regarding testamentary capacity, but does not address the process for making such a finding. For guidance in application of this section to determinations of capacity relating to wills or trusts see South Carolina Probate Code Sections 62-2-501 and 62-7-601.

Section 62-5-108. (A) The process for emergency orders without notice, emergency hearings, duration, and security is as follows:

(1) Emergency orders without notice must not be issued unless the moving party files a summons, motion for emergency order with supporting affidavit(s), verified pleading, notice of emergency hearing, and any other document required by the court. The verified pleading, motions, and affidavits shall set forth specific facts supporting the allegation that an immediate and irreparable injury, loss, or damage will result before notice can be served on adverse parties and a hearing held pursuant to subsection (B).

(a) If emergency relief is required to protect the welfare of an alleged incapacitated individual, the moving party must present an affidavit from a physician who has performed an examination within thirty days prior to the filing of the action, a motion for the appointment of counsel if counsel has not been retained, and a motion for the appointment of a proposed qualified individual to serve as guardian ad litem.

(b) If the emergency relief requested is an order for:

(i) appointment of a temporary guardian, conservator, guardian ad litem, or other fiduciary; or

(ii) the removal of an existing guardian, conservator, or other fiduciary, and the appointment of a substitute, then the moving party must submit evidence of the suitability and creditworthiness of the proposed fiduciary.

(2) If the motion for an emergency order is not granted, the moving party may seek temporary relief after notice pursuant to subsection (B) or proceed to a final hearing.

(3) If the motion for an emergency order is granted, the date and hour of its issuance must be endorsed on the order. The date and time for the emergency hearing must be entered on the notice of hearing and it must be no later than ten days from the date of the order or as the court determines is reasonable for good cause shown.

(4) The moving party shall serve all pleadings on the alleged incapacitated individual, ward or protected person and other adverse parties immediately after issuance of the emergency order.

(5) If the moving party does not appear at the emergency hearing, the court may dissolve the emergency order without notice.

(6) Evidence admitted at the hearing may be limited to pleadings and supporting affidavits. Upon good cause shown or at the court's direction, additional evidence may be admitted.

(7) On two days' notice to the party who obtained the emergency order without notice or on such shorter notice to that party as the court may prescribe, the adverse party may appear and move for the emergency order's dissolution or modification, and in that event, the court shall proceed to hear and determine the motion as expeditiously as possible and may consolidate motions.

(8) No emergency order for conservatorship must be issued except upon the court receiving adequate assurances the assets will be protected, which may include providing of security by the moving party in a sum the court deems proper for costs and damages incurred by any party who without just cause is aggrieved as a result of the emergency order. A surety upon a bond or undertaking submits to the jurisdiction of the court.

(9) The court may take whatever actions it deems necessary to protect assets, including, but not limited to, issuing an order to freeze accounts.

(B) The process for temporary orders and temporary hearings with notice is as follows:

(1) A temporary order must not be issued without notice to the adverse party.

(2) An order for a temporary hearing must not be issued unless the moving party files a summons, motion for temporary hearing with supporting affidavits, and a petition or other appropriate pleading setting forth specific facts supporting the allegation that immediate relief is needed during the pendency of the action, and an affidavit of service of the notice of the temporary hearing to adverse parties.

(a) If temporary relief is required to protect the welfare of an alleged incapacitated individual, in addition to the requirements set forth above in subsection (B)(2), the moving party shall present an affidavit

from a physician who has performed an examination within forty-five days prior to the filing of the action, a motion for the appointment of counsel if counsel has not been retained, and a motion for appointment of a proposed qualified individual to serve as guardian ad litem.

(b) If the temporary relief requested is an order for:

(i) appointment of a temporary guardian, conservator, guardian ad litem, or other fiduciary; or

(ii) removal of an existing guardian, conservator or other fiduciary, and the appointment of a substitute, in addition to the requirements set forth in subsection (B)(2) and (a), as applicable, the moving party shall submit evidence of the suitability and creditworthiness of the proposed fiduciary.

(3) If the motion for temporary relief is not granted, the action will remain on the court docket for a final hearing.

(4) If the motion for temporary relief is granted, the court shall enter a date and time for the temporary hearing on the notice of hearing.

(5) The moving party shall serve pleadings on the alleged incapacitated individual, ward or protected person, and other adverse parties. Service must be made no later than ten days prior to the temporary hearing or as the court determines is reasonable for good cause shown.

(6) Temporary orders resulting from the hearing shall expire six months from the date of issuance unless otherwise specified in the order.

(C) In an emergency, the court may exercise the power of a guardian with or without notice if the court makes emergency findings as required by the Adult Health Care Consent Act, Section 44-66-30.

(D) After preliminary hearing upon such notice as the court deems reasonable, and if the petition requests temporary relief, the court has the power to preserve and apply the property of the alleged incapacitated individual as may be required for his benefit or the benefit of his dependents. Notice of the court's actions shall be given to interested parties as soon thereafter as possible.

(E) A hearing concerning the need for appointment of a permanent guardian must be a hearing de novo as to all issues before the court.

#### REPORTER'S COMMENTS

The 2017 amendment added this section and was patterned after South Carolina Rule of Civil Procedure 65 and is in Part 1 of Article 5 because it applies to both guardianship and protective proceedings. It distinguishes between the requirements for emergency vis-à-vis temporary relief and expands prior statutory counterparts, Section

62-5-310 (temporary guardians) and Section 62-5-408(1) (permissible court orders for conservatorships). The distinction between the two forms of relief is whether there is a true emergency that supports the issuance of an ex parte order. Such an emergency in the guardianship context might consist of an urgently needed medical procedure where there is no ability for an individual to give informed consent and there is no health care power of attorney in place. In a protective proceeding, it could be needed because of alleged financial malfeasance likely to result in immediate loss of assets.

Both emergency and temporary procedures require the filing of a motion, a summons and petition, and other documents such as a physician's affidavit. A hearing is also required in both proceedings.

Section 62-5-108(A) outlines the procedure to obtain emergency relief without notice to adverse parties. The phrase 'any other document required by the court' may include a proposed ex parte order. The moving party must allege specific facts showing the existence of an emergency as defined in Section 62-5-101(7), and the pleadings must be served in accordance with the SCRCF immediately after issuance of the ex parte order. An emergency hearing must be held within ten days of issuance of the order or it automatically dissolves absent a showing by the moving party of good cause for its continuation.

Section 62-5-108(B) outlines the procedure to obtain temporary relief in a nonemergency and with notice to adverse parties. A temporary order may be required in cases where there is no imminent risk of substantial harm to a person or of substantial economic loss, but action should be taken on an expedited basis. The need may arise if incapacity is expected to be of limited duration, or a currently serving guardian is not adequately performing his duties. The same documents are required as for emergency relief, but the pleadings must be served at least ten days prior to a temporary hearing. A temporary order expires in six months.

In both emergency and temporary situations, the moving party must provide evidence of the creditworthiness of a proposed fiduciary, and the court may take measures it deems appropriate to protect assets, including freezing accounts or requiring bond.

Section 62-5-108(C) clarifies that the court may exercise its authority to act as a temporary guardian pursuant to the Adult Health Care Consent Act in an emergency and with or without notice.

Section 62-5-108(D) permits certain financial actions on the part of a court-appointed fiduciary when authorized by the court. When exercising financial powers, the fiduciary should take into account (i) the size of the estate, if known; (ii) the probable duration of the temporary appointment; (iii) the likelihood that the protected person, at some future



time, may be fully able to manage his affairs and the estate which has been protected for him; (iv) the income and reasonable expenses of the protected person and his dependents; and (v) other funds or sources for support of the protected person.

Section 62-5-108(E) clarifies that a hearing for a permanent guardian is de novo as to all issues before the court, requiring the same quantum of proof as if no emergency or temporary guardian had been appointed.

## Part 2

### Jurisdiction

Section 62-5-201. Exclusive jurisdiction of the court is set forth in Sections 62-1-302 and 62-5-701 as to appointment of a guardian or issuance of a protective order. Pursuant to the court's authority to appoint a guardian, and Section 62-5-309, the guardian has the authority to maintain custody of the person of the ward and to establish the ward's place of abode, unless otherwise specified in the court's order. The court does not have jurisdiction over the care, custody, and control of the person of a minor, but does have jurisdiction over the property of a minor if the court determines that the minor owns property that requires management or protection.

### REPORTER'S COMMENTS

The 2017 amendments revised this section to make the reference to exclusive jurisdiction consistent with Section 62-1-302, and as a foundation for distinguishing the probate court's authority regarding incapacitated adults versus the authority of any other court to make decisions regarding a guardianship for an incapacitated adult, even if that court previously entered a decision regarding the care, custody, and control of the same individual when he was a minor.

## Part 3

### Guardians of Incapacitated Individuals

Section 62-5-301. (A) The parent of an alleged incapacitated individual may by will nominate a guardian for an alleged incapacitated individual. A testamentary nomination by a parent gives the nominee priority pursuant to Section 62-5-308 in any proceeding to determine incapacity and appoint a guardian. A testamentary nomination by a

parent gives priority to the nominee to make health care decisions for the alleged incapacitated individual pursuant to Section 44-66-30. Such nomination creates priority under Sections 62-5-308 and 44-66-30 when the will is informally or formally probated, if prior to the will being probated, both parents are deceased or the surviving parent is adjudged incapacitated. If both parents are deceased, the nomination by the parent who died later has priority unless it is terminated by the denial of probate in formal proceedings.

(B) The spouse of an alleged incapacitated individual may by will nominate a guardian for an alleged incapacitated individual. A testamentary nomination by a spouse gives the nominee priority pursuant to Section 62-5-308 in any proceeding to determine incapacity and appoint a guardian. A testamentary nomination by a spouse gives priority to the nominee to make health care decisions for the alleged incapacitated individual pursuant to Section 44-66-30. Such nomination creates priority under Sections 62-5-308 and 44-66-30 when the will is informally or formally probated. An effective nomination by a spouse has priority over a nomination by a parent unless the nomination is terminated by the denial of probate in formal proceedings.

(C) This State shall recognize a testamentary nomination under a will probated at the testator's domicile in another state.

#### REPORTER'S COMMENTS

The 2017 amendments made significant changes to this section. This section now sets forth a procedure by which a testator may nominate a guardian for the testator's alleged incapacitated adult child or spouse. (Prior law treated the naming of a guardian as an 'appointment.') The nominee has priority for appointment similar to priority bestowed on a nominee as personal representative; however, appointment is not automatic. The nominee must file a petition for appointment with the Court, and the Court will follow the usual procedures for vetting the nominee and determining incapacity. The nomination also gives the nominee tertiary priority to make decisions pursuant to the Adult Healthcare Consent Act as set forth in Section 44-66-30(A)(3). Based on the facts of the case and the filings of the parties, pursuant to Section 62-1-100 of the Probate Code, it is within the discretion of the court to determine whether a testamentary guardian designation in a will executed by a parent or spouse prior to the effective date of this article will fall under the processes and procedures of the 1987 Probate Code or under the process and procedures enacted by the 2017 amendments.

Section 62-5-302. Venue for guardianship proceedings is in the place where the alleged incapacitated individual or ward resides or is present. If the alleged incapacitated individual or ward is committed to an institution pursuant to an order of a court of competent jurisdiction, venue also is in the county in which that court sits.

#### REPORTER'S COMMENTS

No substantive changes were made to Section 62-5-302 in 2017. The 2017 amendments made the section consistent with changes in the definitions and choice of words throughout Part 3 and Part 4.

Section 62-5-303. (A) A person seeking a finding of incapacity, appointment of a guardian, or both, must file a summons and petition. When more than one petition is pending in the same court, the proceedings may be consolidated.

(B) The petition shall set forth, to the extent known or reasonably ascertainable, the following information:

(1) interest of the petitioner;

(2) name, age, current address, and contact information of the alleged incapacitated individual, who must be designated as a respondent;

(3) physical location of the alleged incapacitated individual during the six-month period immediately preceding the filing of the summons and petition; and, if the alleged incapacitated individual was not physically present in South Carolina for that period, sufficient information upon which the court may make a determination that it has initial jurisdiction pursuant to Section 62-5-707;

(4) to the extent known and reasonably ascertainable, the names and addresses of the following persons, who must be designated as correspondents:

(a) the alleged incapacitated individual's spouse and adult children; or, if none, his parents; or, if none, at least one of his adult relatives within the nearest degree of kinship;

(b) a person known to have been appointed as agent for the alleged incapacitated individual under a general durable power of attorney or health care power of attorney;

(c) a person who has equal or greater priority for appointment pursuant to Section 62-5-308 as the person whose appointment is sought in the petition; and

(d) a person, other than an unrelated employee or health care worker, who is known or reasonably ascertainable by the petitioner to

have materially participated in caring for the alleged incapacitated individual within the six-month period preceding the filing of the petition;

(5) name and address of the proposed guardian and the basis of his priority for appointment;

(6) reasons why a guardianship is necessary, including why less restrictive alternatives are not available or appropriate, and a brief description of the nature and extent of the alleged incapacity;

(7) a statement of any rights that a petitioner is requesting be removed from the alleged incapacitated individual, any restrictions to be placed on the alleged incapacitated individual, and any restrictions sought to be imposed on the guardian's powers and duties; and

(8) to the extent known and reasonably ascertainable, a general statement of the alleged incapacitated individual's assets, with an estimate of value, and the source and amount of any income of the alleged incapacitated individual.

#### REPORTER'S COMMENTS

In the 2017 amendments, Section 62-5-101 bases the definition of incapacity on functional abilities, recognizing a person may have the capacity to do some things while needing help with others. Sections 62-5-303 through 62-5-303D identify the procedural steps that must be followed so the court has an adequate basis for determining the extent of incapacity, the appropriate person to appoint, and what powers should be vested in or limitations placed upon the guardian.

Pursuant to Section 62-5-303(A), every petitioner requesting appointment must file a separate summons and petition and pay the filing fee; the filing of a counterclaim requesting appointment of a different person in response to a previously filed petition is not sufficient to effectuate an appointment. This is because a counterclaim typically seeks relief against an adverse party, and in a guardianship proceeding the relief sought is not solely against an adverse party, but also against an alleged incapacitated individual. This is analogous to Section 62-3-401 which requires the filing of a summons and petition and the payment of a filing fee by each person asking to be formally appointed as personal representative of an estate. See also Section 8-21-770(11).

In order to make an informed decision, the court must have as much information as possible. Section 62-5-303(B) specifies the data which must be included in each petition including the persons to be named as correspondents. The purpose of Section 62-5-303(B)(4)(d) is to provide notice to persons who may be likely to have an interest in protecting the

alleged incapacitated individual even though they are not family members. The petition also must include a statement as to why less restrictive alternatives such as limited guardianships are or are not sufficient, and requires the enumeration of rights to be removed.

Section 62-5-303A. (A) As soon as reasonably possible after the filing of the summons and petition, the petitioner shall serve:

(1) a copy of the summons, petition, and a notice of right to counsel upon the alleged incapacitated individual;

(2) a copy of the summons and petition upon all corespondents and the petitioner in any pending guardianship proceeding; and

(3) any affidavits or physician's reports filed with the petition.

(B) If service is not accomplished within one hundred twenty days after the filing of the action, the court may dismiss the action without prejudice.

(C) The notice of right to counsel shall advise the alleged incapacitated individual of the right to counsel of his choice and shall state that if the court has not received notice of appearance by counsel selected by the alleged incapacitated individual within fifteen days from the filing of proof of service, the court will appoint counsel. In appointing counsel, the court shall consider the expressed preferences of the alleged incapacitated individual.

(D) The date for the alleged incapacitated individual to file a responsive pleading shall run from the later of the date the court appoints counsel for the alleged incapacitated individual or from the date the court receives notice of appearance by counsel selected by the alleged incapacitated individual.

#### REPORTER'S COMMENTS

Sections 62-5-303A(A) and 62-5-303A(B) specify that the alleged incapacitated individual and the persons named as corespondents pursuant to Section 62-5-303(B)(4) must be served within one hundred twenty days of filing or the action may be dismissed without prejudice. SCRCF 5(d) requires the filing of proof of service of the summons and petition within ten days of service.

With the 2017 amendments, Section 62-5-303A(A) requires that the alleged incapacitated individual be served with notice that he has the right to hire counsel, and Section 62-5-303A(C) requires a lawyer to be appointed by the court within fifteen days of receipt of proof of service unless the court receives a notice of appearance from private counsel hired by the alleged incapacitated individual. An alleged incapacitated

individual may have prior experience with an attorney who he prefers to retain, and this section specifies the privately retained attorney must enter an appearance within fifteen days of filing of the proof of service of the summons and petition.

The time for filing a responsive pleading runs from the later of the date the court appoints counsel or private counsel files a notice of appearance.

Personal service of the summons and petition on the alleged incapacitated individual is required, and failure to personally serve him is jurisdictional.

Section 62-5-303B. (A) Upon receipt by the court of proof of service of the summons, petition, and notice of right to counsel upon the alleged incapacitated individual, the court shall:

(1) upon the expiration of fifteen days from filing the proof of service on the alleged incapacitated individual, if no notice of appearance has been filed by counsel retained by the alleged incapacitated individual, appoint counsel;

(2) no later than thirty days from the filing of the proof of service on the alleged incapacitated individual, appoint:

(a) a guardian ad litem for the alleged incapacitated individual who shall have the duties and responsibilities set forth in Section 62-5-106; and

(b) one examiner, who must be a physician, to examine the alleged incapacitated individual and file a notarized report setting forth his evaluation of the condition of the alleged incapacitated individual in accordance with the provisions set forth in Section 62-5-303D. Unless the guardian ad litem or the alleged incapacitated individual objects, if a physician's notarized report is filed with the petition and served upon the alleged incapacitated individual and all interested parties with the petition, then the court may appoint such physician as the examiner. Upon the court's own motion or upon request of the initial examiner, the alleged incapacitated individual, or his guardian ad litem, the court may appoint a second examiner, who must be a physician, nurse, social worker, or psychologist.

(B) At any time during the proceeding, if requested by a guardian ad litem who is not an attorney, the court may appoint counsel for the guardian ad litem.

(C) At the attorney's discretion, the attorney for the alleged incapacitated individual may file a motion requesting that the court relieve him as the attorney if the alleged incapacitated individual is incapable of communicating, with or without reasonable

accommodations, his wishes, interests, or preferences regarding the appointment of a guardian. The attorney must file an affidavit in support of the motion. If the court is satisfied that the alleged incapacitated individual is incapable of communicating, with or without reasonable accommodations, his wishes, interests, or preferences regarding the appointment of a guardian, then the court may relieve the attorney from his duties as attorney for the alleged incapacitated individual. If the former attorney requests to be appointed as the guardian ad litem, the court may appoint him to serve as the guardian ad litem. An attorney cannot serve as both an attorney and as a guardian ad litem in a guardianship action.

#### REPORTER'S COMMENTS

The 2017 amendments combined the roles of the guardian ad litem and visitor, and the guardian ad litem is not required to be an attorney. The duties and reporting requirements for guardians ad litem are clarified in Section 62-5-106. Because the guardian ad litem is not necessarily an attorney and because of an inherent conflict between the duties of a guardian ad litem and those of an attorney advocating for his client, the 2017 amendments note that counsel appointed by the court, or private counsel hired by the alleged incapacitated individual in lieu of appointed counsel, were essential to insure due process. Alleged incapacitated individuals are often vulnerable and may not have an adequate understanding of the proceeding or its consequences.

The 2017 amendments are an important departure from the prior statute, Section 62-5-303(b), which required the appointment of a lawyer "who then has the powers and duties of a guardian ad litem." Traditionally, a guardian ad litem not only has a duty to the alleged incapacitated individual but also a duty to the court to discern and report what is in the best interest of the individual regardless of the individual's preferences, although by statute those preferences must be considered by the court. With the 2017 amendments, the alleged incapacitated individual must have a lawyer who argues for the individual's expressed wishes regardless of what may be in his best interests, and a guardian ad litem who acts as the eyes and ears of the court to discern the best outcome for the alleged incapacitated individual and to advise the court thereof.

Sections 62-5-303B(A)(1) and (2) set forth specific time lines for appointments of counsel, guardians ad litem and an examiner. The appointment of counsel (or the hiring of counsel by the alleged incapacitated individual) must occur within fifteen days after filing of

proof of service of the summons and petition with the court, and the guardian ad litem and examiner are to be appointed within thirty days after filing of the proof of service. A party may recommend a guardian ad litem and the court may accept or reject the recommendation, but best practices may require that the court independently select the guardian ad litem.

The imposition of a guardianship should be based on competent evidence of incapacity. Evidentiary rules must be enforced to insure due process. To obtain competent evidence, the court should allow the admission of evidence from professionals and experts whose training qualifies them to assess the physical and mental condition of the respondent.

The requirement of only one examiner is a departure from prior statute. Pursuant to Section 62-5-303B(A)(2)(b), the examiner must be a physician. Although a physician may provide valuable information, incapacity is a multifaceted issue and the court may consider using, in addition to the physician, other professionals whose expertise and training give them greater insight into incapacity. The court on its own motion or if requested by the initial examiner, the guardian ad litem, or the alleged incapacitated individual, may appoint a second examiner. The second examiner is not required to be a physician, but if not should be a nurse, social worker, or psychologist. A qualified examiner's additional experience in physical and occupational therapy, developmental disabilities or habilitation and community mental health may also be helpful, though it is not required.

The purpose of the examiner's evaluation is to provide the court with an expert opinion of the alleged incapacitated individual's abilities and limitations, and will be crucial to the court in establishing a full or limited guardianship. The report should include an assessment of the alleged incapacitated individual's treatment plan, if any, the date of the evaluation, and a summary of the information received and upon which the examiner relied.

Section 62-5-303B(C) contemplates situations where an alleged incapacitated individual is unable to communicate with counsel and, therefore, counsel is unable to advocate for the expressed wishes of the alleged incapacitated individual. The attorney must file an affidavit with the motion that documents the efforts made by the attorney to communicate with the alleged incapacitated individual and the basis for the attorney's conclusion that the alleged incapacitated individual is incapable of communicating. The court must independently determine whether the interests of the respondent are adequately represented, and



may require independent counsel for the alleged incapacitated individual at any time in the proceedings.

Section 62-5-303C. (A) As soon as the interests of justice may allow, but after the time for filing a response to the petition has elapsed as to all parties, the court shall hold a hearing on the merits of the petition. The alleged incapacitated individual, all parties, and any person who has filed a demand for notice, shall be given notice of the hearing. The alleged incapacitated individual is entitled to be present at the hearing, to conduct discovery, and to review all evidence bearing upon his condition. The hearing may be closed at the request of the alleged incapacitated individual or his guardian ad litem. The alleged incapacitated individual may waive notice of a hearing and his presence at the hearing. If there is an agreement among all the parties and the guardian ad litem's report indicates that a hearing would not further the interests of justice, the alleged incapacitated individual may waive his right to a hearing. If the alleged incapacitated individual waives his right to a hearing, the court may:

- (1) require a formal hearing;
- (2) require an informal proceeding as the court shall direct; or
- (3) proceed without a hearing.

(B) If no formal hearing is held, the court shall issue a temporary consent order, which shall expire in thirty days. A ward, under a temporary order, may request a formal hearing at any time during the thirty-day period. At the end of the thirty-day period, if the ward has not requested a formal hearing, the court shall issue an order upon such terms agreed to by the parties and the guardian ad litem.

#### REPORTER'S COMMENTS

The 2017 amendments to Section 62-5-303C expands upon former Section 62-5-309(B) which specified to whom notice of hearing should be given. As in the prior statute, notice of hearing shall be given or waived in accordance with Sections 62-1-401 and 62-1-402.

Section 62-5-303C(A) states that a hearing must be held after the time for all parties to file responsive pleadings has elapsed. Unlike previous law, the term 'party' is now defined in Section 62-5-101(16) and the court may allow certain designated individuals, and any person or party it deems appropriate, to participate in the proceedings. The alleged incapacitated individual and the proposed guardian should attend the hearing unless excused by the court for good cause. The hearing may be

closed at the request of counsel for the alleged incapacitated individual or his guardian ad litem.

Section 62-5-303C(A) also states that any person who has filed a demand for notice must be given notice of hearing. In the estate context, Section 62-3-204 allows 'interested persons' to file demands for notice so by analogy, a person must fit within that definition in order to have standing to file a demand for notice pursuant to Article 5.

The alleged incapacitated individual is entitled to receive notice and be present at the hearing. The notice to the alleged incapacitated individual should be given in plain language, and should state the time and place of the hearing, the nature and possible consequences of the hearing, and the respondent's rights.

Subsection 62-5-303C(A) also provides the alleged incapacitated individual may waive the notice of hearing, attendance at the hearing, and if the parties all agree and the guardian ad litem's report indicates a hearing would not further the interests of justice, the requirement of a hearing. Even if the hearing is waived, however, the court may schedule either an informal or a formal hearing. The hearing, whether informal or formal, should be recorded.

Subsection 62-5-303C(B) provides that if no hearing is held, a thirty-day temporary consent order may be issued. The purpose of the thirty-day delay is to give the ward an opportunity to request a formal hearing and if none is requested, the court shall issue a permanent consent order.

The purpose of the language allowing waivers of hearing and the issuance of thirty-day consent orders is to reduce costs, but only where possible to do so fairly and without jeopardizing the due process rights of the alleged incapacitated individual. The court should scrutinize any waivers of notice and hearing closely to insure that they are willingly and voluntarily given.

Section 62-5-303D. (A) Each examiner shall complete a notarized report setting forth an evaluation of the condition of the alleged incapacitated individual. The original report must be filed with the court by the court's deadline, but not less than forty-eight hours prior to any hearing in which the report is introduced as evidence. For good cause, the court may admit an examiner's report filed less than forty-eight hours prior to the hearing. All parties are entitled to review the reports after filing, which must be admissible as evidence. The evaluation shall contain, to the best of the examiner's knowledge and belief:

(1) a description of the nature and extent of the incapacity, including specific functional impairments;

(2) a diagnosis and assessment of the alleged incapacitated individual's mental and physical condition, including whether he is taking any medications that may affect his actions;

(3) an evaluation of the alleged incapacitated individual's ability to exercise the rights set forth in Section 62-5-304A;

(4) when consistent with the scope of the examiner's license, an evaluation of the alleged incapacitated individual's ability to learn self-care skills, adaptive behavior, and social skills, and a prognosis for improvement;

(5) the date of all examinations and assessments upon which the report is based;

(6) the identity of the persons with whom the examiner met or consulted regarding the alleged incapacitated individual's mental or physical condition; and

(7) the signature and designation of the professional license held by the examiner.

(B) Unless otherwise directed by the court, the examiner may rely upon an examination conducted within the ninety-day period immediately preceding the filing of the petition. In the absence of bad faith, an examiner appointed by the court pursuant to Section 62-5-303B, is immune from civil liability for breach of patient confidentiality made in furtherance of his duties.

#### REPORTER'S COMMENTS

The 2017 amendments to this section expand upon former Section 62-5-303 in regard to the examiner's duties, the content and timing of the examiner's report, and the immunity of the examiner from civil liability.

Section 62-5-303D(A) provides for the prompt submission of the report to the court, and clarifies that the report should be made available to all parties. The court need not base its findings and order on the oral testimony of the professionals in every case, but has discretion to require the examiner to appear. In particular, where a party objects to the examiners' opinions, the professional should appear to testify and be available for cross-examination because the South Carolina Rules of Evidence may limit the fact finder's ability to rely on a written report.

Subsection (A) also prescribes the content of the examiner's report, the purpose of which is to evaluate the functional limitations of the alleged incapacitated individual. Among the factors to be addressed are a diagnosis of the level of functioning and assessment of the alleged incapacitated individual's current condition and prognosis, the degree of

personal care the alleged incapacitated individual can manage alone, an evaluation of the individual's ability to exercise the rights outlined in Section 62-5-304A, and whether current medication affects the individual's demeanor or ability to participate in the proceedings. It should include the dates of all examinations.

Section 62-5-303D(B) requires the report or reports to be completed based upon examinations that occurred within the preceding ninety days prior to the filing of the petition, unless otherwise ordered by the court, and explicitly protects the examiner from civil liability for breach of the duty of patient confidentiality.

Section 62-5-304. (A) The court shall exercise its authority to encourage maximum self-reliance and independence of the incapacitated individual and issue orders only to the extent necessitated by the incapacity of the individual.

(B) The court may appoint a guardian if clear and convincing evidence shows that the individual is incapacitated and the appointment of a guardian is necessary to provide continuing care and supervision of the incapacitated individual. The court may:

- (1) enter an appropriate order;
- (2) treat the petition as one for a protective order and proceed accordingly; or
- (3) dismiss the proceeding.

(C) The court may appoint co-guardians if the appointment is in the best interest of the incapacitated individual. The compensation of co-guardians in the aggregate shall not exceed the compensation that would have been allowed to a sole guardian. Unless the order of appointment provides otherwise:

- (1) each co-guardian has authority to act independently; and
- (2) if a co-guardian dies, the other co-guardian has continuing authority to act alone.

(D) The court, on its own motion or on the petition or motion of the incapacitated individual or other interested person, may limit the powers of a guardian and create a limited guardianship. A limitation on the statutory power of a guardian of an incapacitated individual shall be endorsed on the guardian's letters. A limitation may be removed, modified, or restored pursuant to Sections 62-5-307 and 62-5-307A.

(E) Unless the court order specifies otherwise:

- (1) appointment of a guardian terminates an agent's powers under a health care power of attorney or durable power of attorney for matters within the scope of the guardianship; and

(2) the guardian shall act consistently with the most recent advance directive executed by the ward prior to an adjudication of incapacity.

#### REPORTER'S COMMENTS

Consistent with the former version of this section, the 2017 amendments require that guardianship be limited to ensure maximum independence of the alleged incapacitated individual. However, the 2017 amendments made multiple changes to provide the tools needed to ensure that the only rights that are removed from the ward are those that are justified by the ward's incapacity and necessary for the ward's health, safety, and welfare. Therefore, a guardianship should be limited to address the ward's incapacity, which is defined in Section 62-5-101(13). An individual with supports and assistance reasonably available to ensure health, safety, and welfare and to manage property would not need those rights removed which have already been addressed. Supports and assistance, defined in Section 62-5-101(23), includes both advance planning and reasonable accommodations that allow the individual to act on their own behalf. For example, an individual who has addressed end of life decisions in advance of his incapacity through a duly executed Declaration of Desire for Natural Death, living will, or an agent named under a health care power of attorney, does not need a guardian to be appointed for the purpose of end of life decisions. End of life decisions made by the individual in advance should not be overruled through the guardianship process. In contrast, if an individual has a Health Care Power of Attorney, but the agent is unavailable or unable to act on the individual's behalf, then that support is unavailable, and if the individual is incapacitated, guardianship would be appropriate to address health care needs.

Sections 62-5-304 and 62-5-404 both establish a clear and convincing evidence burden of proof, which is on the petitioner. Only if the evidence demonstrates that the alleged incapacitated individual is incapacitated and that the appointment is necessary for the alleged incapacitated individual to receive needed care, should the court move forward with an appointment. In this section, the court may "enter an appropriate order," which may be a single transaction order, similar to the type of single transaction order that was previously only available in protective proceedings.

The appointment of a single guardian is traditional and will be the most appropriate result for most incapacitated individuals. However, there are circumstances in which co-guardianship may be preferable. In

those cases, unless the order specifies otherwise, each co-guardian can act independently and a surviving co-guardian will be the successor guardian. As an alternative, a primary decision maker may be agreed upon by the co-guardians and recognized by the court. The decision of a primary decision maker, if one has been designated, shall control in the event of a conflict between co-guardians.

The ability for the court to create a limited guardianship not only continues, but is required if it is the less restrictive alternative to maximize self-reliance and independence.

Unless the order states otherwise, the appointment of a guardian terminates an agent's powers under a power of attorney for matters within the scope of the guardianship. However, the guardian is to act consistently with any expressed wishes in the ward's most recent advance directive, executed prior to adjudication of incapacity.

Section 62-5-304A. (A) The court shall set forth the rights and powers removed from the ward. To the extent rights are not removed, they are retained by the ward. Such rights and powers include the rights and powers to:

- (1) marry or divorce;
- (2) reside in a place of the ward's choosing, and consent or withhold consent to any residential or custodial placement;
- (3) travel without the consent of the guardian;
- (4) give, withhold, or withdraw consent and make other informed decisions relative to medical, mental, and physical examinations, care, treatment and therapies;
- (5) make end-of-life decisions including, but not limited to, a 'do not resuscitate' order or the application of any medical procedures intended solely to sustain life, and consent or withhold consent to artificial nutrition and hydration;
- (6) consent or refuse to consent to hospitalization and discharge or transfer to a residential setting, group home, or other facility for additional care and treatment;
- (7) authorize disclosures of confidential information;
- (8) operate a vehicle;
- (9) vote;
- (10) be employed without the consent of a guardian;
- (11) consent to or refuse educational services;
- (12) participate in social, religious or political activities;
- (13) buy, sell, or transfer real or personal property or transact business of any type including, but not limited to, those powers conferred upon the conservator under Section 62-5-422;

(14) make, modify, or terminate contracts;  
(15) bring or defend any action at law or equity; and  
(16) any other rights and powers that the court finds necessary to address.

(B) The court shall set forth the rights and powers vested in the guardian. These rights and powers include, but are not limited to, the rights and powers to:

(1) determine the place where the ward shall reside and consent or withhold consent to any residential or custodial placement;

(2) consent to travel;

(3) consent or refuse to consent to visitation with family, friends and others;

(4) give, withhold, or withdraw consent and make other informed decisions relative to medical, mental, and physical examinations, care, treatment and therapies;

(5) make end-of-life decisions, including, but not limited, to a 'do not resuscitate' order or the application of any medical procedures intended solely to sustain life, and consent or withhold consent to artificial nutrition and hydration;

(6) consent or refuse to consent to hospitalization and discharge or transfer to a residential setting, group home, or other facility for additional care and treatment;

(7) authorize disclosures of confidential information;

(8) consent to or refuse educational services;

(9) consent to employment;

(10) make, modify, or terminate contracts related to the duties of the guardian;

(11) bring or defend any action at law or equity; and

(12) exercise any other rights and powers that the court finds necessary to address.

(C) Nothing in this section must be construed as removing any rights guaranteed by the Bill of Rights for Residents of Long-Term Care Facilities under Chapter 81, Title 44.

(D) The attorney-client privilege between the ward and the ward's counsel must not be removed by the appointment of a guardian.

#### REPORTER'S COMMENTS

In order to ensure due process, the rights which may be removed from the ward as outlined in the code, must be included in the petition (Section 62-5-303(B)(7)), evaluated by the designed examiner (Section 62-5-303D), and listed in the report of the guardian ad litem (Section

62-5-106(D)(6)). Each guardianship order should be tailored based upon the list of rights in this section. The court should remove only those rights which the ward is incapable of exercising, with or without supports and assistance, and which must be removed for the well-being of the ward. If the ward is capable of exercising any of the rights, then they should not be removed. The right to vote is fundamental to our democracy and should not be removed unless clear and convincing evidence establishes that the individual is unable to exercise a choice, with or without supports and assistance. If end of life decisions have been made by the ward through a duly executed Declaration of Desire for Natural Death, or living will, then that right should not be removed from the ward or vested in the guardian.

The 2017 amendments require the court to set forth the rights removed from the ward, and among those rights removed, which rights are vested in the guardian. Some rights can be removed, but should not be vested in the guardian. For example, a ward may lose the right to vote, but the guardian cannot be vested with that right and vote on behalf of the ward. In that situation, the right is simply removed.

With regard to end-of-life decisions, if that right is vested in the guardian, the guardian must act consistently with the most recent advance directive executed by the ward prior to the adjudication of incapacity, pursuant to Section 62-5-304A.

The 2017 amendments added a reference to the Bill of Rights for Residents of Long-Term Care Facilities to clarify that the rights guaranteed in those sections of the code cannot be removed by the guardian, such as the right to participate in social and religious activities.

Section 62-5-304A(D) specifies that the appointment of a guardian does not remove the ward's right to have confidences be kept by the ward's counsel.

Section 62-5-305. By accepting appointment, a guardian submits personally to the jurisdiction of the court in any proceeding relating to the guardianship that may be instituted by any interested person. Notice of any proceeding must be given or waived pursuant to Sections 62-1-401 and 62-1-402.

#### REPORTER'S COMMENTS

The 2017 amendment revised this section by adopting the notice and waiver requirements in Sections 62-1-401 and 62-1-402.



Section 62-5-306. (A) Upon the death of the ward, the guardian shall notify the court and file a death certificate confirming the ward's death. The court may then issue an order terminating the guardianship and the appointment of the guardian.

(B) If there is no conservatorship for the ward, the guardian may file an application for specific authority to use the ward's funds for the final disposition of the ward's remains. If the application is granted by the court, the guardian shall file an accounting of those funds within ten days from the date of approval, along with a proof of delivery showing he has delivered a copy of the accounting to the last known address of the person named as Personal Representative in the ward's will. If the guardian cannot locate the will after reasonable effort, he shall send a copy of the accounting to the last known address for at least one of the ward's closest adult relatives. Upon approval of the accounting, the court will issue an order terminating the guardianship and the appointment.

(C) Termination of the appointment does not affect the guardian's liability for prior acts nor his obligation to account for any funds or assets of the ward.

#### REPORTER'S COMMENTS

The 2017 amendments clarify the procedure for terminating a guardianship upon the death of the ward. The guardian must notify the court of the ward's death and file a death certificate with the court. Subsection (B) has been added to give the guardian the ability to seek approval of use of the ward's funds for final disposition of the ward's remains when no conservator has been appointed.

Section 62-5-307. (A) The ward or another person interested in his welfare, may make an informal request for relief by submitting a written request to the court. The court may take such action as considered reasonable and appropriate to protect the ward.

(B) A person making an informal request submits personally to the jurisdiction of the court.

#### REPORTER'S COMMENTS

This section was added in 2017 to allow the court to respond to concerns of the ward or another person interested in his welfare without requiring filing of a formal action. It mirrors Section 62-5-413. The court may dismiss an informal request for relief. If readjudication is

requested informally and the court denies the request, a formal petition for readjudication must be heard pursuant to Section 62-5-307A. The 2017 amendment reflects a change from the 2010 revision, which required the court to hear an informal request made by the ward.

Section 62-5-307A. (A) Upon filing of a summons and petition with the appointing court, the ward or any person interested in his welfare may, for good cause, request an order to:

(1) prove by a preponderance of the evidence that the ward is no longer incapacitated. The petition may request a court order limiting the scope of the guardianship and the authority of the guardian or a termination of the guardianship and the appointment of the guardian. The court may specify a minimum period, not exceeding one year, during which no application or petition for readjudication may be filed without leave of court;

(2) appoint a successor guardian due to death, incapacity, resignation, or dereliction of duty of the guardian. The appointment of a successor guardian does not affect the guardian's liability for prior acts nor his obligation to account for any funds or assets of the ward. The petition shall name a willing and qualified person to serve as successor guardian in the petition or set forth why no such successor is available; or

(3) modify the provisions of an existing court order.

(B) After filing and service of the summons and petition, the court may appoint a guardian ad litem and may appoint counsel for the ward, unless the ward has private counsel, and such examiners as are needed to evaluate and confirm the allegations of the petition.

(C) On its own motion, the court may initiate appropriate proceedings under this section as considered necessary to promote the best interests of the ward.

(D) An attorney who has been asked by the ward to represent him in an action under this section may file a motion with the court for permission to represent the ward.

#### REPORTER'S COMMENTS

The 2017 amendments expand upon former Section 62-5-307 to set forth specific procedures for requesting relief subsequent to the appointment of a guardian. In an action to have a ward determined to have regained capacity, the petitioner has the burden to prove by a preponderance of the evidence that the ward has regained capacity such that a guardian is no longer needed or that a limited guardianship is

appropriate. In contrast, the evidentiary standard for the initial adjudication of incapacity is by clear and convincing evidence, thus giving more protection to the individual's liberty rights.

Prior to the 2017 amendments, the law required that a visitor be appointed before the court could act on a petition or request; this section now gives the court discretion to appoint counsel and a guardian ad litem. In exercising its discretion to appoint counsel or a guardian ad litem, the court should consider the type of relief requested in the petition, the facts of the case, and the likelihood that the ward's rights may not be represented or protected. Additionally, the ward may retain his own counsel, and that attorney may file a motion for the court to represent the ward.

When the court is evaluating capacity, the court may exercise its discretion in appointing examiners to provide opinions regarding the ward's abilities.

The court may allow any of the actions under Section 62-5-307A to be treated as an informal request as set forth in Section 62-5-307.

Section 62-5-308. (A) In appointing a guardian, the court shall consider persons who are otherwise qualified in the following order of priority:

(1) a person previously appointed guardian, other than a temporary or emergency guardian, currently acting for the ward in this State or elsewhere;

(2) a person nominated to serve as guardian by the alleged incapacitated individual if he has sufficient mental capacity to make a reasoned choice;

(3) an agent designated in a power of attorney by the alleged incapacitated individual, whose authority includes powers relating to the care of the alleged incapacitated individual;

(4) the spouse of the alleged incapacitated individual or a person nominated as testamentary guardian in the will of the alleged incapacitated individual's deceased spouse;

(5) an adult child of the alleged incapacitated individual;

(6) a parent of the alleged incapacitated individual or a person nominated as testamentary guardian in the will of the alleged incapacitated individual's deceased parent;

(7) the person nearest in kinship to the alleged incapacitated individual who is willing to accept the appointment;

(8) a person with whom the alleged incapacitated individual resides outside of a health care facility, group home, homeless shelter, or prison;

(9) a person nominated by a health care facility caring for the alleged incapacitated individual; and

(10) any other person considered suitable by the court.

(B) A person whose priority is based upon his status under subsections (A)(1), (3), (4), (5), (6), or (7) may nominate in writing a person to serve in his or her stead. With respect to persons having equal priority, the court shall select the person it considers best qualified to serve as guardian. The court, acting in the best interest of the alleged incapacitated individual, may decline to appoint a person having higher priority and appoint a person having lesser priority or no priority.

(C) Other than as provided in Section 62-5-108, a probate judge or an employee of the court shall not serve as a guardian of a ward; except, a probate judge or an employee of the court may serve as a guardian of a family member if such service does not interfere with the proper performance of the probate judge's or the employee's official duties. For purposes of this subsection, 'family member' means a spouse, parent, child, brother, sister, niece, nephew, mother-in-law, father-in-law, son-in-law, daughter-in-law, grandparent, or grandchild.

#### REPORTER'S COMMENTS

This section sets forth the priority of who may be appointed guardian and provides the standards to be utilized in appointing those of equal or lesser priority. A 'person' is defined in Section 62-5-101(17), and may include a suitable entity as noted.

Section 62-5-309. (A) Subject to the rights and powers retained by the ward and except as modified by order of the court, the guardian has the following duties, rights, and powers:

(1) to the extent that it is consistent with the terms of any order by a court of competent jurisdiction relating to detention or commitment of the ward, maintaining custody of the ward and the ability to establish the ward's place of abode within or without this State;

(2) if entitled to custody of his ward, providing for the care, comfort, and maintenance of the ward; the guardian is entitled to receive reasonable compensation for his services and for room and board furnished to the ward as approved by the court;

(3) arranging for appropriate habilitation and rehabilitation services and educational, social, and vocational services to assist the ward in the development of maximum self-reliance and independence;

(4) taking reasonable care of his ward's clothing, furniture, vehicles, and other personal effects, and commencing protective proceedings if other property of his ward is in need of protection;

(5) providing any consents, denials, or approvals necessary to enable the ward to receive or refuse to receive medical or other professional care, counsel, treatment, or service, including institutional care. If there is no conservator and placement or care of the ward requires the execution of an admission agreement or other documents for the ward's placement in a facility, the guardian may execute such documents on behalf of the ward, without incurring personal liability;

(6) if no conservator for the estate of the ward is appointed or if the guardian is also conservator:

(a) instituting proceedings to compel any person under a duty to support the ward or to pay sums for the welfare of the ward to perform his duty;

(b) receiving money and tangible property deliverable to the ward and applying the money and property for support, care, and education of the ward; however, he may not use funds from his ward's estate for room and board or services that he, his spouse, parent, or child have furnished the ward unless a charge for the services or room and board is approved by order of the court made upon notice to at least one of the next of kin of the ward, if notice is possible. He must exercise care to conserve any excess for the ward's needs; and

(c) exercising the ward's rights as trust beneficiary to the extent provided in Article 7, Title 62;

(7) reporting the condition of his ward and of the estate that has been subject to his possession or control to the court, as required by the court or court rule, but at least on an annual basis;

(8) if a conservator has been appointed:

(a) paying over to the conservator all of the ward's estate received by the guardian in excess of those funds expended to meet current expenses for support, care, and education of the ward and accounting to the conservator for funds expended; and

(b) requesting the conservator to expend the ward's estate by payment to the guardian or to third persons or institutions for the ward's care and maintenance;

(9) if co-guardians have been appointed, keeping the other co-guardian informed of all relevant information regarding the care and custody of the ward, including, but not limited to, the identity of the ward's care providers, medical providers, or similar professionals and informing the other co-guardian when scheduling medical appointments for the ward; and

(10) exercising any other power, right, or duty ordered by the court.

(B) A guardian, within thirty days of his appointment, shall file a plan of care. The plan must be based on the actual needs of the ward, taking into consideration the best interest of the ward. The guardian shall revise the plan as the needs and circumstances of the ward require. The guardian shall include in the plan a statement of the extent to which the ward may be able to develop or recover ability for independent decision making and any proposed steps to develop or restore the ward's ability for independent decision making. The court shall approve, disapprove, or modify the plan in informal or formal proceedings, as the court deems appropriate. Nothing herein shall require the court to oversee the plan of care.

(C) A guardian, by a properly executed special power of attorney, may delegate to another person, for a period not to exceed sixty days, any of his powers regarding the care and custody of the ward. The original power of attorney must be filed with the court having jurisdiction over the guardianship.

(D) A guardian is not legally obligated to provide for the ward from the guardian's funds solely by reason of his appointment as guardian.

(E) A guardian is not liable to a third person for acts of the ward solely by reason of the guardianship relationship and is not liable for injury to the ward resulting from the wrongful conduct of a third person providing medical or other care, treatment or service for the ward except to the extent that the guardian failed to exercise reasonable care in choosing the provider.

#### REPORTER'S COMMENTS

The 2017 amendments expand upon former Sections 62-5-104 and 62-5-312.

Section 62-5-309(A)(2) allows for compensation to the guardian pursuant to Uniform Guardianship and Protective Proceedings Act (UGPPA) 5-316(a) (1997). Subsection 62-5-316(a) supports the proposition that a guardian has a right to reasonable compensation. If there is a conservator appointed, the conservator, without the necessity of prior court approval, may pay the guardian reasonable compensation as well as reimburse the guardian for room, board and clothing the guardian has provided to the ward. However, if the court determines that the compensation paid to the guardian is excessive or the expenses reimbursed were inappropriate, the court may order the guardian to repay

the excessive or inappropriate amount to the estate. If there is no conservator, the guardian must file a fee petition.

Section 62-5-309(A)(3) authorizes and encourages the guardian to facilitate the ward in taking steps toward self-reliance and independence.

Section 62-5-309(A)(4) addresses the guardian's duties to take reasonable care of the ward's personal effects.

Section 62-5-309(A)(5) expands the guardian's authority to execute documents on behalf of the ward if no conservator is in place.

Section 62-5-309(A)(6)(c) allows the guardian to exercise the ward's rights as trust beneficiary to the extent provided in Article 7, Title 62.

Section 62-5-309(A)(8)(a) and (b) replaces former Section 62-5-312(a)(6) and (b).

Section 62-5-309(A)(9) is new to the 2017 amendments.

Section 62-5-309(A)(10) is new to the 2017 amendments and allows authorization for the guardian which the court deems appropriate that is not otherwise specified in 62-5-309.

Section 62-5-309(B) is new to the 2017 amendments and addresses the requirements for filing a plan of care within thirty days after appointment as guardian. (UGPPA 5-317(2010).

Emphasizing the importance of limited guardianship, subsection (B) requires the guardian to report information regarding the ward's ability to develop or recover independent decision making and the proposed steps to restore the ward's ability for independent decision making.

An independent monitoring system is crucial for a court to adequately safeguard against abuses in guardianship cases. Monitors can be paid court personnel, court appointees, or volunteers. For a comprehensive discussion of the various methods for monitoring guardianships, see Sally Balch Hurme, *Steps to Enhance Guardianship Monitoring* (A.B.A. 1991). The National Probate Court Standards also provide for the filing of reports and procedures for monitoring guardianships. See National Probate Court Standards, Standards 3.3.14 'Reports by the Guardian,' and 3.3.15 'Monitoring of the Guardian' (1993). The National Probate Court Standards additionally contain recommendations relating to the need for periodic review of guardianships and sanctions for failures of guardians to comply with reporting requirements. See National Probate Court Standards, Standards 3.3.16 'Reevaluation of Necessity for Guardianship,' and 3.3.17 'Enforcement.' UGPPA Section 5-317 (2010).

Section 62-5-309(C) provides for temporary delegation of powers by the parent or guardian to another person and replaces former Section 62-5-104. The period for delegation of these powers has increased to sixty days.

Section 62-5-309(D) is new to the 2017 amendments. A guardian is not legally obligated to provide for the ward from the guardian's funds solely by reason of his appointment as guardian. UGPPA 5-316(b)(2010). Under subsection (b), the guardian has no duty to use the guardian's personal funds for the ward.

Section 62-5-309(E) is partially new to the 2017 amendments. With the exception of a guardian failing to exercise reasonable care, this subsection provides immunity of a guardian from liability premised on former Section 62-5-312(a). The guardian is not liable, just by reason of being guardian, if the ward harms a third person. A guardian is not liable for the acts of a third person, including negligent medical care, treatment or service provided to the ward, except if a parent would be liable in the same circumstances.

Section 62-5-310. (A) The court that appointed the guardian shall maintain jurisdiction over the guardianship until such time as:

- (1) the proceeding is terminated following the death of the ward;
- (2) the proceeding is terminated pursuant to a readjudication of incapacity;
- (3) the court transfers the proceeding to another county's jurisdiction;
- (4) the court transfers the proceedings to another state.

(B) If the court with competent jurisdiction determines that venue would be more appropriate:

- (1) in another county of this State, the court shall notify the court in the other county and, after consultation with that court, determine whether to retain jurisdiction or transfer the proceedings to the other court, whichever is in the best interest of the ward. A copy of an order accepting a resignation or removing a guardian must be sent to the court in which acceptance of appointment is filed; or
- (2) in another state, the first court shall follow the procedures set forth in Section 62-5-714.

#### REPORTER'S COMMENTS

The 2017 amendment provided consistency with the South Carolina Adult Guardianship and Protective Proceedings Jurisdiction Act (Part 7). A case may be transferred if it is in the ward's best interest to do so.



## Part 4

Protection of Property of Persons Under  
Disability and Minors

Section 62-5-401. Subject to the provisions of Section 62-5-701, et seq., venue for proceedings under this part is:

- (1) in the county where the alleged incapacitated individual resides;
- or
- (2) if the alleged incapacitated individual does not reside in this State, in any county in the state where the alleged incapacitated individual has property or has the right to take legal action.

## REPORTER'S COMMENTS

The 2017 amendment revised Section 62-5-401 because of changes in the definitions and choice of words throughout Part 3 and Part 4. For an individual who does not reside in this State, venue is permissible in any county where the alleged incapacitated individual has property or in any county where he has the right to take legal action, broadening the options for venue from the previous version of the section.

Section 62-5-402. (A) The appointment of a conservator or issuance of a protective order may be made in relation to the estate and affairs of a minor if:

- (1) a minor owns real or personal property that requires management or protection;
- (2) a minor has or may have business affairs that may be adversely affected by a lack of effective management; or
- (3) it is necessary to obtain and administer funds for the health, education, maintenance, and support of the minor.

(B) The appointment of a conservator or issuance of a protective order for a minor may be made in the following manner:

- (1) By filing a verified application setting forth the following information:
  - (a) the interest of the applicant;
  - (b) the name, age, current address, and contact information for the minor;
  - (c) physical location of the minor during the six-month period immediately preceding the filing of the application and if the minor was not present in South Carolina for that period, sufficient information upon which the court may determine it has initial jurisdiction;

(d) the name and address of the non-applicant parent of the minor, the person with whom the minor resides, and other persons as the court directs;

(e) any person who has equal or greater priority for appointment as the person whose appointment is sought pursuant to Section 62-5-408;

(f) the name and address of the person whose appointment is sought and the basis of priority for appointment;

(g) the reason why the appointment is necessary; and

(h) an estimate of the value of the minor's assets and the source of the minor's income, if any.

(2) Upon consideration of the application and in the court's discretion, with or without a hearing, if the court concludes it is in the best interests of the minor, the court shall issue its order of appointment or protective order.

(C) The court may at any time require the filing of a summons and petition for the appointment of a conservator or for issuance of a protective order, and the appointment or order must be made in the following manner:

(1) the petition shall set forth the information required in subsection (B);

(2) the summons and petition must be served on the minor, the minor's parents whose identity and whereabouts are known or reasonably ascertainable, the person or persons having custody of the minor, and other persons the court directs; and

(3) after the time has elapsed for the filing of a response to the petition and a hearing, if the court concludes it is in the best interests of the minor, the court shall issue its order of appointment or a protective order.

(D) Except upon a finding of good cause, the court shall require the conservator to furnish bond, or establish a restricted account, or both pursuant to Section 62-5-409.

(E) If a minor is receiving needs-based government benefits the court may limit access to the minor's funds to prohibit payments that would disqualify the minor from receipt of benefits.

(F) At any time and in any proceeding if the court determines the interests of the minor are not or may not be adequately represented, it may appoint a guardian ad litem to represent the minor.

## REPORTER'S COMMENTS

This section was substantially amended in 2017 to provide an informal procedure for the appointment of a minor's conservator or for the issuance of a protective order for a minor where the court determines the informal procedure is adequate to protect the minor's interests while eliminating any unnecessary depletion of the minor's assets. The cases where this is appropriate are typically uncontested and interested persons are in agreement as to the person to be appointed or the order to be issued. Section 62-5-402(C), however, clarifies that the court may require formal proceedings at any time including after the informal application is made, and as in the prior statute the court may appoint a guardian ad litem for the minor in any proceeding pursuant to Section 62-5-402(F) if it deems the interests of the minor are not adequately protected.

Section 62-5-402(A) describes the circumstances under which a minor might need a conservator or a protective order.

Section 62-5-402(B) outlines the informal application process and information which must be provided to the court, including a statement of priority for appointment as described in Section 62-5-408, so the court may make an appropriate selection of a conservator or issue a protective order without the filing and service of a summons and petition. The court may also dispense with a hearing if it determines it unnecessary to protect the interests of the minor.

Section 62-5-402(D) requires the conservator to post a bond or establish a restricted account from which funds may be disbursed only by court order, or both, absent good cause.

Section 62-5-402(E) specifically authorizes the court to limit access to the conservatorship funds if there is a risk that receipt may disqualify the minor from ongoing public assistance.

Section 62-5-403. (A) A person seeking a finding of incapacity, appointment of a conservator, or issuance of a protective order must file a summons and petition if:

(1) the individual is unable to manage his property or affairs effectively for reasons of incapacity, confinement, detention by a foreign power, or disappearance; and

(a) the individual has an agent pursuant to a durable power of attorney and the actions necessary to prevent waste or dissipation of the individual's property are not being adequately performed by or are beyond the authority of the agent; or

(b) the individual has no agent under a durable power of attorney and owns property that will be wasted or dissipated or which is needed for the health, education, maintenance, or support of the individual or those entitled to his support, and protection is necessary to obtain or administer the funds.

(2) a protective order is necessary to create a special needs trust for an individual who is disabled in accordance with Social Security Administration guidelines.

(B) The petition shall set forth, to the extent known or reasonably ascertainable, the following information:

(1) interest of the petitioner;

(2) name, age, current address, and contact information of the alleged incapacitated individual, who must be designated as the respondent;

(3) physical location of the alleged incapacitated individual during the six-month period immediately preceding the filing of the summons and petition; and, if the alleged incapacitated individual was not physically present in South Carolina for that period, sufficient information upon which the court may make a determination that it has initial jurisdiction pursuant to Section 62-5-707;

(4) to the extent known and reasonably ascertainable, the names and addresses of the following persons, who must be designated corespondents:

(a) the alleged incapacitated individual's spouse and any adult children; or if none, his parents; or if none, at least one of his adult relatives with the nearest degree of kinship;

(b) a person known to have been appointed as agent under a general durable power of attorney or health care power of attorney;

(c) a person who has equal or greater priority for appointment pursuant to Section 62-5-408 as the person whose appointment is sought in the petition;

(d) a person other than an unrelated employee or health care worker who is known or reasonably ascertainable by the petitioner to have materially participated in the caring for the alleged incapacitated individual within the six-month period preceding the filing of the petition; and

(e) the person entitled to notice on behalf of the VA, if the alleged incapacitated individual is receiving VA benefits;

(5) name and address of the proposed conservator and the basis of his priority for appointment;

(6) reason why conservatorship is necessary, including why less restrictive alternatives are not available and appropriate, and a brief description of the nature and extent of the alleged incapacity;

(7) a statement of any rights the petitioner is requesting be removed from the alleged incapacitated individual, any restrictions to be placed on the alleged incapacitated individual, and any restrictions sought to be imposed on the conservator's powers and duties;

(8) a general statement of the alleged incapacitated individual's assets, with an estimated value, and the source and amount of any income of the alleged incapacitated individual; and

(9) whether the alleged incapacitated individual has been rated incapable of handling his estate and monies on examination by the VA and, if so, shall state the name and address of the person to be notified on behalf of the VA.

(C) An alleged incapacitated individual seeking the appointment of a conservator or issuance of a protective order may file a summons and petition with the information specified in subsection (B).

(D) When more than one petition is pending in the same court, the proceedings may be consolidated.

#### REPORTER'S COMMENTS

This section addresses the appointment of a conservator or issuance of a protective order for an adult. The 2017 amendments incorporate prior statutes which described the reasons for the establishment of a conservatorship or issuance of a protective order, identified the person who could petition for appointment, and listed what information must be included in the petition. There is no equivalent informal application process available for adults because the establishment of a conservatorship for an adult will result in diminished access to his property and may have critical implications for his standard of living.

Pursuant to Section 62-5-403(A), every petitioner who requests appointment must file a separate summons and petition and pay the filing fee; the filing of a counterclaim requesting appointment of a different person in response to a previously filed petition is not sufficient to effectuate an appointment. This is because a counterclaim typically seeks relief against an adverse party, and in a protective proceeding the relief sought is not solely against an adverse party, but also against an alleged incapacitated individual. This is analogous to Section 62-3-401 that requires the filing of a summons and petition and the payment of a filing fee by each person asking to be formally appointed as personal representative of an estate. See also Section 8-21-770(11).

Section 62-5-403(A)(1) describes the circumstances under which a conservator may be needed, and Section 62-5-403(A)(2) is new to the 2017 amendments and is an express authorization for the court to create a special needs trust for a disabled individual.

In order to make an informed decision, the court must have as much information as possible. Section 62-5-403(B) specifies the data which must be included in each petition including the persons to be named as co-respondents. The purpose of Section 62-5-403(B)(4)(d) is to provide notice to persons who may be likely to have an interest in protecting the alleged incapacitated individual even though they are not family members. The petition also must include a statement as to why less restrictive alternatives such as limited conservatorship are or are not sufficient, and requires the enumeration of rights to be removed.

With the repeal of Part 6 of Article 5, the Uniform Veterans' Guardianship Act, the requirement contained in former Section 62-5-605 that the petition show that the ward has been rated incompetent by the VA is now included in the contents of the initial conservatorship petition. Additionally, since the VA is entitled to notification of the proceeding, the name and address of the person to be notified on behalf of the VA is also to be included. If a conservatorship is for the purpose of receiving VA benefits, the petitioner must comply with the requirements of Sections 62-5-431(B), 62-5-431(H), and 62-5-431(I).

Section 62-5-403(C) clarifies that in some situations, an individual may recognize the need for a conservator or a protective proceeding and has the authority to file a summons and petition on his or her own behalf.

Section 62-5-403(D) allows consolidation of proceedings when more than one petition is filed, e.g., there are petitions for both a conservatorship and a guardianship.

Section 62-5-403A. (A) As soon as reasonably possible after the filing of the summons and petition, the petitioner shall serve:

(1) a copy of the summons, petition, and a notice of right to counsel upon the alleged incapacitated individual;

(2) a copy of the summons and petition upon all corespondents and the petitioner in any pending conservatorship or protective proceeding; and

(3) any affidavits or physicians' reports filed with the petition.

(B) If service is not accomplished within one hundred twenty days after the filing of the action, the court may dismiss the action without prejudice.

(C) The notice of right to counsel shall advise the alleged incapacitated individual of the right to counsel of his choice and shall

state that if the court has not received a notice of appearance by counsel selected by the alleged incapacitated individual within fifteen days from the filing of the proof of service, the court will appoint counsel. In appointing counsel, the court may consider the expressed preferences of the alleged incapacitated individual.

(D) The date for the alleged incapacitated individual to file a responsive pleading shall run from the later of the date the court appoints counsel for the alleged incapacitated individual or from the date the court receives notice of appearance by counsel selected by the alleged incapacitated individual.

#### REPORTER'S COMMENTS

Sections 62-5-403A(A) and 62-5-403A(B) specify that the alleged incapacitated individual and the persons named as co-respondents pursuant to Section 62-5-403(B)(4) must be served within one hundred twenty days of filing or the action may be dismissed without prejudice.

In cases governed by Section 62-5-431, relating to VA benefits, the VA will be named as a corespondent and will receive a copy of the summons and petition. SCRCP 5(d) requires the filing of proof of service of the summons and petition within ten days of service.

The 2017 amendments to Sections 62-5-403A(A) and 62-5-403A(C) require that the alleged incapacitated individual be served with notice that he has the right to hire counsel, and Section 62-5-403A(C) requires a lawyer to be appointed by the court within fifteen days of receipt of proof of service unless the court receives a notice of appearance from private counsel hired by the alleged incapacitated individual. An alleged incapacitated individual may have prior experience with an attorney who he prefers to retain, and this section specifies the privately retained attorney must enter an appearance within fifteen days of filing of the proof of service of the summons and petition.

The time for filing a responsive pleading runs from the later of the date the court appoints counsel or private counsel files a notice of appearance.

Personal service of the summons, petition and notice of right to counsel on the alleged incapacitated individual is required, and failure to personally serve him is jurisdictional.

Section 62-5-403B. (A) Except in cases governed by Section 62-5-431 relating to veterans benefits, upon receipt by the court of proof of service of the summons, petition, and notice of right to counsel upon the alleged incapacitated individual, the court shall:

(1) upon the expiration of fifteen days from the filing of the proof of service on the alleged incapacitated individual, if no notice of appearance has been filed by counsel retained by the alleged incapacitated individual, appoint counsel;

(2) no later than thirty days from the filing of the proof of service on the alleged incapacitated individual, appoint:

(a) a guardian ad litem for the alleged incapacitated individual who has the duties and responsibilities set forth in Section 62-5-106;

(b) except in cases governed by Section 62-5-431 relating to benefits from the VA, one examiner, who must be a physician, to examine the alleged incapacitated individual and file a notarized report setting forth his evaluation of the condition of the alleged incapacitated individual in accordance with the provisions set forth in Section 62-5-403D. Unless the guardian ad litem or the alleged incapacitated individual objects, if a physician's notarized report is filed with the petition and served upon the alleged incapacitated individual and all interested parties with the petition, then the court may appoint that physician as the examiner. Upon the court's own motion or upon request of the initial examiner, the alleged incapacitated individual, or his guardian ad litem, the court may appoint a second examiner, who must be a physician, nurse, social worker, or psychologist. No appointment of examiners is required when the basis for the petition is that the individual is confined, detained, or missing.

(B) At any time during the proceeding, if requested by a guardian ad litem who is not an attorney, the court may appoint counsel for the guardian ad litem.

(C) At the attorney's discretion, the attorney for the alleged incapacitated individual may file a motion requesting that the court relieve him as the attorney if the alleged incapacitated individual is incapable of communicating, with or without reasonable accommodations, his wishes, interests, or preferences regarding the appointment in a protective proceeding. The attorney must file an affidavit in support of the motion. If the court is satisfied that the alleged incapacitated individual is incapable of communicating, with or without reasonable accommodations, his wishes, interests, or preferences regarding the appointment in a protective proceeding, then the court may relieve the attorney from his duties as attorney for the alleged incapacitated individual. If the former attorney requests to be appointed as the guardian ad litem, the court may appoint him to serve as the guardian ad litem. An attorney cannot serve as both an attorney and as a guardian ad litem in a protective proceeding.



## REPORTER'S COMMENTS

Sections 62-5-403B(A)(1) and (2) set forth specific time lines for appointments of counsel, guardians ad litem, and an examiner. The appointment of counsel (or the hiring of counsel by the alleged incapacitated individual) must occur within fifteen days after filing of proof of service of the summons and petition with the court, and the guardian ad litem and examiner are to be appointed within thirty days after filing of the proof of service.

This is an important departure from former Section 62-5-409, which required the appointment of a lawyer 'who then has the powers and duties of a guardian ad litem.' Traditionally, a guardian ad litem not only has a duty to the alleged incapacitated individual, but also has a duty to the court to discern and report what is in the best interest of the individual regardless of the individual's preferences, although by statute those preferences must be considered by the court. With the 2017 amendments, the alleged incapacitated individual must have a lawyer who argues for the individual's expressed wishes regardless of what may be in his best interests, and a guardian ad litem who acts as the eyes and ears of the court to discern the best outcome for the alleged incapacitated individual and to advise the court thereof.

A party may recommend a guardian ad litem and the court may accept or reject the recommendation, but best practices may require that the court independently select the guardian ad litem.

The imposition of a protective proceeding must be based on competent evidence of incapacity. Evidentiary rules must be enforced to insure due process. To obtain competent evidence, the court should allow the admission of evidence from professionals and experts whose training qualifies them to assess the physical and mental condition of the respondent.

Pursuant to Section 62-5-403B(A)(2)(b), the examiner must be a physician. Although a physician may provide valuable information, incapacity is a multifaceted issue and the court may consider using, in addition to the physician, other professionals whose expertise and training give them greater insight into incapacity. The court on its own motion or if requested by the initial examiner, the guardian ad litem, or the alleged incapacitated individual, may appoint a second examiner. The second examiner is not required to be a physician, but if not, should be a nurse, social worker, or psychologist. A qualified examiner's additional experience in physical and occupational therapy, developmental disabilities or habilitation and community mental health considerations may also be helpful, though is not required.

The purpose of the examiner's evaluation is to provide the court with an expert opinion of the alleged incapacitated individual's abilities and limitations, and will be crucial to the court in establishing a full or limited conservatorship. The report should include an assessment of the alleged incapacitated individual's treatment plan, if any, the date of the evaluation, and a summary of the information received and upon which the examiner relies.

Section 62-5-403B(B) allows the court to appoint an attorney for a guardian ad litem if requested by a non-attorney guardian ad litem. In a contested case, a guardian ad litem who is not an attorney may need the assistance of counsel. However, the guardian ad litem should make a request for counsel as a last resort to not cause needless expense to the proceedings. Whether a guardian ad litem is an attorney or not, the guardian ad litem is encouraged to go to the court for instructions regarding their role and duties as a guardian ad litem.

If a conservatorship is for the purpose of receiving VA benefits, the petitioner must comply with the requirements of Sections 62-5-431(B), 62-5-431(H), and 62-5-431(I).

Section 62-5-403B(C) contemplates situations where an alleged incapacitated individual is unable to communicate with counsel and, therefore, is unable to advocate for the expressed wishes of the alleged incapacitated individual. The attorney must file an affidavit with the motion that documents the efforts made by the attorney to communicate with the alleged incapacitated individual and the basis for the attorney's conclusion that the alleged incapacitated individual is incapable of communicating. The court must independently determine whether the interests of the respondent are adequately represented, and may require independent counsel for the alleged incapacitated individual at any time in the proceedings.

Section 62-5-403C. (A) As soon as the interests of justice may allow, but after the time for filing a response to the petition has elapsed as to all parties, the court shall hold a hearing on the merits of the petition. The alleged incapacitated individual, all parties, and any person who has filed a request or demand for notice must be given notice of the hearing. The alleged incapacitated individual is entitled to be present at the hearing, to conduct discovery, and to review all evidence bearing upon his condition. The hearing may be closed at the request of the alleged incapacitated individual or his guardian ad litem. The alleged incapacitated individual may waive notice of a hearing and his presence at the hearing. If there is an agreement among all the parties and the guardian ad litem's report indicates that a hearing would not further the

interests of justice, the alleged incapacitated individual may waive his right to a hearing. If the alleged incapacitated individual waives his right to a hearing, the court may:

- (1) require a formal hearing;
- (2) require an informal proceeding as the court shall direct; or
- (3) proceed without a hearing.

(B) If no formal hearing is held, the court shall issue a temporary consent order, which shall expire in thirty days. A protected person, under a temporary order, may request a formal hearing at any time during the thirty-day period. At the end of the thirty-day period, if the protected person has not requested a formal hearing, the court shall issue an order upon such terms agreed to by the parties and the guardian ad litem.

#### REPORTER'S COMMENTS

The 2017 amendments expand upon former Section 62-5-405, which specified to whom notice of hearing should be given. As in the prior statute, notice of hearing must be given or waived in accordance with Sections 62-1-401 and 62-1-402.

Section 62-5-403C(A) states that a hearing must be held after the time for all parties to file responsive pleadings has elapsed. Unlike previous law, the term 'party' is now defined in Section 62-5-101(16) and the court may allow certain designated individuals, and any person or party it deems appropriate to participate in the proceedings. The alleged incapacitated individual and the proposed guardian should attend the hearing unless excused by the court for good cause. The hearing may be closed at the request of counsel for the alleged incapacitated individual or his guardian ad litem.

Section 62-5-403C(A) also states that any person who has filed a demand for notice must be given notice of hearing. In the estate context, Section 62-3-204 allows 'interested persons' to file demands for notice so by analogy, a person must fit within that definition in order to have standing to file a demand for notice pursuant to Article 5.

The alleged incapacitated individual is entitled to receive notice and be present at the hearing. The notice to the alleged incapacitated individual should be given in plain language, and should state the time and place of the hearing, the nature and possible consequences of the hearing, and the alleged incapacitated individual's rights.

Section 62-5-403C(A) also provides the alleged incapacitated individual may waive the notice of hearing, attendance at the hearing, and if the parties all agree and the guardian ad litem's report indicates a hearing would not further the interests of justice, the requirement of a

hearing. If the hearing is waived, the court may proceed without a hearing or may schedule either an informal or a formal hearing. The hearing, whether informal or formal, should be recorded.

Section 62-5-403C(B) provides that if no hearing is held, a thirty day temporary consent order may be issued. The purpose of the thirty day delay is to give the alleged incapacitated individual an opportunity to request a formal hearing and if none is requested, the court shall issue a permanent consent order.

The purpose of the language allowing waivers of hearing and the issuance of thirty day consent orders is to reduce costs, but only where possible to do so fairly and without jeopardizing the due process rights of the alleged incapacitated individual. The court should scrutinize any waivers of notice and hearing closely to insure that they are willingly and voluntarily given.

Section 62-5-403D. (A) Each examiner shall complete a notarized report setting forth an evaluation of the condition of the alleged incapacitated individual. The original report must be filed with the court by the court's deadline, but not less than forty-eight hours prior to any hearing in which the report will be introduced as evidence. For good cause, the court may admit an examiner's report filed less than forty-eight hours prior to the hearing. All parties are entitled to review the reports, which are admissible as evidence. The evaluation shall contain, to the best of the examiner's knowledge and belief:

- (1) a description of the nature and extent of the incapacity, including specific functional impairments;
- (2) a diagnosis and assessment of the alleged incapacitated individual's mental and physical condition, including whether he is taking any medications that may affect his actions;
- (3) an evaluation of the alleged incapacitated individual's ability to exercise the rights set forth in Section 62-5-407;
- (4) when consistent with the scope of the examiner's license, an evaluation of the alleged incapacitated individual's ability to learn self-care skills, adaptive behavior, and social skills, and a prognosis for improvement;
- (5) the date of all examinations and assessments upon which the report is based;
- (6) the identity of the persons with whom the examiner met or consulted regarding the alleged incapacitated individual's mental or physical condition; and
- (7) the signature and designation of the professional license held by the examiner.

(B) Unless otherwise directed by the court, the examiner may rely upon an examination conducted within the ninety-day period immediately preceding the filing of the petition. In the absence of bad faith, an examiner appointed by the court pursuant to Section 62-5-403B is immune from civil liability for any breach of patient confidentiality made in furtherance of his duties.

#### REPORTER'S COMMENTS

The 2017 amendments to this section expand upon former Section 62-5-407 in regard to the examiner's duties, the content and timing of the examiner's report, and the immunity of the examiner from civil liability.

Section 62-5-403D(A) provides for the prompt submission of the report to the court and clarifies that the report should be made available to all parties. The court need not base its findings and order on the oral testimony of the professionals in every case, but has discretion to require the examiner to appear. In particular, where a party objects to the examiners' opinions, the professional should appear to testify and be available for cross-examination as the South Carolina Rules of Evidence may limit the fact finder's ability to rely on a written report.

Subsection (A) also prescribes content of the examiner's report, the purpose of which is to evaluate the functional limitations of the alleged incapacitated individual. Among the factors to be addressed are a diagnosis of the level of functioning and assessment of the alleged incapacitated individual's current condition and prognosis, the degree of personal care the alleged incapacitated individual can manage alone, an evaluation of the individual's ability to exercise the rights outlined in Section 62-5-407, and whether current medication affects the individual's demeanor or ability to participate in the proceedings. It should include the dates of all examinations.

Section 62-5-403D(B) requires the report or reports to be completed based upon examinations that occurred within the preceding ninety days prior to the filing of the petition, unless otherwise ordered by the court, and explicitly protects the examiner from civil liability for breach of the duty of patient confidentiality.

Section 62-5-404. (A) Upon a finding by clear and convincing evidence that a basis for an appointment or protective order exists with respect to a minor, the court has all those powers over the estate and affairs of the minor that are necessary for the best interests of the minor and members of his household.

(B) Upon finding by clear and convincing evidence that a basis for an appointment or protective order exists for reasons other than minority, the court has the powers over the incapacitated individual's real and personal property and financial affairs which the incapacitated individual could exercise if not under disability, except the power to make a will or amend a revocable trust.

(C) The court, on its own motion or on the petition or motion of the incapacitated individual or any other person, may limit the powers of a conservator. A limitation on the statutory power of a conservator must be endorsed upon the conservator's letters. A limitation may be removed, modified, or restored pursuant to Section 62-5-428. Notwithstanding the foregoing, the failure to endorse any limitation upon the conservator's letters shall not relieve the conservator of the limitation imposed by order of the court.

#### REPORTER'S COMMENTS

Sections 62-5-304 and 62-5-404 both establish a clear and convincing evidence burden of proof, which is on the petitioner.

The ability for the court to create a limited conservatorship is new to the 2017 amendments. For example, a limited conservatorship might be appropriate for an individual who is capable of managing his income and day to day expenses, but who is susceptible to fraud if he has access to the bulk of his estate. The conservatorship may be granted control over savings accounts and other large assets, while the protected person remains in control of his earned income and checking account. The scenario assumes that there is not an available or appropriate less restrictive means to protect the estate.

Section 62-5-405. (A) When it is established in a formal proceeding that a basis exists for affecting a protective arrangement that concerns the property and affairs of a minor or an incapacitated individual, the court may:

(1) without appointing a conservator, authorize, direct, or ratify any provision within a protective arrangement that is in the best interest of the minor or incapacitated individual. A protective arrangement includes, but is not limited to, the payment, delivery, deposit, or retention of funds or property; the sale, mortgage, lease, or other transfer of property; the entry into an annuity contract, a contract for life care, a deposit contract, or a contract for training and education; or the addition to or establishment of a suitable trust.

(2) authorize a conservator or a special conservator to exercise the power to perform the following acts:

(a) make gifts as the court, in its discretion, believes would be made by the protected person;

(b) convey or release the protected person's contingent and expectant interests in property including material property rights and any right of survivorship incident to joint tenancy;

(c) create or amend revocable trusts or create irrevocable trusts of property of the protected person's estate that may extend beyond the protected person's disability or life, including the creation or funding of a special needs trust or a pooled fund trust for disabled individuals;

(d) fund trusts;

(e) exercise the protected person's right to elect options and change beneficiaries under insurance and annuity policies and to surrender policies for their cash value;

(f) exercise the protected person's right to an elective share in the estate of a deceased spouse;

(g) renounce any interest by testate or intestate succession or by inter vivos transfer;

(h) ratify any such actions taken on behalf of the protected person.

(B) When acting as conservator or when approving a conservator's or special conservator's action, the court may consider the:

(1) wishes of the protected person;

(2) financial needs and legal obligations of the protected person and those who are dependent upon him for support;

(3) tax consequences;

(4) protected person's eligibility or potential eligibility for governmental assistance;

(5) protected person's previous pattern of giving or level of support;

(6) protected person's gifting and estate plan; and

(7) protected person's life expectancy and the probable duration of incapacity.

(C) Prior to issuing a protective order, the court shall consider whether appointment of a conservator is necessary. The court shall set forth specific findings upon which the court bases its order authorizing a protective arrangement. For purposes of issuing a consent order, counsel may consent on behalf of the protected person.

(D) The petitioner shall serve all heirs and devisees of the incapacitated individual whose identity and whereabouts are reasonably

ascertainable with the petition seeking a protective order to perform one or more actions set forth in subsection (A)(2).

#### REPORTER'S COMMENTS

This section gives specific powers to the court to take action with respect to the estate and affairs of a minor or incapacitated individual, when there has been a formal proceeding and a protective arrangement has been offered to or ordered by the court. The court has broad authority to authorize protective arrangements which benefit the minor or incapacitated individual. In addition, the court may authorize a conservator, or a special conservator, to exercise a broad range of acts. For any protective arrangement or action by a conservator, the court may consider the wishes of the protected person.

The action of the court should be based upon what is the less restrictive alternative, acting only as necessary.

Section 62-5-406. RESERVED.

Section 62-5-407. (A) The court shall exercise its authority to encourage maximum self-reliance and independence of the protected person and issue orders only to the extent necessitated by the protected person's mental and adaptive limitations.

(B) The court shall set forth the rights and powers removed from the protected person. To the extent rights are not removed, they are retained by the protected person. Such rights and powers include the rights and powers to:

(1) buy, sell, or transfer real or personal property or transact business of any type including, but not limited to, those powers conferred upon the conservator under Section 62-5-422;

(2) make, modify, or terminate contracts; or

(3) bring or defend any action at law or equity.

(C) Nothing in this section shall prevent the protected person from notifying the court that he is being unjustly denied a right or privilege or requesting removal of the conservator or termination of the conservatorship pursuant to Section 62-5-428.

(D) Unless a court order specifies otherwise, the appointment of a conservator terminates the parts of the power of attorney that relate to matters within the scope of the conservatorship. The authority of an agent to make health care decisions or authority granted by advance directives regarding health care is not altered or changed by the appointment of a conservator.



## REPORTER'S COMMENTS

The 2017 amendments to Section 62-5-407 mirror the guardianship portions of Sections 62-5-304 and 62-5-304A.

A protective order is to be limited when necessary in order to ensure maximum independence of the protected person.

In order to ensure due process, the rights which may be removed from the protected person as outlined in the code, must be included in the petition (Section 62-5-403(B)(7)), evaluated by the designated examiner (Section 62-5-403D), and listed in the report of the guardian ad litem (Section 62-5-106(D)(6)). Each conservatorship order should be tailored based upon the abilities and needs of the protected person, and only those rights which must be removed based upon clear and convincing evidence that the removal of the right is necessary for the well-being of the protected person should be removed. The rights and privileges removed from the protected person are vested in the conservator as authorized in Section 62-5-422.

Unless the order states otherwise, the appointment of a conservator terminates an agent's powers under a power of attorney for matters within the scope of the protective order. The authority under advance directives involving health care is unaffected by the issuance of a protective order.

Section 62-5-408. (A) In appointing a conservator, the court shall consider persons who are otherwise qualified in the following order of priority:

(1) a person previously appointed conservator, other than a temporary or emergency conservator, a guardian of property, or other like fiduciary for the protected person by another court of competent jurisdiction;

(2) a person nominated to serve as conservator by the alleged incapacitated individual if made prior to his incapacity, or if he is fourteen or more years of age and has sufficient mental capacity to make a reasoned choice;

(3) an agent designated in a power of attorney relating to the management of the alleged incapacitated individual's real or personal property, financial affairs, or assets;

(4) the spouse of the alleged incapacitated individual;

(5) an adult child of the alleged incapacitated individual;

(6) a parent of the alleged incapacitated individual;

(7) the person nearest in kinship to the alleged incapacitated individual who is willing to accept the appointment;

(8) a person with whom the alleged incapacitated individual resides outside of a health care facility, group home, homeless shelter, or prison;

(9) a person nominated by a health care facility caring for the alleged incapacitated individual; and

(10) any other person deemed suitable by the court.

(B) A person whose priority is based upon his status under subsections (A)(1), (3), (4), (5), (6), or (7) may nominate in writing a person to serve in his or her stead. With respect to persons having equal priority, the court shall select the person it considers best qualified to serve as conservator. The court, acting in the best interest of the alleged incapacitated individual, may decline to appoint a person having higher priority and appoint a person having lesser priority or no priority.

(C) Except when authorizing, directing, or ratifying the implementations of provisions of protective arrangements, pursuant to Section 62-5-405, a probate judge or an employee of the court shall not serve as a conservator of an estate of a protected person; except, a probate judge or an employee of the court may serve as a conservator of the estate of a family member if such service does not interfere with the proper performance of the probate judge's or the employee's official duties. For purposes of this subsection, 'family member' means a spouse, parent, child, brother, sister, niece, nephew, mother-in-law, father-in-law, son-in-law, daughter-in-law, grandparent, or grandchild.

#### REPORTER'S COMMENTS

This section sets forth the priority of who may be appointed conservator and provides the standards to be utilized in appointing those of equal or lesser priority.

Section 62-5-409. Except upon a finding of good cause, the court shall require a conservator to furnish a bond conditioned upon faithful discharge of all duties of the conservator according to law and the court must approve all sureties. When bond is required, the conservator shall file a statement under oath with the court indicating his best estimate of the value of the personal estate of the protected person and of the income expected from the personal estate during the next calendar year, and he shall execute and file a bond with the court, or give other suitable security, in an amount not less than the estimate. The court shall determine that the bond is duly executed by a corporate surety or one or

more individual sureties whose performance is secured by pledge of personal property, mortgage on real property, or other adequate security. The court may permit the amount of the bond to be reduced by the value of assets of the estate deposited with a domestic financial institution, as defined in Section 62-6-101, in a manner that prevents their unauthorized disposition. The court may authorize an unrestricted account to be used by the conservator for expenses on behalf of the protected person, and all activity in such an account must be reported by the conservator as required by the court. Upon application of the conservator or another interested person, or upon the court's own motion, the court may:

- (1) order the creation, modification, or termination of an account;
- (2) increase or reduce the amount of the bond;
- (3) release sureties;
- (4) dispense with security or securities; or
- (5) permit the substitution of another bond with the same or different sureties.

#### REPORTER'S COMMENTS

The language of this section has been revised for flow and clarity. In addition, it now contains specific language authorizing the use of a restricted account, while protecting the requirement that the activities of the conservator regarding such an account must be reported as required by the court.

The 2017 amendments include language allowing an application or upon the court's own motion concerning actions regarding accounts, modification of bonds, release or dispensing of sureties, or permitting the substitution of another bond for the original bond.

Section 62-5-410. (A) The following requirements and provisions apply to any bond required under Section 62-5-409:

(1) Sureties must be jointly and severally liable with the conservator and with each other.

(2) By executing an approved bond of a conservator, the surety consents to the jurisdiction of the court in any proceeding pertaining to the fiduciary duties of the conservator and naming the surety as a party defendant. Notice of any proceeding must be delivered to the surety or mailed to him by registered or certified mail at his address that is listed with the court where the bond is filed or to his address as then known to the petitioner.

(3) After service of a summons and petition by a successor conservator, or upon the court's own motion, a proceeding may be

initiated against a surety for breach of the obligation of the bond of the conservator.

(4) Subject to applicable statutes of limitation, the bond of the conservator is not void after the first recovery, but may be proceeded against from time to time until the whole penalty is exhausted.

(B) No proceeding may be commenced against the surety on any matter as to which an action or proceeding against the primary obligor is barred by adjudication or limitation.

#### REPORTER'S COMMENTS

Prior to the 2017 amendments, this section was previously Section 62-5-412, and it amplifies Section 62-5-409.

Section 62-5-411. By accepting appointment, a conservator submits personally to the jurisdiction of the court in any proceeding relating to the conservatorship estate. Notice of any proceeding must be given or waived pursuant to Sections 62-1-401 and 62-1-402.

#### REPORTER'S COMMENTS

The 2017 amendments to this section expand upon former Section 62-5-413 to specify that the jurisdiction of the court over a conservator who accepts appointment extends to any estate-related proceeding. Also, this section adopts the notice and waiver provisions in Sections 62-1-401 and 62-1-402.

Section 62-5-412. Any conservator or special conservator appointed in a protective proceeding is entitled to reasonable compensation from the protected person's estate, as determined by the court.

#### REPORTER'S COMMENTS

This section entitles the conservator or special conservator to reasonable compensation. Section 62-5-105 addresses compensation to all who may be entitled to compensation for service to the conservatorship estate.

Section 62-5-413. (A) The protected person or another person interested in his welfare, may make an informal request for relief by submitting a written request to the court. The court may take such action as considered reasonable and appropriate to protect the protected person.

(B) A person making an informal request submits personally to the jurisdiction of the court.

#### REPORTER'S COMMENTS

This section was added in 2017 to allow the court to respond to concerns of the protected person or another person interested in his welfare without requiring the filing of a formal action. It mirrors the 2017 amendments to Section 62-5-307. The court may dismiss an informal request for relief. If readjudication is requested informally and the court denies the request, a formal petition for readjudication may be heard pursuant to Section 62-5-428.

Section 62-5-414. (A) In the exercise of his powers, a conservator is to act as a fiduciary and shall observe the standards of care applicable to trustees.

(B) The court may require a conservator to file a financial plan for managing, expending, and distributing the assets of the protected person's estate. The plan must be tailored for the protected person and the conservator shall revise the plan as the needs and circumstances of the protected person require. The court shall approve, disapprove, or modify the plan in any proceeding as the court determines is necessary based upon the qualifications of the fiduciary. Nothing herein shall require the court to oversee or approve the conservator's investment choices. The conservator shall provide a copy of the plan to the protected person's guardian, if any, or the protected person.

(C) The conservator shall include in the financial plan:

- (1) a statement of the extent to which the protected person may be able to develop or restore his ability to manage his property;
- (2) an estimate of whether the assets are sufficient to meet the current and future needs of the protected person;
- (3) projections of expenses and resources; and
- (4) an estimate of how the financial plan may alter the overall estate plan of the protected person, including assets titled with rights of survivorship.

(D) In investing an estate, selecting assets of the estate for distribution, and using powers of revocation or withdrawal available for the use and benefit of the protected person or his dependents and exercisable by the conservator, a conservator shall take into account any estate plan of the protected person known to the conservator and is entitled to examine the protected person's will or revocable trust and any contract, transfer or joint ownership arrangement with the provisions for

payment or transfer of benefits at his death to others which the protected person may have originated.

#### REPORTER'S COMMENTS

Subsection (A) is based on UGPPA (1982) Section 2-316 (UGPPA Section 62-5-416 (1982)), and subsection (D) on UGPPA (1982) Section 62-2-326 (UGPPA Section 62-5-426 (1982)).

Subsections (B), (C) and (D) are based on UGPPA Section 62-5-418(b)(c) and (d) 1997, which reflect the dual roles of a conservator as fiduciary charged with management of another's property with obligations directly to the protected person while observing the standard of care applicable to trustees as further stated in new Section 62-5-422(A)(1).

Under subsection (B), the conservator is not required to file a financial plan for managing, expending, and distributing the assets of the protected person's estate. If the court orders the conservator to file a financial plan for managing, expending, and distributing the assets of the protected person's estate, subsection C(1), (2), (3), and (4) provide guidance to satisfy that requirement.

In addition to plans for expenditures, investments, and distributions, the plan must list the steps that will be taken to develop or restore the protected person's ability to manage the person's property and an estimate of the length of the conservatorship. The filing of a plan will help the conservator perform more effectively and reduce the need to take action to recover improper expenditures.

When the conservator needs only to file a plan, subsection (B) requires that the conservator shall provide a copy of the plan to the protected person's guardian or the protected person.

Subsection (C)(1) emphasizes the concept of limited conservatorship by limiting the exercise of the conservator's authority and requiring the participation of the protected person in decision making. The conservator should encourage the participation of the protected person in decisions and assist the protected person to develop or regain the capacity to act without a conservator. Before making a decision, the conservator should learn the personal values of the protected person by inquiring about the protected person's desires. If possible, the conservator should be aware of views expressed by the protected person prior to the conservator's appointment.

Subsections (B) and (C)(1) are in substantial part specific applications of the fundamental responsibilities stated in subsections (b) and (c) of UGPPA Section 62-5-418 (2010), specifying subsidiary duties and the

powers and immunities necessary to properly implement the conservator's role. Subsection (c) of UGPPA Section 62-5-418 (2010) is derived from National Probate Court Standards, Standard 3.4.15 'Reports by the Conservator' (1993).

Subsection (D) allows a conservator access to and the right to examine the protected person's will and other documents comprising the protected person's estate plan. Such access is essential for the conservator to carry out the obligation, as stated in subsection (B) and (C)(4), to consider the protected person's views when making decisions. For example, by allowing the conservator access to the estate plan, the risk of inadvertent sales of specifically devised property and the difficult ademption problems that these types of sales often create may be avoided. Access to the estate plan also facilitates, where appropriate, the filing of a petition with respect to the protected person's estate plan as authorized by Section 62-5-405 and preserves the protected person's estate plan in accordance with the 2017 amendments to Section 62-5-425.

Section 62-5-415. Within thirty days of appointment, the conservator shall prepare and file with the court a complete inventory of the estate of the protected person, together with the conservator's oath or affirmation that it is complete and accurate to the best of the conservator's knowledge, information, and belief. The court may grant an extension to file the inventory. The conservator shall provide a copy of the inventory to the protected person's guardian, if any, and any other persons the court may direct.

#### REPORTER'S COMMENTS

The 2017 amendments removed the requirement of providing a copy of the inventory to the protected person who may have attained fourteen years of age and has sufficient mental capacity to understand. The 2017 amendments provide that the conservator shall provide a copy of the inventory to any other persons whom the court may direct.

Section 62-5-416. (A) A conservator shall report to the court regarding his administration of the estate annually and upon the conservator's resignation or removal, the termination of the protected person's minority or disability, the death of the protected person, and at other times as the court directs.

(B) The report must include:

(1) an accounting of receipts and disbursements for the accounting period;

(2) a list of the assets of the estate under the conservator's control and the location of the assets;

(3) any recommendations for changes in the financial plan; and

(4) the conservator's opinion regarding the continued need for the conservatorship and the scope of the conservatorship.

(C) The conservator shall provide a copy of the report to the protected person if he has attained the age of fourteen years and has sufficient mental capacity to understand the report, and to any parent with whom the protected person resides or guardian of the protected person.

(D) The court may appoint a guardian ad litem to review a report or plan, interview the protected person or conservator, and make any other investigation the court directs.

(E) The court may order a conservator to submit the assets of the estate to an appropriate examination in any manner directed by the court.

(F) The conservator or the protected person may petition in formal proceedings pursuant to Section 62-5-428 for an order:

(1) allowing or requiring an intermediate or final report of a conservator and adjudicating liabilities disclosed in the accountings; or

(2) allowing or requiring a final report and adjudicating unsettled liabilities relating to the conservatorship.

#### REPORTER'S COMMENTS

The 2017 amendments outline the reporting requirements of the conservator and some the court's options for monitoring the conservatorship. The conservator is required to report at least annually. The court may require a report to be issued at times other than those outlined in the section. The requirements of what the report must contain are outlined in the section. The conservator or protected person may petition in formal proceedings to allow or direct an intermediate or final report from the conservator and to adjudicate any unsettled liabilities relating to the conservatorship.

Section 62-5-417. The appointment of a conservator vests in him title as trustee to all property of the protected person, presently held or thereafter acquired, including title to any property previously held by custodians or agents, unless otherwise provided in the court's order. Neither the appointment of a conservator nor the establishment of a trust in accordance with Article 6, Chapter 6, Title 44 is a transfer or alienation by the protected person of his rights or interest, within the



meaning of any federal or state statute or regulation, insurance policy, pension plan, contract, will, or trust instrument imposing restrictions upon or penalties for transfer or alienation by the protected person of his rights or interest.

#### REPORTER'S COMMENTS

This section, formerly Section 62-5-420, permits independent administration of the property of protected persons once the appointment of a conservator has been obtained. Any interested person may require the conservator to account in accordance with Section 62-5-416. As a trustee, a conservator holds title to the property of the protected person, unless otherwise stated in a court order. Once appointed, he is free to carry on his fiduciary responsibilities. If he should default in these in any way, he may be made to account to the court. This section provides protection with respect to transfers or alienations made by virtue of a conservatorship or protective order involving a Medicaid qualifying trust.

Section 62-5-418. (A) Fiduciary letters of conservatorship are evidence of transfer of all title of the assets of a protected person to the conservator unless otherwise provided in the court's order. An order terminating a conservatorship transfers all assets of the estate from the conservator to the protected person or his successors. Fiduciary letters and terminations of appointment must be filed and recorded in the office where conveyances of real estate are recorded for the county in which the protected person resides and in the counties of this State or other jurisdictions where the protected person owns real estate.

(B) Conservators may file fiduciary letters of conservatorship with credit reporting agencies or other entities or persons, as appropriate.

#### REPORTER'S COMMENTS

The language has been revised in the 2017 amendments to specifically state that conservators may file their fiduciary letters with credit reporting agencies or other entities or persons, as appropriate. Prior to the 2017 amendments, the court might request that the conservator take such action, but it was not specifically codified so the conservator could take independent action when necessary.

Section 62-5-419. Pursuant to the procedures set forth in Section 62-5-428(B), the conservator shall obtain the court's prior approval of

any transaction that is affected by a conflict of interest, including, but not limited to, a sale or encumbrance of assets of the protected person to or in favor of a conservator; an immediate family member of a conservator; an agent or attorney of conservator; or any corporation, trust, or other entity in which the conservator has a substantial beneficial interest.

#### REPORTER'S COMMENTS

This section allows court authorized sales and purchases of protected property. The 2017 amendment added language that requires court approval of any transaction that is affected by a conflict of interest.

Section 62-5-420. A person, who in good faith either assists a conservator or deals with him for value in any transaction, other than those requiring a court order as required in this part is protected as if the conservator properly exercised the power. The fact that a person knowingly deals with a conservator does not alone require the person to inquire into the existence of a power or the propriety of its exercise, except that restrictions on powers of conservators which are endorsed on letters as provided in Section 62-5-424 are effective as to third persons. A person is not bound to see to the proper application of estate assets paid or delivered to a conservator. This protection extends to instances in which some procedural irregularity or jurisdictional defect occurred in proceedings leading to the issuance of letters. This protection is not a substitution for that provided by comparable provisions of the laws relating to commercial transactions and laws simplifying transfers of securities by fiduciaries.

#### REPORTER'S COMMENTS

Section 62-5-420 carries Section 62-5-419 one step further by affording protection to bona fide purchasers for value of protected property.

Section 62-5-421. (A) Except as otherwise provided in subsections (B) and (C), the interest of a protected person in property vested in a conservator is not transferable or assignable by the protected person.

(B) A person without knowledge of the conservatorship who in good faith and for security or substantially equivalent value receives delivery from a protected person of tangible personal property of a type normally transferred by delivery of possession is protected.

(C) A third party who deals with the protected person in good faith with respect to property vested in a conservator is entitled to any protection provided by law.

#### REPORTER'S COMMENTS

This section was added in 2017. While Section 62-5-420 deals with the protection of persons dealing with the conservator, this section dovetails with that section by specifically discussing the protected person's interest in property. The focus of this section is on the rights of the protected person in his personal property and affirms that the interest of a protected person in property vested in a conservator is not transferable or assignable by the protected person. However, pursuant to Section 62-5-407(B)(1) and subpart (A) of this section, an individual who in good faith purchases tangible personal property belonging to a conservatorship from the protected person for an amount substantially equivalent to the value of the property, is protected once delivery of possession takes place. This section also makes it clear that a third party who deals with the protected person regarding personal property vested in the conservator is entitled to any protection provided by law, which includes the protections in Section 62-5-420 and any other applicable laws.

Section 62-5-422. (A) Except as otherwise qualified or limited by court order, a conservator, acting reasonably in the best interest of the protected person and in efforts to accomplish the purpose for which he was appointed, may act without court approval to:

- (1) invest and reinvest funds of the estate as would a trustee;
- (2) collect, hold, and retain assets of the estate including land in another state, until, in his judgment, disposition of the assets should be made, and retain assets even though they include an asset in which the conservator personally is interested;
- (3) receive additions to the estate;
- (4) deposit estate funds in a financial institution including a financial institution operated by the conservator;
- (5) make ordinary or extraordinary repairs or alterations to buildings or other structures, demolish, improve, raze or erect existing or new party walls or buildings;
- (6) vote a security in person or by general or limited proxy;
- (7) pay calls, assessments, and other sums chargeable or accruing against or on account of securities;

(8) sell or exercise stock subscription or conversion rights; consent directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise whose stock or shares are publicly held;

(9) hold a security in the name of a nominee or in other form without disclosure of the conservatorship so that title to the security may pass by delivery, but the conservator is liable for an act of the nominee in connection with the stock so held;

(10) insure the assets of the estate against damage or loss, and the conservator against liability with respect to third persons;

(11) borrow money to be repaid from estate assets or otherwise; advance money for the protection of the estate or the protected person and for all expenses, losses, and liability sustained in the administration of the estate or because of the holding or ownership of estate assets; and the conservator shall have a lien on the estate as against the protected person for advances so made;

(12) pay or contest a claim except as limited by Section 62-5-433; settle a claim by or against the estate of the protected person by compromise, arbitration, or otherwise except as limited by Section 62-5-433; and release, in whole or in part, a claim belonging to the estate to the extent that the claim is uncollectible;

(13) pay taxes, assessments, and other expenses incurred in the collection, care, administration, and protection of the estate;

(14) allocate items of income or expense to either estate income or principal, as provided by law, including creation of reserves out of income for depreciation, obsolescence, or amortization, or for depletion in mineral or timber properties;

(15) pay a sum distributable to a protected person or his dependent without liability to the conservator, by paying the sum to the protected person or the distributee or by paying the sum for the use of the protected person or the distributee either to his guardian or, if none, to a relative or other person with custody of his person;

(16) employ persons including attorneys, auditors, investment advisors, or agents even though they are associated with the conservator to advise or assist the conservator in the performance of his administrative duties; to act upon their recommendation without independent investigation; and instead of acting personally, to employ one or more agents to perform an act of administration, whether or not discretionary;

(17) prosecute or defend actions, claims, or proceedings in any jurisdiction for the protection of estate assets and of the conservator in the performance of his duties;

(18) execute and deliver all instruments that will accomplish or facilitate the exercise of the powers vested in the conservator;

(19) review the originals and obtain photocopies of the protected person's fully executed estate planning documents, including those documents referenced in Section 62-5-425;

(20) enter into a lease of a residence for the protected person for a term not exceeding one year;

(21) access, monitor, suspend, or terminate the protected person's digital assets and accounts in electronic format, including the power to obtain information as to the protected person's account number, user name and agreement, online tools, addresses, or other unique subscriber or account identifiers, including passwords, and any catalogue of electronic communications considered necessary by the conservator for administration of the conservatorship, consistent with the provisions of Part 10, Article 2, Title 62; and

(22) exercise the protected person's rights as trust beneficiary to the extent provided in Article 7, Title 62.

(B) A conservator acting reasonably and in the best interest of the protected person to accomplish the purpose for which he was appointed, may file an application with the court pursuant to Section 62-5-428(A) requesting authority to:

(1) continue or participate in the operation of any unincorporated business or other enterprise;

(2) acquire an undivided interest in an estate asset in which the conservator, in a fiduciary capacity, holds an undivided interest;

(3) buy and sell an estate asset, including land in this State or in another jurisdiction for cash or on credit, at public or private sale; and to manage, develop, improve, exchange, partition, change the character of, or abandon an estate asset;

(4) subdivide, develop, or dedicate land to public use; make or obtain the vacation of plats and adjust boundaries; adjust differences in valuation on exchange or partition by giving or receiving considerations; or dedicate easements to public use without consideration;

(5) enter into a lease as lessor or lessee, other than a residential lease described in Section 62-5-422(A);

(6) enter into a lease or arrangement for exploration and removal of minerals or other natural resources or enter into a pooling or unitization agreement;

(7) grant an option involving disposition of an estate asset or to take an option for the acquisition of any asset;

(8) undertake another act considered necessary or reasonable by the conservator and the court for the preservation and management of the estate;

(9) make charitable gifts pursuant to the protected person's gifting and estate plan if the estate is sufficient to provide for the health, education, support, and maintenance of the protected person and his dependents;

(10) encumber, mortgage, or pledge an asset for a term extending within or beyond the term of the conservatorship;

(11) pay a reasonable fee to the conservator, special conservator, guardian ad litem, attorney, examiner, or physician for services rendered;

(12) adopt an appropriate budget for routine expenditures of the protected person;

(13) reimburse the conservator for monies paid to or on behalf of the protected person;

(14) exercise or release the protected person's powers as personal representative, custodian for minors, conservator, or donee of a power of appointment; and

(15) exercise options to purchase securities or other property.

(C) A conservator may request instructions concerning his fiduciary responsibility and may file an application for ratification of actions taken in good faith or for the expenditure of funds of the protected person; the court may approve or deny an application pursuant to subsection (B) above, or may require the commencement of formal proceedings.

(D) The attorney-client privilege between the protected person and the protected person's counsel must not be removed by the appointment of a conservator.

#### REPORTER'S COMMENTS

The 2017 amendments to Section (A)(1) incorporates previous Section 62-5-424(A)(3).

Section (A)(4) replaced the word 'bank' with 'financial institution' in Section 62-5-424(A)(4) and UGPPA Section 62-5-425(b)(6)(2010).

Section (A)(19) allows the conservator access to all of the protected person's fully executed estate planning and other protected documents.

Section (A)(20) amends the terms of the conservator entering into a residential lease agreement previously specified in Section 62-5-424(c)(5).

Section (A)(21) addresses a conservator's authority regarding digital assets of the protected person.

Section (A)(22) authorizes a conservator to exercise a protected person's rights as a trust beneficiary.

Section (B)(3) follows UGPPA Section 62-5-425(b)(7)(2010). The comment to the UGPPA section states that while this subsection authorizes a conservator to deal with real property located in another state, before disposing of the property in the other state, local law may require that the conservator have some contact with or supervision by a court in that state.

Section (B)(5) addresses leasing other than residential leases.

Section (B)(9) revises former Section 62-5-424(C)(9) and allows charitable gifting following the protected person's estate plan, provided there are sufficient assets for the protected person and dependent's support and has eliminated specific financial restrictions.

Section (B)(11) addresses payment of fees to identifiable parties from the protected person's estate.

Section (B)(12) provides for budgeting for routine expenditures.

Section (B)(13) allows for reimbursements to the conservator.

Section (B)(14) authorizes the conservator to exercise or release protected person's fiduciary and custodial powers.

Section (B)(15) authorizes the conservator to purchase options for securities or other property.

Section (C) allows the conservator to file for instructions to ratify certain expenditures.

Section (D) preserves the protected person's attorney-client relationship with his counsel.

Section 62-5-423. (A) A conservator may expend or distribute sums from the estate without further court authorization for the health, education, maintenance, and support of the protected person and his dependents in accordance with the following principles:

(1) The expenditures must be consistent with a prior court-approved financial plan.

(2) The conservator shall consider recommendations relating to the appropriate standard of health, education, maintenance, and support for the protected person made by a parent or guardian. The conservator may not be surcharged for sums paid to persons or organizations furnishing health, education, maintenance, or support to the protected person pursuant to the recommendations of a parent or guardian unless the conservator has actual knowledge that the parent or guardian is deriving personal financial benefit from these payments, including relief

from any personal duty of support, or unless the recommendations are clearly not in the best interests of the protected person.

(3) The conservator shall consider:

(a) the size of the estate, the probable duration of the conservatorship, and the likelihood that the protected person, at some future time, may be fully able to manage his affairs and the estate that has been conserved for him;

(b) the accustomed standard of living of the protected person and members of his household; and

(c) other funds or sources used for the support of the protected person.

(4) Funds expended under this subsection may be paid by the conservator to any person, including the protected person, as reimbursement for expenditures or in advance for services to be rendered to the protected person when it is reasonable to expect that they will be performed and where advance payments are customary or reasonably necessary under the circumstances.

(5) If the conservator determines that it is reasonably necessary to supply funds to the protected person, the conservator may provide these funds to the protected person through reasonable financial methods, including, but not limited to, checks, currency, debit card, or allowance. All funds so provided must be reported on the accountings as required by the court.

(B) After paying outstanding expenses of administration and any claims approved by the court, after meeting the requirements of Section 62-5-416, and after complying with any additional requirements established by the court, the conservator shall pay over and distribute all remaining funds and properties as follows:

(1) when a person who is incapacitated solely by reason of minority attains the age of eighteen or is emancipated by a court order, to the now-adult or emancipated protected person as soon as practical, unless a:

(a) protective order has been issued because the protected person is incapacitated; or

(b) protective proceeding or other petition with regard to the protected person is pending; a protected person under the age of eighteen who is married shall remain a minor for purposes of this subsection until attaining the age of eighteen or being emancipated by court order;

(2) upon an adjudication restoring capacity, to the former protected person as soon as practical;

(3) upon a determination by the court that the protected person's estate has a net aggregate amount of less than fifteen thousand dollars to



or for the protected person as soon as practical pursuant to Section 62-5-103; or

(4) if a protected person dies, to the protected person's duly appointed personal representative or as ordered by the court.

#### REPORTER'S COMMENTS

The introduction of Section 62-5-423(A) refers to the protected person's dependents. UGPPA Section 62-5-427 (2010) clarifies the definition and authority to distribute to dependents. 'Dependents' is not limited to dependents whom the protected person is legally obligated to support, but refers to individuals who are in fact dependent on the protected person, such as children in college and adult children with developmental disabilities. Child and spousal support payments are now specifically included within permitted distributions to dependents. Former Section 62-5-425(3) is now incorporated within the introductory paragraph of Section 62-5-423.

The 2017 amendment added Section (A)(1) and pertains to expenditures relying on a court approved financial plan.

Section (A)(2) added 'health' and 'maintenance,' but deleted 'care.' This was based on UGPPA Section 62-5-427 (upon which that section was based on subsections (a) and (b) of UGPPA (1982) Section 62-2-324 (subsections (a) and (b) of UGPPA Section 62-5-424 (1982)) but with several changes.

Section (A)(5) is new and provides accepted methods of supplying funds to the protected person.

Section (B) addresses conservatorships established based on minority.

Section (B)(1)(a) and (b) provide exceptions for distributions to protected persons who do not fall within the category of a protected person simply on the basis of having been a minor.

Section (B)(2) extrapolates from former Section 62-5-425(c)(1).

Section (B)(3) increases the net distributive amount to \$15,000.00 to be paid to the protected person upon a determination by the court that the estate consists of that amount in the net aggregate.

Former Section 62-5-425(d) that addresses conservator's duties upon the death of the protected person has been removed from the revised section and moved to Section 62-5-428.

Section 62-5-423(B)(4) more directly states the identity of the protected person's personal representative.

Section 62-5-424. RESERVED.

Section 62-5-425. In investment and distribution of estate assets or in the use or withdrawal of a power of revocation, and in titling accounts, the conservator and the court must consider any:

(A) known estate plan, including a revocable trust having the protected person as settlor; or

(B) instrument, including, but not limited to, a contract, transfer, or joint ownership arrangement originated by the protected person which provides a benefit at death to another as referenced in Section 62-5-422.

#### REPORTER'S COMMENTS

The 2017 amendments strengthen the requirement of the conservator and the court from 'should consider' to 'must consider' when taking into account any known estate plan of the protected person, in making investments, in distribution of assets, and in exercising certain other powers.

The amendment also adds language which requires that the conservator and the court must consider any contract, transfer, or joint ownership arrangement originated by the protected person that provides a benefit at death to another person as referenced in Section 62-5-422(A)(19).

Section 62-5-426. (A) The probate court has exclusive jurisdiction over claims against the protected person arising from the internal affairs of the conservatorship which may be commenced in the following manner:

(1) A claimant may deliver or mail to the conservator a written statement of the claim indicating its basis, the name and address of the claimant, and the amount claimed.

(2) A claim is considered presented on the receipt of the written statement of claim by the conservator.

(3) Every claim that is disallowed in whole or part by the conservator is barred so far as not allowed unless the claimant files and properly serves a summons and petition for allowance no later than thirty days after the mailing of the notice of disallowance or partial disallowance if the notice warns the claimant of the impending bar.

(B) Except as limited by Section 62-5-433, the probate court has jurisdiction concurrent with the circuit court in matters involving a request for a judicial determination as to the external affairs of a conservatorship, including actions by or against creditors or debtors of conservatorships and other actions or proceedings involving conservators and third parties. If a creditor has notice of the appointment

of a conservator, all pleadings must be served by or on the conservator. Within thirty days after the conservator files, or becomes aware of, any court action in which the protected person is a party, the conservator must notify the court where the conservatorship is being administered if the outcome may constitute a claim against the estate. The conservator may request instructions from the court as necessary.

(C) If it appears that the conservatorship assets are likely to be exhausted before all existing claims are paid, preference must be given to prior claims for the care, maintenance, and education of the protected person or his dependents and existing claims for expenses of administration.

#### REPORTER'S COMMENTS

The 2017 amendment made substantial revisions from the prior statute, Section 62-5-428, which provided a procedure for the presentation and enforcement of claims against the estate of a protected person similar to claims procedures for decedents' estates. With the 2017 revision, the procedures are differentiated depending on whether they relate to the internal or external affairs of the conservatorship. This is analogous to Article 7, the South Carolina Trust Code, which delineates the subject matter jurisdiction between the probate court and circuit court depending upon whether proceedings concern internal or external matters.

Subsection 62-5-426(A) addresses the procedure relative to the internal affairs of a conservatorship, and specifies that after the disallowance of a claim the claimant has thirty days to file and serve a summons and petition for allowance. This is the same requirement of filing and serving the pleadings within the thirty days as in the elective share, omitted spouse and pretermitted children statutes. Internal affairs of a conservatorship estate relate to how the estate of a protected person is managed, expended or distributed, and could include questions about the costs of housing for the protected person, payments to guardians or to advisors employed by the conservator, or conservator commissions. Subsection 62-5-426(C) gives priority to claims made by caregivers and expenses of administration.

Subsection 62-5-426(B) addresses the procedure relative to the external affairs of a conservatorship and its main purpose is to require the conservator to keep the probate court informed about actions in other courts which may affect the protected person's assets, and allows the conservator to request instructions from the court. External affairs could include disputes between the conservator and third parties, family court

proceedings involving a protected person, or other matters outside the day to day administration of a protected person's estate.

Section 62-5-427. (A) Unless otherwise provided in a contract, a conservator is not individually liable on a contract properly entered into in his fiduciary capacity during the administration of the estate unless he fails to reveal his representative capacity and fails to identify the estate in the contract.

(B) The conservator is individually liable for obligations arising from ownership or control of property of the estate or for torts committed during the administration of the estate only if he is personally at fault.

(C) Claims based on contracts entered into by a conservator in his fiduciary capacity, on obligations arising from ownership or control of the estate, or on torts committed during the administration of the estate may be asserted against the estate by proceeding against the conservator in his fiduciary capacity, whether or not the conservator is individually liable.

(D) A question of liability between the estate and the conservator individually may be determined in a proceeding for accounting, surcharge, indemnification, or other appropriate proceeding.

#### REPORTER'S COMMENTS

The 2017 amendments to this section retains the language from former Section 62-5-429.

Section 62-5-428. (A)(1) Upon filing of an application with the appointing court, the protected person, the conservator, or interested person may request an order:

- (a) requiring, increasing, or reducing bond or security;
- (b) requiring an accounting;
- (c) terminating a conservatorship when the estate has a net aggregate amount of less than fifteen thousand dollars;
- (d) terminating a conservatorship and approving a final accounting at the death of the protected person;
- (e) terminating a conservatorship and approving a final accounting when a protected person who is incapacitated solely by reason of minority attains the age of eighteen or is emancipated by court order;
- (f) approving payment of the protected person's funeral expenses;

(g) accepting the resignation of or removing the conservator for good cause and appointing a temporary or successor conservator, if necessary;

(h) adjudicating the restoration of the protected person's capacity.

(2) The court may approve or deny the application without notice, require notice to such persons as the court directs, or may require the commencement of a formal proceeding pursuant to Section 62-5-428(B).

(3) If the court determines that the protected person's estate has a net aggregate amount of less than fifteen thousand dollars, the court may in its discretion, terminate the conservatorship.

(4) If a protected person dies, the conservator shall deliver to the court for safekeeping any will of the deceased protected person which may have come into the conservator's possession, inform the personal representative or a beneficiary named in the will of the delivery, and retain the estate for delivery to a duly appointed personal representative of the deceased protected person or other persons entitled to delivery. If, after thirty days from the death of the protected person, no person has been appointed personal representative and no application or petition for appointment is pending in the court, the conservator may apply for appointment as personal representative. A person must not be disqualified as a personal representative of a deceased protected person solely by reason of his having been appointed or acting as conservator for that protected person.

(B)(1) Upon filing of a summons and petition with the appointing court, the protected person, the conservator, or interested person may request an order:

(a) terminating a conservatorship;

(b) requiring distributions from the protected person's estate after the conservator has denied the request;

(c) upon the death of a conservator, appointing a successor conservator, if necessary;

(d) limiting or expanding the conservatorship;

(e) authorizing a transaction involving a conflict of interest pursuant to Section 62-5-419;

(f) reviewing the denial of an application pursuant to Section 62-5-422(C); or

(g) granting other appropriate relief.

(2) The procedure for obtaining orders subsequent to appointment is as follows:

(a) The summons and petition shall state the relief sought and the reasons the relief is necessary and must be served upon the protected

person; the conservator; the guardian, if any; the spouse; adult children; and parents of the protected person whose whereabouts are reasonably ascertainable; and, if there is no spouse, adult child, or parent, any person who has equal or greater priority for appointment; any person with whom the protected person resides outside of a health care facility, group home, homeless shelter, or prison; and the Secretary of the Department of Veterans Affairs if the conservatorship is for the purpose of receiving veterans benefits.

(b) After filing and service of the summons and petition, the court may appoint a guardian ad litem and may appoint counsel for the protected person, unless the protected person has private counsel, and such examiners as are needed to evaluate and confirm the allegations of the petition.

(c) As soon as the interests of justice may allow, but after the time for response to the petition has elapsed as to all parties served, the court shall hold a hearing on the merits of the petition. The protected person and all parties not in default must be given notice of the hearing. If all parties not in default waive a hearing, the court may issue a consent order.

(d) The court may issue interim orders, for a period not to exceed ninety days, until a hearing is held and a final order is issued.

(C) The court may specify a minimum period, not exceeding one year, during which no application or petition for readjudication may be filed without leave of court. Subject to this restriction, the protected person or the conservator may petition the court for a termination of incapacity or of the protective order, which must be proved by a preponderance of the evidence.

(D) An attorney who has been asked by the protected person to represent him in an action under this section may file a motion with the court for permission to represent the protected person.

#### REPORTER'S COMMENTS

The 2017 amendment to this section allows informal actions for requests subsequent to appointment and specifies the procedures for both informal and formal actions. Subsection (A)(3) allows the Court to terminate conservatorships when the assets are below \$15,000.00 (previously \$5,000.00).

While this section allows the filing of an application for various types of relief, the court has the discretion to require a formal action when it deems it appropriate. For example, if the matter is contested, the court may require the filing of a formal action.

In an action to have a protected person determined to have regained capacity, the petitioner has the burden to prove by a preponderance of the evidence that the protected person has regained capacity, such that a conservatorship is no longer needed or that a limited conservatorship or other protective order is appropriate. In contrast, the evidentiary standard for the initial adjudication of incapacity is by clear and convincing evidence, thus giving more protection to the individual's rights.

The 2017 amendment gives the court discretion in appointing counsel and a guardian ad litem for requests for relief after the appointment of a conservator or issuance of another protective order. In exercising its discretion to appoint counsel or a guardian ad litem, the court should consider the type of relief requested in the petition, the facts of the case, and the likelihood that the protected person's rights may not be represented or protected. Additionally, the protected person has the right to retain his own counsel, and that attorney may file a motion for the court to represent the protected person.

Section 62-5-429. (A) A person indebted to a protected person, or having possession of property of or an instrument evidencing a debt, stock, or chose in action belonging to a protected person may pay or deliver to a conservator, guardian of the estate, or other like fiduciary appointed by a court of the state of residence of the protected person, upon being presented with proof of his appointment and an affidavit made by him or on his behalf stating that:

(1) no protective proceeding relating to the protected person is pending in this State; and

(2) the foreign conservator is entitled to payment or to receive delivery.

(B) If the person to whom the affidavit is presented is not aware of a protective proceeding pending in this State, payment or delivery in response to the demand and affidavit discharges the debtor or possessor.

#### REPORTER'S COMMENTS

Section 62-5-429 provides that any debtor (or person having possession of property) of a protected person may pay the debt (or deliver the property) to any conservator or other fiduciary appointed by a court of the state of residence of the protected person, upon presentation by the fiduciary of proof of appointment and his affidavit that there is no protective proceeding relating to the protected person pending in this State and that the foreign fiduciary is entitled to payment

or receive delivery. The person making payment or delivery is then discharged.

Section 62-5-430. (A) If a conservator has not been appointed in this State and a petition for a protective order is not pending in this State, a conservator appointed in another state, after giving notice to the appointing court of an intent to register, may register the protective order in this State by filing as a foreign judgment in the court, in any appropriate county of this State certified copies of the order and letters of office, and any bond. The court shall treat this as the filing of authenticated or certified records and shall charge fees set forth in Section 8-21-770 for the filing of these documents. The court will then issue a certificate of filing as proof of the filing. The conservator shall file the certificate of filing, along with a copy of the letters of office, in the office of the register of deeds of that county.

(B) Upon registration of a protective order from another state, the conservator may exercise in this State all powers authorized in the order of appointment except as prohibited under the laws of this State, including maintaining actions and proceedings in this State and, if the guardian or conservator is not a resident of this State, subject to any conditions imposed upon nonresident parties.

(C) A court of this State may grant any relief available under this article and other laws of this State to enforce a registered order.

#### REPORTER'S COMMENTS

This section provides that a foreign conservator may file certified copies of his appointment in all counties where the protected person has property and exercise all powers of a local conservator, if no local conservator has been appointed and no petition is pending.

The 2017 amendment modifies former Section 62-5-432 to be consistent with Section 62-5-716.

Section 62-5-431. (A) For purposes of this section:

(1) 'Estate' and 'income' include only monies received from the VA, all real and personal property acquired in whole or in part with these monies, and all earnings, interest, and profits.

(2) 'Benefits' means all monies payable by the United States through the VA.

(3) 'Secretary' means the Secretary of the United States Department of Veterans Affairs (VA) or his successor.

(4) 'Protected person' means a beneficiary of the VA.



(5) 'Conservator' has the same meaning as provided in Section 62-1-201 but only as to benefits from the VA.

(B) Whenever, pursuant to a law of the United States or regulation of the VA, the Secretary requires that a conservator be appointed for a protected person before payment of benefits, the appointment must be made in the manner provided in this part, except to the extent this section requires otherwise. The petition shall show that the person to be protected has been rated incapable of handling his estate and monies on examination by the VA in accordance with the laws and regulations governing the VA.

(C) When a petition is filed for the appointment of a conservator and a certificate of the secretary or his representative is filed setting forth the fact that the appointment of a conservator is a condition precedent to the payment of benefits due the protected person by the VA, the certificate is prima facie evidence of the necessity for the appointment and no examiner's report is required.

(D) Except as provided or as otherwise permitted by the VA, a person may not serve as conservator of a protected person if the proposed conservator at that time is acting simultaneously as conservator for five protected persons. Upon presentation of a petition by an attorney for the VA alleging that a person is serving simultaneously as a conservator for more than five protected persons and requesting that person's termination as a conservator for that reason, upon proof substantiating the petition, the court shall restrain that person from acting as a conservator for the affected protected person and shall require a final accounting from the conservator. After the appointment of a successor conservator if one is warranted under the circumstances, the court shall terminate the appointment of the person as conservator in all requested cases. The limitations of this section do not apply when the conservator is a bank or trust company.

(E) The conservator shall file an inventory, accountings, exhibits or other pleadings with the court and with the VA as provided by law or VA regulation. The conservator is required to furnish the inventory and accountings to the VA.

(F) Every conservator shall invest the surplus funds in his protected person's estate in securities, or otherwise, as allowed by law, and in which the conservator has no interest. These funds may be invested, without prior court authorization, in direct interest-bearing obligations of this State or of the United States and in obligations in which the interest and principal are both unconditionally guaranteed by the United States Government.

(G) Whenever a copy of a public record is required by the VA to be used in determining the eligibility of a person to participate in benefits made available by the VA, the official charged with the custody of the public record shall provide a certified copy of the record, without charge, to an applicant for the benefits, a person acting on his behalf, or a representative of the VA.

(H) With regard to a minor or a mentally incompetent person to whom, or on whose behalf, benefits have been paid or are payable by the VA, the secretary is and must be a necessary party in a:

(1) proceeding brought for the appointment, confirmation, recognition, or removal of a conservator;

(2) suit or other proceeding, whether formal or informal, arising out of the administration of the person's estate; and

(3) proceeding which is for the removal of the disability of minority or of mental incompetency of the person.

(I) In a case or proceeding involving property or funds of a protected person not derived from the VA, the VA is not a necessary party, but may be an interested party in the proceedings.

(J) For services as conservator of funds paid from the VA, a conservator may be paid an amount not to exceed five percent of the income of the protected person during any year. If extraordinary services are rendered by a conservator, the court may, upon application of the conservator and notice to the VA, authorize additional compensation payable from the estate of the protected person. No compensation is allowed on the corpus of an estate derived from payments from the VA. The conservator may be allowed reimbursement from the estate of the protected person for reasonable premiums paid to a corporate surety upon the bond furnished by the conservator.

#### REPORTER'S COMMENTS

This section was adopted in 2016 as Section 62-5-436 and was renumbered in the 2017 version. This section is a distillation of provisions of the Uniform Veterans' Guardianship Act, which was formerly Part 6 of Title 62. This section should be considered whenever the minor or incapacitated individual is receiving or will receive benefits from the Veterans Administration. In general, the requirements for commencing the proceeding remain the same as with a person who is not receiving VA benefits except that a certificate of the Secretary or his representative that the appointment is necessary replaces the necessity for an examiner. Additionally, this section imposes a limit on the number of persons for whom an individual conservator may act, unless

permitted by the VA. The VA is a necessary party in some proceedings and an interested party in other proceedings.

Section 62-5-432. (A) The court has authority to create and establish a special needs trust for an incapacitated individual in compliance with 42 U.S.C. Section 1396p(d)(4)(A), as amended, and to order the placement of the incapacitated individual's funds into such a trust or into a pooled trust in compliance with 42 U.S.C. Section 1396p(d)(4)(C), as amended, for the benefit of incapacitated individuals under its authority to issue protective orders pursuant to the procedure set forth in Section 62-5-401, et seq.

(B) In the case of a disabled minor, the court has authority to create and establish a special needs trust in compliance with 42 U.S.C. Section 1396p(d)(4)(A), as amended, if the court determines it is in the disabled minor's best interest. The court also has the authority to order the placement of the minor's funds into a special needs trust or into a pooled trust in compliance with 42 U.S.C. Section 1396p(d)(4)(C), as amended, for the benefit of a minor under its authority to implement provisions of protective orders pursuant to the procedure set forth in Section 62-5-401, et seq., even though the terms of the trust extend beyond the age of majority.

#### REPORTER'S COMMENTS

Prior to the 2017 amendments to Article V, the court did not have specific jurisdiction to create a special needs trust. The 2017 amendments established jurisdiction for the creation of a special needs trust in S.C. Code Section 62-1-302(a)(2)(iii) and set forth a procedure for the creation of a special needs trust in this section. The authority of the court to create and establish a special needs trust for minors and incapacitated individuals pursuant to provisions of protective orders is now specifically established and set out in this section.

Section 62-5-433. (A)(1) For purposes of this section and for any claim exceeding twenty-five thousand dollars in favor of or against any minor or incapacitated individual, 'court' means the circuit court of the county in which the minor or incapacitated individual resides or the circuit court in the county in which the suit is pending. For purposes of this section and for any claim not exceeding twenty-five thousand dollars in favor of or against any minor or incapacitated individual, 'court' means either the circuit court or the probate court of the county in which

the minor or incapacitated individual resides or the circuit court or probate court in the county in which the suit is pending.

(2) 'Claim' means the net or actual amount accruing to or paid by the minor or incapacitated individual as a result of the settlement.

(3) 'Petitioner' means either a conservator appointed by the court for the minor or incapacitated individual or the guardian or guardian ad litem of the minor or incapacitated individual if a conservator has not been appointed.

(B) The settlement of a claim over twenty-five thousand dollars in favor of or against a minor or incapacitated individual for the payment of money or the possession of personal property must be effected on his behalf in the following manner:

(1) The petitioner must file with the court a verified petition setting forth all of the pertinent facts concerning the claim, payment, attorney's fees, and expenses, if any, and the reasons why, in the opinion of the petitioner, the proposed settlement should be approved. For all claims that exceed twenty-five thousand dollars, the verified petition must include a statement by the petitioner that, in his opinion, the proposed settlement is in the best interests of the minor or incapacitated individual.

(2) If, upon consideration of the petition and after hearing the testimony as it may require concerning the matter, the court concludes that the proposed settlement is proper and in the best interests of the minor or incapacitated individual, the court shall issue its order approving the settlement and authorizing the petitioner to consummate it and, if the settlement requires the payment of money or the delivery of personal property for the benefit of the minor or incapacitated individual, to receive the money or personal property and execute a proper receipt and release or covenant not to sue therefor, which is binding upon the minor or incapacitated individual.

(3) The order authorizing the settlement must require that payment or delivery of the money or personal property be made through the conservator. If a conservator has not been appointed, the petitioner, upon receiving the money or personal property, shall pay and deliver it to the court pending the appointment and qualification of a duly appointed conservator. If a party subject to the court order fails or refuses to pay the money or deliver the personal property as required by the order, he is liable and punishable as for contempt of court, but failure or refusal does not affect the validity or conclusiveness of the settlement.

(C) The settlement of a claim that does not exceed twenty-five thousand dollars in favor of or against a minor or incapacitated

individual for the payment of money or the possession of personal property may be effected in any of the following manners:

(1) If a conservator has been appointed, he may settle the claim without court authorization or confirmation, as provided in Section 62-5-424, or he may petition the court for approval, as provided in items (1), (2), and (3) of subsection (B). If the settlement requires the payment of money or the delivery of personal property for the benefit of the minor or incapacitated individual, the conservator shall receive the money or personal property and execute a proper receipt and release or covenant not to sue therefor, which is binding upon the minor or incapacitated individual.

(2) If a conservator has not been appointed, the guardian or guardian ad litem must petition the court for approval of the settlement, as provided in items (1) and (2) of subsection (B), and without the appointment of a conservator. The payment or delivery of money or personal property to or for a minor or incapacitated individual must be made in accordance with Section 62-5-103. If a party subject to the court order fails or refuses to pay the money or deliver the personal property, as required by the order and in accordance with Section 62-5-103, he is liable and punishable as for contempt of court, but failure or refusal does not affect the validity or conclusiveness of the settlement.

(D) The settlement of a claim that does not exceed two thousand five hundred dollars in favor of or against a minor or incapacitated individual for the payment of money or the possession of personal property may be effected by the parent or guardian of the minor or incapacitated individual without court approval of the settlement and without the appointment of a conservator. If the settlement requires the payment of money or the delivery of personal property for the benefit of the minor or incapacitated individual, the parent or guardian shall receive the money or personal property and execute a proper receipt and release or covenant not to sue therefor, which is binding upon the minor or incapacitated individual. The payment or delivery of money or personal property to or for a minor or incapacitated individual must be made in accordance with Section 62-5-103.

#### REPORTER'S COMMENTS

No substantive changes were made to this section in the 2017 amendments. The only changes involved changes in terms, like use of the term 'incapacitated individual' rather than 'incapacitated person.' Actions initiated by agents acting within the scope of authority granted

in a properly executed durable power of attorney are not subject to the requirements of this section.”

B.Part 7, Article 5, Title 62 of the 1976 Code is amended to read:

“Part 7

South Carolina Adult Guardianship and Protective Proceedings  
Jurisdiction Act

Section 62-5-700. This act may be cited as the ‘South Carolina Adult Guardianship and Protective Proceedings Jurisdiction Act’.

Section 62-5-701. Notwithstanding another provision of law, this part provides the exclusive jurisdictional basis for a court of this State to appoint a guardian or issue a protective order for an adult.

Section 62-5-702. In addition to the terms defined in Part 1, Article 5, Title 62, the following terms, as used in the part, apply:

(1) ‘Court’ means a probate court in this State or a court in another state with the same jurisdiction as a probate court in this State.

(2) ‘Guardianship order’ means an order appointing a guardian.

(3) ‘Home state’ means the state in which the alleged incapacitated individual was physically present, including a period of temporary absence, for at least six consecutive months immediately preceding the filing of a petition for the appointment of a guardian or protective order; or if none, the state in which the alleged incapacitated individual was physically present, including a period of temporary absence, for at least six consecutive months ending with the six months prior to the filing of the petition.

(4) ‘Significant-connection state’ means a state, other than the home state, with which an alleged incapacitated individual has a significant connection other than mere physical presence and in which substantial evidence concerning the alleged incapacitated individual is available. In determining, pursuant to Sections 62-5-707 and 62-5-714, whether an alleged incapacitated individual has a significant connection with a particular state, the court shall consider the:

(a) location of the alleged incapacitated individual’s family and other persons required to be notified of the guardianship or protective proceeding;

(b) length of time the alleged incapacitated individual at any time was physically present in the state and the duration of any absence;

- (c) location of the alleged incapacitated individual's property; and
- (d) extent to which the alleged incapacitated individual has ties to the state such as voting registration, state or local tax return filing, vehicle registration, driver's license, social relationship, and receipt of services.

## REPORTER'S COMMENT

The 2017 amendment incorporates the definition of 'home state' (9) from the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act adopted in modified form in South Carolina and included in Sections 62-5-700 through 716 and was derived from, but differs in a couple of respects from, the definition of the same term in Section 102 of the Uniform Child Custody Jurisdiction and Enforcement Act (1997). First, unlike the definition in the UCCJEA, the definition clarifies that actual physical presence is necessary. The UCCJEA definition instead focuses on where the child has 'lived' for the prior six months. Basing the test on where someone has 'lived' may imply that the term 'home state' is similar to the concept of domicile. Domicile, in an adult guardianship context, is a vague concept that can easily lead to claims of jurisdiction by courts in more than one state. Second, under the UCCJEA, home state jurisdiction continues for six months following physical removal from the state and the state has ceased to be the actual home. Under this Act, the six-month tail is incorporated directly into the definition of home state. The place where the alleged incapacitated individual was last physically present for six months continues as the home state for six months following physical removal from the state. This modification of the UCCJEA definition eliminates the need to refer to the six-month tail each time home state jurisdiction is mentioned in the Act.

The definition of 'significant-connection state' (17) is also from the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act adopted in modified form in South Carolina and included in Sections 62-5-700 through 716 and was similar to Section 201(a)(2) of the Uniform Child Custody Jurisdiction and Enforcement Act (1997). However, this definition adds a list of factors relevant to adult guardianship and protective proceedings to aid the court in deciding whether a particular place is a significant-connection state. Under Section 301(e)(1), the significant connection factors listed in the definition are to be taken into account in determining whether a conservatorship may be transferred to another state.

Section 62-5-703. The court may treat a foreign country as if it were a state for the purpose of applying this part.

Section 62-5-704. (A) The court may communicate with a court in another state concerning a proceeding arising pursuant to this article. The court shall allow the parties to participate in a discussion between courts on the merits of a proceeding. Except as otherwise provided in subsection (B), the court shall make a record of the communication. When a discussion on the merits of a proceeding between courts is held, the record must show that the parties were given an opportunity to participate, must summarize the issues discussed, and must list the participants to the discussion. In all other matters except as provided in subsection (B), the record may be limited to the fact that the communication occurred.

(B) Courts may communicate concerning schedules, calendars, court records, and other administrative matters without making a record. A court may allow the parties to a proceeding to participate in any communications held pursuant to this subsection.

Section 62-5-705. (A) In a guardianship or protective proceeding in this State, the court may request the appropriate court of another state to do any of the following:

- (1) hold an evidentiary hearing;
- (2) order a person in that state to produce evidence or give testimony pursuant to procedures of that state;
- (3) order that an evaluation or assessment be made of the alleged incapacitated individual;
- (4) order an appropriate investigation of a person involved in a proceeding;
- (5) forward to the court a certified copy of the transcript or other record of a hearing pursuant to item (1) or another proceeding, evidence otherwise produced pursuant to item (2), and an evaluation or assessment prepared in compliance with an order pursuant to item (3) or (4);
- (6) issue an order necessary to assure the appearance in the proceeding of a person whose presence is necessary for the court to make a determination, including the alleged incapacitated individual or the ward or protected person; and
- (7) issue an order authorizing the release of medical, financial, criminal, or other relevant information in that state, including protected health information as defined in 45 C.F.R. Section 164.504.

(B) If a court of another state in which a guardianship or protective proceeding is pending requests assistance of the kind provided in



subsection (A), the court has jurisdiction for the limited purpose of granting the request or making reasonable efforts to comply with the request.

Section 62-5-706. (A) In a guardianship or protective proceeding, in addition to other procedures that may be available, testimony of a witness who is located in another state may be offered by deposition or other means allowable in this State for testimony taken in another state. The court on its own motion may order that the testimony of a witness be taken in another state and may prescribe the manner in which and the terms upon which the testimony is to be taken.

(B) In a guardianship or protective proceeding, a court in this State may permit a witness located in another state to be deposed or to testify by telephone or audiovisual or other electronic means. The court shall cooperate with the court of the other state in designating an appropriate location for the deposition or testimony.

(C) Documentary evidence transmitted from another state to a court of this State by technological means that does not produce an original writing may not be excluded from evidence on an objection based on the means of transmission.

Section 62-5-707. The court has jurisdiction to appoint a guardian or issue a protective order for an alleged incapacitated individual if:

(A) this State is the alleged incapacitated individual's home state;

(B) on the date the petition is filed, this State is a significant-connection state; and

(1) the alleged incapacitated individual does not have a home state or a court of the alleged incapacitated individual's home state has declined to exercise jurisdiction because this State is a more appropriate forum; or

(2) the alleged incapacitated individual has a home state, a petition for an appointment or order is not pending in a court of that state or another significant-connection state and, before the court makes the appointment or issues the order:

(a) a petition for an appointment or order is not filed in the alleged incapacitated individual's home state;

(b) an objection to the court's jurisdiction is not filed by a person required to be notified of the proceeding; and

(c) the court concludes that it is an appropriate forum pursuant to the factors provided in Section 62-5-710(C);

(C) this State does not have jurisdiction pursuant to either subsections (A) or (B), the alleged incapacitated individual's home state

and all significant-connection states have declined to exercise jurisdiction because this State is the more appropriate forum, and jurisdiction in this State is consistent with the constitutions of this State and the United States; or

(D) the requirements for special jurisdiction pursuant to Section 62-5-708 are met.

Section 62-5-708. (A) The court lacking jurisdiction pursuant to Sections 62-5-707 (A) through (C) has special jurisdiction to do any of the following:

(1) appoint a guardian in an emergency pursuant to this article for a term not exceeding ninety days for an alleged incapacitated individual who is physically present in this State;

(2) issue a protective order with respect to real or tangible personal property located in this State; or

(3) appoint a guardian or conservator for an incapacitated individual or protected person for whom a provisional order to transfer the proceeding from another state has been issued pursuant to procedures similar to Section 62-5-714.

(B) If a petition for the appointment of a guardian in an emergency is brought in this State pursuant to this article and this State was not the alleged incapacitated individual's home state on the date the petition was filed, the court shall dismiss the proceeding at the request of the court of the home state, if any, whether dismissal is requested before or after the emergency appointment.

Section 62-5-709. Except as otherwise provided in Section 62-5-708, a court that has appointed a guardian or issued a protective order consistent with this article has exclusive and continuing jurisdiction over the proceeding until it is terminated by the court or the appointment or order has expired by its own terms.

Section 62-5-710. (A) The court having jurisdiction pursuant to Section 62-5-707 to appoint a guardian or issue a protective order may decline to exercise its jurisdiction if it determines at any time that a court of another state is a more appropriate forum.

(B) If the court declines to exercise its jurisdiction pursuant to subsection (A), it either shall dismiss or stay the proceeding. The court may impose any condition the court considers just and proper, including the condition that a petition for the appointment of a guardian or issuance of a protective order be filed promptly in another state.

(C) In determining whether it is an appropriate forum, the court shall consider all relevant factors, including:

- (1) the expressed preference of the alleged incapacitated individual;
- (2) whether abuse, neglect, or exploitation of the alleged incapacitated individual has occurred or is likely to occur and which state could best protect the alleged incapacitated individual from the abuse, neglect, or exploitation;
- (3) the length of time the alleged incapacitated individual was physically present in or was a legal resident of this or another state;
- (4) the distance of the alleged incapacitated individual from the court in each state;
- (5) the financial circumstances of the alleged incapacitated individual's estate;
- (6) the nature and location of the evidence;
- (7) the ability of the court in each state to decide the issue expeditiously and the procedures necessary to present evidence;
- (8) the familiarity of the court of each state with the facts and issues in the proceeding; and
- (9) if an appointment is made, the court's ability to monitor the conduct of the guardian or conservator.

Section 62-5-711. (A) If at any time the court determines that it acquired jurisdiction to appoint a guardian or issue a protective order because of unjustifiable conduct, the court may:

- (1) decline to exercise jurisdiction;
- (2) exercise jurisdiction for the limited purpose of fashioning an appropriate remedy to ensure the health, safety, and welfare of the alleged incapacitated individual or the protection of the alleged incapacitated individual's property or prevent a repetition of the unjustifiable conduct, including staying the proceeding until a petition for the appointment of a guardian or issuance of a protective order is filed in a court of another state having jurisdiction; or
- (3) continue to exercise jurisdiction after considering:
  - (a) the extent to which the alleged incapacitated individual and all persons required to be notified of the proceedings have acquiesced in the exercise of the court's jurisdiction;
  - (b) whether it is a more appropriate forum than the court of any other state pursuant to the factors provided in Section 62-5-710(C); and
  - (c) whether the court of any other state would have jurisdiction under factual circumstances in substantial conformity with the jurisdictional standards of Section 62-5-708.

(B) If the court determines that it acquired jurisdiction to appoint a guardian or issue a protective order because a party seeking to invoke its jurisdiction engaged in unjustifiable conduct, it may assess against that party necessary and reasonable expenses, including attorney's fees, investigative fees, court costs, communication expenses, witness fees and expenses, and travel expenses. The court may not assess fees, costs, or expenses of any kind against this State or a governmental subdivision, agency, or instrumentality of this State unless authorized by law other than this article.

Section 62-5-712. If a petition for the appointment of a guardian or issuance of a protective order is brought in this State and this State was not the alleged incapacitated individual's home state on the date the petition was filed, in addition to complying with the notice requirements of this State, notice of the petition must be given to those persons who would be entitled to notice of the petition if a proceeding were brought in the alleged incapacitated individual's home state. The notice must be given in the same manner as notice is required to be given in this State.

Section 62-5-713. Except for a petition for the appointment of a guardian in an emergency or issuance of a protective order limited to property located in this State pursuant to Section 62-5-708(A)(1) or (2), if a petition for the appointment of a guardian or issuance of a protective order is filed in this State and in another state and neither petition has been dismissed or withdrawn, the following rules apply:

(A) if the court has jurisdiction pursuant to Section 62-5-707, it may proceed with the case unless a court in another state acquires jurisdiction under provisions similar to Section 62-5-707 before the appointment or issuance of the order; or

(B) if the court does not have jurisdiction pursuant to Section 62-5-707, whether at the time the petition is filed or at any time before the appointment or issuance of the order, the court shall stay the proceeding and communicate with the court in the other state. If the court in the other state has jurisdiction, the court in this State shall dismiss the petition unless the court in the other state determines that the court in this State is a more appropriate forum.

Section 62-5-714. (A) A guardian or conservator appointed in this State may petition the court to transfer the guardianship or conservatorship to another state.

(B) Notice of a petition pursuant to subsection (A) must be given to the persons that would be entitled to notice of a petition in this State for the appointment of a guardian or conservator.

(C) On the court's own motion or on request of the guardian or conservator, the ward or protected person, or other person required to be notified of the petition, the court shall hold a hearing on a petition filed pursuant to subsection (A), except that a hearing must not be required if a consent order is signed by all parties who have pled, defended, or otherwise participated in the proceeding, as provided by the South Carolina Rules of Civil Procedure.

(D) The court shall issue an order provisionally granting a petition to transfer a guardianship and shall direct the guardian to petition for guardianship in the other state if the court is satisfied that the guardianship will be accepted by the court in the other state and the court finds that:

(1) the ward is physically present in or is reasonably expected to move permanently to the other state;

(2) an objection to the transfer has not been made or, if an objection has been made, the objector has not established that the transfer would be contrary to the interests of the ward; and

(3) plans for care and services for the ward in the other state are reasonable and sufficient.

(E) The court shall issue a provisional order granting a petition to transfer a conservatorship and shall direct the conservator to petition for conservatorship in the other state if the court is satisfied that the conservatorship will be accepted by the court of the other state and the court finds that:

(1) the protected person is physically present in or is reasonably expected to move permanently to the other state, or the protected person has a significant connection to the other state considering the factors provided in Section 62-5-707;

(2) an objection to the transfer has not been made or, if an objection has been made, the objector has not established that the transfer would be contrary to the interests of the protected person; and

(3) adequate arrangements will be made for management of the protected person's property.

(F) The court shall issue a final order confirming the transfer and terminating the guardianship or conservatorship upon its receipt of:

(1) a provisional order accepting the proceeding from the court to which the proceeding is to be transferred which is issued under provisions similar to Section 62-5-715; and

(2) the documents required to terminate a guardianship or conservatorship in this State.

Section 62-5-715. (A) To confirm transfer of a guardianship or conservatorship to this State under provisions similar to Section 62-5-714, the guardian or conservator must petition the court in this State to accept the guardianship or conservatorship. The petition must include a certified copy of the other state's provisional order of transfer.

(B) Notice of a petition pursuant to subsection (A) must be given to those persons that would be entitled to notice if the petition were a petition for the appointment of a guardian or issuance of a protective order in both the transferring state and this State. The notice must be given in the same manner as notice is required to be given in this State.

(C) On the court's own motion or on request of the guardian or conservator, the ward or protected person, or other person required to be notified of the proceeding, the court shall hold a hearing on a petition filed pursuant to subsection (A), except that a hearing must not be required if a consent order is signed by all parties who have pled, defended, or otherwise participated in the proceeding, as provided by the South Carolina Rules of Civil Procedure.

(D) The court shall issue an order provisionally granting a petition filed pursuant to subsection (A) unless:

(1) an objection is made and the objector establishes that transfer of the proceeding would be contrary to the interests of the ward or protected person; or

(2) the guardian or conservator is ineligible for appointment in this State.

(E) The court shall issue a final order accepting the proceeding and appointing the guardian or conservator as guardian or conservator in this State upon its receipt of a final order from the court from which the proceeding is being transferred, when that final order is issued pursuant to provisions similar to Section 62-5-714 transferring the proceeding to this State.

(F) Not later than ninety days after issuance of a final order accepting transfer of a guardianship or conservatorship, the court shall determine whether the guardianship or conservatorship needs to be modified to conform to the laws of this State.

(G) In granting a petition pursuant to this section, the court shall recognize a guardianship or conservatorship order from the other state, including the determination of the ward or protected person's incapacity and the appointment of the guardian or conservator.

(H) The denial by the court of a petition to accept a guardianship or conservatorship transferred from another state does not affect the ability of the guardian or conservator to seek appointment as guardian or conservator in this State pursuant to another provision of this article if the court has jurisdiction to make an appointment other than by reason of the provisional order of transfer.

#### REPORTER'S COMMENTS

The language in this section was amended in 2017 to include language that creates the option of not having a hearing in the matter of the transfer of a guardianship and/or conservatorship case from another state. Prior to the 2017 amendments, there was no such option, and this change was written to make Section 62-5-715(C) consistent with Section 62-5-714(C).

Section 62-5-716. (A) If a guardian has been appointed in another state and a petition for the appointment of a guardian is not pending in this State, the guardian appointed in the other state, after giving notice to the appointing court of an intent to register, may register the guardianship order in this State by filing as a foreign judgment in the court, in any appropriate county of this State, certified copies of the order and letters of office. The court shall treat this as the filing of authenticated or certified records and shall charge the fees set forth in Section 8-21-770. The court will then issue a certificate of registration. The guardian shall file the certificate, along with a copy of his fiduciary letters of office in county real estate records.

(B) If a conservator has been appointed in another state and a petition for a protective order is not pending in this State, the conservator appointed in the other state, after giving notice to the appointing court of an intent to register, may register the protective order in this State by filing as a foreign judgment in the Probate Court, in any county in which property belonging to the protected person is located, certified copies of the order and letters of office and of any bond. The court shall treat this as the filing of authenticated or certified records and shall charge the fees set forth in Section 8-21-770 for the filing of such documents. The court will then issue a certificate of registration. The conservator shall file the certificate, along with a copy of the fiduciary letters in the county real estate records.

(C)(1) Upon registration of a guardianship or protective order from another state, the guardian or conservator may exercise in this State all powers authorized in the order of appointment except as prohibited

under the laws of this State, including maintaining actions and proceedings in this State and, if the guardian or conservator is not a resident of this State, subject to any conditions imposed upon nonresident parties.

(2) A probate court of this State may grant any relief available pursuant to the provisions of this article and other laws of this State to enforce a registered order.

#### REPORTER'S COMMENTS

The purpose of this section is to describe the process for registration of orders from another state and the powers of the guardian or conservator in this State. The 2017 amendment adds language that provides direction to the court stating that the filing of the guardian or conservatorship order is to be treated the same as the filing of an authenticated or certified record. The guardian or conservator pays the required fee, and he is required to file the certificate issued by the court along with a copy of his fiduciary letters of office in the county office that keeps all real estate records. Prior to the 2017 amendments, the language did not provide enough clarity regarding these procedures and what powers the guardian or conservator could exercise in this State.”

#### **Time effective**

SECTION 6. (A) This act takes effect on January 1, 2019.

(B) Except as otherwise provided in this act, on the effective date of this act:

(1) this act applies to any conservatorships, guardianships, or protective orders for minors or persons under a disability created before, on, or after its effective date;

(2) this act applies to all judicial proceedings concerning conservatorships, guardianships, or protective orders for minors or persons under a disability commenced on or after its effective date;

(3) this act applies to judicial proceedings concerning conservatorships, guardianships, and protective orders for minors or persons under a disability commenced before its effective date unless the court finds that application of a particular provision of this act would substantially interfere with the effective conduct of the judicial proceedings or prejudice the rights of the parties, in which case that particular provision of this act does not apply and the superseded law applies;



(4) subject to item (B)(5) and subsection (C) of this SECTION, any rule of construction or presumption provided in this act applies to governing instruments executed before the effective date of this act unless there is a clear indication of a contrary intent in the terms of the governing instrument; and

(5) an act done and any right acquired or accrued before the effective date of the act is not affected by this act.

(C) If a right is acquired, extinguished, or barred upon the expiration of a prescribed period that has commenced to run under any other statute before the effective date of the act, that statute continues to apply to the right even if it has been repealed or suspended.

Ratified the 4<sup>th</sup> day of May, 2017.

Approved the 9<sup>th</sup> day of May, 2017.

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No. 88

(R79, S443)

**AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTIONS 50-11-700, 50-11-705, 50-11-715, AND 50-11-717 SO AS TO PROVIDE DEFINITIONS FOR CERTAIN TERMS RELATING TO NIGHT HUNTING OF CERTAIN WILDLIFE, TO PROVIDE PENALTIES FOR VIOLATING THE PROVISIONS THAT RESTRICT NIGHT HUNTING OF CERTAIN WILDLIFE, TO PROVIDE FOR THE LAWFUL NIGHT HUNTING OF CERTAIN WILDLIFE, AND TO PROVIDE FOR THE USE OF ARTIFICIAL LIGHTS FOR THE PURPOSE OF OBSERVING OR HARASSING WILDLIFE UNDER CERTAIN CIRCUMSTANCES; TO AMEND SECTION 50-11-710, AS AMENDED, RELATING TO NIGHT HUNTING OF CERTAIN WILDLIFE, SO AS TO PROVIDE THAT IT IS UNLAWFUL TO NIGHT HUNT RACCOONS, OPOSSUMS, FOXES, MINKS, OR SKUNKS UNDER CERTAIN CIRCUMSTANCES, TO REVISE THE PENALTY PROVISIONS, AND TO DELETE THE PROVISIONS RELATING TO NIGHT HUNTING OF FERAL HOGS, COYOTES, AND ARMADILLOS, A TERM AND ITS DEFINITIONS, AND THE USE OF ARTIFICIAL LIGHTS AT NIGHT; TO AMEND SECTIONS**

**50-11-740, 50-11-745, AND 50-9-1120, ALL AS AMENDED, RELATING TO THE CONFISCATION AND RELEASE OF CERTAIN PROPERTY USED FOR HUNTING, AND THE POINT SYSTEM USED TO ASSESS HUNTING VIOLATIONS, SO AS TO ADD TURKEY TO THE LIST OF ANIMALS COVERED BY THE PROVISIONS RELATING TO THE UNLAWFUL HUNTING OF WILDLIFE; AND TO REPEAL SECTIONS 50-11-708 AND 50-11-720 RELATING TO THE USE OF ARTIFICIAL LIGHTS TO OBSERVE OR HARASS WILDLIFE AND PENALTIES ASSOCIATED WITH NIGHT HUNTING OF DEER AND BEAR.**

Be it enacted by the General Assembly of the State of South Carolina:

**Night hunting of wildlife**

SECTION 1. Article 4, Chapter 11, Title 50 of the 1976 Code is amended by adding:

“Section 50-11-700. For purposes of this article:

(1) ‘Night’ means the period of time between one hour after official sundown of a day and one hour before official sunrise of the following day.

(2) ‘Night hunting’ means hunting during the period of time between one hour after official sundown of a day and one hour before official sunrise of the following day.

(3) ‘Registered property’ means property annually registered as prescribed by the department for night hunting feral hogs, coyotes, or armadillos pursuant to Section 50-11-715.

Section 50-11-705. (A) Except as otherwise provided in this article, night hunting in this State is unlawful.

(B) A person who violates this section by night hunting for any animal, except for deer, bear, turkey, or an animal listed in Section 50-11-710 or 50-11-715, upon conviction, must:

(1) for a first offense, be fined not more than five hundred dollars, be imprisoned for not more than thirty days, or both;

(2) for a second offense within two years from the date of conviction for the first offense, be fined not more than one thousand dollars, be imprisoned as provided for a first offense, or both; and

(3) for a third or subsequent offense within two years of the date of conviction for the last previous offense, be fined not more than one

thousand five hundred dollars, be imprisoned as provided for a first offense, or both.

(C) A person who violates this section by night hunting for deer, bear, or turkey on property not registered with the department for night hunting feral hogs, coyotes, or armadillos, upon conviction, must:

(1) for a first offense, be fined not less than five hundred dollars nor more than two thousand five hundred dollars, be imprisoned for not more than one year, or both;

(2) for a second offense within two years from the date of conviction for the first offense, be fined not less than five hundred dollars nor more than two thousand five hundred dollars, be imprisoned as provided for a first offense, or both; and

(3) for a third or subsequent offense within two years of the date of conviction for the last previous offense, be fined not less than one thousand dollars nor more than three thousand dollars, be imprisoned as provided for a first offense, or both.

(D) A person who violates this section by night hunting for deer, bear, or turkey on property registered with the department for night hunting feral hogs, coyotes, or armadillos, upon conviction, must:

(1) for a first offense, be fined not less than five hundred dollars nor more than two thousand five hundred dollars, be imprisoned for not more than one year, or both;

(2) for a second offense within two years from the date of conviction for the first offense, be fined not less than one thousand dollars nor more than three thousand five hundred dollars, be imprisoned as provided for a first offense, or both; and

(3) for a third or subsequent offense within two years of the date of conviction for the last previous offense, be fined not less than two thousand five hundred dollars nor more than five thousand dollars, be imprisoned as provided for a first offense, or both.

(E) The display or use of artificial light at night on property not registered with the department for night hunting feral hogs, coyotes, or armadillos, in a manner capable of disclosing the presence of deer, bear, or turkey, together with the possession of or with immediate access to a centerfire rifle and ammunition larger than a twenty-two caliber rimfire, or a shotgun and ammunition larger than shot size number four, shall constitute prima facie evidence of night hunting for deer, bear, or turkey.

(F) Nothing in this article prohibits a person from acting in accordance with the conditions contained in a depredation permit issued by the department pursuant to Section 50-11-2570.

Section 50-11-715. (A) It is unlawful to night hunt for feral hogs, coyotes, or armadillos in violation of the provisions of this section.

(B)(1) Feral hogs, coyotes, and armadillos may be hunted at night on registered property on which a person has a lawful right to hunt:

(a) with any legal firearm, bow and arrow, or crossbow; and

(b) with or without the aid of bait, electronic calls, artificial light, or night vision devices.

(2) It is unlawful to:

(a) hunt feral hogs, coyotes, or armadillos at night with a firearm within three hundred yards of a residence without the permission of the occupant. The provisions of this subsection do not apply to a landowner hunting on his own land or a person taking feral hogs, coyotes, or armadillos pursuant to a department depredation permit; or

(b) shoot or attempt to shoot a feral hog, coyote, or armadillo, at night, from, on, or across any public paved road.

(C) Persons who have been convicted of night hunting for deer, bear, or turkey during the previous five years are not eligible to participate in night hunting for feral hogs, coyotes, or armadillos under the provisions of this section.

(D) A person who violates this section, upon conviction, must:

(1) for a first offense, be fined not more than five hundred dollars, be imprisoned for not more than thirty days, or both;

(2) for a second offense within two years from the date of conviction for the first offense, be fined not more than one thousand dollars nor less than four hundred dollars, be imprisoned as provided for a first offense, or both; and

(3) for a third or subsequent offense within two years of the date of conviction for the last previous offense, be fined not more than one thousand five hundred dollars nor less than five hundred dollars, be imprisoned as provided for a first offense, or both.

(E) In addition to any other penalty, any person convicted for a second or subsequent offense under this section within three years of the date of conviction for a first offense may have his privilege to hunt in this State suspended for a period of two years. No hunting license may be issued to an individual while his privilege is suspended, and any license mistakenly issued is invalid.

(F) In order to assess the night hunting program, the person registering the property must report to the department the number of feral hogs, coyotes, and armadillos taken under the provisions of this section within thirty days following the end of the twelve-month registration period, or prior to registering the property again. Properties for which

reports have not been submitted will not be registered again until such time that reports are submitted.

Section 50-11-717. (A) The use of artificial lights for the purpose of observing or harassing wildlife is unlawful, except that a property owner, or person with permission from the property owner, may use artificial lights to observe wildlife prior to 11:00 p.m. This section does not prohibit:

- (1) a property owner from using artificial lights for the purpose of protecting the property;
- (2) a person or group, with permission of the property owner, from observing wildlife with the use of artificial lights, while engaged in research or documentary filming;
- (3) a person from using artificial lights to night hunt pursuant to this article; or
- (4) a person from using remote trail monitors or cameras on a property.

(B) A person who violates this section, upon conviction, must be fined not more than one hundred dollars or be imprisoned for not more than thirty days.”

### **Night hunting of wildlife**

SECTION 2. Section 50-11-710 of the 1976 Code, as last amended by Act 53 of 2015, is further amended to read:

“Section 50-11-710. (A) It is unlawful to night hunt for raccoons, opossums, foxes, minks, or skunks in violation of the provisions of this section.

(B) Raccoons, opossums, foxes, minks, and skunks may be hunted at night on property on which a person has a lawful right to hunt; however, the animals may not be hunted with artificial lights except when treed or cornered with dogs, and may not be hunted with buckshot or any shot larger than a number four, or any rifle ammunition larger than a twenty-two caliber rimfire.

(C) A person who violates this section, upon conviction, must:

- (1) for a first offense, be fined not more than five hundred dollars, be imprisoned for not more than thirty days, or both;
- (2) for a second offense within two years from the date of conviction for the first offense, be fined not more than one thousand dollars, be imprisoned not more than thirty days, or both; and

(3) for a third or subsequent offense within two years of the date of conviction for the last previous offense, be fined not more than one thousand five hundred dollars, be imprisoned for not more than thirty days, or both.

(D) In addition to any other penalty, any person convicted for a second or subsequent offense under this section within three years of the date of conviction for a first offense shall have his privilege to hunt in this State suspended for a period of one year. A hunting license may not be issued to an individual while his privilege is suspended, and any license mistakenly issued is invalid.”

### **Confiscation of property**

SECTION 3. Section 50-11-740 of the 1976 Code, as last amended by Act 54 of 2013, is further amended to read:

“Section 50-11-740. (A) Every vehicle, boat, trailer, other means of conveyance, animal, firearm, or device used in the hunting of deer, bear, or turkey at night is forfeited to the State and must be seized by any peace officer who shall forthwith deliver it to the department.

(B) ‘Hunting’ as used in this section in reference to a vehicle, boat, or other means of conveyance includes the transportation of a hunter to or from the place of hunting or the transportation of the carcass, or any part of the carcass, of a deer, bear, or turkey which has been unlawfully killed at night.

(C)(1) For purposes of this section, a conviction for unlawfully hunting deer, bear, or turkey at night is conclusive as against any owner of the above mentioned property.

(2) In all other instances, forfeiture must be accomplished by the initiation by the State of an action in the circuit court in the county in which the property was seized giving notice to owners of record and lienholders of record or other persons having claimed an interest in the property subject to forfeiture and an opportunity to appear and show, if they can, why the property should not be forfeited and disposed of as provided for by this section. Failure of any person claiming an interest in the property to appear at the above proceeding after having been given notice of the proceeding constitutes a waiver of his claim and the property must be immediately forfeited to the State.

(3) Notice of the above proceedings must be accomplished by:

(a) personal service of the owner of record or lienholder of record by certified copy of the petition or notice of hearing; or

(b) in the case of property for which there is no owner or lienholder of record, publication of notice in a newspaper of local circulation in the county where the property was seized for at least two successive weeks before the hearing.

(D) The department shall sell any confiscated device at public auction for cash to the highest bidder in front of the county courthouse in the county where it is confiscated, after having given ten days' public notice of the sale by posting advertisement thereof on the door or bulletin board of the county courthouse or by publishing the advertisement at least once in a newspaper of general circulation in the county.

(E)(1) If an individual is apprehended for a first offense and the device is of greater value than two thousand five hundred dollars, the owner may at any time before sale redeem it by paying to the department the sum of two thousand five hundred dollars. When the device is of lesser value than two thousand five hundred dollars, the owner may at any time before sale redeem it by paying to the department the retail market value.

(2) If an individual is apprehended for a second offense and the device is of greater value than five thousand dollars, the owner may, at any time before sale, redeem it by paying to the department the sum of five thousand dollars. When the device is of lesser value than five thousand dollars, the owner may, at any time before sale, redeem it by paying to the department the retail market value.

(3) If an individual is apprehended for a third or subsequent offense, the device must be forfeited to the State.

(F) Upon sale or redemption of a confiscated device, the department shall pay over the net proceeds, after payment of any proper costs and expenses of the seizure, advertisement, and sale, including any proper expense incurred for the storage of the confiscated device, to the State Treasurer for deposit in the County Game and Fish Fund.”

### **Release of property**

SECTION 4. Section 50-11-745(A) of the 1976 Code, as last amended by Act 54 of 2013, is further amended to read:

(A) Notwithstanding another provision of law, the Department of Natural Resources may administratively release any vehicle, boat, trailer, other means of conveyance, animal, firearm, or device confiscated from a person charged with hunting of deer, bear, or turkey at night to an innocent owner or lienholder of the property.”

**Point system**

SECTION 5. Section 50-9-1120(2)(b) of the 1976 Code is amended to read:

“(b) night hunting deer, bear, or turkey: 18.”

**Repeal**

SECTION 6. Sections 50-11-708 and 50-11-720 of the 1976 Code are repealed.

**Time effective**

SECTION 7. This act takes effect upon approval by the Governor.

Ratified the 15<sup>th</sup> day of May, 2017.

Approved the 19<sup>th</sup> day of May, 2017.

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**No. 89**

(R99, H3247)

**AN ACT TO AMEND SECTION 56-1-10, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO TERMS AND THEIR DEFINITIONS REGARDING THE ISSUANCE OF DRIVERS' LICENSES, SO AS TO REVISE THE DEFINITION OF CERTAIN TERMS AND TO ADD THE TERMS "MOPED", "DAYLIGHT HOURS", AND "VEHICLE" AND THEIR DEFINITIONS; TO AMEND SECTION 56-1-30, RELATING TO PERSONS EXEMPT FROM OBTAINING A DRIVER'S LICENSE, SO AS TO DELETE THE TERM "ARTICLE" AND REPLACE IT WITH THE TERM "CHAPTER"; TO AMEND SECTION 56-1-50, RELATING TO THE ISSUANCE OF A BEGINNER'S PERMIT, SO AS TO DELETE THE PROVISIONS THAT ALLOW A PERMIT HOLDER TO OPERATE A MOPED AND REVISE THE TIME OF DAY AND CONDITIONS UPON WHICH A PERMITTEE MAY OPERATE A MOTORCYCLE, AND TO DELETE AN**



**OBSOLETE PROVISION; TO AMEND SECTION 56-1-175, RELATING TO THE ISSUANCE OF A CONDITIONAL DRIVER'S LICENSE, SO AS TO DELETE THE PROVISION THAT ALLOWS A LICENSEE TO OPERATE A MOTOR SCOOTER OR LIGHT MOTOR-DRIVEN CYCLE, THE PROVISION THAT DEFINES THE TERM "DAYLIGHT HOURS", AND TO PROVIDE THE LOCATION THAT AN ACCOMPANYING DRIVER MUST BE SEATED WHEN THE LICENSEE IS OPERATING A MOTOR VEHICLE, MOTORCYCLE, OR MOPED; TO AMEND SECTION 56-1-180, RELATING TO THE ISSUANCE OF A SPECIAL RESTRICTED DRIVER'S LICENSE, SO AS TO MAKE A TECHNICAL CHANGE, TO DELETE THE PROVISION THAT ALLOWS A LICENSEE TO OPERATE A MOTOR SCOOTER OR LIGHT MOTOR-DRIVEN CYCLE, TO DELETE THE PROVISION THAT DEFINES THE TERM "DAYLIGHT HOURS", TO PROVIDE THE LOCATION THAT AN ACCOMPANYING DRIVER MUST BE SEATED WHEN THE LICENSEE IS OPERATING A MOTOR VEHICLE, MOTORCYCLE, OR MOPED, AND TO PROVIDE ADDITIONAL LOCATIONS THAT AN UNACCOMPANIED LICENSEE MAY TRAVEL; TO AMEND SECTION 56-1-1710, RELATING TO THE DEFINITION OF THE TERM "MOPED", SO AS TO DELETE THIS PROVISION; TO AMEND SECTION 56-1-1720, RELATING TO THE OPERATION OF A MOPED, SO AS TO REVISE THE FORM OF LICENSURE A PERSON MUST POSSESS TO OPERATE A MOPED, AND TO DELETE THE PROVISION THAT PROHIBITS THE DEPARTMENT OF MOTOR VEHICLES FROM ISSUING A BEGINNER'S PERMIT OR A SPECIAL RESTRICTED LICENSE TO CERTAIN PERSONS CONVICTED OF A MOPED VIOLATION FOR A CERTAIN PERIOD OF TIME; TO AMEND SECTION 56-1-1730, RELATING TO THE ELIGIBILITY TO OBTAIN, SUSPENSION OF, AND REVOCATION OF A MOPED OPERATOR'S LICENSE, SO AS TO MAKE A TECHNICAL CHANGE; TO AMEND SECTION 56-2-2740, RELATING TO MOTOR VEHICLE REGISTRATION AND PROPERTY TAXES, SO AS TO PROVIDE THAT VALIDATION DECALS MUST NOT BE ISSUED TO VEHICLES THAT DO NOT REQUIRE THE PAYMENT OF PROPERTY TAXES; BY ADDING ARTICLE 3 TO CHAPTER 2, TITLE 56 SO AS TO PROVIDE FOR THE REGISTRATION, TITLING, AND LICENSING OF MOPEDS,**

TO PROVIDE PENALTIES FOR A VIOLATION OF THIS ARTICLE, TO REGULATE THE OPERATION OF A MOPED, AND TO REGULATE THE SALE OF A MOPED; BY ADDING ARTICLE 4 TO CHAPTER 2, TITLE 56 SO AS TO PROVIDE A PENALTY FOR A VIOLATION OF CHAPTER 2, TITLE 56; TO AMEND SECTION 56-3-20, RELATING TO CERTAIN TERMS AND THEIR DEFINITIONS REGARDING THE REGISTRATION AND LICENSING OF MOTOR VEHICLES, SO AS TO DELETE CERTAIN TERMS AND THEIR DEFINITIONS; TO AMEND SECTION 56-3-200, RELATING TO THE REGISTRATION OF A VEHICLE, SO AS TO PROVIDE THAT A CERTIFICATE OF TITLE IS NOT REQUIRED TO REGISTER A MOPED; TO AMEND SECTION 56-3-250, RELATING TO THE REGISTRATION AND LICENSING OF A MOTOR VEHICLE ONCE ALL LOCAL PROPERTY TAXES ARE PAID, SO AS TO PROVIDE THAT THIS PROVISION DOES NOT APPLY TO A MOPED, AND TO MAKE A TECHNICAL CHANGE; TO AMEND SECTIONS 56-3-630, AS AMENDED, AND 56-3-760, BOTH RELATING TO VEHICLES, CLASSIFIED AS PRIVATE PASSENGER MOTOR VEHICLES AND THE REGISTRATION FEE FOR CERTAIN VEHICLES, SO AS TO DELETE THE TERM "MOTOR-DRIVEN CYCLE" AND REPLACE IT WITH THE TERM "MOPED", AND TO MAKE A TECHNICAL CHANGE; TO AMEND SECTIONS 56-5-120 AND 56-5-130, RELATING TO THE TERMS "VEHICLE" AND "MOTOR VEHICLE" AND THEIR DEFINITIONS, SO AS TO DELETE BOTH PROVISIONS; TO AMEND SECTION 56-5-140, RELATING TO THE TERM "MOTORCYCLE" AND ITS DEFINITION, SO AS TO DELETE THIS PROVISION; TO AMEND SECTION 56-5-150, RELATING TO THE TERM "MOTOR-DRIVEN CYCLE" AND ITS DEFINITION, SO AS TO DELETE THIS PROVISION; TO AMEND SECTION 56-5-155, RELATING TO THE TERM "MOTORCYCLE THREE-WHEEL VEHICLE" AND ITS DEFINITION, SO AS TO DELETE THIS PROVISION; TO AMEND SECTION 56-5-165, RELATING TO THE TERM "MOPED" AND ITS DEFINITION, SO AS TO DELETE THIS PROVISION; TO AMEND SECTION 56-5-361, RELATING TO THE TERM "PASSENGER CAR" AND ITS DEFINITION, SO AS TO DELETE THE TERM "MOTOR-DRIVEN CYCLES" AND ADD THE TERM "MOPEDS"; TO AMEND SECTION 56-5-410, RELATING TO THE TERM "OWNER" AND ITS DEFINITION, SO AS TO

DELETE THIS PROVISION; TO AMEND SECTION 56-5-1550, RELATING TO THE OPERATION OF A MOTOR-DRIVEN CYCLE, SO AS TO DELETE THIS PROVISION; TO AMEND SECTION 56-5-1555, RELATING TO THE OPERATION OF A MOPED, SO AS TO DELETE THIS PROVISION; TO AMEND SECTION 56-5-4450, RELATING TO DISPLAY OF LIGHTS BY A VEHICLE DURING CERTAIN TIMES OF DAY, SO AS TO DELETE AN OBSOLETE PROVISION AND MAKE A TECHNICAL CHANGE; TO AMEND SECTION 56-9-110, RELATING TO THE APPLICABILITY OF THE MOTOR VEHICLE FINANCIAL RESPONSIBILITY ACT TO CERTAIN ACCIDENTS OR JUDGMENTS, SO AS TO DELETE THIS PROVISION; TO AMEND SECTION 56-15-10, AS AMENDED, RELATING TO CERTAIN TERMS AND THEIR DEFINITIONS REGARDING THE REGULATION OF MOTOR VEHICLE MANUFACTURERS, DISTRIBUTORS, AND DEALERS, SO AS TO REVISE THE DEFINITION OF THE TERM "MOTOR VEHICLE" TO EXCLUDE MOPEDS; TO AMEND SECTION 56-16-10, RELATING TO TERMS AND THEIR DEFINITIONS REGARDING THE REGULATION OF MOTORCYCLE MANUFACTURERS, DISTRIBUTORS, DEALERS, AND WHOLESALERS, SO AS TO REVISE THE DEFINITION OF THE TERM "MOTORCYCLE" AND REVISE THE TYPE OF VEHICLES REGULATED BY THIS CHAPTER; TO AMEND SECTION 56-19-10, AS AMENDED, RELATING TO TERMS AND THEIR DEFINITIONS REGARDING THE PROTECTION OF TITLES TO AND INTERESTS IN MOTOR VEHICLES, SO AS TO DELETE CERTAIN TERMS AND THEIR DEFINITIONS; TO AMEND SECTION 56-19-220, RELATING TO VEHICLES THAT ARE EXEMPTED FROM THE REQUIREMENT TO OBTAIN A CERTIFICATE OF TITLE, SO AS TO MAKE A TECHNICAL CHANGE AND TO ADD MOPEDS TO THE LIST OF EXEMPTED VEHICLES; TO AMEND SECTION 38-77-30, RELATING TO TERMS AND THEIR DEFINITIONS REGARDING AUTOMOBILE INSURANCE, SO AS TO DELETE THE TERMS "MOTOR-DRIVEN CYCLES", "MOTOR SCOOTERS", AND "MOPEDS", AND TO PROVIDE THAT MOPEDS ARE CONSIDERED TO BE MOTOR VEHICLES FOR THE PURPOSE OF CERTAIN MOTOR VEHICLE INSURANCE COVERAGE; TO AMEND SECTION 56-5-2941, AS AMENDED, RELATING TO PERSONS REQUIRED TO INSTALL IGNITION INTERLOCK DEVICES ON THEIR VEHICLES, SO AS TO

**PROVIDE THAT THIS PROVISION DOES NOT APPLY TO MOPEDS; AND TO REPEAL ARTICLE 30, CHAPTER 5, TITLE 56 RELATING TO MOPED REGULATIONS.**

Be it enacted by the General Assembly of the State of South Carolina:

**Definitions**

SECTION 1. Section 56-1-10 of the 1976 Code, as last amended by Act 216 of 2010, is further amended to read:

“Section 56-1-10. For the purpose of this title, unless otherwise indicated, the following words, phrases, and terms are defined as follows:

(1) ‘Driver’ means every person who drives or is in actual physical control of a vehicle.

(2) ‘Operator’ means every person who drives or is in actual physical control of a motor vehicle or who is exercising control over or steering a vehicle being towed by a motor vehicle.

(3) ‘Owner’ means a person, other than a lienholder, having the property interest in or title to a vehicle. The term includes a person entitled to the use and possession of a vehicle subject to a security interest in another person, but excludes a lessee under a lease not intended as security. This term also includes a person to whom a moped is registered if the moped is not titled.

(4) ‘Department’ means the Department of Motor Vehicles when the term refers to the duties, functions, and responsibilities of the former Motor Vehicle Division of the Department of Public Safety and means the Department of Public Safety otherwise and in Section 56-3-840.

(5) ‘State’ means a state, territory, or possession of the United States and the District of Columbia, or the Commonwealth of Puerto Rico.

(6) ‘Highway’ means the entire width between the boundary lines of every way publicly maintained when any part of it is open to the use of the public for purposes of vehicular travel.

(7) ‘Motor vehicle’ means every vehicle which is self-propelled and every vehicle which is propelled by electric power obtained from overhead trolley wires but not operated upon rails.

(8) ‘Motorcycle’ means every motor vehicle having no more than two permanent functional wheels in contact with the ground or trailer and having a saddle for the use of the rider, but excluding a tractor and a moped.

(9) 'Nonresident' means every person who is not a resident of this State.

(10) 'Nonresident's operating privilege' means the privilege conferred upon a nonresident by the laws of this State pertaining to the operation by the person of a motor vehicle, or the use of a vehicle owned by the person, in this State.

(11) 'Conviction' means an unvacated adjudication of guilt, or a determination that a person has violated or failed to comply with the law in a court of original jurisdiction, an unvacated forfeiture of bail or collateral deposited to secure the person's appearance in court, a plea of guilty or nolo contendere accepted by the court, the payment of a fine or court cost, or violation of a condition of release without bail, regardless of whether or not the penalty is rebated, suspended, or probated.

(12) 'Cancellation of driver's license' means the annulment or termination by formal action of the Department of Motor Vehicles of a person's driver's license because of some error or defect in the license or because the licensee is no longer entitled to the license; the cancellation of a license is without prejudice, and application for a new license may be made at any time after the cancellation.

(13) 'Revocation of driver's license' means the termination by formal action of the Department of Motor Vehicles of a person's driver's license or privilege to operate a motor vehicle on the public highways, which privilege to operate is not subject to renewal or restoration, except that an application for a new license may be presented and acted upon by the department.

(14) 'Suspension of driver's license' means the temporary withdrawal by formal action of the Department of Motor Vehicles of a person's driver's license or privilege to operate a motor vehicle on the public highways, which temporary withdrawal shall be as specifically designated.

(15) 'Automotive three-wheel vehicle' means every motor vehicle having no more than three permanent functional wheels in contact with the ground, having a bench seat for the use of the operator, and having an automotive type steering device, but excluding a tractor or motorcycle three-wheel vehicle.

(16) 'Alcohol' means a substance containing any form of alcohol including, but not limited to, ethanol, methanol, propanol, and isopropanol.

(17) 'Alcohol concentration' means:

(a) the number of grams of alcohol for each one hundred milliliters of blood by weight; or

(b) as determined by the South Carolina Law Enforcement Division for other bodily fluids.

(18) 'Motorcycle three-wheel vehicle' means every motor vehicle having no more than three permanent functional wheels in contact with the ground to include motorcycles with detachable side cars, having a saddle type seat for the operator, and having handlebars or a motorcycle type steering device but excluding a tractor or automotive three-wheel vehicle.

(19) 'Low speed vehicle' or 'LSV' means a four-wheeled motor vehicle, other than an all terrain vehicle, whose speed attainable in one mile is more than twenty miles an hour and not more than twenty-five miles an hour on a paved level surface, and whose gross vehicle weight rating (GVWR) is less than three thousand pounds.

(20) 'All terrain vehicle' or 'ATV' means a motor vehicle measuring fifty inches or less in width, designed to travel on three or more wheels and designed primarily for off-road recreational use, but not including farm tractors or equipment, construction equipment, forestry vehicles, or lawn and grounds maintenance vehicles.

(21) 'Operator' or 'driver' means a person who is in actual physical control of a motor vehicle.

(22) 'Person' means every natural person, firm, partnership, trust, company, firm, association, or corporation. Where the term 'person' is used in connection with the registration of a motor vehicle, it includes any corporation, association, partnership, trust, company, firm, or other aggregation of individuals which owns or controls the motor vehicle as actual owner, or for the purpose of sale or for renting, as agent, salesperson, or otherwise.

(23) 'Office of Motor Vehicle Hearings' means the Office of Motor Vehicle Hearings created by Section 1-23-660. The Office of Motor Vehicle Hearings has exclusive jurisdiction to conduct all contested case hearings or administrative hearings arising from department actions.

(24) 'Administrative hearing' means a 'contested case hearing' as defined in Section 1-23-310. It is a hearing conducted pursuant to the South Carolina Administrative Procedures Act.

(25) 'Home jurisdiction' means the jurisdiction which has issued and has the power to suspend or revoke the use of the license or permit to operate a motor vehicle.

(26) 'Moped' means a cycle, defined as a motor vehicle, with or without pedals, to permit propulsion by human power, that travels on not more than three wheels in contact with the ground whether powered by gasoline, electricity, alternative fuel, or a hybrid combination thereof. Based on the engine or fuel source, the moped must be equipped not to

exceed the following limitations: a motor of fifty cubic centimeters; or designed to have an input exceeding 750 watts and no more than 1500 watts. If an internal combustion engine is used, the moped must have a power drive system that functions directly or automatically without clutching or shifting by the operator after the drive system is engaged.

(27) 'Daylight hours' means after six o'clock a.m. and no later than six o'clock p.m. However, beginning on the day that daylight saving time goes into effect through the day that daylight saving time ends, 'daylight hours' means after six o'clock a.m. and no later than eight o'clock p.m. All other hours are designated as nighttime hours.

(28) 'Vehicle' means every device in, upon, or by which a person or property is or may be transported or drawn upon a highway, except devices moved by human power or used exclusively upon stationary rails or tracks."

### **Drivers' licenses**

SECTION 2. Section 56-1-30 of the 1976 Code is amended to read:

"Section 56-1-30. The following persons are exempt from licenses under this chapter:

(1) Any employee of the United States Government while operating a motor vehicle owned by or leased to the United States Government and being operated on official business, unless the employee is required by the United States Government or the Federal agency by which he is employed to have a state driver's license;

(2) A nonresident who is at least sixteen years of age and who has in his immediate possession a valid operator's or chauffeur's license issued to him in his home state or country may operate a motor vehicle, but a person may not claim nonresidence exemption under this provision who does not maintain a permanent residence address in the state or country of which he holds a valid and current operator's or chauffeur's license at which he regularly receives his mail and which address is on file with the motor vehicle authorities of that state or country; also, a person may not claim nonresidence exemption under this provision who for all other intents and purposes has or may remove his residence into this State;

(3) Any nonresident who is at least eighteen years of age and whose home state or country does not require the licensing of operators may operate a motor vehicle for a period of not more than ninety days in any calendar year, if the motor vehicle is duly registered in the home state or country of the nonresident and a nonresident on active duty in

the Armed Services of the United States who has a valid license issued by his home state and the nonresident's spouse or dependent who has a valid license issued by his home state;

(4) A person operating or driving implements of husbandry temporarily drawn, propelled, or moved upon a highway. Implements of husbandry include, but are not limited to, farm machinery and farm equipment other than a passenger car.

(5) Any person on active duty in the Armed Services of the United States who has in his immediate possession a valid driver's license issued in a foreign country or by the Armed Services of the United States may operate a motor vehicle in this State for a period of not more than ninety days from the date of his return to the United States; and

(6) A citizen of a foreign jurisdiction whose licensing procedure is at least as strict as South Carolina's, as determined by the Department of Motor Vehicles, who is at least eighteen years of age, who is employed in South Carolina, and who has a valid driver's license issued by that jurisdiction may drive in this State for five years if the foreign jurisdiction provides a reciprocal arrangement for South Carolina residents. The provisions of this item also shall apply to the dependents of foreign nationals who qualify under this section."

### **Beginner's permit**

SECTION 3. Section 56-1-50 of the 1976 Code is amended to read:

"Section 56-1-50. (A) A person who is at least fifteen years of age may apply to the department for a beginner's permit. After the applicant has passed successfully all parts of the examination other than the driving test, the department may issue to the applicant a beginner's permit. A beginner's permit entitles the permittee having the permit in his immediate possession to drive a motor vehicle on public highways under the conditions contained in this section for not more than twelve months.

(B) The permit is valid only in the operation of:

(1) vehicles after six o'clock a.m. and not later than midnight. Except as provided in subsection (E), while driving, the permittee must be accompanied by a licensed driver twenty-one years of age or older who has had at least one year of driving experience. A permittee may not drive between midnight and six o'clock a.m. unless accompanied by the permittee's licensed parent or guardian; and

(2) motorcycles.



While driving a motorcycle during nighttime hours, the permittee must be accompanied by a motorcycle-licensed driver twenty-one years of age or older who has had at least one year of driving experience.

(C) The accompanying driver must:

(1) occupy a seat beside the permittee when the permittee is operating a motor vehicle; or

(2) be within a safe viewing distance of the permittee when the permittee is operating a motorcycle or a moped.

(D) A beginner's permit may be renewed or a new permit issued for additional periods of twelve months. However, the department may refuse to renew or issue a new permit where the examining officer has reason to believe the applicant has not made a bona fide effort to pass the required driver's road test or does not appear to the examining officer to have the aptitude to pass the road test. The fee for every beginner's or renewal permit is two dollars and fifty cents, and the permit must bear the full name, date of birth, and residence address and a brief description and color photograph of the permittee and a facsimile of the signature of the permittee or a space upon which the permittee shall write his usual signature with pen and ink immediately upon receipt of the permit. A permit is not valid until it has been signed by the permittee.

(E) The following persons are not required to obtain a beginner's permit to operate a motor vehicle:

(1) a student at least fifteen years of age regularly enrolled in a high school of this State which conducts a driver's training course while the student is participating in the course and when accompanied by a qualified instructor of the course; and

(2) a person fifteen years of age or older enrolled in a driver training course conducted by a driver training school licensed under Chapter 23 of this title. However, this person at all times must be accompanied by an instructor of the school and may drive only an automobile owned or leased by the school which is covered by liability insurance in an amount not less than the minimum required by law.

(F) A person who has never held a form of license evidencing previous driving experience first must be issued a beginner's permit and must hold the permit for at least one hundred eighty days before being eligible for full licensure.

(G) The fees collected pursuant to this section must be credited to the Department of Transportation State Non-Federal Aid Highway Fund."

### **Conditional driver's license**

SECTION 4. Section 56-1-175 of the 1976 Code is amended to read:

“Section 56-1-175. (A) The Department of Motor Vehicles may issue a conditional driver’s license to a person who is at least fifteen years of age and less than sixteen years of age, who has:

- (1) held a beginner’s permit for at least one hundred eighty days;
- (2) passed a driver’s education course as defined in subsection (D);
- (3) completed at least forty hours of driving practice, including at least ten hours of driving practice during darkness, supervised by the person’s licensed parent or guardian;
- (4) passed successfully the road tests or other requirements the department may prescribe; and
- (5) satisfied the school attendance requirement contained in Section 56-1-176.

(B) A conditional driver’s license is valid only in the operation of vehicles during daylight hours. The holder of a conditional license must be accompanied by a licensed adult twenty-one years of age or older after six o’clock p.m. or eight o’clock p.m. during daylight saving time. A conditional driver’s license holder may not drive between midnight and six o’clock a.m. unless accompanied by the holder’s licensed parent or guardian. The accompanying driver must:

- (1) occupy a seat beside the conditional license holder when the conditional license holder is operating a motor vehicle; or
- (2) be within a safe viewing distance of the conditional license holder when the conditional license holder is operating a motorcycle or a moped.

(C) A conditional driver’s license holder may not transport more than two passengers who are under twenty-one years of age unless accompanied by a licensed adult who is twenty-one years of age or older. This restriction does not apply when the conditional driver’s license holder is transporting family members, or students to or from school.

(D) A driver training course, as used in this section, means a driver’s training course administered by a driver’s training school or a private, parochial, or public high school conducted by a person holding a valid driver’s instructor permit contained in Section 56-23-85.

(E) For purposes of issuing a conditional driver’s license pursuant to this section, the department must accept a certificate of completion for a student who attends or is attending an out-of-state high school and passed a qualified driver’s training course or program that is equivalent to an approved course or program in this State. The department must establish procedures for approving qualified driver’s training courses or programs for out-of-state students.”

**Special restricted driver's license**

SECTION 5. Section 56-1-180 of the 1976 Code is amended to read:

“Section 56-1-180. (A) The Department of Motor Vehicles may issue a special restricted driver's license to a person who is at least sixteen years of age and less than seventeen years of age, who has:

- (1) held a beginner's permit for at least one hundred eighty days;
- (2) passed a driver's education course as defined in subsection (F);
- (3) completed at least forty hours of driving practice, including at least ten hours of driving practice during darkness, supervised by the person's licensed parent or guardian;
- (4) passed successfully the road test or other requirements the department may prescribe; and
- (5) satisfied the school attendance requirement contained in Section 56-1-176.

(B) A special restricted driver's license is valid only in the operation vehicles during daylight hours. The holder of a special restricted driver's license must be accompanied by a licensed adult, twenty-one years of age or older after six o'clock p.m. or eight o'clock p.m. during daylight saving time. The holder of a special restricted driver's license may not drive between midnight and six o'clock a.m. unless accompanied by the holder's licensed parent or guardian. The accompanying driver must:

- (1) occupy a seat beside the conditional license holder when the conditional license holder is operating a motor vehicle; or
- (2) be within a safe viewing distance of the conditional license holder when the conditional license holder is operating a motorcycle or a moped.

(C) The restrictions in this section may be modified or waived by the department if the restricted licensee proves to the department's satisfaction that the restriction interferes or substantially interferes with:

- (1) employment or the opportunity for employment;
- (2) travel between the licensee's home and place of employment or school;
- (3) travel between the licensee's home or place of employment and vocational training;
- (4) travel between the licensee's church, church-related and church-sponsored activities; or
- (5) travel between the licensee's parentally approved sports activities.

(D) The waiver or modification of restrictions provided for in subsection (C) must include a statement of the purpose of the waiver or modification executed by the parents or legal guardian of the holder of the restricted license and documents executed by the driver's employment or school official, as is appropriate, evidencing the holder's need for the waiver or modification.

(E) A special restricted license holder may not transport more than two passengers who are under twenty-one years of age unless accompanied by a licensed adult twenty-one years of age or older. This restriction does not apply when the special restricted license holder is transporting family members or students to or from school.

(F) A driver training course, as used in this section, means a driver's training course administered by a driver's training school or a private, parochial, or public high school conducted by a person holding a valid driver's instruction permit contained in Section 56-23-85.

(G) For purposes of issuing a special restricted driver's license pursuant to this section, the department must accept a certificate of completion for a student who attends or is attending an out-of-state high school and passed a qualified driver's training course or program that is equivalent to an approved course or program in this State. The department must establish procedures for approving qualified driver's training courses or programs for out-of-state students."

### **Reserved**

SECTION 6. Section 56-1-1710 of the 1976 Code is amended to read:

"Section 56-1-1710. Reserved."

### **Moped**

SECTION 7. Section 56-1-1720 of the 1976 Code is amended to read:

"Section 56-1-1720. (A) To operate a moped on public highways, a person must possess a valid driver's license issued under Article 1 of this chapter or a valid moped operator's license issued under this article. The department may issue a moped operator's license to a person who is fifteen years of age or older.

(B) A person younger than sixteen years of age with a moped operator's license may operate a moped:

- (1) alone during daylight hours only; and

(2) during nighttime hours when accompanied by a licensed driver twenty-one years of age or older who has had at least one year of driving experience. The accompanying driver must be a passenger or within a safe viewing distance of the operator when the operator is operating a moped.

(C) A person sixteen years of age or older with a moped license may drive a moped alone any time.

(D) A person who operates a moped in violation of the provisions of this section is guilty of a misdemeanor and, upon conviction of a first offense, must be fined not more than one hundred dollars and, upon conviction of a second or subsequent offense, must be fined not more than two hundred dollars.”

### **Moped**

SECTION 8. Section 56-1-1730 of the 1976 Code is amended to read:

“Section 56-1-1730. (A) A person is eligible for a moped operator’s license without regard to his eligibility for or the status of any other driver’s license or permit.

(B) The Department of Motor Vehicles may suspend, revoke, or cancel a moped operator’s license only for violations committed while operating a moped. A moped operator’s license may be suspended, revoked, or canceled in the same manner and upon the same grounds for which any other motor vehicle operator’s license or permit may be suspended, revoked, or canceled.”

### **Validation decals**

SECTION 9. Section 56-2-2740(C) of the 1976 Code is amended to read:

“(C) All validation decals must be issued for a period not to exceed twelve months, except for vehicles which do not require the payment of property taxes.”

### **Moped**

SECTION 10. Chapter 2, Title 56 of the 1976 Code is amended by adding:

## “Article 3

## Mopeds

Section 56-2-3000. A person operating a moped on a public highway at all times must have in his possession a valid moped operator's license or valid driver's license and moped registration.

Section 56-2-3010. (A) A moped operated on a public highway must be registered and licensed with the department in the same fashion as passenger vehicles pursuant to this title.

(B) The department shall establish for mopeds a special size and class of license plates with distinctive numbering and/or lettering so as to be identifiable to law enforcement.

(C) Mopeds are not required to be titled or insured in this State.

(D) Mopeds are exempt from ad valorem property taxes in this State.

(E) If a manufacturer's certificate of origin states the vehicle is a 'motor scooter', 'motor-driven cycle', or any similar term, the definitions of 'motorcycle' and 'moped', as shown in Section 56-1-10, must be used to determine whether the vehicle must be registered as a moped or must be titled and registered as a motorcycle.

Section 56-2-3020. (A) A privately owned and operated moped of a nonresident, otherwise subject to registration and license as provided by this chapter, may be operated within this State without being registered and licensed provided that the moped:

(1) is duly registered or licensed in the state, territory, district, or country of residence of the owner; and

(2) has displayed or issued a valid registration, registration card, license plate or decal, or other indicia satisfactorily evidencing compliance with the requirements of the owner's home jurisdiction.

(B) The moped of a nonresident must be registered and licensed pursuant to this chapter upon the earlier of a nonresident's:

(1) establishment of domicile in this State; or

(2) operation of the moped in this State for an accumulated period exceeding one hundred and eighty days.

Section 56-2-3030. An owner of a moped required to be registered in this State must make application to the department for the registration and licensing of the moped. The application must be made upon the appropriate form furnished by the department. Every application must bear the signature of the owner.

Section 56-2-3040. (A) An application for registration and licensing of a moped must contain:

(1) the name, bona fide residence and mailing address of the owner or business address of the owner if a firm, association or corporation;

(2) a description of the moped including, insofar as this exists with respect to a given moped, the make, model, type of body, serial number or other identifying number, whether the vehicle is new or used, and the date of sale by the manufacturer or seller to the person intending to operate the moped; and

(3) other information that reasonably may be required by the department to enable the department to determine whether the moped is lawfully entitled to registration and licensing.

(B) The application shall be accompanied by a bill of sale and a vehicle registration certificate, manufacturer's certificate of origin, or an affidavit from the applicant certifying that he is the legal and rightful owner of the moped. The documentation provided must list the vehicle specifications, including the total cubic centimeters of the engine or wattage of the engine, as applicable.

Section 56-2-3050. The department, at the request of the owner, may issue a title for the moped in conjunction with the moped registration, provided that the owner makes application for title on the appropriate form and provides the department with a manufacturer's certificate of origin or a prior title. If an owner cannot provide a manufacturer's statement of origin or prior title, the moped may be registered, but not titled.

Section 56-2-3060. (A) A person is guilty of a misdemeanor who:

(1) fraudulently uses or gives a false or fictitious name or address in an application required to be made under this article;

(2) knowingly makes a false statement in an application; or

(3) knowingly conceals a material fact in an application.

(B) A person who operates or an owner who permits the operation of a vehicle registered and licensed under a violation of this section is guilty of a misdemeanor and, upon conviction, must be fined not more than two hundred dollars or imprisoned not more than thirty days.

Section 56-2-3070. (A) A person may not ride upon a moped other than upon or astride a permanent and regular seat attached to the moped. A moped may not be used to carry more persons at one time than the

number for which it is designed and equipped by the manufacturer to carry.

(B) A moped, while traveling along a multilane highway, must be operated in the farthest right lane except when making a left turn or when travel in the farthest right lane is unsafe.

(C) A person under the age of twenty-one may not operate or ride upon a moped unless he wears a protective helmet identical to underage motorcycle helmet requirements provided in Section 56-5-3660.

(D) A person may not operate a moped at a speed in excess of thirty-five miles per hour.

(E) A person may not operate a moped on a public highway that has a speed limit of greater than fifty-five miles per hour. A person operating a moped may cross an intersection at a public highway that has a speed limit of greater than fifty-five miles per hour.

(F) The operator of a moped must have turned on and in operation the operational lights and the headlight at all times while the moped is in operation.

(G) A person who violates the provisions of this section is guilty of a misdemeanor and, upon conviction, must be fined not more than two hundred dollars or imprisoned not more than thirty days.

Section 56-2-3080. (A) It is unlawful for a person in the business of selling, leasing or renting mopeds to sell, lease or rent a moped for use on the public highways of this State without:

- (1) operable pedals, if the moped is equipped with pedals;
- (2) at least one rearview mirror;
- (3) operable headlights and running lights; and
- (4) brake lights which are operable when either brake is deployed.

(B) A person who violates the provisions of this section is guilty of a misdemeanor and, upon conviction, must be fined not more than two hundred dollars or imprisoned not more than thirty days.

Section 56-2-3090. A person selling mopeds shall post, in a conspicuous place in his business, a sign that contains a brief explanation of the provisions of law governing the operation of mopeds, including, but not limited to, age restrictions, maximum speeds, and the definition of a moped.

Section 56-2-3100. A person or entity selling mopeds is not required to obtain a motor vehicle dealer's license."



**Penalties**

SECTION 11. Chapter 2, Title 56 of the 1976 Code is amended by adding:

“Article 4

Penalties

Section 56-2-4000. It is a misdemeanor for any person to violate any of the provisions of this chapter unless such violation is by this chapter or other law of this State declared to be a felony. A person convicted of a misdemeanor for a violation of any of the provisions of this chapter for which another penalty is not provided shall be punished by a fine of not more than one hundred dollars or by imprisonment for not more than thirty days.”

**Definitions**

SECTION 12. Section 56-3-20 of the 1976 Code is amended read:

“Section 56-3-20. For purposes of this chapter, the following words and phrases are defined as follows:

- (1) Reserved.
- (2) Reserved.
- (3) Reserved.
- (4) Reserved.
- (5) ‘Authorized emergency vehicle’ means vehicles of the fire department (fire patrol), police vehicles, and the ambulances and emergency vehicles of municipal departments or public service corporations designated or authorized by the department or the chief of police of an incorporated municipality.
- (6) ‘School bus’ means every bus owned by a public or governmental agency and operated for the transportation of children to or from school or privately owned and operated for the transportation of children to or from school.
- (7) ‘Truck tractor’ means every motor vehicle designed and used primarily for drawing other vehicles and not constructed so as to carry a load other than a part of the weight of the vehicle and load drawn.
- (8) ‘Farm tractor’ means every motor vehicle designed and used primarily as a farm implement for drawing plows, mowing machines, and other implements of husbandry.

(9) 'Road tractor' means every motor vehicle designed and used for drawing other vehicles and not constructed so as to carry a load on it either independently or any part of the weight of a vehicle or load drawn.

(10) 'Truck' means every motor vehicle designed, used, or maintained primarily for the transportation of property.

(11) 'Special mobile equipment' includes every vehicle, with or without motive power, not designed or used primarily for the transportation of persons or pay-load property and incidentally operated or moved over the highways, including farm tractors, road construction and maintenance machinery, ditch-digging apparatus, well-boring apparatus, truck cranes or mobile shovel cranes, and similar vehicles; this enumeration is deemed partial and does not operate to exclude other vehicles which are within the general terms of this definition.

(12) 'Bus' means every motor vehicle designed for carrying more than ten passengers and used for the transportation of persons and every motor vehicle, other than a taxicab, designed and used for the transportation of persons for compensation.

(13) 'Trailer' means every vehicle with or without motive power, other than a pole trailer, designed for carrying persons or property and for being drawn by a motor vehicle and constructed so that no part of its weight rests upon the towing vehicle.

(14) 'Semitrailer' means every vehicle with or without motive power, other than a pole trailer, designed for carrying persons or property and for being drawn by a motor vehicle and constructed so that some part of its weight and that of its load rests upon or is carried by another vehicle.

(15) 'Pole trailer' means every vehicle without motive power designed to be drawn by another vehicle and attached to the towing vehicle by means of a reach or pole or by being boomed or otherwise secured to the towing vehicle and ordinarily used for transporting long or irregularly shaped loads such as poles, pipes, or structural members capable, generally, of sustaining themselves as beams between the supporting connections.

(16) 'Foreign vehicle' means every vehicle of a type required to be registered brought into this State from another state, territory, or country other than in the ordinary course of business by or through a manufacturer or dealer and not registered in this State.

(17) 'Implement of husbandry' means every vehicle which is designed for agricultural purposes and exclusively used by its owner in the conduct of his agricultural operations.

(18) 'Solid tire' means every tire of rubber or other resilient material which does not depend upon compressed air for the support of the load.

(19) 'Gross weight' or 'gross weight vehicle' means the weight of a vehicle without load plus the weight of any load on it.

(20) 'Load capacity' means the maximum weight of the pay load of the property intended to be transported by a vehicle or combination of vehicles, exclusive of the weight of the vehicle or vehicles.

(21) 'Owner' means a person who holds the legal title of a vehicle or, in the event (a) a vehicle is the subject of an agreement for the conditional sale or lease with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee or lessee or (b) a mortgagor of a vehicle is entitled to possession, then the conditional vendee or lessee or mortgagor is deemed the owner for the purpose of this chapter.

(22) Reserved.

(23) 'Dealer' or 'motor vehicle dealer' means both 'dealer' and 'wholesaler' as defined in Chapter 15 of this title.

(24) Reserved.

(25) 'Street' or 'highway' means the entire width between boundary lines of every way publicly maintained when any part of it is open to the use of the public for vehicular travel.

(26) 'Odometer' means an instrument for measuring and recording the actual distance a motor vehicle travels while in operation; it does not include an auxiliary instrument designed to be reset by the operator of the motor vehicle for the purpose of recording the distance traveled on trips.

(27) 'Odometer reading' means actual cumulative distance traveled disclosed on the odometer.

(28) 'Odometer disclosure statement' means a statement, as prescribed by item (4) of Section 56-3-240, certified by the owner of the motor vehicle to the transferee or to the Department of Motor Vehicles as to the odometer reading.

(29) Reserved.

(30) 'Automotive three-wheel vehicle' means every motor vehicle having no more than three permanent functional wheels in contact with the ground, having a bench seat for the use of the operator, and having an automotive type steering device, but excluding a tractor or motorcycle three-wheel vehicle.

(31) Reserved.”

**Motor vehicle registration**

SECTION 13. Section 56-3-200 of the 1976 Code is amended to read:

“Section 56-3-200. Except in the case of a moped or as otherwise provided for in Chapter 19 of this title, the department shall not register or renew the registration of a vehicle unless a certificate of title has been issued by the department to the owner or an application has been delivered by the owner to the department.”

**Motor vehicle registration and licensing**

SECTION 14. Section 56-3-250 of the 1976 Code is amended to read:

“Section 56-3-250. No vehicle shall be registered and licensed by the department unless a signed statement accompanies the application certifying that all county and municipal taxes legally due by the applicant on the vehicle concerned have been paid and if such vehicle is legally subject to being returned by the applicant for county and municipal taxes such return has been made; that the applicant is not delinquent in the payment of any motor vehicle taxes in this State, and that the address and county shown on the application for license is the true legal residence of the applicant. A transfer between members of the same family shall not, for the purpose of this section, be considered a bona fide purchase. Any person falsely certifying as required in this section shall have his driver’s license suspended for a period of six months.

The provisions of this section shall not apply to mopeds or to any citizen of this State on active duty with the Armed Forces of the United States when the vehicle to be registered and licensed is operated for more than six months each year outside the boundaries of this State, nor to any motor vehicle subject to assessment for ad valorem tax purposes by the Department of Revenue.”

**Private passenger motor vehicle**

SECTION 15. Section 56-3-630 of the 1976 Code, as last amended by Act 398 of 2006, is further amended to read:

“Section 56-3-630. The Department of Motor Vehicles shall classify as a private passenger motor vehicle every motor vehicle which is designed, used, and maintained for the transportation of ten or fewer persons and trucks having an empty weight of nine thousand pounds or

less and a gross weight of eleven thousand pounds or less, except a motorcycle, motorcycle three-wheel vehicle, or moped. The department shall classify a three-wheel vehicle by the manufacturer's certificate of origin for the vehicle's initial registration. For subsequent registration, the department shall classify the three-wheel vehicle by its title document. This section does not relieve or negate any applicable fees required under Section 56-3-660."

**Registration fee**

SECTION 16. Section 56-3-760 of the 1976 Code is amended to read:

"Section 56-3-760. For every motorcycle, motorcycle three-wheel vehicle, or moped the biennial registration fee is ten dollars."

**Reserved**

SECTION 17. Section 56-5-120 of the 1976 Code is amended to read:

"Section 56-5-120. Reserved."

**Reserved**

SECTION 18. Section 56-5-130 of the 1976 Code is amended to read:

"Section 56-5-130. Reserved."

**Reserved**

SECTION 19. Section 56-5-140 of the 1976 Code is amended to read:

"Section 56-5-140. Reserved."

**Reserved**

SECTION 20. Section 56-5-150 of the 1976 Code is amended to read:

"Section 56-5-150. Reserved."

**Reserved**

SECTION 21. Section 56-5-155 of the 1976 Code is amended to read:

“Section 56-5-155. Reserved.”

**Reserved**

SECTION 22. Section 56-5-165 of the 1976 Code is amended to read:

“Section 56-5-165. Reserved.”

**Passenger car defined**

SECTION 23. Section 56-5-361 of the 1976 Code is amended to read:

“Section 56-5-361. Every motor vehicle except motorcycles and mopeds, designed for carrying ten passengers or less and used for the transportation of persons is a ‘passenger car’.”

**Reserved**

SECTION 24. Section 56-5-410 of the 1976 Code is amended to read:

“Section 56-5-410. Reserved.”

**Reserved**

SECTION 25. Section 56-5-1550 of the 1976 Code is amended to read:

“Section 56-5-1550. Reserved.”

**Reserved**

SECTION 26. Section 56-5-1555 of the 1976 Code is amended to read:

“Section 56-5-1555. Reserved.”

**Vehicle equipment**

SECTION 27. Section 56-5-4450 of the 1976 Code is amended to read:

“Section 56-5-4450. (A) Every vehicle upon a street or highway within this State shall display lighted lamps and illuminating devices, excluding parking lights, from a half hour after sunset to a half hour before sunrise, and at any other time when windshield wipers are in use as a result of rain, sleet, or snow, or when inclement weather or environmental factors severely reduce the ability to clearly discern persons and vehicles on the street or highway at a distance of five hundred feet ahead as required in this article for different classes of vehicles, subject to exceptions with respect to parked vehicles as provided in this article; provided, however, the provisions of this section requiring use of lights in conjunction with the use of windshield wipers shall not apply to instances when windshield wipers are used intermittently in misting rain, sleet, or snow.

(B) Any person who violates this section is guilty of a misdemeanor and, upon conviction, may be fined up to twenty-five dollars.”

### **Reserved**

SECTION 28. Section 56-9-110 of the 1976 Code is amended to read:

“Section 56-9-110. Reserved.”

### **Motor vehicle defined**

SECTION 29. Section 56-15-10(a) of the 1976 Code is amended to read:

“(a) ‘Motor vehicle’, any motor driven vehicle required to be registered under Section 56-3-110. This definition does not include motorcycles or mopeds.”

### **Motorcycle defined**

SECTION 30. Section 56-16-10(a) of the 1976 Code is amended to read:

“(a) ‘Motorcycle’ is defined in Section 56-1-10. This chapter does not apply to bicycles with helper motors.”

**Definitions**

SECTION 31. Section 56-19-10 of the 1976 Code, as last amended by Act 245 of 2016, is further amended to read:

“Section 56-19-10. For the purposes of this chapter and Chapter 21, Title 16, the following terms are defined as follows:

(1) ‘Authorized emergency vehicle’ means vehicles of the fire department, police vehicles, and the ambulances and emergency vehicles of municipal departments or public service corporations designated or authorized by the chief of police or governing body of a municipality.

(2) ‘Bicycle’ means a device propelled solely by pedals, operated by one or more persons, and having two or more wheels, except childrens’ tricycles.

(3) ‘Bus’ means every motor vehicle designed for carrying more than ten passengers and used for the transportation of persons and every motor vehicle, other than a taxicab, designed and used for the transportation of persons for compensation.

(4) ‘Dealer’ or ‘motor vehicle dealer’ means both ‘dealer’ and ‘wholesaler’, as defined in Chapter 15 of this title.

(5) Reserved.

(6) ‘Essential parts’ means all integral and body parts of a vehicle of a type required to be registered under this title, the removal, alteration, or substitution of which would tend to conceal the identity of the vehicle or substantially alter its appearance, model, type, or mode of operation.

(7) Reserved.

(8) ‘Farm tractor’ means every motor vehicle designed and used primarily as a farm implement for drawing plows, mowing machines, and other implements of husbandry.

(9) ‘Foreign vehicle’ means every vehicle of a type required to be registered under this title brought into this State from another state, territory, or country, other than in the ordinary course of business by or through a manufacturer or dealer, and not registered in this State.

(10) ‘House trailer’ means:

(a) a trailer or semitrailer which is designed, constructed, and equipped as a dwelling place, living abode, or sleeping place, either permanently or temporarily, and is equipped for use as a conveyance on streets and highways; or

(b) a trailer or a semitrailer whose chassis and exterior shell is designed and constructed for use as a house trailer, as defined in subitem (a) of this item, but which is used instead permanently or temporarily for the advertising, sales, display, or promotion of merchandise or services



or for another commercial purpose except the transportation of property for hire or the transportation of property for distribution by a private carrier.

(11) 'Identifying number' means the numbers and letters, if any, on a vehicle designated by the Department of Motor Vehicles for the purpose of identifying the vehicle.

(12) 'Implement of husbandry' means every vehicle, including mobile barns, designed and adapted exclusively for agricultural, horticultural, or livestock-raising operations or for lifting or carrying an implement of husbandry and in either case not subject to registration if used upon the highways.

(13) 'Lienholder' means a person holding a security interest in a vehicle.

(14) 'Mail' means to deposit in the United States mail, properly addressed and with postage prepaid.

(15) 'Manufacturer' means every person engaged in the business of constructing or assembling vehicles of a type required to be registered under this title at an established place of business in this State.

(16) Reserved.

(17) Reserved.

(18) Reserved.

(19) Reserved.

(20) Reserved.

(21) Reserved.

(22) 'Pole trailer' means every vehicle without motive power designed to be drawn by another vehicle and attached to the towing vehicle by means of a reach or pole or by being boomed or otherwise secured to the towing vehicle and ordinarily used for transporting long or irregularly shaped loads such as poles, pipes, or structural members capable, generally, of sustaining themselves as beams between the supporting connections.

(23) 'Previously registered vehicle' means a vehicle registered in this State on January 1, 1958, or a vehicle whose last registration before that date was in this State.

(24) 'Reconstructed vehicle' means every vehicle of a type required to be registered under this title materially altered from its original construction by the removal, addition, or substitution of essential parts, new or used.

(25) 'Registration' means the registration certificate or certificates and registration plates issued under the laws of this State pertaining to the registration of vehicles.

(26) 'Road tractor' means every motor vehicle designed and used for drawing other vehicles and not constructed to carry any load on it, either independently or any part of the weight of a vehicle or load drawn.

(27) 'School bus' means every motor vehicle owned by a public or governmental agency and operated for the transportation of children to or from school, or privately owned and operated for compensation for the transportation of children to or from school.

(28) 'Security agreement' means a written agreement which reserves or creates a security interest.

(29) 'Security interest' means an interest in a vehicle reserved or created by agreement and which secures payment or performance of an obligation, conditional sale contract, conditional lease, chattel mortgage, or other lien or encumbrance, except taxes or attachment liens provided for in Section 29-15-20. The term includes the interest of a lessor under a lease intended as security. A security interest is 'perfected' when it is valid against third parties generally, subject only to specific statutory exceptions.

(30) 'Semitrailer' means every vehicle with or without motive power, other than a pole trailer, designed for carrying persons or property and for being drawn by a motor vehicle and constructed so that some part of its weight and that of its load rests upon or is carried by another vehicle.

(31) 'Special mobile equipment' means every vehicle not designed or used primarily for the transportation of persons or property and only incidentally operated or moved over a highway including, but not limited to: ditch-digging apparatus, well-boring apparatus, and road construction and maintenance machinery, such as asphalt spreaders, bituminous mixers, bucket loaders, tractors other than truck tractors, ditchers, leveling graders, finishing machines, motor graders, road rollers, scarifiers, earth-moving carryalls and scrapers, power shovels and draglines, and self-propelled cranes and earth-moving equipment. The term does not include house trailers, dump trucks, truck-mounted transit mixers, cranes, or shovels, or other vehicles designed for the transportation of persons or property to which machinery has been attached.

(32) 'Specifically constructed vehicle' means every vehicle of a type required to be registered under this title not originally constructed under a distinctive name, make, model, or type by a generally recognized manufacturer of vehicles and not materially altered from its original construction.

(33) 'Trackless trolley coach' means every motor vehicle which is propelled by electric power obtained from overhead trolley wires but not operated upon rails.

(34) 'Trailer' means every vehicle with or without motive power, other than a pole trailer, designed for carrying persons or property and for being drawn by a motor vehicle and constructed so that no part of its weight rests upon the towing vehicle.

(35) 'Transporter' means every person engaged in the business of delivering vehicles of a type required to be registered under this title from a manufacturing, assembling, or distributing plant to dealers or sales agents of a manufacturer.

(36) 'Truck' means every motor vehicle designed, used, or maintained primarily for the transportation of property.

(37) 'Truck tractor' means every motor vehicle designed and used primarily for drawing other vehicles and not constructed to carry a load other than a part of the weight of the vehicle and load drawn.

(38) Reserved.

(39) 'Mobile home' means every vehicle which is designed, constructed, and equipped principally as a permanent dwelling place and is equipped to be moved on streets and highways, but which exceeds the size limitations prescribed in Section 56-3-710 and which cannot be licensed and registered by the Department of Motor Vehicles as a 'house trailer'.

(40) 'Odometer' means an instrument for measuring and recording the actual distance a motor vehicle travels while in operation; it does not include an auxiliary instrument designed to be reset by the operator of the motor vehicle for the purpose of recording the distance traveled on trips.

(41) 'Odometer reading' means actual cumulative distance traveled disclosed on the odometer.

(42) 'Odometer disclosure statement' means a statement, as prescribed by item (d) of subsection (1) of Section 56-19-240, certified by the owner of the motor vehicle to the transferee or to the Department of Motor Vehicles as to the odometer reading.

(43) Reserved.

(44) Reserved.

(45) Reserved.

(46) 'Commercial truck' or 'commercial motor vehicle (CMV)' as defined by the Federal Motor Carrier Safety Administration (FMCSA) means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle:

(a) has a gross combination weight rating or gross combination weight of 11,794 kilograms or more (26,001 pounds or more), whichever is greater, inclusive of a towed unit(s) with a gross vehicle weight rating or gross vehicle weight of more than 4,536 kilograms (10,000 pounds), whichever is greater;

(b) has a gross vehicle weight rating or gross vehicle weight of 11,794 or more kilograms (26,001 pounds or more), whichever is greater;

(c) is designed to transport sixteen or more passengers, including the driver; or

(d) is of any size and is used in the transportation of hazardous materials as that term is defined in 49 C.F.R. Section 390.5.

(47) 'Motor home' means a vehicular unit designed to provide temporary living quarters built into an integral part of or permanently attached to a self-propelled motor vehicle chassis or van which unit contains permanently installed independent life support systems other than low voltage meeting the American National Standards Institute (ANSI) A119.2 Standard for Recreational Vehicles and provides at least four of the following facilities: cooking with onboard power source; gas or electric refrigerator; toilet with exterior evacuation; heating or air conditioning with onboard power source separate from the vehicle engine; a potable water supply system including a faucet, sink, and water tank with an exterior service connection; or separate 110-125 volt electric power supply. For purposes of this definition, a passenger-carrying automobile, truck, or van without permanently installed independent life support systems, including at least four of the indicated facilities, does not constitute a motor home.

(48) 'Permanently installed' means built into or attached as an integral part of a chassis or van and designed not to be removed except for repair or replacement. A system which is readily removable or held in place by clamps or tie downs is not permanently installed.

(49) 'Low voltage' means twenty-four volts or less.

(50) 'Special mobile equipment' means every vehicle, with or without motive power, not designed or used primarily for the transportation of persons or pay-load property and incidentally operated or moved over the highways, including farm tractors, road construction and maintenance machinery, ditch-digging apparatus, well-boring apparatus, truck cranes or mobile shovel cranes, and similar vehicles; this enumeration is deemed partial and does not operate to exclude other vehicles which are within the general terms of this definition."

**Certificate of title**

SECTION 32. Section 56-19-220 of the 1976 Code is amended to read:

“Section 56-19-220. No certificate of title need be obtained for:

- (1) A vehicle owned by the United States unless it is registered in this State;
- (2) A vehicle owned by a manufacturer or dealer and held for sale, even though incidentally moved on the highway or used for purposes of testing or demonstration, or a vehicle used by the manufacturer solely for testing;
- (3) A vehicle owned by a nonresident of this State and not required by law to be registered in this State;
- (4) A vehicle regularly engaged in the interstate transportation of persons or property for which a currently effective certificate of title has been issued in another state;
- (5) A vehicle moved solely by animal power;
- (6) An implement of husbandry;
- (7) Special mobile equipment not required to be registered and licensed in this State;
- (8) A pole trailer;
- (9) A vehicle not required to be licensed and registered in this State, except mobile homes;
- (10) A vehicle used by its manufacturer in a benefit program for the manufacturer’s employees;
- (11) A vehicle used by its manufacturer for testing, distribution, evaluation, and promotion, subject to the limitation in Section 56-3-2332(B)(2); or
- (12) A moped.”

**Definitions**

SECTION 33. Section 38-77-30(5.5)(d), (9), (14), and (15) of the 1976 Code is amended to read:

“(d) Individual private passenger automobile does not include:

- (i) motor vehicles that are used for public or livery conveyance or rented to others without a driver;
- (ii) fire department vehicles, police vehicles, ambulances, and rescue squad vehicles which are publicly owned;
- (iii) mopeds;

- (iv) dune buggies, all-terrain vehicles, go carts, and snowmobiles;
- (v) golf carts; and
- (vi) small commercial risks.

(9) 'Motor vehicle' means every self-propelled vehicle which is designed for use upon a highway, including trailers and semitrailers designed for use with these vehicles but excepting traction engines, road rollers, farm trailers, tractor cranes, power shovels and well-drillers, and every vehicle which is propelled by electric power obtained from overhead wires but not operated upon rails. Mopeds are considered to be motor vehicles for the purposes of uninsured motor vehicle insurance coverage and underinsured motor vehicle insurance coverage only. For purposes of this chapter, the term automobile has the same meaning as motor vehicle.

(14) 'Uninsured motor vehicle' means a motor vehicle as defined in item (9) as to which:

(a) there is not bodily injury liability insurance and property damage liability insurance both at least in the amounts specified in Section 38-77-140; or

(b) there is nominally that insurance, but the insurer writing the same successfully denies coverage thereunder; or

(c) there was that insurance, but the insurer who wrote the same is declared insolvent, or is in delinquency proceedings, suspension, or receivership, or is proven unable fully to respond to a judgment; and

(d) there is no bond or deposit of cash or securities in lieu of the bodily injury and property damage liability insurance;

(e) the owner of the motor vehicle has not qualified as a self-insurer in accordance with the applicable provisions of law.

A motor vehicle is considered uninsured if the owner or operator is unknown. However, recovery under the uninsured motorist provision is subject to the conditions set forth in this chapter. Any motor vehicle owned by the State or any of its political subdivisions is considered an uninsured motor vehicle when the vehicle is operated by a person without proper authorization.

(15) 'Underinsured motor vehicle' means a motor vehicle as defined in item (9) as to which there is bodily injury liability insurance or a bond applicable at the time of the accident in an amount of at least that specified in Section 38-77-140 and the amount of the insurance or bond is less than the amount of the insureds' damages."

**Ignition interlock devices**

SECTION 34. Section 56-5-2941(A) of the 1976 Code, as last amended by Act 34 of 2015, is further amended to read:

“(A) The Department of Motor Vehicles shall require a person who is a resident of this State and who is convicted of violating the provisions of Sections 56-5-2930, 56-5-2933, 56-5-2945, 56-5-2947 except if the conviction was for Section 56-5-750, or a law of another state that prohibits a person from driving a motor vehicle while under the influence of alcohol or other drugs, to have installed on any motor vehicle the person drives, except a moped, an ignition interlock device designed to prevent driving of the motor vehicle if the person has consumed alcoholic beverages. This section does not apply to a person convicted of a first offense violation of Section 56-5-2930 or 56-5-2933, unless the person submitted to a breath test pursuant to Section 56-5-2950 and had an alcohol concentration of fifteen one-hundredths of one percent or more. The department may waive the requirements of this section if the department determines that the person has a medical condition that makes the person incapable of properly operating the installed device. If the department grants a medical waiver, the department shall suspend the person’s driver’s license for the length of time that the person would have been required to hold an ignition interlock restricted license. The department may withdraw the waiver at any time that the department becomes aware that the person’s medical condition has improved to the extent that the person has become capable of properly operating an installed device. The department also shall require a person who has enrolled in the Ignition Interlock Device Program in lieu of the remainder of a driver’s license suspension or denial of the issuance of a driver’s license or permit to have an ignition interlock device installed on any motor vehicle the person drives, except a moped.

The length of time that a device is required to be affixed to a motor vehicle as set forth in Sections 56-1-286, 56-5-2945, 56-5-2947 except if the conviction was for Sections 56-5-750, 56-5-2951, and 56-5-2990.”

**Repeal**

SECTION 35. Article 30, Chapter 5, Title 56 of the 1976 Code is repealed.

**Savings clause**

SECTION 36. The repeal or amendment by this act of any law, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

**Time effective**

SECTION 37. This act takes effect eighteen months after approval by the Governor. The provisions of this act amending Section 38-77-30 apply to automobile insurance coverage issued or renewed on or after eighteen months following approval by the Governor.

Ratified the 15<sup>th</sup> day of May, 2017.

Approved the 19<sup>th</sup> day of May, 2017.

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**No. 90**

(R107, H3647)

**AN ACT TO AMEND SECTION 27-32-10, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO DEFINITIONS CONCERNING VACATION TIME SHARING PLANS, SO AS TO DEFINE AND REDEFINE CERTAIN TERMS CONCERNING RESALE SERVICES, AMONG OTHERS; TO AMEND SECTION 27-32-55, RELATING TO FEES FOR THE RESALE OF INTERESTS IN VACATION TIMESHARES, SO AS TO PROVIDE REQUIREMENTS OF RESALE VACATION TIMESHARE SERVICES AND PROVIDERS OF THESE SERVICES, AND TO INCLUDE CONSUMER PROTECTION**



**PROVISIONS; AND TO AMEND SECTION 27-32-130, RELATING TO ENFORCEMENT AND IMPLEMENTATION PROVISIONS, SO AS TO MAKE THE PROVISIONS APPLICABLE TO VACATION TIME SHARING ASSOCIATIONS.**

Be it enacted by the General Assembly of the State of South Carolina:

**Definitions**

SECTION 1. Section 27-32-10 of the 1976 Code, as last amended by Act 310 of 2006, is further amended to read:

“Section 27-32-10. For purposes of this chapter:

(1) ‘Accommodations’ means any hotel or motel room, condominium or cooperative unit, cabin, lodge, apartment, or other private or commercial structure designed for occupancy by one or more individuals or a recreational vehicle campsite or campground.

(2) ‘Person’ means any individual, corporation, firm, association, joint venture, partnership, trust estate, business trust, syndicate, fiduciary, and any other group or combination.

(3) ‘Contract’ means the agreement between the seller and a purchaser: (a) setting forth the terms and conditions of the purchase and sale of an ownership interest in a vacation time sharing ownership plan, or (b) setting forth the terms and conditions of the purchase and sale of a lease or other right-to-use interest in a vacation time sharing lease plan.

(4) ‘Commission’ means the South Carolina Real Estate Commission.

(5) ‘Facilities’ means a structure, service, or property, whether improved or unimproved, made available to the purchaser for recreational, social, family, or personal use.

(6) ‘Seller’ means a person who creates a vacation time sharing plan or is in the business of selling interests in a vacation timeshare plan, or employs agents to do the same, or a person who succeeds to the interest of a seller by sale, lease, assignment, mortgage, or other transfer; except that, the term includes only a person who offers interests in vacation time sharing plans in the State of South Carolina in the ordinary course of business. The term ‘seller’ does not include the following:

(a) an owner of a time sharing interest who has acquired the time sharing interest for his own use and occupancy and who later offers it for resale on his own behalf or through a real estate broker;

(b) a managing entity or owners' association of a time sharing plan, not otherwise a seller, that offers on the association's behalf time sharing interests in the time sharing plan transferred to the association through foreclosure, deed in lieu of foreclosure, or gratuitous transfer; or

(c) a person who owns or is conveyed, assigned, or transferred time sharing interests, and who subsequently conveys, assigns, or transfers all acquired time sharing interests to a single purchaser in a single transaction, which transaction may occur in stages.

(7) 'Vacation time sharing ownership plan' means any arrangement, plan, or similar devise, whether by tenancy in common, sale, term for years, deed, or other means, in which the purchaser receives an ownership interest in real property and the right to use accommodations or facilities, or both, for a period or periods of time during a given year, but not necessarily for consecutive years, which extends for a period of more than one year. A vacation time sharing ownership plan may be created in a condominium established on a term for years or leasehold interest having an original duration of thirty years or longer. An interest in a vacation time sharing ownership plan is recognized as an interest in real property for all purposes pursuant to the laws of this State.

(8) 'Vacation time sharing lease plan' means any arrangement, plan, or similar devise, whether by membership agreement, lease, rental agreement, license, use agreement, security, or other means, in which the purchaser receives a right to use accommodations or facilities, or both, but does not receive an ownership interest in real property, for a period or periods of time during a given year, but not necessarily for consecutive years, which extends for a period of more than three years. These lease plans do not include an arrangement or agreement in which a purchaser in exchange for an advance fee and yearly dues is entitled to select from a designated list of facilities located in more than one state, accommodations of companies that operate nationwide in at least nine states in the United States through franchises or ownership, for a specified time period and at reduced rates and under which an interest in real property is not transferred.

(9) 'Vacation time sharing plan' means either a vacation time sharing ownership plan or a vacation time sharing lease plan.

(10) 'Substantially complete' means all structural components and mechanical systems of all buildings containing or comprising facilities or accommodations are finished in accordance with the plans or specifications of the vacation time sharing plan, as evidenced by a recorded certificate of completion executed by an independent registered surveyor, architect, or engineer.

(11) 'Unit week' means a number of consecutive days, normally seven consecutive days in duration, which may reasonably be assigned to purchasers of vacation time sharing plans by the seller.

(12) 'Escrow agent' means a bank or trust company doing business in this State or a bonded trust agent bonded in at least the amount of the trust; except, that nothing contained in this chapter prevents investment of funds escrowed pursuant to this chapter by the bank, trust company, or bonded agent, with payment of all interest and dividends to the seller of vacation time sharing plans. For purposes of Section 27-32-55, escrow agent also means a licensed South Carolina attorney in good standing, a licensed South Carolina real estate broker in good standing, or a licensed South Carolina title insurance agent in good standing.

(13) 'Escrow account' means funds held or maintained by an escrow agent.

(14) 'Fund' and 'recovery fund' means the South Carolina Vacation Time Sharing Recovery Fund.

(15) 'Claim' means a monetary loss sustained or allegedly sustained by a person due to the wrongdoing of a registrant or licensee.

(16) 'Real estate broker's trust account' means a demand account in a bank or savings institution in this State held by a duly licensed South Carolina real estate broker.

(17) 'Resale vacation time sharing interest' means a vacation time sharing interest, including all or substantially all ownership, rights, or interests associated with the vacation time sharing interest that has been previously acquired by an owner for his own use and occupancy and is later offered or advertised for sale or rent, or legal ownership is transferred by or with the assistance of a resale service provider.

(18) 'Resale service provider' means any person or entity, including any agent or employee of such person or entity, who, directly or indirectly, offers or uses telemarketing, direct mail, email, or any other forms of communication in connection with offering of vacation time sharing resale services. This term does not include the following:

(a) a newspaper, periodical, or publisher, unless the newspaper, periodical, or publisher derives more than ten percent of its gross revenue from vacation time sharing resale services. For purposes of this chapter, the calculation of gross revenue derived from providing vacation time sharing resale services includes revenue of any affiliate, parent, agent, and subsidiary of the newspaper, periodical, or publisher, so long as the resulting percentage of gross revenue is not decreased by the inclusion of such affiliate, parent, subsidiary, or agent in the calculation;

(b) a seller, vacation time sharing association, managing entity, or other person responsible for managing or operating the vacation time sharing plan to the extent they offer vacation time sharing resale services to owners of vacation time sharing interests in such a vacation time sharing plan;

(c) a consumer vacation time sharing reseller who, in a given calendar year, sells seven or fewer resale vacation time sharing interests;

(d) a licensed South Carolina attorney in good standing providing only those services provided under Section 27-32-410; or

(e) a licensed South Carolina real estate broker in good standing operating within the scope of activities specified in Chapter 57, with respect to the sale of a resale vacation time sharing interest, as long as the real estate broker does not collect a fee in advance. To the extent a real estate broker is engaged in activities outside the scope of activities specified in Chapter 57, collects an advance fee, or is an agent, employee of, or has an affiliated business arrangement with a party to the sale of a resale vacation time sharing interest, this exemption does not apply.

(19) 'Vacation time sharing resale service' means:

(a) the advertising of, or an offer to advertise, any resale vacation time sharing interest for resale or rent; or

(b) the transfer or offer to assist in the transfer of legal ownership of any resale vacation time sharing interest.

(20) 'Vacation time sharing association' means an association made up of all owners of vacation time sharing interests in a vacation time sharing plan, including sellers and owners of such vacation time sharing plan.

(21) 'Consumer vacation time sharing reseller' means an owner of a resale vacation time sharing interest."

### **Resale services and providers, consumer protections, fees**

SECTION 2. Section 27-32-55 of the 1976 Code is amended to read:

"Section 27-32-55. (A) Before engaging in any vacation time sharing resale services, a resale service provider must provide a written contract to the consumer vacation time sharing reseller that includes:

(1) The name, physical address, telephone number, and website address, if any, of the resale service provider and any other agent or third party who will provide any of the vacation time sharing resale services on behalf of the resale service provider.

(2) The name, physical address, telephone number, and email address of the escrow agent, if applicable, that will be used to hold funds or other property pursuant to this section.

(3) A complete description of the vacation timesharing resale services.

(4) The duration of the contract for vacation time sharing resale services expressed in days, weeks, months or years.

(5) A description of any fees, costs, or other consideration to be paid to the resale service provider or any agent or third party of it. These fees must include marketing and advertising fees or commissions that are paid upon the sale of a resale vacation time sharing interest.

(6) A statement, if applicable, that the resale service provider will deliver to the consumer vacation time sharing reseller all documentation evidencing the transfer of legal ownership of the resale vacation time sharing interest as provided in subsection (B).

(7) A statement, if applicable, that the consumer time sharing reseller shall have five business days from the date they receive the notice of right to dispute the release funds from the escrow agent as referenced in subsection (B).

(8) The Internet addresses and telephone numbers for both the Department of Consumer Affairs and the commission.

(9) A statement printed in at least twelve-point boldfaced type immediately preceding the space in the contract provided for the consumer time sharing reseller's signature in substantially the following form:

'You have an unwaivable right to cancel this contract for any reason within five business days after the date you sign this contract. If you decide to cancel this contract, you must notify (name of resale service provider) in writing of your intent to cancel. Your notice of cancellation must be effective upon the date sent and must be sent to (resale service provider's mailing address) or to (resale service provider's e-mail address). Your refund will be made within twenty days after receipt of notice of cancellation or within five days after receipt of funds from your cleared check, whichever is later. You are not obligated to pay (name of resale service provider) any money unless you sign this contract and return it to (name of resale service provider).

Before signing this contract, you should carefully review your original vacation time sharing purchase contract and other project documents to determine whether there are any restrictions or special conditions applicable to the resale or rental of your vacation time sharing interest. You also may wish to contact your resort management company or your

vacation time sharing association to learn about resale or rental options that may be available to you.’

(B) With respect to all fees, costs and compensation paid to a resale service provider, the following shall apply:

(1) A consumer vacation time sharing reseller may not be charged an appraisal fee in connection with the sale or rental of a resale vacation time sharing interest.

(2) A consumer vacation time sharing reseller may be charged marketing or advertising fees prior to the sale or rental of a resale vacation time sharing interest.

(3) A consumer vacation time sharing reseller shall not pay any advance fee, cost or compensation for vacation time sharing resale services, except as provided in item (2), unless one hundred percent of all funds are deposited into an escrow account until the vacation time sharing resale service is completed and all other requirements of this section have been met.

(a) The funds or other property required to be escrowed hereunder only may be released from escrow to or on the order of the person providing the vacation time sharing resale services upon completion of all of the following:

(i) Presentation by the vacation time sharing resale services provider of an affidavit by such person to the escrow agent that all promised vacation time sharing resale services have been performed, including delivery to both the consumer vacation time sharing reseller and the vacation time sharing plan association or managing entity of a copy of the recorded instrument or other legal document evidencing the transfer of ownership or of legal title to the resale vacation time sharing interest completed in accordance with Section 27-32-40, to the transferee.

(ii) The escrow agent’s submission of the affidavit and a notice of right to dispute the release of funds or property in escrow to the consumer vacation time sharing reseller. The notice shall state the consumer vacation time sharing reseller shall have five business days after receipt of such affidavit to submit a written dispute to the escrow agent that all promised vacation time sharing resale services have in fact not been fully performed by the resale service provider. The consumer vacation time sharing reseller may submit the dispute by electronic mail or regular mail. The dispute is effective upon the date sent.

(iii) Failure of the consumer vacation time sharing reseller to submit a dispute pursuant to subsubitem (ii).

(iv) Should the escrow agent receive conflicting demands for funds or other property held in escrow, the escrow agent immediately

must notify the commission of the dispute and either promptly submit the matter to arbitration or, by interpleader or otherwise, seek an adjudication of the matter by court.

(b) The commission may audit or examine the escrow account. The resale service provider must make available documents relating to the escrow account or escrow obligation to the commission upon the commission's request.

(c) The escrow agent must retain all resale transfer agreements, escrow account records, affidavits and notices of dispute received pursuant to this subsection for a period of three years.

(C)(1) No person shall knowingly participate, for consideration or with the expectation of consideration, in any plan or scheme, a purpose of which is to transfer a resale vacation time sharing interest to a person or entity that the person knows or reasonably should know does not have the ability, means, or intent to pay all assessments and taxes associated with ownership of the resale vacation time sharing interest that are due or that come due during the transferee's ownership.

(2) Failure to pay assessments or taxes that are due or that come due within four years after acquisition of a resale vacation time sharing interest by a transferee who acquires the resale vacation time sharing interest for commercial purposes and not for personal use and enjoyment creates a rebuttable presumption of a violation of this section.

(3) Payment of all assessments and taxes for four years by or on behalf of a transferee shall satisfy item (2).

(4) It is considered a violation of this section if there is any transfer, series of transfers, or other action made or taken by any person for the purpose of circumventing this section.

(D) No individual consumer vacation timesharing reseller who sells or transfers five or fewer resale vacation time sharing interests owned by that consumer vacation timesharing reseller in a given calendar year shall be subject to liability under subsection (C) above.

(E) Engagement in any vacation time sharing resale service, or receipt of consideration in connection with, any vacation time sharing resale service without an executed written contract as provided in this section or the transfer of a resale vacation time sharing interest to a person who the resale service provider knows or should have known has demonstrated a pattern of nonpayment of assessments, taxes, or fees associated with the obligations of ownership, creates a rebuttable presumption of this as a violation of this section.

(F) Providing vacation time sharing resale services with respect to a consumer resale vacation time sharing interest in a vacation time sharing property located or offered within this State or required to be registered

in this State, including acting as an agent or third-party service provider for a resale service provider, constitutes operating, conducting, engaging in, or carrying on a business or business venture in this State.

(G) A contract for vacation time sharing resale services resulting from conduct in violation of this section is voidable by the consumer vacation time sharing reseller and the resale service provider shall return all consideration received pursuant to the contract to the consumer vacation time sharing reseller.

(H)(1) A person violating the provisions of this section has committed an unfair trade practice pursuant to Chapter 5, Title 39 of the Unfair Trade Practices Act and is subject to all civil penalties and remedies provided by law for this violation. The criminal penalty provisions of Chapter 5, Title 39 do not apply to this section.

(2) If a court, in its discretion, based upon the evidence presented by the parties, determines that a person's actions pursuant to this section were inadvertent, unintentional, and not an effort to violate the provisions of this section, the court may hold that the person's actions were nonmaterial, technical violations not subject to Chapter 5, Title 39 of the Unfair Trade Practices Act, and in lieu of all other penalties, the court may assess a technical violation penalty not exceeding two hundred dollars. The court's determination that a violation is a nonmaterial, technical violation in no way prevents the court from assessing full penalties under this section or Chapter 5, Title 39 of the Unfair Trade Practices Act for any other violations determined to be a plan or scheme.

(I) The Department of Consumer Affairs may enforce this section, and impose penalties, including those provided in Section 27-32-120(A), a warning notice of deficiency, a cease and desist order and a refund of fees, costs or compensation assessed and/or received in violation of the section. A person aggrieved by the department's final administrative order may request a contested case hearing before the Administrative Law Court pursuant to the court's rules of procedure. If the person fails to timely request a contested case hearing, the department may bring an action to enforce its order pursuant to Chapter 23, Title 1. The criminal penalty provisions of Section 27-32-120(B) do not apply to this section.

(J) Vacation time sharing interests are subject to the protections of the Service Members Civil Relief Act."

### **Enforcement**

SECTION 3. Section 27-32-130 of the 1976 Code is amended to read:



“Section 27-32-130. The Real Estate Commission is responsible for the enforcement and implementation of this chapter and the Department of Labor, Licensing and Regulation, at the request of the Real Estate Commission, shall prosecute a violation under this chapter. The commission shall promulgate regulations for the implementation of this chapter, subject to the State Administrative Procedures Act. The provisions of this section do not limit the right of a purchaser or lessee or a vacation time sharing association to bring a private action to enforce the provisions of this chapter.”

**Time effective**

SECTION 4. This act takes effect upon approval by the Governor.

Ratified the 15<sup>th</sup> day of May, 2017.

Approved the 19<sup>th</sup> day of May, 2017.

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**No. 91**

(R113, H3824)

**AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 44-53-1645 SO AS TO REQUIRE HEALTH CARE PRACTITIONERS TO REVIEW A PATIENT’S CONTROLLED SUBSTANCE PRESCRIPTION HISTORY, AS MAINTAINED IN THE PRESCRIPTION MONITORING PROGRAM, BEFORE PRESCRIBING A SCHEDULE II CONTROLLED SUBSTANCE, WITH EXCEPTIONS; TO AMEND SECTION 44-53-1630, AS AMENDED, RELATING TO THE PRESCRIPTION MONITORING PROGRAM, SO AS TO ADD A DEFINITION OF “PRACTITIONER”; TO AMEND SECTION 44-53-1640, AS AMENDED, RELATING TO THE PRESCRIPTION MONITORING PROGRAM, SO AS TO MAKE CONFORMING CHANGES; TO AMEND SECTION 44-53-1680, AS AMENDED, RELATING TO PENALTIES FOR VIOLATING REQUIREMENTS OF THE PRESCRIPTION MONITORING PROGRAM, SO AS TO ESTABLISH A PENALTY IF A PRACTITIONER OR AUTHORIZED DELEGATE FAILS TO**

REVIEW A PATIENT'S CONTROLLED SUBSTANCE PRESCRIPTION HISTORY, AS MAINTAINED IN THE PRESCRIPTION MONITORING PROGRAM, BEFORE PRESCRIBING A SCHEDULE II CONTROLLED SUBSTANCE; BY ADDING SECTION 40-15-145 SO AS TO ESTABLISH EDUCATIONAL REQUIREMENTS FOR DENTISTS ADDRESSING THE PRESCRIPTION AND MONITORING OF CERTAIN CONTROLLED SUBSTANCES; TO AMEND SECTIONS 40-37-240, 40-47-965, AS AMENDED, AND 40-51-140, RELATING TO CONTINUING EDUCATION REQUIREMENTS FOR CERTAIN HEALTH CARE PRACTITIONERS, SO AS TO ADD REQUIREMENTS ADDRESSING THE PRESCRIPTION AND MONITORING OF CERTAIN CONTROLLED SUBSTANCES; TO AMEND SECTION 40-43-130, RELATING IN PART TO CONTINUING EDUCATION REQUIREMENTS FOR PHARMACISTS, SO AS TO ADD REQUIREMENTS ADDRESSING CERTAIN CONTROLLED SUBSTANCES; TO AMEND SECTION 40-43-82, RELATING TO AUTHORIZED ACTIONS OF A CERTIFIED PHARMACY TECHNICIAN, SO AS TO PROHIBIT CERTAIN ACTIONS INVOLVING THE FILLING, REFILLING, OR REPACKAGING OF MEDICATIONS; TO AMEND SECTION 40-43-86, AS AMENDED, RELATING IN PART TO THE REQUIREMENT FOR A PHARMACIST-IN-CHARGE TO DEVELOP CERTAIN PHARMACY POLICIES, SO AS TO PROHIBIT PHARMACISTS FROM SUPERVISING MORE THAN FOUR PHARMACY TECHNICIANS; TO AMEND SECTION 40-43-130, RELATING TO CONTINUING EDUCATION REQUIREMENTS PROVIDED IN THE SOUTH CAROLINA PHARMACY PRACTICE ACT, SO AS TO INCLUDE EXEMPTIONS FOR PHARMACY TECHNICIANS; BY ADDING SECTION 40-43-75 SO AS TO AUTHORIZE A RENAL DIALYSIS FACILITY TO DELIVER LEGEND DRUGS OR DEVICES TO PATIENTS IN CERTAIN CIRCUMSTANCES; AND TO AMEND SECTION 40-43-86, AS AMENDED, RELATING IN PART TO THE AUTHORITY OF A PHARMACIST TO REFILL A PRESCRIPTION WITHOUT THE AUTHORIZATION OF THE PRESCRIBER, SO AS TO PROVIDE FOR EMERGENCY REFILLS.

Be it enacted by the General Assembly of the State of South Carolina:

**Prescription monitoring program, requirement to review of patient's prescription history**

SECTION 1. Article 15, Chapter 53, Title 44 of the 1976 Code is amended by adding:

“Section 44-53-1645. (A) A practitioner, or the practitioner's authorized delegate, shall review a patient's controlled substance prescription history, as maintained in the prescription monitoring program, before the practitioner issues a prescription for a Schedule II controlled substance. If an authorized delegate reviews a patient's controlled substance prescription history, the practitioner must consult with the authorized delegate regarding the prescription history before issuing a prescription for a Schedule II controlled substance. The consultation must be documented in the patient's medical record.

(B) The requirements of this section do not apply to:

(1) a practitioner issuing a prescription for a Schedule II controlled substance to treat a hospice-certified patient;

(2) a practitioner issuing a prescription for a Schedule II controlled substance that does not exceed a five-day supply for a patient;

(3) a practitioner prescribing a Schedule II controlled substance for a patient with whom the practitioner has an established relationship for the treatment of a chronic condition; however, the practitioner must review the patient's controlled substance history maintained in the prescription monitoring program at least every three months;

(4) a practitioner approving the administration of a Schedule II controlled substance by a health care provider licensed in South Carolina;

(5) a practitioner prescribing a Schedule II controlled substance for a patient in a skilled nursing facility, nursing home, community residential care facility, or an assisted living facility and the patient's medications are stored, given, and monitored by staff; or

(6) a practitioner who is temporarily unable to access the prescription monitoring program due to exigent circumstances; however, the exigent circumstances and the potential adverse impact to the patient if the prescription is not issued timely must be documented in the patient's medical record.

(C) A practitioner is deemed to be in compliance with this section if the practitioner utilizes technology that automatically displays the patient's controlled substance prescription history from the prescription monitoring program in the practitioner's electronic medical record system. The practitioner must be able to demonstrate that this technology

has been deployed in his practice, but no additional documentation is required in the patient's medical record."

### **Prescription monitoring program, definitions**

SECTION 2. Section 44-53-1630 of the 1976 Code, as last amended by Act 244 of 2014, is further amended to read:

"Section 44-53-1630. As used in this article:

(1) 'Authorized delegate' means an individual who is approved as having access to the prescription monitoring program and who is directly supervised by an authorized practitioner or pharmacist.

(2) 'Controlled substances' means those substances listed in Schedules II, III, and IV of the schedules provided for in Sections 44-53-210, 44-53-230, 44-53-250, and 44-53-270.

(3) 'Dispenser' means a person who delivers a Schedule II-IV controlled substance to the ultimate user, but does not include:

(a) a licensed hospital pharmacy that distributes controlled substances for the purpose of inpatient hospital care or dispenses prescriptions for controlled substances at the time of discharge from the hospital;

(b) a practitioner or other authorized person who administers these controlled substances; or

(c) a wholesale distributor of a Schedule II-IV controlled substance.

(4) 'Drug control' means the Department of Health and Environmental Control, Bureau of Drug Control.

(5) 'Patient' means the person or animal who is the ultimate user of a drug for whom a prescription is issued or for whom a drug is dispensed, or both.

(6) 'Practitioner' means an individual authorized pursuant to state and federal law to prescribe controlled substances."

### **Prescription monitoring program, establishment**

SECTION 3. Section 44-53-1640(A) of the 1976 Code is amended to read:

"(A) The Department of Health and Environmental Control, Bureau of Drug Control shall establish and maintain a program to monitor the prescribing and dispensing of all Schedule II, III, and IV controlled

substances by professionals licensed to prescribe or dispense these substances in this State.”

**Prescription monitoring program, penalties for failure to review a patient’s controlled substance prescription history**

SECTION 4. Section 44-53-1680 of the 1976 Code, as last amended by Act 244 of 2014, is further amended to read:

“Section 44-53-1680. (A) A dispenser or authorized delegate who knowingly fails to submit prescription monitoring information to drug control as required by this article, or who knowingly submits incorrect prescription information, is guilty of a misdemeanor and, upon conviction, must be fined not more than two thousand dollars or imprisoned not more than two years, or both.

(B) A person who knowingly discloses prescription monitoring information in violation of this article is guilty of a felony and, upon conviction, must be fined not more than ten thousand dollars or imprisoned not more than ten years, or both.

(C) A person who knowingly uses prescription monitoring information in a manner or for a purpose in violation of this article is guilty of a felony and, upon conviction, must be fined not more than ten thousand dollars or imprisoned not more than ten years, or both.

(D) A pharmacist or practitioner, licensed in Title 40, who knowingly discloses prescription monitoring information in a manner or for a purpose in violation of this article shall be reported to his respective board for disciplinary action.

(E) Nothing in this chapter requires a pharmacist to obtain information about a patient from the prescription monitoring program. A practitioner or authorized delegate of a practitioner who knowingly fails to review a patient’s controlled substance prescription history, as maintained in the prescription monitoring program, or a practitioner who knowingly fails to consult with his authorized delegate regarding a patient’s controlled substance prescription history before issuing a prescription for a Schedule II controlled substance, as required by this article, must be reported to his respective board for disciplinary action.

(F) A pharmacist or practitioner does not have a duty and must not be held liable in damages to any person in any civil or derivative criminal or administrative action for injury, death, or loss to person or property on the basis that the pharmacist or practitioner did or did not seek or obtain information from the prescription monitoring program. A pharmacist or practitioner acting in good faith is immune from any civil,

criminal, or administrative liability that might otherwise be incurred or imposed for requesting or receiving information from the prescription monitoring program.”

**Continuing education for dentists on the prescription of Schedule II, III, and IV controlled substances**

SECTION 5. Article 1, Chapter 15, Title 40 of the 1976 Code is amended by adding:

“Section 40-15-145. As part of the biennial continuing education required by the board or pursuant to law, including Regulation 39-5, South Carolina Code of State Regulations, a dentist authorized pursuant to state and federal law to prescribe controlled substances shall complete at least two hours of continuing education every two years related to approved procedures of prescribing and monitoring controlled substances listed in Schedules II, III, and IV of the schedules provided for in Sections 44-53-210, 44-53-230, and 44-53-250.”

**Continuing education for optometrists on the prescription of Schedule II, III, and IV controlled substances**

SECTION 6. Section 40-37-240(D)(2) of the 1976 Code is amended to read:

“(2) Continuing education instruction must be on subjects relative to optometry, exclusive of office management or administration, at board-approved and recognized educational seminars and courses or accredited institutions of learning. Four of the forty hours may be for courses directly related to mandated health care programs including, but not limited to, HIPAA, Medicare and Medicaid, and Ethics or Jurisprudence. Sixteen of the forty hours must be pharmacology or pathology related. Satisfactory proof of compliance with this requirement is a prerequisite for biennial license renewal. If an optometrist is authorized pursuant to state and federal law to prescribe controlled substances, two of the requisite hours of continuing education must be related to approved procedures of prescribing and monitoring controlled substances listed in Schedules II, III, and IV of the schedules provided for in Sections 44-53-210, 44-53-230, and 44-53-250.”

**Continuing education for physician assistants on the prescription of Schedule II, III, and IV controlled substances**

SECTION 7. Section 40-47-965(B)(3) of the 1976 Code is amended to read:

“(3) every two years, the physician assistant shall provide documentation of four continuing education hours related to approved procedures of prescribing and monitoring controlled substances listed in Schedules II, III, and IV of the schedules provided for in Sections 44-53-210, 44-53-230, and 44-53-250;”

**Continuing education for podiatrists on the prescription of Schedule II, III, and IV controlled substances**

SECTION 8. Section 40-51-140 of the 1976 Code is amended to read:

“Section 40-51-140. A person licensed to practice podiatry must pay a biennial renewal license fee which must be established in regulation by the board, biennially must complete twenty-four hours of continuing medical education through a program approved by the South Carolina Board of Podiatry Examiners, and must submit documentation to the board of completion of this education. If a podiatrist is authorized pursuant to state and federal law to prescribe controlled substances, two of the requisite biennial hours of continuing education must be related to approved procedures of prescribing and monitoring controlled substances listed in Schedules II, III, and IV of the schedules provided for in Sections 44-53-210, 44-53-230, and 44-53-250. If the renewal fee is not accompanied with the appropriate continuing education documentation, the license may not be renewed and is considered late and subject to the penalties promulgated by the board in regulation. If the renewal fee is not paid within two months after the date of notification by the department that the fee is due, the license of the person failing to pay shall be considered late and a penalty imposed as determined by regulation. After an additional sixty days a nonrenewed license must be suspended or revoked and must be reissued only by a majority vote of the Board of Podiatry Examiners and upon payment of a late fee and penalties established by the board.”

**Continuing education for pharmacists, prescription of Schedule II, III, and IV controlled substances**

SECTION 9. Section 40-43-130(B) of the 1976 Code is amended to read:

“(B) Each licensed pharmacist, as a condition of an active status license renewal, shall complete fifteen hours (1.5 CEU’s) of American Council on Pharmaceutical Education (ACPE) accredited continuing pharmacy education or continuing medical education (CME), Category I, or both, each license year. Of the fifteen hours, a minimum of six hours must be obtained through attendance at lectures, seminars, or workshops. At least fifty percent of the total number of hours required must be in drug therapy or patient management and at least one hour must be related to approved procedures for monitoring controlled substances listed in Schedules II, III, and IV of the schedules provided for in Sections 44-53-210, 44-53-230, and 44-53-250.”

**Pharmacy technicians, authorized actions and continuing education requirements**

SECTION 10. A. Section 40-43-82(C) of the 1976 Code is amended to read:

“(C)(1) Notwithstanding any other provision of this chapter, a supervising pharmacist may authorize a certified pharmacy technician to perform any of the following actions including, but not limited to:

- (a) receiving and initiating verbal telephone orders;
- (b) conducting one-time prescription transfers;
- (c) checking a technician’s refill of medications if the medication is to be administered by a licensed health care professional in an institutional setting; and
- (d) checking a technician’s repackaging of medications from bulk to unit dose in an institutional setting.

(2) Nothing in this section prevents the Board of Pharmacy from establishing duties for a certified technician; provided, however, that a certified technician is prohibited from checking another technician’s fill, refill, or repackaging of medications for delivery to a patient in an outpatient setting.”

B. Section 40-43-82 is amended by adding an appropriately lettered new subsection to read:



“( ) Pharmacy technicians are exempt from continuing education requirements for the first renewal period following initial registration.”

**Pharmacists-in-charge, supervision of pharmacy technicians**

SECTION 11. Section 40-43-86(B)(4)(b) of the 1976 Code, as last amended by Act 11 of 2017, is further amended to read:

“(b) The pharmacist-in-charge shall develop and implement written policies and procedures to specify the duties to be performed by pharmacy technicians. The duties and responsibilities of these personnel shall be consistent with their training and experience. These policies and procedures shall, at a minimum, specify that pharmacy technicians are to be personally supervised by a licensed pharmacist who has the ability to control and who is responsible for the activities of pharmacy technicians and that pharmacy technicians are not assigned duties that may be performed only by a licensed pharmacist. One pharmacist may not supervise more than a total of four pharmacy technicians at a time, including both state-certified and nonstate-certified technicians. One pharmacist may not supervise more than two nonstate certified technicians at a time. If a pharmacist supervises only one or two pharmacy technicians, these technicians are not required to be state-certified. Pharmacy technicians do not include personnel in the prescription area performing only clerical functions, including data entry up to the point of dispensing, as defined in Section 40-43-30(15).”

**Continuing education for pharmacy technicians, exemptions**

SECTION 12. Section 40-43-130(G) of the 1976 Code is amended by adding an appropriately numbered item at the end to read:

“( ) Pharmacy technicians are exempt from continuing education requirements while enrolled in a pharmacy technician program, as well as during the first renewal period following successful completion of the program.”

**Renal dialysis facilities, authority to deliver a legend drug or device to a patient**

SECTION 13. Chapter 43, Title 40 of the 1976 Code is amended by adding:

“Section 40-43-75. (A) For purposes of this section:

(1) ‘Renal dialysis facility’ or ‘RDF’ means an outpatient facility that treats and offers staff-assisted dialysis or training and support services for self-dialysis patients to end-stage renal disease patients, as defined by Centers for Medicare and Medicaid Services. An RDF may be composed of one or more fixed buildings, mobile units, or a combination of them, as defined in R. 61-97. An RDF must be certified by Medicare to provide dialysis-related services to ESRD patients and must have a medical director licensed as a physician, pursuant to Chapter 47, Title 40, on staff.

(2) ‘End-stage renal disease’ or ‘ESRD’ means the disease state, and associated conditions, defined under 42 C.F.R. 406.13 and the United States Social Security Act.

(B) An RDF may deliver a legend drug or device to a patient of an RDF if:

(1) the drug or device is for home use by the patient or for administration in the facility as required by the prescriber’s order or prescription;

(2) the drug or device is dispensed to the RDF by a properly licensed resident or nonresident pharmacy licensed by the board or administered by a properly licensed health care practitioner;

(3) the drug or device is dispensed by the pharmacy pursuant to a valid prescription issued by a licensed practitioner, as defined in Section 40-43-30(45);

(4) the drug or device delivered by the RDF is properly labeled in accordance with state and federal law;

(5) the drug or device is held by the RDF in a secure location in an area not accessible to the public, and packages containing drugs or devices are delivered by RDF staff, unopened, to the patient;

(6) the patient is given a choice of receiving the drug or device from the RDF, at their home, or from another agent;

(7) the drugs exclude controlled substances; and

(8) the RDF maintains policies and procedures concerning how it will receive, store, maintain, and return any drugs or devices that are not picked up by the patient and returned to the dispensing pharmacy.

(C) The provisions of this section do not waive any other requirements to obtain licensure, permits, or certification as required by law to possess legend drug products. A facility engaged in an activity related to the delivery or distribution of legend drugs still shall hold the requisite licensure or drug permits required by law.”

**Pharmacist authority to dispense an emergency refill**

SECTION 14. Section 40-43-86(P) of the 1976 Code is amended to read:

“(P) If a pharmacist receives a request for a prescription refill and the pharmacist is unable to obtain refill authorization from the prescriber, the pharmacist may dispense, once within a twelve-month period, an emergency refill of up to a ten-day supply of the prescribed medication if:

- (1) the prescription is not for a controlled substance;
- (2) the medication is essential to the maintenance of life or to the continuation of therapy;
- (3) in the pharmacist’s professional judgment, continuing the therapy for up to ten days will produce no undesirable health consequences or cause physical or mental discomfort;
- (4) the pharmacist properly records the dispensing; and
- (5) the dispensing pharmacist notifies the prescriber of the refill and the amount of the refill, not to exceed a ten-day supply, within a reasonable time, but no later than ten days after the once in twelve months refill dispensing.”

**Severability clause**

SECTION 15. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this act, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

**Time effective**

SECTION 16. This act takes effect upon approval by the Governor.

Ratified the 15<sup>th</sup> day of May, 2017.

Approved the 19<sup>th</sup> day of May, 2017.

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No. 92

(R118, H4003)

**AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING CHAPTER 26 TO TITLE 39 SO AS TO ENACT THE “PRODUCE SAFETY ACT”, TO ESTABLISH THE AUTHORITY OF THE SOUTH CAROLINA DEPARTMENT OF AGRICULTURE TO ENFORCE CERTAIN FOOD SAFETY STANDARDS APPLICABLE TO FARM PRODUCE INCLUDING, BUT NOT LIMITED TO, THE AUTHORITY TO INSPECT CERTAIN FARMS; TO SEIZE, CONDEMN, AND DESTROY COVERED PRODUCE; AND TO OBTAIN A COURT ORDER FOR FORFEITURE AND DESTRUCTION OF COVERED PRODUCE; TO PROVIDE FOR THE APPEAL OF COURT ORDERS; TO DEFINE CERTAIN TERMS, INCLUDING “FARM” AND “COVERED PRODUCE”; TO PROVIDE EXCEPTIONS FOR CERTAIN FARMS AND PRODUCE; TO AUTHORIZE THE DEPARTMENT TO PROMULGATE REGULATIONS; TO ESTABLISH CERTAIN PENALTIES FOR VIOLATION OF THE CHAPTER; TO PROVIDE FOR THE REPEAL OF THE CHAPTER UNDER CERTAIN CIRCUMSTANCES; AND FOR OTHER PURPOSES.**

Be it enacted by the General Assembly of the State of South Carolina:

**Produce Safety Act, creation to authorize the Department of Agriculture to enforce farm produce food safety standards**

SECTION 1. Title 39 of the 1976 Code is amended by adding:

## “CHAPTER 26

## Produce Safety Act

Section 39-26-10. This chapter may be cited as the ‘South Carolina Produce Safety Act’.

Section 39-26-20. (A) As used in this chapter:

(1) ‘Adequate’ means satisfactory for a particular purpose, fully sufficient, suitable, or fit.

(2) ‘Agricultural water’ means water used at a farm for agronomic reasons, including water used for irrigation, transpiration control, frost protection, washing produce, harvesting, or as a carrier for fertilizers and pesticides. Occasionally, a more specific term may be used, such as irrigation water. Typical sources of agricultural water include flowing surface waters from rivers, streams, irrigation ditches or open canals; impoundment; wells; and municipal supplies.

(3) ‘Clean’ means washed, rinsed and/or reasonably free of dust, dirt, food residues, and other debris.

(4) ‘Commissioner’ means the South Carolina Commissioner of Agriculture.

(5) ‘Covered produce’ means food that is produce within the meaning of 21 C.F.R. Part 112 and that is a raw agricultural commodity, as defined in 21 C.F.R. Section 112.3(c), unless excluded under Section 39-26-30(A) or exempted under Section 39-26-30(B).

(6) ‘Department’ means the South Carolina Department of Agriculture.

(7) ‘Documentation’ means a written procedure or record of a task being completed.

(8) ‘Farm’ means a farm, as defined in 21 C.F.R. Section 112.3(c), or a farm mixed-type facility, as defined in 21 C.F.R. Section 112.3(c).

(9) ‘Pathogen’ means a microorganism of public health significance capable of causing human disease or injury.

(10) ‘Personal-service area’ means an area used for activities not directly connected with the production or service function performed by the operation or facility. Such activities include, but are not limited to, first aid, medical services, dressing, showering, toilet use, washing, and eating. A personal-service area may include outdoor areas adjacent to a field in production.

(11) ‘Pest’ means any animal or insect of public health significance including, but not limited to, birds, rodents, cockroaches, flies, and

larvae that may carry pathogens which can contaminate food or food-contact surfaces.

(12) 'Post-harvest activity' means any activity that takes place after the edible portion of the plant has been harvested. This may include washing, cooling, sorting, or packing in the field or at another location.

(13) 'Produce' means food that is produce within the meaning of 21 C.F.R. Part 112 and that is a raw agricultural commodity, as defined in 21 C.F.R. Section 112.3(c).

(14) 'Sanitize' means to treat food-contact surfaces with a process that is effective in destroying or substantially reducing the number of microorganisms of public health concern as well as other undesirable microorganisms, without adversely affecting the quality of the involved product or its safety for the consumer.

(15) 'Water source' or 'source water' means the origin of the water being used at the farm or packing operation facility. It may be a municipal supply, private well, pond, stream, or other body of water.

Section 39-26-30. (A) 'Covered produce' includes all of the following:

(1) fruits and vegetables such as almonds, apples, apricots, apriums, artichokes-globe-type, Asian pears, avocados, babacos, bananas, Belgian endive, blackberries, blueberries, boysenberries, brazil nuts, broad beans, broccoli, brussels sprouts, burdock, cabbages, Chinese cabbages (bok choy, mustard, and Napa), cantaloupes, carambolas, carrots, cauliflower, celeriac, celery, chayote fruit, cherries (sweet), chestnuts, chicory (roots and tops), citrus (such as clementine, grapefruit, lemons, limes, mandarin, oranges, tangerines, tangors, and unqi fruit), cowpea beans, cress-garden, cucumbers, curly endive, currants, dandelion leaves, fennel-Florence, garlic, genip, gooseberries, grapes, green beans, guavas, herbs (such as basil, chives, cilantro, oregano, and parsley), honeydew, huckleberries, Jerusalem artichokes, kale, kiwifruit, kohlrabi, kumquats, leek, lettuce, lychees, macadamia nuts, mangos, other melons (such as Canary, Crenshaw, and Persian), mulberries, mushrooms, mustard greens, nectarines, onions, papayas, parsnips, passion fruit, peaches, pears, peas, peas-pigeon, peppers (such as bell and hot), pine nuts, pineapples, plantains, plums, plumcots, quince, radishes, raspberries, rhubarb, rutabagas, scallions, shallots, snow peas, soursop, spinach, sprout (such as alfalfa and mung bean), strawberries, summer squash (such as patty pan, yellow and zucchini), sweetsop, Swiss chard, taro, tomatoes, turmeric, turnips (roots and tops), walnuts, watercress, watermelons, and yams; and

(2) a mix of intact fruits and vegetables, such as a fruit basket.

(B) 'Covered produce' does not include:

(1) produce that is rarely consumed raw, specifically the produce on the following exhaustive list:

asparagus, black beans, great Northern beans, kidney beans, lima beans, navy beans, pinto beans, beets, garden beets (roots and tops), sugar beets, cashews, sour cherries, chickpeas, cocoa beans, coffee beans, collards, sweet corn, cranberries, dates, dill (seeds and weed), eggplants, figs, ginger, hazelnuts, horseradish, lentils, okra, peanuts, pecans, peppermint, potatoes, pumpkins, mature southern field peas (such as black-eyed peas, cowpeas, crowder peas, purple hull peas, sea island peas, silver peas, and speckled peas), winter squash, sweet potatoes, and water chestnuts;

(2) produce that is produced by an individual for personal consumption or produced for consumption on the farm or another farm under the same management; or

(3) produce that is not a raw agricultural commodity, as defined in 21 C.F.R. Section 112.3(c).

(C) Produce is eligible for exemption from the requirements of this chapter under the following conditions:

(1) the produce receives commercial processing that adequately reduces the presence of microorganisms of public health significance;

(2) the covered farm discloses in documents accompanying the produce, in accordance with the practice of the trade, that the food is not processed to adequately reduce the presence of microorganisms of public health significance;

(3) the covered farm complies with the requirements of 21 C.F.R. Section 112.2(b)(3);

(4) the covered farm complies with the requirements of 21 C.F.R. Section 112.2(b)(4);

(5) the requirements of 21 C.F.R. Section 112 Subpart A and Subpart Q apply to such produce; and

(6) an entity that provides a written assurance under 21 C.F.R. Section 112.2(b)(3)(i) or (ii) acts consistently with the assurance and documents its actions taken to satisfy the written assurance.

Section 39-26-40. (A) Except as provided in subsection (B), a farm with an average annual monetary value of produce sold during the previous three-year period of more than twenty-five thousand dollars on a rolling basis, adjusted for inflation using 2011 as the baseline year for calculating the adjustment, is a 'covered farm' as used in this chapter, unless the context requires a different meaning. A covered farm shall comply with all applicable requirements of 21 C.F.R. Part 21, this

chapter, or any provision of a regulation of the department promulgated pursuant to Section 39-26-50 when conducting a covered activity, as defined in 21 C.F.R. Section 112.3(c), on covered produce.

(B) A farm is not subject to this chapter if:

- (1) it satisfies the requirements in 21 C.F.R. Section 112.5; and
- (2) the U.S. Food and Drug Administration, or the department operating on authority delegated from the U.S. Food and Drug Administration, has not withdrawn the farm's exemption in accordance with the requirements of 21 C.F.R. Section 112 Subpart R; or if the U.S. Food and Drug Administration, or the department operating on authority delegated from the U.S. Food and Drug Administration, has stayed the withdrawal of the farm's exemption pursuant to the procedures and requirements of 21 C.F.R. Section 112 Subpart R; or if the U.S. Food and Drug Administration, or the department operating on authority delegated from the U.S. Food and Drug Administration, has revoked the withdrawal of the farm's exemption pursuant to the procedures and requirements of 21 C.F.R. Section 112 Subpart R; or if the U.S. Food and Drug Administration, or the department operating on authority delegated from the U.S. Food and Drug Administration, has not confirmed the withdrawal of the farm's exemption in response to the farm's appeal of the withdrawal pursuant to the procedures and requirements of 21 C.F.R. Section 112 Subpart R; or if the U.S. Food and Drug Administration, or the department operating on authority delegated from the U.S. Food and Drug Administration, has reinstated the farm's exemption pursuant to the procedures and requirements of 21 C.F.R. Section 112 Subpart R.

(C) A farm is eligible for a qualified exemption and associated modified requirements in a calendar year if:

- (1) during the previous three-year period preceding the applicable calendar year, the average annual monetary value of the food, as defined in 21 C.F.R. Section 112.3(c), the farm sold directly to qualified end-users, as defined in 21 C.F.R. Section 112.3(c), during such period exceeded the average annual monetary value of the food the farm sold to all other buyers during that period; and

- (2) the average annual monetary value of all food, as defined in 21 C.F.R. Section 112.3(c), the farm sold during the three-year period preceding the applicable calendar year was less than five hundred thousand dollars, adjusted for inflation, using 2011 as the baseline year for calculating the adjustment for inflation.

(D) If a farm is eligible for a qualified exemption in accordance with 21 C.F.R. Section 112.5, the farm is subject to the requirements of 21 C.F.R. Section 112 Subparts A, O, Q, and R.



(E) If a farm is eligible for a qualified exemption in accordance with 21 C.F.R. Section 112.5, the farm is subject to the modified requirements established in 21 C.F.R. Section 112.6(b).

(F) A farm eligible for an exemption under this section may complete forms made available by the department. The department shall issue the farm an exemption certificate as an official acknowledgement of the farm's exemption status. However, receipt of any certificate from the department is in no way a condition of eligibility for an exemption under this section.

Section 39-26-50. The South Carolina Department of Agriculture may promulgate regulations necessary or convenient to carry out the purposes of this chapter.

Section 39-26-60. (A) For purposes of enforcement of this chapter, the Commissioner, or any authorized agent of the Commissioner, upon presenting appropriate credentials to the farm's owner, operator, or agent in charge, may:

(1) enter at reasonable hours on any farm in which produce is grown, packed, stored or held for introduction into commerce or after introduction or enter any vehicle being used to transport or hold this food in commerce;

(2) inspect at reasonable hours and within reasonable limits and in a reasonable manner the farm and all pertinent equipment, finished and unfinished materials, containers, and labeling and to obtain samples necessary for the enforcement of this chapter; and

(3) have access to and to copy all records of carriers in commerce showing the movement in commerce of any food, or the holding of it during or after movement, and the quantity, shipper, and consignee of it. Evidence obtained pursuant to this subsection may not be used in a criminal prosecution of the person from whom it was obtained. Carriers are not subject to the other provisions of this chapter by reason of their receipt, carriage, holding, or delivery of food in the usual course of business as carriers.

(B) The Commissioner, or any authorized agent of the Commissioner, shall have access only at reasonable hours to any farm eligible for a qualified exemption in accordance with 21 C.F.R. Section 112.5 for the purpose of:

(1) reviewing relevant records to demonstrate that the farm is in compliance with the applicable requirements of 21 C.F.R. Section 112 Subparts A, O, Q, and R; and

(2) in the event of an active investigation of a foodborne illness outbreak that is directly linked to the farm, in which case the Commissioner, or any authorized agent of the Commissioner, is authorized to inspect the farm and secure samples or specimens directly relevant to the active investigation.

Section 39-26-70. If the Commissioner, or any authorized agent of the Commissioner, believes any covered produce on a covered farm that is being grown, kept, or exposed for sale or held in possession or under the control of any person to be in violation of any provision of 21 C.F.R. Part 112, this chapter, or regulations of the department promulgated pursuant to Section 39-26-50, the Commissioner, or any authorized agent of the Commissioner, is authorized to seize or take possession of the covered produce.

Section 39-26-80. (A) If the Commissioner, or any authorized agent of the Commissioner, believes any covered produce on a covered farm that is being grown, kept, or exposed for sale or held in possession or under the control of any person to be in violation of any provision of 21 C.F.R. Part 112, this chapter, or regulations of the department promulgated pursuant to Section 39-26-50, the Commissioner, or any authorized agent of the Commissioner, is authorized to condemn, destroy, or require the destruction of the covered produce.

(B) Prior to condemning, destroying, or requiring the destruction of covered produce pursuant to subsection (A), the Commissioner, or any authorized agent of the Commissioner, shall seize the covered produce in accordance with Section 39-26-70 and either:

(1) secure the written consent to the condemnation or destruction, on a form to be provided by the Commissioner, or any authorized agent of the Commissioner, from the person from whom the covered produce was seized; or

(2) make complaint before a magistrate pursuant to Section 39-26-90.

Section 39-26-90. If unable to secure the written consent to the condemnation or destruction in accordance with Section 39-26-80(B)(1), the Commissioner, or any authorized agent of the Commissioner, shall make a complaint before a magistrate, or other officer authorized to issue summons, having jurisdiction where the covered produce was seized. The magistrate or other officer shall issue his summons to the person from whom the covered produce was seized, directing him to appear before an appropriate court in the jurisdiction not less than six nor more

than twelve days from the date of issuing the summons and show cause why the covered produce should not be condemned or destroyed. If the person from whom the covered produce was seized cannot be found, then the summons must be served upon the person then in possession of the covered produce. The summons must be served at least six days before the time of appearance as directed herein by the appropriate court. If the person from whom the covered produce was seized cannot be found, no one can be found in possession of the covered produce, and the defendant does not appear on the return day, an appropriate court shall proceed in the cause in the same manner as where a writ of attachment is returned not personally served upon any of the defendants and none of the defendants appears upon the return day.

Section 39-26-100. (A) Unless otherwise shown or if the covered produce to be condemned or destroyed pursuant to Section 39-26-80 is found upon trial to be in violation of any provision of 21 C.F.R. Part 112, this chapter, or regulations of the department promulgated pursuant to Section 39-26-50, it is the duty of the circuit court to render judgment that the covered produce be forfeited to the department and that the goods be destroyed or sold by the Commissioner, or any authorized agent of the Commissioner, for any purpose other than to be used for human consumption. The mode of procedure before the circuit court must be the same, as near as may be in civil proceedings. Either party may appeal to the South Carolina Court of Appeals as appeals are taken from the circuit court, but it is not necessary for the State of South Carolina or the department to give any appeal bond.

(B) The proceeds arising from any sale ordered pursuant to subsection (A) must be disposed of in accordance with this chapter, or regulations of the department promulgated pursuant to Section 39-26-50.

Section 39-26-110. No covered farm or farm eligible for a qualified exemption in accordance with 21 C.F.R. Section 112.5 shall violate any provision of 21 C.F.R. Part 112 or any provision of a regulation of the department promulgated pursuant to Section 39-26-50, that is applicable to that covered farm or qualified exempt farm.

Section 39-26-120. No person shall impede, obstruct, hinder, or otherwise prevent or attempt to prevent the Commissioner, or any authorized agent of the Commissioner, an inspector, or any other department personnel in the performance of his duty in connection with this chapter.

Section 39-26-130. A person who wilfully violates the provisions of this chapter is subject to a civil penalty of up to one thousand dollars for each violation as determined by the department. Any person wilfully violating this section also is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned for not more than thirty days. The criminal penalty does not apply for violations of state regulations.

Section 39-26-140. This chapter is repealed upon the effective date of the repeal of 21 C.F.R. Part 112.

Section 39-26-150. Any exemption to the requirements of 21 C.F.R. Part 112, as established in 21 C.F.R. Part 112, also applies to this chapter.

Section 39-26-160. This chapter is repealed if the federal government declines to award funds to the State of South Carolina to implement the provisions of federal law embodied in this chapter or the federal funds awarded are exhausted, as determined by the Commissioner, whichever is later.

Section 39-26-170. If any provision of this chapter or its application to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of this chapter that can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.”

#### **Time effective**

SECTION 2. This act takes effect upon approval by the Governor.

Ratified the 15<sup>th</sup> day of May, 2017.

Approved the 19<sup>th</sup> day of May, 2017.

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#### **No. 93**

(R75, S366)

**AN ACT TO AMEND SECTION 37-22-110, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO MORTGAGE**

LENDING DEFINITIONS, SO AS TO MAKE CERTAIN CHANGES AND DEFINE THE TERM "LOAN CORRESPONDENT"; TO AMEND SECTION 37-22-140, RELATING TO MORTGAGE LENDING LICENSE APPLICATIONS, SO AS TO REMOVE THE STATE FINGERPRINT-BASED CRIMINAL HISTORY RECORD CHECK REQUIREMENT, TO REQUIRE THREE HOURS OF PRELICENSING EDUCATION ON SOUTH CAROLINA LAWS AND REGULATIONS, TO ALLOW THE LICENSURE OF A PERSONAL RESIDENCE UNDER CERTAIN CIRCUMSTANCES, AND TO ALLOW FOR THE GRANT OF TRANSITIONAL LICENSES PURSUANT TO THE SAFE ACT; TO AMEND SECTION 37-22-150, RELATING TO EXPIRATION AND RENEWAL OF LICENSES, SO AS TO REMOVE REFERENCES TO A STATE FINGERPRINT-BASED CRIMINAL HISTORY RECORD CHECK; TO AMEND SECTION 37-22-160, RELATING TO CONTINUING PROFESSIONAL EDUCATION, SO AS TO REQUIRE AT LEAST ONE HOUR OF ANNUAL CONTINUING PROFESSIONAL EDUCATION ON SOUTH CAROLINA LAWS AND REGULATIONS; TO AMEND SECTION 37-22-190, RELATING TO PROHIBITED ACTIVITIES, SO AS TO REMOVE A REFERENCE TO THE SECRETARY OF THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT; TO AMEND SECTION 37-22-210, RELATING TO THE COMMISSIONER'S RECORDS, SO AS TO UPDATE A REFERENCE; TO AMEND SECTION 37-22-240, RELATING TO CRIMINAL BACKGROUND CHECKS, SO AS TO REMOVE CERTAIN REQUIREMENTS AND TO AUTHORIZE THE NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY TO RETAIN FINGERPRINTS FOR CERTAIN PURPOSES; TO AMEND SECTION 37-22-270, RELATING TO PARTICIPATION IN THE NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY, SO AS TO DELETE REFERENCES TO THE SOUTH CAROLINA LAW ENFORCEMENT DIVISION; TO AMEND SECTION 37-23-75, RELATING TO LOAN DISCLOSURES, SO AS TO REQUIRE A LOAN ESTIMATE TO BE MADE UNDER THE TILA-RESPA INTEGRATED DISCLOSURE RULE, TO AMEND SECTION 40-58-20, RELATING TO DEFINITIONS CONCERNING THE LICENSING OF MORTGAGE BROKERS ACT, SO AS TO MAKE CERTAIN CHANGES AND DEFINE THE TERM "LOAN

**CORRESPONDENT”; TO AMEND SECTION 40-58-50, AS AMENDED, RELATING TO MORTGAGE BROKER LICENSE APPLICATIONS, SO AS TO REMOVE THE STATE CRIMINAL BACKGROUND CHECK REQUIREMENT, TO AUTHORIZE THE NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY TO RETAIN FINGERPRINTS FOR CERTAIN PURPOSES, AND TO REQUIRE AT LEAST THREE HOURS OF PRELICENSING EDUCATION ON SOUTH CAROLINA LAWS AND REGULATIONS; TO AMEND SECTION 40-58-60, RELATING TO THE ISSUING OF A MORTGAGE BROKERS LICENSE, SO AS TO AUTHORIZE THE GRANT OF TRANSITIONAL LICENSES; TO AMEND SECTION 40-58-65, RELATING TO THE MAINTENANCE OF RECORDS, SO AS TO REMOVE CERTAIN PHYSICAL PRESENCE REQUIREMENTS; TO AMEND SECTION 40-58-67, RELATING TO CONTINUING PROFESSIONAL EDUCATION REQUIREMENTS, SO AS TO REQUIRE AT LEAST ONE HOUR OF ANNUAL CONTINUING PROFESSIONAL EDUCATION ON SOUTH CAROLINA LAWS AND REGULATIONS; TO AMEND SECTION 40-58-110, RELATING TO LICENSE APPLICATIONS AND RENEWAL FEES, SO AS TO ALLOW FOR THE DEPARTMENT TO LICENSE A PERSONAL RESIDENCE UNDER CERTAIN CIRCUMSTANCES, AND TO AMEND SECTION 48-58-130, RELATING TO PARTICIPATION IN THE NATIONWIDE MORTGAGE LICENSING SYSTEM REGISTRY, SO AS TO DELETE REFERENCES TO THE SOUTH CAROLINA LAW ENFORCEMENT DIVISION.**

Be it enacted by the General Assembly of the State of South Carolina:

### **Definitions**

SECTION 1. Section 37-22-110(1), (18), (22), and (25) through (41) of the 1976 Code is amended to read:

“(1) ‘Act as a mortgage broker’ means to act, for compensation or gain, or in the expectation of compensation or gain, either directly or indirectly, by: (i) soliciting, processing, placing, or negotiating a mortgage loan for a borrower from a mortgage lender or depository institution or offering to process, place, or negotiate a mortgage loan for a borrower from a mortgage lender or depository institution, (ii) engaging in tablefunding of a mortgage loan, or (iii) acting as a loan

correspondent whether those acts are done by telephone, by electronic means, by mail, or in person with the borrowers or potential borrowers. 'Act as a mortgage broker' also includes bringing a borrower and lender together to obtain a mortgage loan or rendering a settlement service as described in 12 U.S.C. 2602(3) and 24 C.F.R. Part 3500.2(b).

(18) 'Exempt person' means:

(a) an employee of a licensee whose responsibilities are limited to clerical or support duties for the employer and who does not solicit borrowers, accept applications, or negotiate the terms of loans on behalf of the employer;

(b) a depository institution or a subsidiary that is wholly owned and controlled by the depository institution and regulated by a federal banking agency or an institution regulated by the Farm Credit Administration. This chapter does not apply to the exempt persons described in this subitem;

(c) an officer, registered loan originator, or employee of an exempt person described in subitem (b) of this section when acting in the scope of employment for the exempt person;

(d) a person who offers or negotiates terms of a mortgage loan with or on behalf of an immediate family member of the individual;

(e) an individual who offers or negotiates terms of a mortgage loan secured by a dwelling that served as the person's residence;

(f) an employee whose employment as a processor or underwriter is undertaken pursuant to the direction and supervision of a licensee or exempt person except when the processor or underwriter is working as an independent contractor;

(g) an attorney who negotiates the terms of a residential mortgage loan on behalf of a client as an ancillary matter to the attorney's representation of the client, unless the attorney is compensated by a mortgage lender, a mortgage broker, or other mortgage loan originator or by an agent of the mortgage lender, mortgage broker, or other mortgage loan originator;

(h) an attorney who works for a mortgage lender, pursuant to a contract, for loss mitigation efforts or third party independent contractor who is HUD-certified, Neighborworks-certified, or similarly certified, who works for a mortgage lender, pursuant to a contract, for loss mitigation efforts;

(i) a manufactured home retailer and its employees if performing only clerical or support duties in connection with the sale or lease of a manufactured home and the manufactured home retailer and its employees receive no compensation or other gain from a mortgage

lender or a mortgage broker for the performance of the clerical or support duties; or

(j) any other person deemed exempt pursuant to the Secure and Fair Enforcement for Mortgage Licensing Act (SAFE Act), Section 1508, Title V of the Housing and Economic Recovery Act of 2008, Public Law 110-289, and any regulations promulgated thereunder.

(22) 'Individual servicing a mortgage loan' means an employee of a mortgage lender licensed in this State, that:

(a) collects or receives payments including payments of principal, interest, escrow amounts, and other amounts due on existing obligations due and owing to the licensed mortgage lender for a mortgage loan including, but not limited to, when:

(i) the borrower is in default; or

(ii) the borrower is in reasonably foreseeable likelihood of default;

(b) works with the borrower and the licensed mortgage lender, collects data, and makes decisions necessary to modify, either temporarily or permanently, certain terms of those obligations; or

(c) otherwise finalizes collection through the foreclosure process.

(25) 'Loan correspondent' means a person engaged in the business of making mortgage loans as a third party originator and who does not engage in all three of the following activities with respect to each mortgage loan:

(a) underwrite the mortgage loan written by their employees;

(b) approve the mortgage loan; and

(c) fund the mortgage loan utilizing an unrestricted warehouse or credit line.

A loan correspondent is not a mortgage lender.

(26) 'Loan originator' means a natural person who, in exchange for compensation or gain or in the expectation of compensation or gain as an employee of a licensed mortgage lender, solicits, negotiates, accepts, or offers to accept applications for mortgage loans, including electronic applications, or includes direct contact with, or informing mortgage loan applicants of, the rates, terms, disclosures, and other aspects of the mortgage loan. The definition of 'loan originator' does not include an exempt person described in item (18) or a person solely involved in extensions of credit relating to timeshare plans, as that term is defined in Section 101(53D) of Title 11, United States Code. The definition of loan originator does not apply to an individual servicing a mortgage loan as that term is defined in this chapter until July 31, 2011, unless the United



States Department of Housing and Urban Development or a court of competent jurisdiction determines before that time that those individuals servicing mortgage loans are 'loan originators' as that term is defined in the SAFE Act pursuant to Section 1508 of Title V of the Housing and Economic Recovery Act of 2008, Public Law 110-289. Solely acquiring and reviewing a credit report does not constitute acting as a loan originator.

(27) 'Make a mortgage loan' means to close a mortgage loan, advance funds, offer to advance funds, or make a commitment to advance funds to a borrower under a mortgage loan.

(28) 'Managing principal' means a natural person who meets the requirements of Section 37-22-140(C) and who agrees to be primarily responsible for the operations of a licensed mortgage lender.

(29) 'Mortgage broker' means a person who acts as a mortgage broker, as that term is defined in item (1).

(30) 'Mortgage lender' means a person who acts as a mortgage lender as that term is defined in item (2) or engages in the business of servicing mortgage loans for others or collecting or otherwise receiving mortgage loan payments directly from borrowers for distribution to another person. This definition does not include engaging in a tablefunded transaction.

(31) 'Mortgage loan' means a loan made to a natural person primarily for personal, family, or household use, primarily secured by a mortgage, deed of trust, or other security interest on residential real property or security interest arising under an installment sales contract or equivalent security interest against the borrower's dwelling and: (i) located in South Carolina, (ii) negotiated, offered, or otherwise transacted within this State, in whole or in part, or (iii) made or extended within this State.

(32) 'Nationwide Mortgage Licensing System and Registry' means a mortgage licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators of licensees licensed pursuant to this chapter.

(33) 'Nontraditional mortgage product' means a mortgage product other than a thirty-year fixed rate mortgage loan.

(34) 'Person' means a natural person, partnership, limited liability company, limited partnership, corporation, association, or other group engaged in joint business activities, however organized.

(35) 'Processor or underwriter' means an employee of a mortgage broker, mortgage lender, or exempt person who performs clerical or support duties at the direction of and subject to the supervision and instruction of a licensee or exempt person and may include direct contact with applicants but does not include soliciting, negotiating, accepting, or

offering to accept applications that include personal identifying information as defined in Section 16-13-510(D) for mortgage loans including electronic applications or informing applicants of the rates, terms, disclosures, and other aspects of the mortgage loan.

(a) For purposes of this item only, clerical or support duties may include after the receipt of an application: (i) the receipt, collection, distribution, and analysis of information common for the processing or underwriting of a mortgage loan, and (ii) communication with a consumer to obtain the information necessary for the processing or underwriting of a mortgage loan, to the extent that the communication does not include offering or negotiating loan rates or terms or counseling consumers about mortgage loans.

(b) A person engaging solely in loan processor or underwriter activities may not represent to the public, through advertising or other means of communicating or providing information including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items that the person may or will perform any of the activities of a loan originator.

(c) A processor or underwriter who is an independent contractor may not engage in the activities of a processor or underwriter unless the independent contractor processor or underwriter obtains and maintains a license as provided by rule or regulation pursuant to Section 37-22-270.

(36) 'Registered loan originator' means a natural person who meets the definition of loan originator and is an employee of a depository institution or a subsidiary that is wholly owned and controlled by the depository institution and regulated by a federal banking agency or an institution regulated by the Farm Credit Administration and is registered with and maintains a unique identifier through the Nationwide Mortgage Licensing System and Registry.

(37) 'Residential real property' means real property located in the State of South Carolina upon which there is located or is to be located one or more single-family dwellings or dwelling units that are to be occupied as the owner's dwelling, and includes real estate and residential manufactured home (land/home) transactions.

(38) 'RESPA' means the Real Estate Settlement Procedures Act of 1974, 12 U.S.C. Section 2601, et seq., and regulations adopted pursuant to it including, but not limited to, the TILA-RESPA Integrated Disclosure Rule.

(39) 'Soliciting, processing, placing, or negotiating a mortgage loan' means, for compensation or gain or in the expectation of compensation or gain, either directly or indirectly, accepting or offering to accept an application for a mortgage loan, assisting or offering to assist in the

processing of an application for a mortgage loan, soliciting or offering to solicit a mortgage loan, or negotiating or offering to negotiate the terms or conditions of a mortgage loan.

(40) ‘Tablefunding’ means a settlement at which a loan is funded by a contemporaneous advance of loan funds and an assignment of the loan to the person advancing the funds.

(41) ‘TILA’ means the Truth in Lending Act, 15 U.S.C. Section 1601, et seq., and regulations adopted pursuant to it including, but not limited to, the TILA-RESPA Integrated Disclosure Rule.

(42) ‘Unique identifier’ means a number or other identifier assigned by protocols established by the Nationwide Mortgage Licensing System and Registry.”

**Prelicensing education requirements, South Carolina law required, transitional licenses authorized**

SECTION 2. Section 37-22-140 of the 1976 Code is amended to read:

“Section 37-22-140. (A) A person desiring to obtain a license pursuant to this chapter shall make application for licensure to the commissioner on forms prescribed by the commissioner. The application must contain the information the commissioner considers necessary including, but not limited to, the applicant’s:

(1) name, address, and social security number or, if applicable, Employer Identification Number (EIN);

(2) form and place of organization, if applicable;

(3) proposed method of and locations for doing business, if applicable;

(4) qualifications and business history and, if applicable, the business history of any partner, officer, or director, a person occupying a similar status or performing similar functions, or a person directly or indirectly controlling the applicant, including:

(i) a description of any injunction or administrative order by a state or federal authority to which the person is or has been subject, including denial, suspension, or revocation of a financial services or financial services related license or registration;

(ii) a conviction, or plea of guilty or nolo contendere to a misdemeanor within the last ten years involving financial services or a financial services related business or any fraud, false statements or omissions, theft or wrongful taking of property, bribery, perjury, forgery, counterfeiting, extortion, money laundering, breach of trust, or a conspiracy to commit any of these offenses; and

(iii) a conviction of, or plea of guilty or nolo contendere to, a felony;

(5) financial condition, credit history, and business history, with respect to an application for licensing as a mortgage lender; and credit history and business history, with respect to the application for licensing as a loan originator; and

(6) consent to a national fingerprint-based criminal history record check pursuant to Section 37-22-240 and submission of a set of the applicant's fingerprints in a form acceptable to the commissioner. In the case of an applicant that is a corporation, partnership, limited liability company, association, or trust, each natural person who has control of the applicant or who is the managing principal or a branch manager shall consent to a national fingerprint-based criminal history record check pursuant to Section 37-22-240 and submit a set of that natural person's fingerprints pursuant to this item. Refusal to consent to a criminal history record check constitutes grounds for the commissioner to deny licensure to the applicant as well as to any entity:

(i) by whom or by which the applicant is employed;

(ii) over which the applicant has control; or

(iii) as to which the applicant is the current or proposed managing principal or a current or proposed branch manager.

(B) In addition to the requirements imposed by the commissioner in subsection (A), each applicant for licensure as a loan originator shall:

(1) have attained the age of at least eighteen years;

(2) work for a licensed mortgage lender;

(3) have satisfactorily completed prelicensing education of at least twenty hours, which shall include at least three hours on South Carolina laws and regulations, and the National Test Component with Uniform State Content approved pursuant to 12 U.S.C. 5101, et seq.;

(4) have never had a loan originator license revoked in any governmental jurisdiction; and

(5) have not been convicted of, or pled guilty or nolo contendere to, a felony in a domestic, foreign, or military court: (i) during the ten-year period preceding the date of the application for licensing, or (ii) at any time, if the felony involved an act of fraud, dishonesty, breach of trust, or money laundering.

(C) In addition to the requirements of subsection (A) of this section, each applicant for licensure as a mortgage lender at the time of application and at all times after that shall comply with the following requirements:

(1) If the applicant is a sole proprietor, the applicant shall have at least three years of experience in financial services or financial services

related business or other experience or competency requirements as the commissioner may impose.

(2) If the applicant is a general or limited partnership, at least one of its general partners shall have the experience described in item (1).

(3) If the applicant is a corporation, at least one of its principal officers shall have the experience described in item (1).

(4) If the applicant is a limited liability company, at least one of its members or managers shall have the experience described in item (1).

(5) Instead of a showing of three years' experience, an applicant may show proof of three years' employment with a federally insured depository institution or a VA-, FHA-, or HUD-approved mortgagee.

(D) Each applicant shall identify one person meeting the requirements of subsections (B) and (C) to serve as the applicant's managing principal.

(E) Every applicant for initial licensure shall pay a filing fee of one thousand dollars for licensure as a mortgage lender or fifty dollars for licensure as a loan originator, in addition to the actual cost of obtaining credit reports and national fingerprint-based criminal history record checks. If a licensed loan originator changes employment, a new license must be issued and a fee of twenty-five dollars must be paid.

(F) A mortgage lender shall post and maintain a surety bond in an amount determined by the commissioner, based on the total dollar amount of mortgage loans subject to regulation by the commissioner pursuant to this act in a calendar year in this State pursuant to the following: (i) dollar volume of mortgage loans from \$0 to \$49,999,999, surety bond of \$50,000, (ii) dollar volume of mortgage loans from \$50,000,000 to \$249,999,999, surety bond of \$100,000, (iii) dollar volume of mortgage loans greater than \$250,000,000 surety bond of \$150,000. In no case is the surety bond less than fifty thousand dollars. The surety bond must be executed by a surety company authorized by the laws of this State to transact business within this State. The surety bond must be in a form satisfactory to the commissioner, must be executed to the commissioner, and must be for the use of the State for the recovery of expenses, fines, and fees, or any of them, levied pursuant to this chapter and for consumers who have losses or damages as a result of noncompliance with this chapter by the mortgage lender. The full amount of the surety bond must be in effect at all times. The license of a licensee expires upon the termination of the bond by the surety company, unless a new bond is filed with the commissioner before the termination of the previous bond. If the license expires based on bond termination, all licensed activity must cease and the person must apply for a license pursuant to subsection (A).

(G) Any sole proprietor, general partner, member or manager of a limited liability company, or officer of a corporation who meets individually the requirements of subsection (B), upon payment of the applicable fee, meets the qualifications for licensure as a loan originator subject to the provisions of subsection (I).

(H) Each principal office and each branch office of a licensed mortgage lender at which business is conducted must be licensed pursuant to this chapter and must be issued a separate license. A licensed mortgage lender shall file with the commissioner an application on a form prescribed by the commissioner which identifies the address of the principal office and each branch office and branch manager. The commissioner may license a personal residence of a loan originator as a branch office if it is located more than seventy-five miles from a commercial branch office location. A licensing fee of one hundred fifty dollars must be assessed by the commissioner for each branch office issued a license.

(I) If the commissioner determines that an applicant meets the qualifications for licensure and finds that the financial responsibility, character, and general fitness of the applicant are such as to command the confidence of the community and to warrant belief that the business is to be operated honestly, fairly, and efficiently according to the purposes of this chapter and in accordance with all applicable state and federal laws, the commissioner shall issue a license to the applicant. If the commissioner does not make that determination, the commissioner shall refuse to license the applicant and shall notify him of the denial.

(J) Issuance of a license does not indicate approval or acceptance of any contract, agreement, or other document submitted in support of the application. A licensee may not represent that its services or contracts are approved by the State or state agency.

(K) A person who obtains a license as a mortgage lender, upon notice to the commissioner on a form prescribed by the commissioner, may act as a mortgage broker as defined in Section 37-22-110(1). The commissioner shall provide to the administrator notification of which mortgage lenders also are acting as brokers. A mortgage lender who also acts as a mortgage broker is not required to obtain a license as a mortgage broker pursuant to Chapter 58, Title 40, unless the person acts as a mortgage broker with regard to the majority of mortgage loans reported on the person's Mortgage Call Report filed during the last two quarters of the previous calendar year and the first two quarters of the current calendar year. A mortgage lender acting as a mortgage broker must comply with Sections 40-58-70, 40-58-75, and 40-58-78.

(L) Transitional licenses will be granted as authorized by and pursuant to the SAFE Act.

(M) If the information contained in a document filed with the commissioner is or becomes inaccurate or incomplete, the licensee promptly shall file a correcting amendment to the information contained in the document.

(N) All advertisements of mortgage loans must comply with the Truth in Lending Act, 15 U.S.C. 1601, et seq., and the South Carolina Consumer Protection Code, Title 37.”

### **State fingerprint-based criminal history record check removed**

SECTION 3. Section 37-22-150 of the 1976 Code is amended to read:

“Section 37-22-150. (A) All licenses issued by the commissioner pursuant to this chapter expire annually on the thirty-first day of December or on another date that the commissioner may determine. The license is invalid after that date unless renewed. The renewal period for all licensees is from November first through December thirty-first annually or on another date the commissioner may determine. A licensee desiring to renew its license must submit an application to the commissioner on forms and containing information the commissioner requires. Applications received after December thirty-first or another date the commissioner determines, are late and the late fees in subsection (B) apply. A license may be renewed by compliance with this section and by paying to the commissioner, in addition to the actual cost of obtaining credit reports and national fingerprint-based criminal history record checks as the commissioner may require, a renewal fee as prescribed by the board for each of the following:

(1) for a licensed mortgage lender, an annual renewal fee of no more than eight hundred dollars and no more than one hundred fifty dollars for each branch office; and

(2) for a licensed loan originator, an annual fee of no more than fifty dollars.

(B) If a license of a licensed mortgage lender is not renewed during the renewal period, a late fee of not more than five hundred dollars as prescribed by the board, in addition to the renewal fee in subsection (A)(1), must be assessed. If a license of a licensed loan originator is not renewed during the renewal period, a late fee of not more than one hundred dollars as prescribed by the board, in addition to the renewal fee in subsection (A)(2), must be assessed as a late fee to a renewal. If a licensee fails to renew its license within thirty days after the date the

license expires or otherwise fails to maintain a valid license, the commissioner shall require the licensee to comply with the requirements for the initial issuance of a license pursuant to this chapter, in addition to paying any fee that has accrued.

(C) At any time required by the commissioner, each person described in Section 37-22-140 shall furnish to the commissioner consent to a national fingerprint-based criminal history record check and a set of fingerprints in a form acceptable to the commissioner. Refusal to consent to a criminal history record check may constitute grounds for the commissioner to deny renewal of the license of the person as well as the license of another person by which he is employed, over which he has control, or as to which he is the current or proposed managing principal or a current or proposed branch manager.

(D) A license issued pursuant to this chapter is not assignable or transferable. Control of a licensee must not be acquired through a stock purchase or other device without the prior written consent of the commissioner. The commissioner may not give written consent if the commissioner finds that any of the grounds for denial, revocation, or suspension of a license pursuant to Section 37-22-200 are applicable to the acquiring person.”

#### **Mortgage lender license renewal requirements, South Carolina law required**

SECTION 4. Section 37-22-160(A) of the 1976 Code is amended to read:

“(A) As a condition of license renewal, a licensee must complete at least eight hours of continuing professional education annually, which shall include at least one hour on South Carolina laws and regulations, for the purpose of enhancing professional competence and responsibility. The continuing professional education completed must be reported to the commissioner annually. Documentation of courses completed must be maintained by all licensees. This documentation is subject to inspection by the commissioner for up to two years after the date of course completion.”

#### **Secretary of the Department of Housing and Urban Development, reference removed**

SECTION 5. Section 37-22-190(A)(11) of the 1976 Code is amended to read:



“(11) fail to comply with the mortgage loan servicing transfer, escrow account administration, or borrower inquiry response requirements imposed by Sections 6 and 10 of the Real Estate Settlement Procedures Act (RESPA), 12 U.S.C. Section 2605 and Section 2609, and regulations adopted pursuant to them and state law;”

**Code of Federal Regulations, reference updated**

SECTION 6. Section 37-22-210(C)(2) of the 1976 Code is amended to read:

“(2) Beginning on January 1, 2010, in addition to the records required to be maintained by licensees pursuant to item (1), each licensee shall maintain a mortgage log that contains these specific data elements:

- (i) credit score of the borrower;
- (ii) adjustable or fixed type of loan;
- (iii) term of the loan;
- (iv) annual percentage rate of the loan; and
- (v) appraised value of the collateral.

Each licensee shall submit to the commissioner by March thirty-first of each year its mortgage log data and the data identified in 12 C.F.R. Part 1003, et seq., in a form determined by the commissioner. The licensee shall pay a fine of one hundred dollars a day for late or incomplete data submissions. Data collected by the commissioner pursuant to this section is confidential and may be released to the public only in composite form. The commissioner annually shall submit to the department, in a form prescribed by the department and no later than April thirtieth, the data that it collected. The department shall prepare and make available to the public a report based on the data. The report must be available by June thirtieth each year.”

**Mortgage lender licensing, certain criminal background check requirements removed, retention of fingerprints for certification purposes**

SECTION 7. Section 37-22-240 of the 1976 Code is amended to read:

“Section 37-22-240. Using the information supplied by the commissioner, the applicant must undergo a national criminal record check, supported by fingerprints, by the Federal Bureau of Investigation (FBI). The results of these criminal record checks must be reported to

the commissioner. The Nationwide Mortgage Licensing System and Registry is authorized to retain the fingerprints for certification purposes and for notification of the commissioner regarding subsequent criminal charges which may be reported to the FBI. The commissioner shall keep all information pursuant to this section privileged, in accordance with applicable state and federal guidelines.”

**State criminal history background records check, references removed**

SECTION 8. Section 37-22-270(A)(4) of the 1976 Code is amended to read:

“(4) authorize the Nationwide Mortgage Licensing System and Registry to collect fingerprints on the commissioner’s behalf in order to receive national criminal history background record checks from the FBI to retain for certification purposes and for notification of the commissioner regarding subsequent criminal charges which may be reported to the FBI in accordance with Sections 37-22-140 and 37-22-240;”

**Loan disclosures, loan estimate under the TILA-RESPA integrated disclosure rule**

SECTION 9. Section 37-23-75(A) of the 1976 Code is amended to read:

“(A)At the time the borrower receives the loan estimate under the Real Estate Settlement and Procedures Act (RESPA), the Truth In Lending Act (TILA), and regulations adopted pursuant to both acts including, but not limited to, the TILA-RESPA Integrated Disclosure Rule, and before the scheduled closing of a consumer home loan, the broker or mortgage broker of a loan must disclose in writing the amount being earned on the loan. The Department of Consumer Affairs shall provide a disclosure form to include the following:

(1) the dollar amount of the yield spread premium and the percentage of the yield spread premium in relation to the loan amount. For purposes of this item, ‘yield spread premium’ is the amount paid to the broker by the lender based on the difference between the interest rate at which the broker originates the loan and the par, or market rate offered by a lender;

(2) an itemization of dollar amounts for points, fees, and commissions with a combined total given. A percentage of the combined total should be specified in relation to the loan amount;

(3) a dollar amount total of items (1) and (2) and a percentage of the total specified in relation to the total amount of the loan; and

(4) for a loan that is an ARM as defined in Section 37-23-20(17), a listing of the schedule when the loan may be reset, for each and every reset, and a listing of the monthly payment that is owed for each change that is allowed by the terms of the contract. If the consumer escrows the insurance and taxes with each monthly payment, it must be reflected in the payment listed.”

### Definitions

SECTION 10. Section 40-58-20(1), (16), (20), and (23) through (40) of the 1976 Code is amended to read:

“(1) ‘Act as a mortgage broker’ means to act, for compensation or gain, or in the expectation of compensation or gain, either directly or indirectly, by: (i) soliciting, processing, placing, or negotiating a mortgage loan for a borrower from a mortgage lender or depository institution or offering to process, place, or negotiate a mortgage loan for a borrower from a mortgage lender or depository institution, (ii) engaging in tablefunding of a mortgage loan, or (iii) acting as a loan correspondent whether those acts are done by telephone, by electronic means, by mail, or in person with the borrowers or potential borrowers. ‘Act as a mortgage broker’ also includes bringing a borrower and lender together to obtain a mortgage loan or rendering a settlement service as described in 12 U.S.C. 2602(3) and 24 C.F.R. Part 3500.2(b).

(16) ‘Exempt person’ means:

(a) an employee of a licensee whose responsibilities are limited to clerical or support duties for the employer and who does not solicit borrowers, accept applications, or negotiate the terms of loans on behalf of the employer;

(b) a depository institution or a subsidiary that is wholly owned and controlled by the depository institution and regulated by a federal banking agency or an institution regulated by the Farm Credit Administration. This chapter does not apply to the exempt persons described in this subitem;

(c) an officer, registered loan originator, or employee of an exempt person described in subitem (b) of this section when acting in the scope of employment for the exempt person;

(d) a person who offers or negotiates terms of a mortgage loan with or on behalf of an immediate family member of the individual;

(e) an individual who offers or negotiates terms of a mortgage loan secured by a dwelling that served as the person's residence;

(f) an employee whose employment as a processor or underwriter is undertaken pursuant to the direction and supervision of a licensee or exempt person except when the processor or underwriter is working as an independent contractor;

(g) an attorney who negotiates the terms of a residential mortgage loan on behalf of a client as an ancillary matter to the attorney's representation of the client, unless the attorney is compensated by a mortgage lender, a mortgage broker, or other mortgage loan originator or by an agent of the mortgage lender, mortgage broker, or other mortgage loan originator;

(h) an attorney who works for a mortgage lender, pursuant to a contract, for loss mitigation efforts or third party independent contractor who is HUD-certified, Neighborworks-certified, or similarly certified, who works for a mortgage lender, pursuant to a contract, for loss mitigation efforts;

(i) a manufactured home retailer and its employees if performing only clerical or support duties in connection with the sale or lease of a manufactured home and the manufactured home retailer and its employees receive no compensation or other gain from a mortgage lender or a mortgage broker for the performance of the clerical or support duties; or

(j) any other person deemed exempt pursuant to the Secure and Fair Enforcement for Mortgage Licensing Act (SAFE Act), Section 1508, Title V of the Housing and Economic Recovery Act of 2008, Public Law 110-289, and any regulations promulgated thereunder.

(20) 'Individual servicing a mortgage loan' means an employee of a mortgage lender licensed in this State, that:

(a) collects or receives payments including payments of principal, interest, escrow amounts, and other amounts due on existing obligations due and owing to the licensed mortgage lender for a mortgage loan including, but not limited to, when:

(i) the borrower is in default; or

(ii) the borrower is in reasonably foreseeable likelihood of default;

- (b) works with the borrower and the licensed mortgage lender, collects data, and makes decisions necessary to modify, either temporarily or permanently, certain terms of those obligations; or
- (c) otherwise finalizes collection through the foreclosure process.

(23) 'Loan correspondent' means a person engaged in the business of making mortgage loans as a third party originator and who does not engage in all three of the following activities with respect to each mortgage loan:

- (a) underwrite the mortgage loan written by their employees;
- (b) approve the mortgage loan; and
- (c) fund the mortgage loan utilizing an unrestricted warehouse or credit line.

A loan correspondent is not a mortgage lender.

(24) 'Loan originator' means a natural person who, in exchange for compensation or gain or in the expectation of compensation or gain as an employee of a licensed mortgage lender, solicits, negotiates, accepts, or offers to accept applications for mortgage loans, including electronic applications, or includes direct contact with, or informing mortgage loan applicants of, the rates, terms, disclosures, and other aspects of the mortgage loan. The definition of 'loan originator' does not include an exempt person described in item (16) or a person solely involved in extensions of credit relating to timeshare plans, as that term is defined in Section 101(53D) of Title 11, United States Code. The definition of loan originator does not apply to an individual servicing a mortgage loan as that term is defined in this chapter until July 31, 2011, unless the United States Department of Housing and Urban Development or a court of competent jurisdiction determines before that time that those individuals servicing mortgage loans are 'loan originators' as that term is defined in the SAFE Act pursuant to Section 1508 of Title V of the Housing and Economic Recovery Act of 2008, Public Law 110-289. Solely acquiring and reviewing a credit report does not constitute acting as a loan originator.

(25) 'Make a mortgage loan' means to close a mortgage loan, advance funds, offer to advance funds, or make a commitment to advance funds to a borrower under a mortgage loan.

(26) 'Managing principal' means a natural person who meets the requirements of Section 37-22-140(C) and who agrees to be primarily responsible for the operations of a licensed mortgage lender.

(27) 'Mortgage broker' means a person who acts as a mortgage broker, as that term is defined in item (1).

(28) 'Mortgage lender' means a person who acts as a mortgage lender as that term is defined in item (2) or engages in the business of servicing mortgage loans for others or collecting or otherwise receiving mortgage loan payments directly from borrowers for distribution to another person. This definition does not include engaging in a tablefunded transaction.

(29) 'Mortgage loan' means a loan made to a natural person primarily for personal, family, or household use, primarily secured by a mortgage, deed of trust, or other security interest on residential real property or security interest arising under an installment sales contract or equivalent security interest against the borrower's dwelling and: (i) located in South Carolina, (ii) negotiated, offered, or otherwise transacted within this State, in whole or in part, or (iii) made or extended within this State.

(30) 'Nationwide Mortgage Licensing System and Registry' means a mortgage licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators of licensees licensed pursuant to this chapter.

(31) 'Nontraditional mortgage product' means a mortgage product other than a thirty-year fixed rate mortgage loan.

(32) 'Person' means a natural person, partnership, limited liability company, limited partnership, corporation, association, or other group engaged in joint business activities, however organized.

(33) 'Processor or underwriter' means an employee of a mortgage broker, mortgage lender, or exempt person who performs clerical or support duties at the direction of and subject to the supervision and instruction of a licensee or exempt person and may include direct contact with applicants but does not include soliciting, negotiating, accepting, or offering to accept applications that include personal identifying information as defined in Section 16-13-510(D) for mortgage loans including electronic applications or informing applicants of the rates, terms, disclosures, and other aspects of the mortgage loan.

(a) For purposes of this item only, clerical or support duties may include after the receipt of an application: (i) the receipt, collection, distribution, and analysis of information common for the processing or underwriting of a mortgage loan, and (ii) communication with a consumer to obtain the information necessary for the processing or underwriting of a mortgage loan, to the extent that the communication does not include offering or negotiating loan rates or terms or counseling consumers about mortgage loans.

(b) A person engaging solely in loan processor or underwriter activities may not represent to the public, through advertising or other means of communicating or providing information including the use of

business cards, stationery, brochures, signs, rate lists, or other promotional items that the person may or will perform any of the activities of a loan originator.

(c) A processor or underwriter who is an independent contractor may not engage in the activities of a processor or underwriter unless the independent contractor processor or underwriter obtains and maintains a license as provided by rule or regulation pursuant to Section 37-22-270.

(34) 'Registered loan originator' means a natural person who meets the definition of loan originator and is an employee of a depository institution or a subsidiary that is wholly owned and controlled by the depository institution and regulated by a federal banking agency or an institution regulated by the Farm Credit Administration and is registered with and maintains a unique identifier through the Nationwide Mortgage Licensing System and Registry.

(35) 'Residential real property' means real property located in the State of South Carolina upon which there is located or is to be located one or more single-family dwellings or dwelling units that are to be occupied as the owner's dwelling, and includes real estate and residential manufactured home (land/home) transactions.

(36) 'RESPA' means the Real Estate Settlement Procedures Act of 1974, 12 U.S.C. Section 2601, et seq., and regulations adopted pursuant to it including, but not limited to, the TILA-RESPA Integrated Disclosure Rule.

(37) 'Soliciting, processing, placing, or negotiating a mortgage loan' means, for compensation or gain or in the expectation of compensation or gain, either directly or indirectly, accepting or offering to accept an application for a mortgage loan, assisting or offering to assist in the processing of an application for a mortgage loan, soliciting or offering to solicit a mortgage loan, or negotiating or offering to negotiate the terms or conditions of a mortgage loan.

(38) 'Tablefunding' means a settlement at which a loan is funded by a contemporaneous advance of loan funds and an assignment of the loan to the person advancing the funds.

(39) 'TILA' means the Truth in Lending Act, 15 U.S.C. Section 1601, et seq., and regulations adopted pursuant to it including, but not limited to, the TILA-RESPA Integrated Disclosure Rule.

(40) 'Unique identifier' means a number or other identifier assigned by protocols established by the Nationwide Mortgage Licensing System and Registry.

(41) 'Qualified loan originator' means a natural person who acts as a loan originator exclusively for a mortgage broker licensee and who is not an employee of the mortgage broker. Unless otherwise indicated, a

qualified loan originator is subject to the requirements of a loan originator under this chapter.”

**Mortgage broker licensing, state criminal background check requirement removed, South Carolina law required, written exam replaced**

SECTION 11. Sections 40-58-50(B)(1) and (C) of the 1976 Code is amended to read:

“(1) The application for a mortgage broker license must include an affirmation of financial solvency noting bonding requirements required by the administrator and the descriptions of the business activities, credit history, financial responsibility, educational background, and general character and fitness of the applicant and any partner, officer, or director, a person occupying a similar status or performing similar functions, or a person directly or indirectly controlling the applicant as required by this chapter, including consent to national criminal history record checks and a set of the applicant’s fingerprints in a form acceptable to the administrator. The application must be accompanied by a nonrefundable fee, payable to the department, of five hundred fifty dollars, in addition to the actual cost of obtaining credit reports and national criminal history record checks by the Federal Bureau of Investigation (FBI). Using the information supplied by the administrator, the applicant must undergo national criminal record checks, supported by fingerprints, by the FBI. The results of these criminal record checks must be reported to the administrator. The Nationwide Mortgage Licensing System and Registry is authorized to retain the fingerprints for certification purposes and for notification of the administrator regarding criminal charges. The administrator shall keep all information pursuant to this section privileged, in accordance with applicable state and federal guidelines.

(C) The application for a loan originator license must designate the employing mortgage broker and must include descriptions of the business activities, credit history, financial responsibility, educational background, and general character and fitness of the applicant as required by this chapter, including consent to national criminal history record checks and a set of the applicant’s fingerprints in a form acceptable to the administrator. The application must be accompanied by a nonrefundable fee, payable to the department, of fifty dollars, in addition to the actual cost of obtaining credit reports and national criminal history record checks by the FBI. Using the information



supplied by the administrator, the applicant must undergo national criminal record checks, supported by fingerprints, by the FBI. The results of these criminal record checks must be reported to the administrator. The Nationwide Mortgage Licensing System and Registry is authorized to retain the fingerprints for certification purposes and for notification of the administrator regarding criminal charges. The administrator shall keep all information pursuant to this section privileged, in accordance with applicable state and federal guidelines. Additionally, the applicant must:

- (1) complete satisfactorily a prelicensing educational course of at least twenty hours, which shall include at least three hours on South Carolina laws and regulations, and the National Test Component with Uniform State Content approved pursuant to 12 U.S.C. 5101, et seq.;
- (2) have never had a loan originator license revoked in any governmental jurisdiction;
- (3) have not been convicted of, or pled guilty or nolo contendere to, a felony in a domestic, foreign, or military court: (i) during the ten-year period preceding the date of application for licensing, or (ii) at any time if the felony involved an act of fraud, dishonesty, breach of trust, or money laundering; and
- (4) be at least eighteen years of age and otherwise comply with this chapter.”

#### **Mortgage broker licensing, transitional licenses authorized**

SECTION 12. Section 40-58-60 of the 1976 Code is amended to read:

“Section 40-58-60. (A) Upon the filing of an application for a license, if the administrator finds that the financial responsibility, experience, character, and general fitness of the applicant, and of the members if the applicant is a partnership, association, or limited liability company, and of the officers and directors if the applicant is a corporation, are such as to command the confidence of the community and to warrant belief that the business may be operated honestly, fairly, and efficiently according to the purposes of this chapter and in accordance with all applicable state and federal laws, it shall license the applicant and issue a license. If the administrator does not so find, it shall refuse to license the applicant and shall notify him of the denial.

(B) Upon the receipt of the license, the licensee is authorized to engage in the business for which the license was issued.

(C) Each license issued to a licensee must state the address at which the business is to be conducted and must state fully the name of the

licensee and the date of the license. A license must be posted prominently in each place of business of the licensee. The license is not transferable or assignable.

(D) Issuance of a license does not indicate approval or acceptance of any contract, agreement, or other document submitted in support of the application. A licensee may not represent that its services or contracts are approved by the State or a state agency.

(E) If the information contained in any document filed with the administrator is or becomes inaccurate or incomplete in a material respect, the licensee promptly shall file a correcting amendment to the information contained in the document.

(F) All advertisements of mortgage loans must comply with the Truth in Lending Act, 15 U.S.C. 1601, et seq., and the South Carolina Consumer Protection Code, Title 37.

(G) Transitional licenses will be granted as authorized by and pursuant to the SAFE Act.”

**Mortgage broker records, Code of Federal Regulations, reference updated, physical presence requirement removed**

SECTION 13. Section 40-58-65 of the 1976 Code is amended to read:

“Section 40-58-65. (A) A mortgage broker licensed pursuant to this chapter must maintain at his usual place of business books, records, and documents pertaining to the business conducted, to enable the administrator to determine compliance with this chapter, and shall include a mortgage loan log that contains these specific data elements: (i) credit score of the borrower, (ii) adjustable or fixed type of loan, (iii) term of the loan, (iv) annual percentage rate of the loan, and (v) appraised value of the collateral. Each licensee shall submit its mortgage loan log data and the data identified in 12 C.F.R. Part 1003, et seq., in a form determined by the administrator by March thirty-first of each year. The licensee shall pay a fine of one hundred dollars a day for late or incomplete data submissions. Data collected by the administrator pursuant to this section is confidential and may be released only in composite form. The administrator shall prepare and make available to the public a report based on the above data. The report must be available by June thirtieth of each year. The mortgage loan log must be completed with information known at the time of review by the administrator and must include loans in process, closed loans, turndowns, denials, and withdrawals. A mortgage broker with two or more licensed offices may consolidate the records at any one of the licensed offices so long as the

administrator is notified of the location of the records. The records must be available for examination to the administrator or his designee upon request. Books and records must be maintained for at least three years. A licensee's records may be maintained electronically, if approved by the administrator, so long as they are readily accessible for examination by the administrator.

(B) A licensed mortgage broker with an official place of business also may maintain one or more branch offices if the:

(1) mortgage broker notifies the administrator in writing seven days before the opening of a branch office of the location of the branch office, the branch manager for each branch location, the location of all records pertaining to business transacted from the branch office, and the branch location's business hours;

(2) mortgage broker notifies the administrator in writing within seven business days of closing a branch office; and

(3) mortgage broker licensee is responsible and accountable for the activities of all licensed locations, branch managers, and loan originators. Compliance reviews must include examination of all facts and circumstances of branch operations to ensure this responsibility and accountability.

(C) The administrator may examine the books and records of a mortgage broker and other documents and records to determine whether there has been substantial compliance with this chapter. Unless there is reason to believe a violation of this chapter has occurred, examinations must be limited to one each year. Records and information obtained by the administrator during an examination are confidential and the administrator must certify that it is in compliance with the Right to Financial Privacy Act (RFPA).

(D) The administrator may cooperate and share information with an agency of this State, other states, or the federal government. The administrator may accept or participate in examinations conducted by one of these agencies.

(E) If the mortgage broker fails to notify the administrator of the existence or closing of a branch office, the actual operating hours of the main or branch offices where records are kept, or the whereabouts of its records, the broker is subject to penalties as set forth in Section 40-58-80.

(F) A mortgage broker licensee who ceases doing business in this State must notify the administrator at least seven days in advance. The notification must include a withdrawal plan that includes a timetable for disposition of the business, the location of the books, records, and accounts until the end of the retention period, and certification of the proper disposal of those records.

(G) A mortgage broker licensee may develop, maintain, and test disaster recovery plans for all records that are maintained.”

**Mortgage broker continuing education, South Carolina law required**

SECTION 14. Section 40-58-67(A)(1) of the 1976 Code is amended to read:

“(1) Licensees must complete at least eight hours of continuing professional education annually, which must include at least one hour on South Carolina laws and regulations. Continuing education credit may be granted only for the year in which the class is taken and may not be granted for the same course in successive years. The continuing professional education completed must be reported to the administrator annually. Course providers must maintain records of attendees for two years after the course.”

**Authorization to license a loan originator’s personal residence**

SECTION 15. Section 40-58-110(A) of the 1976 Code is amended to read:

“(A)(1) In addition to the initial nonrefundable license application fee of five hundred fifty dollars required by Section 40-58-50, first time mortgage broker licensees also shall pay a one-time, nonrefundable processing fee of two hundred dollars. Thereafter, a mortgage broker licensee shall pay an annual nonrefundable renewal fee of five hundred fifty dollars. A mortgage broker licensee shall pay an initial nonrefundable fee of one hundred fifty dollars and, thereafter, a nonrefundable renewal fee of one hundred fifty dollars for each branch location. The department may license a personal residence of a loan originator as a branch office if it is located more than seventy-five miles from a commercial branch office location.

(2) The initial nonrefundable license fee is fifty dollars for a loan originator license, and fifty dollars, nonrefundable, for a renewal license. In addition, all licensees must pay the cost of obtaining credit reports and national criminal history record checks as the administrator may require. The broker shall notify the administrator in writing ten days before opening a new location or changing the address of a licensed location. A fee of twenty-five dollars is required when the licensee notifies the administrator of a change in address for a licensed location.”

**State criminal history background records check, references removed**

SECTION 16. Section 40-58-130(A)(4) of the 1976 Code is amended to read:

“(4) authorizing the Nationwide Mortgage Licensing System and Registry to collect fingerprints on the administrator’s behalf in order to receive national criminal history background record checks from the FBI to retain for certification purposes and for notification of the administrator regarding subsequent criminal charges which may be reported to the FBI in accordance with Section 40-58-50;”

**Time effective**

SECTION 17. This act takes effect one hundred twenty days after approval by the Governor.

Ratified the 15<sup>th</sup> day of May, 2017.

Approved the 19<sup>th</sup> day of May, 2017.

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**No. 94**

(R130, H3969)

**AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 59-18-1940 SO AS TO PROVIDE THE EDUCATION OVERSIGHT COMMITTEE SHALL DESIGN AND PILOT CERTAIN DISTRICT ACCOUNTABILITY MODELS THAT FOCUS ON COMPETENCY-BASED EDUCATION; BY ADDING SECTION 59-18-1950 SO AS TO PROVIDE FOR THE ESTABLISHMENT OF A STATE LONGITUDINAL DATA SYSTEM FOR MEASURING THE CONTINUOUS IMPROVEMENT OF PUBLIC EDUCATION AND THE COLLEGE READINESS AND CAREER READINESS OF PUBLIC SCHOOL GRADUATES, AND TO PROVIDE RELATED FINDINGS; BY ADDING SECTION 59-18-1960 SO AS TO PROVIDE THE MEASURING**

OF STUDENT PROGRESS OR GROWTH USING A VALUE-ADDED SYSTEM; TO AMEND SECTION 59-18-100, AS AMENDED, RELATING TO THE PURPOSE OF THE ACCOUNTABILITY SYSTEM IN THE EDUCATION ACCOUNTABILITY ACT, SO AS TO PROVIDE ADDITIONAL PURPOSES CONCERNING THE PROFILE OF THE SOUTH CAROLINA GRADUATE; TO AMEND SECTION 59-18-120, AS AMENDED, RELATING TO DEFINITIONS IN THE EDUCATION ACCOUNTABILITY ACT, SO AS TO REVISE AND ADD DEFINED TERMS; TO AMEND SECTION 59-18-310, AS AMENDED, RELATING TO THE STATEWIDE ASSESSMENT PROGRAM FOR MEASURING STUDENT PERFORMANCE, SO AS TO DELETE OBSOLETE LANGUAGE AND TO DELETE PROVISIONS CONCERNING THE TIMING FOR ADMINISTERING CERTAIN ASSESSMENTS; TO AMEND SECTION 59-18-320, AS AMENDED, RELATING TO THE ADMINISTRATION OF CERTAIN STATEWIDE STANDARDS-BASED ASSESSMENTS, SO AS TO DELETE OBSOLETE PROVISIONS CONCERNING THE NO CHILD LEFT BEHIND ACT, AND TO DELETE PROVISIONS CONCERNING PERFORMANCE LEVEL RESULTS IN VARIOUS CORE SUBJECT AREAS; TO AMEND SECTION 59-18-325, AS AMENDED, RELATING TO COLLEGE AND CAREER READINESS SUMMATIVE ASSESSMENTS, SO AS TO REVISE PROCUREMENT AND ADMINISTRATION PROVISIONS AND THE TIME AFTER WHICH RESULTS OF SUCH ASSESSMENTS MAY BE INCLUDED IN SCHOOL RATINGS; TO AMEND SECTION 59-18-340, AS AMENDED, RELATING TO THE MANDATORY PROVISION OF STATE-FUNDED ASSESSMENTS, SO AS TO DELETE ONE SUCH ASSESSMENT AND INCLUDE TWO ADDITIONAL ASSESSMENTS; TO AMEND SECTION 59-18-360, AS AMENDED, RELATING TO ASSESSMENT REPORTS, SO AS TO REVISE DEADLINES; TO AMEND SECTION 59-18-900, AS AMENDED, RELATING TO THE COMPREHENSIVE ANNUAL REPORT CARD FOR SCHOOLS, SO AS TO PROVIDE IT IS WEB-BASED, TO REVISE THE PURPOSES OF THE REPORT CARD, TO REVISE AND DEFINE CATEGORIES OF ACADEMIC PERFORMANCE RATINGS, TO PROVIDE THE SAME CATEGORIES ALSO MUST BE ASSIGNED TO INDIVIDUAL INDICATORS USED TO MEASURE SCHOOL PERFORMANCE, TO MAKE THE USE OF STUDENT SCORES

IN CALCULATING SCHOOL RATINGS BE OPTIONAL INSTEAD OF MANDATORY, TO DELETE STUDENT PERFORMANCE LEVELS, TO PROVIDE THE REPORT CARD MUST INCLUDE INDICATORS THAT MEET FEDERAL LAW REQUIREMENTS, TO INCLUDE DROPOUT RETENTION DATA AND ACCESS TO TECHNOLOGY AMONG THE TYPES OF INFORMATION THAT SHOULD BE INCLUDED IN REPORT CARDS, AND TO REVISE REQUIREMENTS FOR RELATED SCHOOL IMPROVEMENT COUNCIL REPORTS; TO AMEND SECTION 59-18-910, AS AMENDED, RELATING TO COMPREHENSIVE CYCLICAL REVIEWS OF THE ACCOUNTABILITY SYSTEM, SO AS TO REQUIRE THE INCLUSION OF CERTAIN RECOMMENDATIONS DETERMINING THE READINESS OF GRADUATING STUDENTS IN CERTAIN CATEGORIES RELATED TO THE PROFILE OF THE SOUTH CAROLINA GRADUATE; TO AMEND SECTION 59-18-920, AS AMENDED, RELATING TO CHARTER SCHOOLS, SO AS TO PROVIDE DATA REQUIRED OF A CHARTER SCHOOL MAY BE USED TO DEVELOP A RATING OF THE SCHOOL, TO DELETE EXISTING PROVISIONS CONCERNING THE CHARTER SCHOOL RATINGS, TO DELETE PROVISIONS PROHIBITING USE OF CHARTER SCHOOL STUDENT PERFORMANCE IN A DISTRICT'S OVERALL PERFORMANCE RATINGS; TO AMEND SECTION 59-18-930, AS AMENDED, RELATING TO THE REQUIREMENT THAT THE DEPARTMENT ANNUALLY ISSUE AN EXECUTIVE SUMMARY OF THE REPORT CARD, SO AS TO PROVIDE THE DEPARTMENT INSTEAD MAY PUBLISH THE REPORT ON ITS WEBSITE IN A CERTAIN MANNER, AND TO PROVIDE CERTAIN NATIONAL ASSESSMENT SCORES MAY BE INCLUDED; AND TO REPEAL SECTION 59-18-950 RELATING TO CRITERIA FOR SCHOOL DISTRICT AND HIGH SCHOOL RATINGS.

Be it enacted by the General Assembly of the State of South Carolina:

**Pilot district accountability models**

SECTION 1. Article 19, Chapter 18, Title 59 of the 1976 Code is amended by adding:

“Section 59-18-1940. Working with the Education Oversight Committee, the State Department of Education shall design and pilot district accountability models that focus on competency-based education for a district or school or on regional or county economic initiatives to improve the postsecondary success of students. A district may apply to the department and the committee to participate in the pilot.”

### **Longitudinal data system**

SECTION 2. Article 19, Chapter 18, Title 59 of the 1976 Code is amended by adding:

“Section 59-18-1950. (A) The General Assembly recognizes the importance of having a state longitudinal data system to inform policy and fiscal decisions related to early childhood education, public education, postsecondary preparedness and success, and workforce development.

(B)(1) The Revenue and Fiscal Affairs Office, working with the Office of First Steps to School Readiness, the South Carolina Department of Education, the South Carolina Commission on Higher Education, the Department of Social Services, the South Carolina Technical College System, the Department of Commerce, the Department of Employment and Workforce, and other state agencies or institutions of higher education, shall develop, implement, and maintain a universal identification system that includes, at a minimum, the following information for measuring the continuous improvement of the state public education system and the college and career readiness and success of its graduates:

- (a) students graduating from public high schools in the State who enter postsecondary education without the need for remediation;
- (b) working-aged adults in South Carolina by county who possess a postsecondary degree or industry credential;
- (c) high school graduates who are gainfully employed in the State within five and ten years of graduating from high school; and
- (d) outcome data regarding student achievement and student growth that will assist colleges of education in achieving accreditation and in improving the quality of teachers in classrooms.

(2) All information disseminated will conform to state and federal privacy laws.”



**School growth measurement system**

SECTION 3. Article 19, Chapter 18, Title 59 of the 1976 Code is amended by adding:

“Section 59-18-1960. In measuring annual school growth, with approval of the State Board of Education and the Education Oversight Committee, the State shall use a value-added system that calculates student progress or growth. A local school district may, in its discretion, use the value-added system to evaluate classroom teachers using student progress or growth. The estimates of specific teacher effects on the educational progress of students will not be a public record and will be made available only to the specific teacher, principal, and superintendent. Furthermore, the estimates of specific teacher effects also may be made to any teacher preparation programs approved by the State Board of Education. The estimates made available to the teacher preparation programs shall not be a public record and shall be used only in evaluation of the respective teacher preparation programs. Furthermore, educator effectiveness data must be exempt from public disclosure pursuant to Section 30-4-30, and may not be subject to the South Carolina Freedom of Information Act. An institution or postsecondary system receiving the estimates shall develop a policy to protect the confidentiality of the data.”

**Performance-based system, Profile of the South Carolina graduate**

SECTION 4. Section 59-18-100 of the 1976 Code, as last amended by Act 282 of 2008, is further amended to read:

“Section 59-18-100. The General Assembly finds that South Carolinians have a commitment to public education and a conviction that high expectations for all students are vital components for improving academic achievement. It is the purpose of the General Assembly in this chapter to establish a performance-based accountability system for public education which focuses on improving teaching and learning so that students are equipped with a strong academic foundation. Moreover, to meet the Profile of the South Carolina Graduate, all students graduating from public high schools in this State should have the knowledge, skills, and opportunity to be college ready, career ready, and life ready for success in the global, digital, and knowledge-based world of the twenty-first century as provided in Section 59-1-50. All graduates should have the opportunity to qualify for and be prepared to succeed in

entry-level, credit-bearing college courses, without the need for remedial coursework, postsecondary job training, or significant on-the-job training. Accountability, as defined by this chapter, means acceptance of the responsibility for improving student performance and taking actions to improve classroom practice and school performance by the Governor, the General Assembly, the State Department of Education, colleges and universities, local school boards, administrators, teachers, parents, students, and the community.”

### Definitions

SECTION 5. Section 59-18-120 of the 1976 Code, as last amended by Act 282 of 2008, is further amended to read:

“Section 59-18-120. As used in this chapter:

(1) ‘Oversight Committee’ means the Education Oversight Committee established in Section 59-6-10.

(2) ‘Standards-based assessment’ means an assessment where an individual’s performance is compared to specific performance standards and not to the performance of other students.

(3) ‘Disaggregated data’ means data broken out for specific groups within the total student population, such as by race, gender, level of poverty, limited English proficiency status, disability status, gifted and talented, or other groups as required by federal statutes or regulations.

(4) ‘Longitudinally matched student data’ means examining the performance of a single student or a group of students by considering their test scores over time.

(5) ‘Academic achievement standards’ means statements of expectations for student learning.

(6) ‘Department’ means the State Department of Education.

(7) ‘Performance rating’ means the classification a school will receive based on the percentage of students meeting standard on the state’s standards-based assessment, student growth or student progress from one school year to the next, graduation rates, and other indicators as determined by federal guidelines and the Education Oversight Committee, as applicable. To increase transparency and accountability, the overall points achieved by a school to determine its ‘performance rating’ must be based on a numerical scale from zero to one hundred, with one hundred being the maximum total achievable points for a school.

(8) ‘Objective and reliable statewide assessment’ means assessments that yield consistent results and that measure the cognitive knowledge

and skills specified in the state-approved academic standards and do not include questions relative to personal opinions, feelings, or attitudes and are not biased with regard to race, gender, or socioeconomic status. The assessments must include a writing assessment and questions designed to reflect a range of cognitive abilities beyond the knowledge level. Constructed response questions may be included as a component of the writing assessment.

(9) 'Division of Accountability' means the special unit within the oversight committee established in Section 59-6-100.

(10) 'Formative assessment' means assessments used within the school year to analyze general strengths and weaknesses in learning and instruction, to understand the performance of students individually and across achievement categories, to adapt instruction to meet students' needs, and to consider placement and planning for the next grade level. Data and performance from the formative assessments must not be used in the calculation of elementary, middle, or high school ratings, but may be used in determining primary school ratings."

#### **Standards-based assessments, selection, use, kindergarten included**

SECTION 6. Section 59-18-310 of the 1976 Code, as last amended by Act 207 of 2016, is further amended to read:

"Section 59-18-310. (A) Notwithstanding any other provision of law, the State Board of Education, through the Department of Education, is required to develop or adopt a statewide assessment program to promote student learning and to measure student performance on state standards and:

- (1) identify areas in which students, schools, or school districts need additional support;
- (2) indicate the academic achievement for schools, districts, and the State;
- (3) satisfy federal reporting requirements; and
- (4) provide professional development to educators.

Assessments required to be developed or adopted pursuant to the provisions of this section or chapter must be objective and reliable, and administered in English and in Braille for students as identified in their Individual Education Plan.

(B)(1) The statewide assessment program must include the subjects of English/language arts, mathematics, science, and social studies in grades three through eight, as delineated in Section 59-18-320, and end-of-course tests for courses selected by the State Board of Education

and approved by the Education Oversight Committee for federal accountability, which award units of credit in English/language arts, mathematics, science, and social studies. A student's score on an end-of-year assessment may not be the sole criterion for placing the student on academic probation, retaining the student in his current grade, or requiring the student to attend summer school. Beginning with the graduating class of 2010, students are required to pass a high school credit course in science and a course in United States history in which end-of-course examinations are administered to receive the state high school diploma. Beginning with the graduating class of 2015, students are no longer required to meet the exit examination requirements set forth in this section and State Regulation to earn a South Carolina high school diploma.

(2) A person who is no longer enrolled in a public school and who previously failed to receive a high school diploma or was denied graduation solely for failing to meet the exit exam requirements pursuant to this section and State Regulation may petition the local school board to determine the student's eligibility to receive a high school diploma pursuant to this chapter. The local school board will transmit diploma requests to the South Carolina Department of Education in accordance with department procedures. Petitions under this section must be submitted to the local school district. Students receiving diplomas in accordance with this section shall not be counted as graduates in the graduation rate calculations for affected schools and districts, either retroactively or in current or future calculations. On or before January 31, 2019, the South Carolina Department of Education shall report to the State Board of Education and the General Assembly the number of diplomas granted, by school district, under the provision. The State Board of Education shall remove any conflicting requirement and promulgate conforming changes in its applicable regulations. The department shall advertise the provisions of this item in at least one daily newspaper of general circulation in the area of each school district within forty-five days after this enactment. After enactment, the department may continue to advertise the provisions of this item, but it shall not be required to advertise after December 31, 2017. At a minimum, this notice must consist of two columns measuring at least ten inches in length and measuring at least four and one-half inches combined width, and include:

- (a) a headline printed in at least a twenty-four point font that is boldfaced;
- (b) an explanation of who qualifies for the petitioning option;
- (c) an explanation of the petition process;
- (d) a contact name and phone number; and

(e) the deadline for submitting a petition.

(C) While assessment is called for in the specific areas mentioned above, this should not be construed as lessening the importance of foreign languages, visual and performing arts, health, physical education, and career or occupational programs.

(D) The State Board of Education shall create a statewide adoption list of formative assessments for grades kindergarten through nine aligned with the state content standards in English/language arts and mathematics that satisfies professional measurement standards in accordance with criteria jointly determined by the Education Oversight Committee and the State Department of Education. The formative assessments must provide diagnostic information in a timely manner to all school districts for each student during the course of the school year. For use beginning with the 2009-2010 School Year, and subject to appropriations by the General Assembly for the assessments, local districts must be allocated resources to select and administer formative assessments from the statewide adoption list to use to improve student performance in accordance with district improvement plans. However, if a local district already administers formative assessments, the district may continue to use the assessments if they meet the state standards and criteria pursuant to this subsection.

(E) The State Department of Education shall provide on-going professional development in the development and use of classroom assessments, the use of formative assessments, and the use of the end-of-year state assessments so that teaching and learning activities are focused on student needs and lead to higher levels of student performance.”

**Standards-based assessments, accountability purposes, obsolete language removed, third grade included**

SECTION 7. Section 59-18-320(B) of the 1976 Code, as last amended by Act 282 of 2008, is further amended to read:

“(B) After review and approval by the Education Oversight Committee, and pursuant to Section 59-18-325, the standards-based assessment of mathematics, English/language arts, social studies, and science will be administered for accountability purposes to all public school students in grades three through eight, to include those students as required by the federal Individuals with Disabilities Education Improvement Act and by Title 1 of the Elementary and Secondary Education Act. To reduce the number of days of testing, to the extent

possible, field test items must be embedded with the annual assessments. To ensure that school districts maintain the high standard of accountability established in the Education Accountability Act, performance level results reported on school and district report cards must meet consistently high levels in all four core content areas. For students with documented disabilities, the assessments developed by the Department of Education shall include the appropriate modifications and accommodations with necessary supplemental devices as outlined in a student's Individualized Education Program and as stated in the Administrative Guidelines and Procedures for Testing Students with Documented Disabilities.”

### **College entrance and career readiness assessments**

SECTION 8. Section 59-18-325 of the 1976 Code, as last amended by Act 281 of 2016, is further amended to read:

“Section 59-18-325. (A) Beginning in eleventh grade for the first time in School Year 2017-2018 and subsequent years, all students must be offered a college entrance assessment that is from a provider secured by the department. In addition, all students entering the eleventh grade for the first time in School Year 2017-2018 and subsequent years must be administered a career readiness assessment. The results of the assessments must be provided to each student, their respective schools, and to the State to:

(1) assist students, parents, teachers, and guidance counselors in developing individual graduation plans and in selecting courses aligned with each student's future ambitions;

(2) promote South Carolina's Work Ready Communities initiative; and

(3) meet federal and state accountability requirements.

(B) Students subsequently may use the results of these assessments to apply to college or to enter careers. The results must be added as part of each student's permanent record and maintained at the department for at least ten years. The purpose of the results is to provide instructional information to assist students, parents, and teachers to plan for each student's course selection. This course selection might include remediation courses, dual-enrollment or dual-credit courses, advanced placement courses/International Baccalaureate, internships, career and technology courses that are aligned with appropriate industry credentials or certificates, or other options during the remaining semesters in high school.

(1) For purposes of this section, 'eleventh grade students' means students in the third year of high school after their initial enrollment in the ninth grade.

(2) Valid accommodations must be provided according to the students' IEP or 504 plan. If a student also chooses to use the results of the college readiness assessment for post-secondary admission or placement, the student, his parent, or his guardian must indicate that choice in compliance with the testing vendor's deadline to ensure that the student may receive allowable accommodations consistent with the IEP or 504 plan that may yield a college reportable score.

(3) In the twelfth grade, and as aligned to the student's Individual Graduation Plan, if funds are available, the State shall provide all students the opportunity to take or retake a college readiness assessment, the career readiness assessment, and/or earn industry credentials or certifications at no cost to the students. The results of the assessments must be provided to each student, the respective schools, and to the State.

(4) A student with a disability, whose Individualized Education Program (IEP) team determines, and agrees in writing, that taking either of these assessments would not be aligned with the student's program of study and the student should not be administered either assessment, must not be administered either assessment.

(C) To maintain a comprehensive and cohesive assessment system that signals a student's preparedness for the next educational level and ultimately culminates in a clear indication of a student's preparedness for postsecondary success in a college or career and to satisfy federal and state accountability purposes, the State Department of Education shall procure and maintain a summative assessment system.

(1) The summative assessment must be administered to all students in grades three through eight. The summative assessment must assess students in English/language arts and mathematics, including those students as required by the federal Individuals with Disabilities Education Act and by Title I of the Elementary and Secondary Education Act. For purposes of this subsection, 'English/language arts' includes English, reading, and writing skills as required by existing state standards. The assessment must be a rigorous, achievement assessment that measures student mastery of the state standards, that provides timely reporting of results to educators, parents, and students, and that measures each student's progress toward college and career readiness. Therefore, the assessment or assessments must meet all of the following minimum requirements:

(a) compares performance of students in South Carolina to other students' performance on comparable standards in other states with

the ability to link the scales of the South Carolina assessment to the scales from other assessments measuring those comparable standards;

(b) be a vertically scaled, benchmarked, standards-based system of summative assessments;

(c) measures a student's preparedness for the next level of their educational matriculation and individual student performance against the state standards in English/language arts, reading, writing, mathematics, and student growth;

(d) documents student progress toward national college and career readiness benchmarks derived from empirical research and state standards;

(e) establishes at least four student achievement levels;

(f) includes various test questions including, but not limited to, multiple choice, constructed response, and selected response, that require students to demonstrate their understanding of the content;

(g) be administered to all students in a computer-based format except for students with disabilities as specified in the student's IEP or 504 plan, and unless the use of a computer by these students is prohibited due to the vendor's restrictions on computer-based test security, in which case the paper version must be made available; and

(h) assists school districts and schools in aligning assessment, curriculum, and instruction.

(2)(a) Beginning in the 2017-2018 School Year, each school district shall administer the statewide summative assessment, with the exception of alternate assessments, for grades three through eight during the last twenty days of school as determined by the district's regular instructional calendar, not including make-up days. If an extension to the twenty-day time period is needed, the school district or charter school may submit a request for an extension to the State Board of Education before December first of the school year for which the waiver is requested. The request must clearly document the scope and rationale for the extension. The request also must be accompanied by an action plan showing how the district or charter school will be able to comply with the twenty-day time frame for the following school year.

(b) Statewide summative testing for each student may not exceed eight days each school year, with the exception of students with disabilities as specified in their IEPs or 504 plans.

(c) The State Board of Education shall promulgate regulations outlining the procedures to be used during the testing process to ensure test security, including procedures for make-up days, and to comply with federal and state assessment requirements where necessary.



(d) In the event of school closure due to extreme weather or other disruptions that are not the fault of the district, or significant school or district technology disruptions that impede computer-based assessment administration, the school district or charter school may submit a request to the department to provide a paper-based administration to complete testing within the last twenty days of school. The request must clearly document the scope and cause of the disruption.

(3) Beginning with the 2017-2018 School Year, the department shall procure and administer the standards-based assessments of mathematics and English/language arts to students in grades three through eight. The department also shall procure and administer the standards-based assessment in science to students in grades four, six, and eight, and the standards-based assessment in social studies to students in grades five and seven.

(4) The State Department of Education shall reimburse districts for the administration of the college entrance and career readiness assessments.

(5) Formative assessments must continue to be adopted, selected, and administered pursuant to Section 59-18-310.

(6) Within thirty days after providing student performance data to the school districts as required by law, the department must provide to the Education Oversight Committee student performance results on assessments authorized in this subsection and end-of-course assessments in a format agreed upon by the department and the Oversight Committee. The results of these assessments must be included in state ratings for each school beginning in the 2017-2018 School Year. The Oversight Committee also must develop and recommend a single accountability system that meets federal and state accountability requirements by the Fall of 2017. While developing the single accountability system that will be implemented in the 2017-2018 School Year, the Education Oversight Committee shall determine the format of a transitional report card released to the public in the Fall of 2016 and 2017 that will also identify underperforming schools and districts. These transitional reports will, at a minimum, include the following: (1) school, district, and statewide student assessment results in reading and mathematics in grades three through eight; (2) high school and district graduation rates; and (3) measures of student college and career readiness at the school, district, and statewide level. These transitional reports will inform schools and districts, the public, and the Department of Education of school and district general academic performance and assist in identifying potentially underperforming schools and districts and in targeting

technical assistance support and interventions in the interim before ratings are issued.

(7) When standards are subsequently revised, the Department of Education, the State Board of Education, and the Education Oversight Committee shall approve assessments pursuant to Section 59-18-320.”

### **Tenth grade assessments**

SECTION 9. Section 59-18-340 of the 1976 Code, as last amended by Act 282 of 2008, is further amended to read:

“Section 59-18-340. High schools shall offer state-funded PSAT, pre-ACT, or tenth grade Aspire tests to each tenth grade student in order to assess and identify curricular areas that need to be strengthened and reinforced. Schools and districts shall use these assessments as diagnostic tools to provide academic assistance to students whose scores reflect the need for such assistance. Schools and districts shall use these assessments to provide guidance and direction for parents and students as they plan for postsecondary experiences.”

### **Annual assessment reports, deadline exception**

SECTION 10. Section 59-18-360 of the 1976 Code, as last amended by Act 282 of 2008, is further amended to read:

“Section 59-18-360. Beginning with the 2010 assessment administration, the Department of Education is directed to provide assessment results annually on individual students and schools by August first, except when assessments are being updated and new achievement standards are being set, in a manner and format that is easily understood by parents and the public. In addition, the school assessment results must be presented in a format easily understood by the faculty and in a manner that is useful for curriculum review and instructional improvement. The department is to provide longitudinally matched student data from the standards-based assessments and include information on the performance of subgroups of students within the school. The department must work with the Division of Accountability in developing the formats of the assessment results. Schools and districts are responsible for disseminating this information to parents.”

**Annual report cards**

SECTION 11. Section 59-18-900 of the 1976 Code, as last amended by Act 289 of 2014, is further amended to read:

“Section 59-18-900. (A) The Education Oversight Committee, working with the State Board of Education, is directed to establish the format of a comprehensive, web-based, annual report card to report on the performance for the State and for individual primary, elementary, middle, high schools, career centers, and school districts of the State. The comprehensive report card must be in a reader-friendly format, using graphics whenever possible, published on the state, district, and school websites, and, upon request, printed by the school districts. The school’s rating must be emphasized and an explanation of its meaning and significance for the school also must be reported. The annual report card must serve at least six purposes:

- (1) inform parents and the public about the school’s performance including, but not limited to, that on the home page of the report there must be each school’s overall performance rating in a font size larger than twenty-six and the total number of points the school achieved on a zero to one hundred scale;
- (2) assist in addressing the strengths and weaknesses within a particular school;
- (3) recognize schools with high performance;
- (4) evaluate and focus resources on schools with low performance;
- (5) meet federal report card requirements; and
- (6) document the preparedness of high school graduates for college and career.

(B)(1) The Education Oversight Committee, working with the State Board of Education and a broad-based group of stakeholders, including, but not limited to, parents, business and industry persons, community leaders, and educators, shall determine the criteria for and establish performance ratings of excellent, good, average, below average, and unsatisfactory for schools to increase transparency and accountability as provided below:

- (a) Excellent – School performance substantially exceeds the criteria to ensure all students meet the Profile of the South Carolina Graduate;
- (b) Good – School performance exceeds the criteria to ensure all students meet the Profile of the South Carolina Graduate;

(c) Average – School performance meets the criteria to ensure all students meet the Profile of the South Carolina Graduate;

(d) Below Average – School performance is in jeopardy of not meeting the criteria to ensure all students meet the Profile of the South Carolina Graduate; and

(e) Unsatisfactory – School performance fails to meet the criteria to ensure all students meet the Profile of the South Carolina Graduate.

(2) The same categories of performance ratings also must be assigned to individual indicators used to measure a school's performance including, but not limited to, academic achievement, student growth or progress, graduation rate, English language proficiency, and college and career readiness.

(3) Only the scores of students enrolled continuously in the school from the time of the forty-five-day enrollment count to the first day of testing must be included in calculating the rating. Graduation rates must be used as an additional accountability measure for high schools and school districts.

(4) The Oversight Committee, working with the State Board of Education, shall establish student performance indicators which will be those considered to be useful for inclusion as a component of a school's overall performance and appropriate for the grade levels within the school.

(C) In setting the criteria for the academic performance ratings and the performance indicators, the Education Oversight Committee shall report the performance by subgroups of students in the school and schools similar in student characteristics. Criteria must use established guidelines for statistical analysis and build on current data-reporting practices.

(D) The comprehensive report card must include a comprehensive set of performance indicators with information on comparisons, trends, needs, and performance over time which is helpful to parents and the public in evaluating the school. In addition, the comprehensive report card must include indicators that meet federal law requirements. Special efforts are to be made to ensure that the information contained in the report card is provided in an easily understood manner and a reader-friendly format. This information should also provide a context for the performance of the school. Where appropriate, the data should yield disaggregated results to schools and districts in planning for improvement. The report card should include information in such areas as programs and curriculum, school leadership, community and parent support, faculty qualifications, evaluations of the school by parents,

teachers, and students. In addition, the report card must contain other criteria including, but not limited to, information on promotion and retention ratios, disciplinary climate, dropout ratios, dropout reduction data, dropout retention data, access to technology, student and teacher ratios, and attendance data.

(E) After reviewing the school's performance on statewide assessments and results of other report card criteria, the principal, in conjunction with the School Improvement Council established in Section 59-20-60, must write an annual narrative of a school's progress in order to further inform parents and the community about the school and its efforts to ensure that all students graduate with the knowledge, skills, and opportunity to be college ready, career ready, and life ready for success in the global, digital, and knowledge-based world of the twenty-first century as provided in Section 59-1-50. The narrative must be reviewed by the district superintendent or appropriate body for a local charter school. The narrative must cite factors or activities supporting progress and barriers which inhibit progress. The school's report card must be furnished to parents and the public no later than November fifteenth for the 2016-2017 and 2017-2018 School Years. To further increase transparency and accountability, for the 2018-2019 School Year, the school's report card must be furnished to parents and the public no later than October first. For the 2019-2020 School Year, and every subsequent year, the school's report card must be furnished to parents and the public no later than September first.

(F) The percentage of new trustees who have completed the orientation requirement provided in Section 59-19-45 must be reflected on the school district website.

(G) The State Board of Education shall promulgate regulations outlining the procedures for data collection, data accuracy, data reporting, and consequences for failure to provide data required in this section.

(H) The Education Oversight Committee, working with the State Board of Education, is directed to establish a comprehensive annual report concerning the performance of military-connected children who attend primary, elementary, middle, and high schools in this State. The comprehensive annual report must be in a reader-friendly format, using graphics whenever possible, published on the state, district, and school websites, and, upon request, printed by the school districts. The annual comprehensive report must address at least attendance, academic performance in reading, math, and science, and graduation rates of military-connected children.”

**Cyclical review of accountability systems**

SECTION 12. Section 59-18-910 of the 1976 Code, as last amended by Act 282 of 2008, is further amended to read:

“Section 59-18-910. Beginning in 2020, the Education Oversight Committee, working with the State Board of Education and a broad-based group of stakeholders, selected by the Education Oversight Committee, shall conduct a comprehensive cyclical review of the accountability system at least every five years and shall provide the General Assembly with a report on the findings and recommended actions to improve the accountability system and to accelerate improvements in student and school performance. The stakeholders must include the State Superintendent of Education and the Governor, or the Governor’s designee. The other stakeholders include, but are not limited to, parents, business and industry persons, community leaders, and educators. The cyclical review must include recommendations of a process for determining if students are graduating with the world-class skills and life and career characteristics of the Profile of the South Carolina Graduate to be successful in postsecondary education and in careers. The accountability system needs to reflect evidence that students have developed these skills and characteristics.”

**Charter school report cards, district ratings**

SECTION 13. Section 59-18-920 of the 1976 Code, as last amended by Act 164 of 2012, is further amended to read:

“Section 59-18-920. A charter school established pursuant to Chapter 40, Title 59 shall report the data requested by the Department of Education necessary to generate a report card and a rating. The performance of students attending charter schools sponsored by the South Carolina Public Charter School District must be included in the overall performance ratings of each school in the South Carolina Public Charter School District. The performance of students attending a charter school authorized by a local school district must be reflected on a separate line on the school district’s report card. An alternative school is included in the requirements of this chapter; however, the purpose of an alternative school must be taken into consideration in determining its performance rating. The Education Oversight Committee, working with the State Board of Education and the School to Work Advisory Council, shall develop a report card for career and technology schools.”

**Publication of report cards**

SECTION 14. Section 59-18-930(A) of the 1976 Code, as last amended by Act 34 of 2009, is further amended to read:

“(A) The State Department of Education annually shall publish on its website home page the report card to all schools and districts of the State no later than November fifteenth, for the 2016-2017 and 2017-2018 School Years. To further increase transparency and accountability, for the 2018-2019 School Year, the school’s report card must be furnished to parents and the public no later than October first. For the 2019-2020 School Year, and every subsequent year, the school’s report card must be furnished to parents and the public no later than September first. The home page report card must be capable of being downloaded into a portable document format (PDF) and must contain National Assessment of Educational Progress (NAEP) scores or other national scores or comparisons, if available. The report card summary must be made available to all parents of the school and the school district.”

**Repeal**

SECTION 15. Section 59-18-950 of the 1976 Code is repealed.

**Time effective**

SECTION 16. This act takes effect upon approval by the Governor.

Ratified the 6<sup>th</sup> day of June, 2017.

Approved the 10<sup>th</sup> day of June, 2017.

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**No. 95**

(R125, S179)

**AN ACT TO AMEND THE CODE OF LAWS OF SOUTH  
CAROLINA, 1976, BY ADDING ARTICLE 19 TO CHAPTER 53,  
TITLE 44 SO AS TO PROVIDE LIMITED IMMUNITY FROM  
PROSECUTION FOR CERTAIN DRUG AND**

**ALCOHOL-RELATED OFFENSES FOR A PERSON WHO SEEKS MEDICAL ASSISTANCE FOR ANOTHER PERSON WHO IS EXPERIENCING A DRUG OR ALCOHOL-RELATED OVERDOSE OR FOR A PERSON WHO IS EXPERIENCING A DRUG OR ALCOHOL-RELATED OVERDOSE AND SEEKS MEDICAL ASSISTANCE, TO ALLOW THE COURT TO CONSIDER AS A MITIGATING FACTOR IN PROCEEDINGS RELATED TO OTHER CRIMINAL OFFENSES WHETHER OR NOT MEDICAL ASSISTANCE WAS SOUGHT, TO LIMIT THE IMMUNITY TO ALLOW PROSECUTION OF A PERSON FOR OTHER CRIMES ARISING OUT OF THE DRUG OR ALCOHOL-RELATED OVERDOSE, TO ALLOW FOR ADMISSIBILITY OF CERTAIN EVIDENCE, TO PROVIDE CIVIL AND CRIMINAL IMMUNITY FOR LAW ENFORCEMENT OFFICERS RELATING TO CERTAIN ARRESTS IF THE OFFICER MADE THE ARREST BASED ON PROBABLE CAUSE, AND TO PROVIDE FOR OTHER PROCEDURAL AND RELATED PROVISIONS PERTAINING TO THE ABOVE.**

Be it enacted by the General Assembly of the State of South Carolina:

**Drug or alcohol-related overdoses, certain immunity when seeking medical treatment**

SECTION 1. Chapter 53, Title 44 of the 1976 Code is amended by adding:

“Article 19

Drug or Alcohol-Related Overdose Medical Treatment

Section 44-53-1910. As used in this article:

(1) ‘Controlled substance’ has the same meaning as provided in Section 44-53-110.

(2) ‘Drug or alcohol-related overdose’ means an acute condition, including mania, hysteria, extreme physical illness, coma, or death resulting from the consumption or use of a controlled substance, alcohol, or another substance with which a controlled substance or alcohol was combined, that a layperson would reasonably believe to be a drug or alcohol overdose that requires medical assistance.



(3) 'Seeks medical assistance' means seeking medical assistance by contacting the 911 system, a law enforcement officer, or emergency services personnel.

Section 44-53-1920. (A) A person who seeks medical assistance for another person who appears to be experiencing a drug or alcohol-related overdose may not be prosecuted for any of the offenses listed in subsection (B), if the evidence for prosecution was obtained as a result of the person seeking medical assistance for the apparent overdose on the premises or immediately after seeking medical assistance and the person:

(1) acted in good faith when seeking medical assistance, upon a reasonable belief that he was the first person to call for assistance;

(2) provided his own name to the 911 system or to a law enforcement officer upon arrival; and

(3) did not seek medical assistance during the course of the execution of an arrest warrant, search warrant, or other lawful search.

(B) A person who seeks medical assistance for another person in accordance with the requirements of subsection (A) may not be prosecuted for:

(1) dispensing or delivering a controlled substance in violation of Section 44-53-370(a), when the controlled substance is dispensed or delivered directly to the person who appears to be experiencing a drug-related overdose;

(2) possessing a controlled substance in violation of Section 44-53-370(c);

(3) possessing less than one gram of methamphetamine or cocaine base in violation of Section 44-53-375(A);

(4) dispensing or delivering methamphetamine or cocaine base in violation of Section 44-53-375(B), when the methamphetamine or cocaine base is dispensed or delivered directly to the person who appears to be experiencing a drug-related overdose;

(5) possessing paraphernalia in violation of Section 44-53-391;

(6) selling or delivering paraphernalia in violation of Section 44-53-391, when the sale or delivery is to the person who appears to be experiencing a drug-related overdose;

(7) purchasing, attempting to purchase, consuming, or knowingly possessing alcoholic beverages in violation of Section 63-19-2440;

(8) transferring or giving to a person under the age of twenty-one years for consumption beer or wine in violation of Section 61-4-90; or

(9) contributing to the delinquency of a minor in violation of Section 16-17-490.

(C) If the person seeking medical assistance pursuant to this section previously has sought medical assistance for another person pursuant to this article, the court may consider the circumstances of the prior incidents and the related offenses to determine whether to grant the person immunity from prosecution.

(D) A person described in this section must use his or her own name when contacting authorities, fully cooperate with law enforcement and medical personnel, and must remain with the individual needing medical assistance until help arrives.

Section 44-53-1930. (A) A person who experiences a drug or alcohol-related overdose and is in need of medical assistance may not be prosecuted for any of the offenses listed in Section 44-53-1920 if the evidence for prosecution was obtained as a result of the drug or alcohol-related overdose and need for medical assistance.

(B) A person described in Section 44-53-1920 must use his or her own name when contacting authorities, and fully cooperate with law enforcement and medical personnel.

Section 44-53-1940. The court may consider a person's decision to seek medical assistance pursuant to Section 44-53-1920(A) or 44-53-1930 as a mitigating factor in a criminal prosecution or sentencing for a drug or alcohol-related offense that is not an offense listed in Section 44-53-1920(B).

Section 44-53-1950. This article does not prohibit a person from being arrested, charged, or prosecuted, or from having his supervision status modified or revoked, based on an offense other than an offense listed in Section 44-53-1920(B), whether or not the offense arises from the same circumstances for which the person sought medical assistance.

Section 44-53-1960. Nothing in this section may be construed to:

(1) limit the admissibility of any evidence in connection with the investigation or prosecution of a crime with regard to a defendant who does not qualify for the protections of Section 44-53-1920(A) or with regard to other crimes committed by a person who otherwise qualifies for protection pursuant to Section 44-53-1920(A) or Section 44-53-1930;

(2) limit any seizure of evidence or contraband otherwise permitted by law; or

(3) limit or abridge the authority of a law enforcement officer to detain or take into custody a person in the course of an investigation or to effect an arrest for any offense, except as provided in Section 44-53-1920(A) or Section 44-53-1930.

Section 44-53-1970. A law enforcement officer who arrests a person for an offense listed in Section 44-53-1920(B) is not subject to criminal prosecution, or civil liability, for false arrest or false imprisonment if the officer made the arrest based on probable cause.”

**Time effective**

SECTION 2. This act takes effect upon approval by the Governor.

Ratified the 6<sup>th</sup> day of June, 2017.

Approved the 10<sup>th</sup> day of June, 2017.

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**No. 96**

(R126, S289)

**AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, SO AS TO ENACT THE “SOUTH CAROLINA CRIME VICTIM SERVICES ACT” TO RESTRUCTURE AND CONSOLIDATE VICTIM SERVICES; BY ADDING ARTICLE 8 TO CHAPTER 7, TITLE 1 SO AS TO CREATE THE OFFICE OF THE ATTORNEY GENERAL, SOUTH CAROLINA CRIME VICTIM SERVICES DIVISION, MOVE THE STATE OFFICE OF VICTIM ASSISTANCE, THE SOUTH CAROLINA CRIME VICTIM OMBUDSMAN, AND THAT PORTION OF THE OFFICE OF HIGHWAY SAFETY AND JUSTICE PROGRAMS UNDER THE DEPARTMENT OF PUBLIC SAFETY WHICH ADMINISTERS CERTAIN VICTIM SERVICES GRANTS UNDER THE NEWLY CREATED DIVISION, AND TO CREATE FOUR DEPARTMENTS UNDER THE DIVISION TO OVERSEE AND ADMINISTER DIFFERENT ASPECTS OF THE VICTIM SERVICES DELIVERY SYSTEM; TO AMEND SECTION 1-11-10, AS AMENDED, RELATING TO OFFICES AND DIVISIONS UNDER THE DEPARTMENT OF**

ADMINISTRATION, SO AS TO DELETE THOSE VICTIM SERVICES OFFICES AND OTHER ENTITIES WHICH ARE MOVED TO THE NEW DIVISION; TO AMEND SECTIONS 14-1-203, 14-1-204, 14-1-205, 14-1-206, 14-1-207, 14-1-208, AND 14-1-210, ALL RELATING TO THE DISTRIBUTION OF CERTAIN FILING FEES, ALL SO AS TO MAKE CONFORMING CHANGES REFLECTING THE RESTRUCTURING OF VICTIM SERVICES GENERALLY RELATING TO THAT PORTION OF THE FEES DISTRIBUTED TO THE VICTIM COMPENSATION FUND; TO AMEND SECTION 16-3-1110, AS AMENDED, AND TO AMEND SECTIONS 16-3-1120, 16-3-1140, 16-3-1150, 16-3-1160, 16-3-1170, 16-3-1180, 16-3-1220, 16-3-1230, 16-3-1240, 16-3-1260, 16-3-1290, 16-3-1330, 16-3-1340, AND 16-3-1350, ALL RELATING TO COMPENSATION OF VICTIMS OF CRIME, ALL SO AS TO MAKE CONFORMING CHANGES REFLECTING THE RESTRUCTURING OF VICTIM SERVICES GENERALLY RELATING TO THE VICTIM COMPENSATION FUND AND CERTAIN RESPONSIBILITIES OF THE NEWLY CREATED OFFICE OF THE ATTORNEY GENERAL, SOUTH CAROLINA CRIME SERVICES DIVISION, DEPARTMENT OF CRIME VICTIM COMPENSATION; TO AMEND ARTICLE 14, CHAPTER 3, TITLE 16, RELATING TO THE VICTIM ASSISTANCE PROGRAM, SO AS TO RENAME THE ARTICLE "CRIME VICTIM SERVICES TRAINING, PROVIDER CERTIFICATION, AND STATISTICAL ANALYSIS", TO MAKE CONFORMING CHANGES REFLECTING THE RESTRUCTURING OF VICTIM SERVICES ALL GENERALLY RELATING TO THE NEWLY CREATED OFFICE OF THE ATTORNEY GENERAL, SOUTH CAROLINA CRIME VICTIM SERVICES DIVISION, DEPARTMENT OF CRIME VICTIM SERVICES TRAINING, PROVIDER CERTIFICATION, AND STATISTICAL ANALYSIS AND ITS RESPONSIBILITIES, AND TO MAKE CONFORMING CHANGES TO THE VICTIM SERVICES COORDINATING COUNCIL AND TO PROVIDE THAT THE DIRECTOR OF THE SOUTH CAROLINA CRIME VICTIM SERVICES DIVISION SHALL SERVE AS CHAIRPERSON; TO AMEND ARTICLE 16, CHAPTER 3, TITLE 16, RELATING TO THE CRIME VICTIMS' OMBUDSMAN OF THE OFFICE OF THE GOVERNOR, SO AS TO RENAME THE ARTICLE "CRIME VICTIM OMBUDSMAN", TO MAKE CONFORMING CHANGES

REFLECTING THE RESTRUCTURING OF VICTIM SERVICES ALL GENERALLY RELATING TO THE NEWLY CREATED OFFICE OF THE ATTORNEY GENERAL, SOUTH CAROLINA CRIME VICTIM SERVICES DIVISION, DEPARTMENT OF CRIME VICTIM OMBUDSMAN AND ITS RESPONSIBILITIES, AND TO PROVIDE A PROCEDURE FOR COMPLAINTS REGARDING THE OFFICE OF THE ATTORNEY GENERAL, SOUTH CAROLINA CRIME VICTIM SERVICES DIVISION AND ITS AFFILIATED DEPARTMENTS TO BE HANDLED THROUGH THE OMBUDSMAN WITH APPEAL TO THE STATE INSPECTOR GENERAL; BY ADDING ARTICLE 12 TO CHAPTER 3, TITLE 16, SO AS TO ENTITLE THE ARTICLE "CRIME VICTIM ASSISTANCE GRANTS", AND TO PROVIDE THAT THE OFFICE OF THE ATTORNEY GENERAL, SOUTH CAROLINA CRIME VICTIM SERVICES DIVISION, DEPARTMENT OF CRIME VICTIM ASSISTANCE GRANTS WILL BE RUN BY A DEPUTY DIRECTOR WHO SHALL ESTABLISH A PROCESS TO SOLICIT AND ADMINISTER CERTAIN VICTIM SERVICES GRANTS AND THE DISBURSEMENT OF FUNDS FROM THOSE GRANTS; TO AMEND SECTIONS 23-6-500, 23-6-510, AND 23-6-520, ALL RELATING TO THE SOUTH CAROLINA PUBLIC SAFETY COORDINATING COUNCIL, ALL SO AS TO MAKE CONFORMING CHANGES TO INCLUDE THE OFFICE OF THE ATTORNEY GENERAL, SOUTH CAROLINA CRIME VICTIM SERVICES DIVISION, DEPARTMENT OF CRIME VICTIM ASSISTANCE GRANTS TO THE GRANT PROCESS UNDER CERTAIN CIRCUMSTANCES, AND TO REVISE THE COUNCIL'S MEMBERSHIP TO INCLUDE THE ATTORNEY GENERAL AND A VICTIM WITH A DOCUMENTED HISTORY OF VICTIMIZATION APPOINTED BY THE ATTORNEY GENERAL; TO AMEND SECTION 16-15-445, RELATING TO THE SEIZURE AND FORFEITURE OF EQUIPMENT USED IN VIOLATION OF A CRIME, SECTION 24-3-40, AS AMENDED, RELATING TO THE PRISON INDUSTRIES PROGRAM AND DISTRIBUTION OF PRISONER WAGES, AND SECTION 63-19-480, RELATING TO THE DEPARTMENT OF JUVENILE JUSTICE AND THE DISTRIBUTION OF JUVENILE WAGES, ALL SO AS TO MAKE CONFORMING CHANGES REFLECTING THE RESTRUCTURING OF VICTIM SERVICES GENERALLY RELATING TO THE VICTIM COMPENSATION FUND; TO AMEND SECTIONS 14-1-206, 14-1-207, AND 14-1-208,

**ALL RELATING TO THE DISTRIBUTION OF CERTAIN FILING FEES, ALL SO AS TO MAKE CONFORMING CHANGES REFLECTING THE RESTRUCTURING OF VICTIM SERVICES GENERALLY, AND TO PROVIDE FOR THE UNIFORM SUPPLEMENTAL SCHEDULE FORM TO BE DEVELOPED BY THE OFFICE OF THE ATTORNEY GENERAL, SOUTH CAROLINA CRIME VICTIM SERVICES DIVISION; AND BY ADDING SECTIONS 14-1-211.5 AND 14-1-211.6 SO AS TO CODIFY EXISTING BUDGET PROVISOS RELATING TO THE DISTRIBUTION OF CERTAIN CRIME VICTIM FUNDS, AND TO REQUIRE THE DEPARTMENT OF CRIME VICTIM ASSISTANCE GRANTS TO OFFER TRAINING AND ASSISTANCE ON THE USE OF CERTAIN FUNDS AND PROVIDE FOR AUDITING AND REPORTING PROCEDURES FOR VICTIM SERVICES PROVIDERS, RESPECTIVELY.**

Be it enacted by the General Assembly of the State of South Carolina:

**Citation**

SECTION 1. This act may be cited as the “South Carolina Crime Victim Services Act”.

**Creation of Office of the Attorney General, South Carolina Crime Victim Services Division, transfer of existing crime victim services entities, creation of four crime victim services departments under the division**

PART I

Restructure and Consolidation of Victim Services

SECTION 2. Chapter 7, Title 1 of the 1976 Code is amended by adding:

“Article 8

South Carolina Crime Victim Services

Section 1-7-1100. The following agencies, boards, and commissions, including all the allied, advisory, affiliated, or related entities, as well as the employees, funds, property, and all contractual

rights and obligations associated with any such agency, except for those subdivisions specifically included under another department, are hereby transferred to and incorporated in and shall be administered as part of the Office of the Attorney General, South Carolina Crime Victim Services Division:

- (1) State Office of Victim Assistance, provided for in Articles 13 and 14, Chapter 3, Title 16;
- (2) South Carolina Crime Victim Ombudsman, provided for in Article 16, Chapter 3, Title 16;
- (3) that portion of the Office of Highway Safety and Justice Programs of the Department of Public Safety that administers the Victims of Crime Act grants, the Violence Against Women Act grants, and the State Victim Assistance Program grants.

Section 1-7-1110. (A) There is created the South Carolina Crime Victim Services (SCCVS) Division in the Office of the Attorney General under the Attorney General's authority. The division must be headed by a director appointed by the Attorney General who shall hold office until his successor is appointed and qualified. There are created four departments within the division, the:

- (1) Department of Crime Victim Compensation;
- (2) Department of Crime Victim Assistance Grants;
- (3) Department of Crime Victim Services Training, Provider Certification, and Statistical Analysis; and
- (4) Department of Crime Victim Ombudsman.

The director shall appoint the three deputy directors, pursuant to items (1), (2), and (3), and the ombudsman.

(B) Information including, but not limited to, all papers, files, or investigative materials requested or voluntarily provided and received by any department of the Office of the Attorney General, South Carolina Crime Services Division relating to a particular victim of crime, is confidential and retains its confidential status at all times and may not be shared with other divisions or departments within the Office of the Attorney General in order to pursue prosecution of that victim. In addition, confidential information as defined in this section is not subject to release pursuant to Chapter 4, Title 30, the Freedom of Information Act.”

**Department of Administration, conforming amendments reflecting transfer of certain victim services**

SECTION 3. Section 1-11-10(A) of the 1976 Code, as last amended by Act 121 of 2014, is further amended to read:

“(A) There is hereby created, within the executive branch of the state government, the Department of Administration, headed by a director appointed by the Governor upon the advice and consent of the Senate who only may be removed pursuant to Section 1-3-240(B). Effective July 1, 2015, the following offices, divisions, or components of the former State Budget and Control Board, Office of the Governor, or other agencies are transferred to, and incorporated into, the Department of Administration:

(1) the Division of General Services, including Business Operations, Facilities Management, State Building and Property Services, and Agency Services, including surplus property, intrastate mail, parking, state fleet management, except that the Division of General Services shall not be transferred to the Department of Administration until the Director of the Department of Administration enters into a memorandum of understanding with appropriate officials of applicable legislative and judicial agencies or departments meeting the requirements of this subsection. There shall be a single memorandum of understanding involving the Department of Administration and the legislative and judicial branches with appropriate officials of each to be signatories to the memorandum of understanding.

(a) The memorandum of understanding shall provide for:

- (i) continued use of existing office space;
- (ii) a method for the allocation of new, additional, or different office space;
- (iii) adequate parking;
- (iv) a method for the allocation of new, additional, or different parking;
- (v) the provision of appropriate levels of electrical, mechanical, maintenance, energy management, fire protection, custodial, project management, safety and building renovation, and other services currently provided by the General Services Division of the State Budget and Control Board;
- (vi) the provision of water, electricity, steam, and chilled water to the offices, areas, and facilities occupied by the applicable agencies;



(vii) the ability for each agency or department to maintain building access control for its allocated office space; and

(viii) access control for the Senate and House chambers and courtrooms as appropriate.

(b) The parties may modify the memorandum of understanding by mutual consent at any time.

(c) The General Services Division must provide the services described in subsection (a) and any other maintenance and support, at a level that is greater than or equal to what is provided prior to the effective date of this act, to each building on the Capitol Complex, including the Supreme Court, without charge. The General Services Division must coordinate with the appropriate officials of applicable legislative and judicial agencies or departments when providing these services to the buildings and areas controlled by those agencies;

(2) the State Office of Human Resources;

(3) the Guardian Ad Litem Program as established in Article 5, Chapter 11, Title 63;

(4) the Office of Economic Opportunity, the office designated by the Governor to be the state administering agency that is responsible for the receipt and distribution of the federal funds as allocated to South Carolina for the implementation of Title VI, Public Law 97-35;

(5) the Developmental Disabilities Council as established by Executive Order in 1971 and reauthorized in 2010;

(6) the Continuum of Care for Emotionally Disturbed Children as established in Article 13, Chapter 11, Title 63;

(7) the Division for Review of the Foster Care of Children as established by Article 7, Chapter 11, Title 63;

(8) the Children's Case Resolution System as established by Article 11, Chapter 11, Title 63;

(9) the Client Assistance Program;

(10) the Division of Veterans' Affairs as established by Chapter 11, Title 25;

(11) the Commission on Women as established by Chapter 15, Title 1;

(12) the Governor's Office of Ombudsman;

(13) the Division of Small and Minority Business Contracting and Certification, as established pursuant to Article 21, Chapter 35, Title 11, formerly known as the Small and Minority Business Assistance Office;

(14) the Division of State Information Technology, including the Data Center, Telecommunications and Information Technology Services, the South Carolina Enterprise Information System, and the Division of Information Security; and

(15) the Nuclear Advisory Council as established in Article 9, Chapter 7, Title 13.”

**Filing fees, conforming amendments reflecting transfer of certain victim services**

PART II

Conforming Changes

SECTION 4. A. Section 14-1-203 of the 1976 Code is amended to read:

“Section 14-1-203. The revenue from the fee set in Section 63-3-370(C) must be remitted to the county in which the proceeding is instituted. Forty-four percent of the revenues must be remitted monthly by the fifteenth day of each month to the State Treasurer on forms in a manner prescribed by him. When payment is made to the county in installments, the state’s portion must be remitted to the State Treasurer by the county treasurer on a monthly basis. The forty-four percent remitted to the State Treasurer must be deposited as follows:

- (1) 43.76 percent to the general fund;
- (2) 10.04 percent to the Department of Mental Health to be used exclusively for the treatment and rehabilitation of drug addicts within the department’s addiction center facilities;
- (3) 6.20 percent to the Office of the Attorney General, South Carolina Crime Victim Services Division, Department of Crime Victim Compensation, Victim Compensation Fund; and
- (4) 40.00 percent to the South Carolina Judicial Department.”

B. Section 14-1-204(A) of the 1976 Code is amended to read:

“(A) The one-hundred-dollar-filing fee for documents and actions described in Section 8-21-310(11)(a) must be remitted to the county in which the proceeding is instituted, and fifty-six percent of these filing fee revenues must be delivered to the county treasurer to be remitted monthly by the fifteenth day of each month to the State Treasurer. When a payment is made to the county in installments, the state’s portion must be remitted to the State Treasurer by the county treasurer on a monthly basis.

The fifty-six percent of the one-hundred-dollar fee prescribed in Section 8-21-310(11)(a) remitted to the State Treasurer must be deposited as follows:

- (1) 31.52 percent to the state general fund;
- (2) 7.23 percent to the Department of Mental Health to be used exclusively for the treatment and rehabilitation of drug addicts within the department's addiction center facilities;
- (3) 4.47 percent to the Office of the Attorney General, South Carolina Crime Victim Services Division, Department of Crime Victim Compensation, Victim Compensation Fund;
- (4) 26.78 percent to the Defense of Indigents Per Capita Fund, administered by the Commission on Indigent Defense, which shall then distribute these funds on December thirty-first and on June thirtieth of each year to South Carolina organizations that are grantees of the Legal Services Corporation, in amounts proportionate to each recipient's share of the state's poverty population; and
- (5) 30.00 percent to the South Carolina Judicial Department."

C. Section 14-1-205 of the 1976 Code is amended to read:

"Section 14-1-205. Except as provided in Sections 17-15-260, 34-11-90, and 56-5-4160, on January 1, 1995, fifty-six percent of all costs, fees, fines, penalties, forfeitures, and other revenues generated by the circuit courts and the family courts, except the one-hundred-dollar-filing fee prescribed in Section 8-21-310(11)(a) must be remitted to the county in which the proceeding is instituted and forty-four percent of the revenues must be delivered to the county treasurer to be remitted monthly by the fifteenth day of each month to the State Treasurer on forms and in a manner prescribed by him. When a payment is made to the county in installments, the state's portion must be remitted to the State Treasurer by the county treasurer on a monthly basis. The forty-four percent remitted to the State Treasurer must be deposited as follows:

- (1) 72.93 percent to the general fund;
- (2) 16.73 percent to the Department of Mental Health to be used exclusively for the treatment and rehabilitation of drug addicts within the department's addiction center facilities;
- (3) 10.34 percent to the Office of the Attorney General, South Carolina Crime Victim Services Division, Department of Crime Victim Compensation, Victim Compensation Fund.

In any court, when sentencing a person convicted of an offense which has proximately caused physical injury or death to the victim, the court

may order the defendant to pay a restitution charge commensurate with the offense committed, not to exceed ten thousand dollars, to the Office of the Attorney General, South Carolina Crime Victim Services Division, Department of Crime Victim Compensation, Victim Compensation Fund.”

D. Section 14-1-206(C) and (D) of the 1976 Code is amended to read:

“(C) After deducting amounts provided pursuant to Section 14-1-210, the State Treasurer shall deposit the balance of assessments received as follows:

(1) 42.08 percent for programs established pursuant to Chapter 21 of Title 24 and the Shock Incarceration Program as provided in Article 13, Chapter 13 of Title 24;

(2) 14.74 percent to the Law Enforcement Training Council for training in the fields of law enforcement and criminal justice;

(3) .45 percent to the Department of Public Safety to defray the cost of erecting and maintaining the South Carolina Law Enforcement Officers Hall of Fame. When funds collected pursuant to this item exceed the necessary costs and expenses of the South Carolina Law Enforcement Officers Hall of Fame operation and maintenance as determined by the Department of Public Safety, the department may retain, carry forward, and expend the surplus to defray the costs of maintaining and operating the Hall of Fame;

(4) 14.46 percent to the Office of Indigent Defense for the defense of indigents;

(5) 11.83 percent for the Office of the Attorney General, South Carolina Crime Victim Services Division, Department of Crime Victim Compensation, Victim Compensation Fund;

(6) 15.39 percent to the general fund;

(7) .89 percent to the Office of the Attorney General for a fund to provide support for counties involved in complex criminal litigation. For the purposes of this item, ‘complex criminal litigation’ means criminal cases in which the State is seeking the death penalty and has served notice as required by law upon the defendant’s counsel, and the county involved has expended more than two hundred fifty thousand dollars for a particular case in direct support of operating the court of general sessions and for prosecution related expenses. The Attorney General shall develop guidelines for determining what expenses are reimbursable from the fund and shall approve all disbursements from the fund. Funds must be paid to a county for all expenditures authorized for reimbursement under this item except for the first one hundred thousand

dollars the county expended in satisfying the requirements for reimbursement from the fund; however, money disbursed from this fund must be disbursed on a 'first received, first paid' basis. When revenue in the fund reaches five hundred thousand dollars, all revenue in excess of five hundred thousand dollars must be credited to the general fund of the State. Unexpended revenue in the fund at the end of the fiscal year carries over and may be expended in the next fiscal year; and

(8) .16 percent to the Office of the State Treasurer to defray the administrative expenses associated with collecting and distributing the revenue of these assessments.

(D) The revenue retained by the county under subsection (B) must be used for the provision of services for the victims of crime including those required by law. These funds must be appropriated for the exclusive purpose of providing victim services as required by Article 15, Chapter 3, Title 16; specifically, those service requirements that are imposed on local law enforcement, local detention facilities, prosecutors, and the summary courts. First priority must be given to those victims' assistance programs which are required by Article 15, Chapter 3, Title 16 and second priority must be given to programs which expand victims' services beyond those required by Article 15, Chapter 3, Title 16. All unused funds must be carried forward from year to year and used exclusively for the provision of services for victims of crime. All unused funds must be separately identified in the governmental entity's adopted budget as funds unused and carried forward from previous years."

E. Section 14-1-207(C) and (D) of the 1976 Code is amended to read:

"(C) After deducting amounts provided pursuant to Section 14-1-210, the State Treasurer shall deposit the balance of the assessments received as follows:

(1) 32.36 percent for programs established pursuant to Chapter 21 of Title 24 and the Shock Incarceration Program as provided in Article 13, Chapter 13, Title 24;

(2) 20.72 percent to the Law Enforcement Training Council for training in the fields of law enforcement and criminal justice;

(3) .60 percent to the Department of Public Safety to defray the cost of erecting and maintaining the South Carolina Law Enforcement Officers Hall of Fame. When funds collected pursuant to this item exceed the necessary costs and expenses of the South Carolina Law Enforcement Officers Hall of Fame operation and maintenance as determined by the Department of Public Safety, the department may

retain, carry forward, and expend the surplus to defray the costs of maintaining and operating the Hall of Fame;

(4) 18.82 percent for the Office of the Attorney General, South Carolina Crime Victim Services Division, Department of Crime Victim Compensation, Victim Compensation Fund;

(5) 15.93 percent to the general fund;

(6) 10.49 percent to the Office of Indigent Defense for the defense of indigents;

(7) .92 percent to the Office of the Attorney General for a fund to provide support for counties involved in complex criminal litigation. For the purposes of this item, 'complex criminal litigation' means criminal cases in which the State is seeking the death penalty and has served notice as required by law upon the defendant's counsel and the county involved has expended more than two hundred fifty thousand dollars for a particular case in direct support of operating the court of general sessions and for prosecution related expenses. The Attorney General shall develop guidelines for determining what expenses are reimbursable from the fund and shall approve all disbursements from the fund. Funds must be paid to a county for all expenditures authorized for reimbursement under this item except for the first one hundred thousand dollars the county expended in satisfying the requirements for reimbursement from the fund; however, money disbursed from this fund must be disbursed on a 'first received, first paid' basis. When revenue in the fund reaches five hundred thousand dollars, all revenue in excess of five hundred thousand dollars must be credited to the general fund of the State. Unexpended revenue in the fund at the end of the fiscal year carries over and may be expended in the next fiscal year; and

(8) .16 percent to the Office of the State Treasurer to defray the administrative expenses associated with collecting and distributing the revenue of these assessments.

(D) The revenue retained by the county under subsection (B) must be used for the provision of services for the victims of crime including those required by law. These funds must be appropriated for the exclusive purpose of providing victim services as required by Article 15, Chapter 3, Title 16; specifically, those service requirements that are imposed on local law enforcement, local detention facilities, prosecutors, and the summary courts. First priority must be given to those victims' assistance programs which are required by Article 15, Chapter 3, Title 16 and second priority must be given to programs which expand victims' services beyond those required by Article 15, Chapter 3, Title 16. All unused funds must be carried forward from year to year and used exclusively for the provision of services for victims of crime. All unused

funds must be separately identified in the governmental entity's adopted budget as funds unused and carried forward from previous years."

F. Section 14-1-208(C) and (D) of the 1976 Code is amended to read:

“(C) After deducting amounts provided pursuant to Section 14-1-210, the State Treasurer shall deposit the balance of the assessments received as follows:

(1) 14.04 percent for programs established pursuant to Chapter 21 of Title 24 and the Shock Incarceration Program as provided in Article 13, Chapter 13, Title 24;

(2) 13.89 percent to the Law Enforcement Training Council for training in the fields of law enforcement and criminal justice;

(3) .36 percent to the Department of Public Safety to defray the cost of erecting and maintaining the South Carolina Law Enforcement Officers Hall of Fame. When funds collected pursuant to this item exceed the necessary costs and expenses of the South Carolina Law Enforcement Officers Hall of Fame operation and maintenance as determined by the Department of Public Safety, the department may retain, carry forward, and expend the surplus for the purpose of defraying the costs of maintaining and operating the Hall of Fame;

(4) 10.38 percent for the Office of the Attorney General, South Carolina Crime Victim Services Division, Department of Crime Victim Compensation, Victim Compensation Fund;

(5) 11.53 percent to the general fund;

(6) 10.56 percent to the Office of Indigent Defense for the defense of indigents;

(7) .89 percent to the Department of Mental Health to be used exclusively for the treatment and rehabilitation of drug addicts within the department's addiction center facilities;

(8) .54 percent to the Office of the Attorney General for a fund to provide support for counties involved in complex criminal litigation. For the purposes of this item, 'complex criminal litigation' means criminal cases in which the State is seeking the death penalty and has served notice as required by law upon the defendant's counsel and the county involved has expended more than one hundred thousand dollars for a particular case in direct support of operating the court of general sessions and for prosecution-related expenses. The Attorney General shall develop guidelines for determining what expenses are reimbursable from the fund and shall approve all disbursements from the fund. Funds must be paid to a county for all expenditures authorized for reimbursement under this item except for the first one hundred thousand dollars the

county expended in satisfying the requirements for reimbursement from the fund; however, money disbursed from this fund must be disbursed on a 'first received, first paid' basis. When revenue in the fund reaches five hundred thousand dollars, all revenue in excess of five hundred thousand dollars must be credited to the general fund of the State. Unexpended revenue in the fund at the end of the fiscal year carries over and may be expended in the next fiscal year;

(9)(a) 9.16 percent to the Department of Public Safety for the programs established pursuant to Section 56-5-2953(E); and

(b) 1.31 percent to SLED for the programs established pursuant to Section 56-5-2953(E);

(10) 13.61 percent to the Governor's Task Force on Litter and in the expenditure of these funds, the provisions of Chapter 35, Title 11 do not apply;

(11) 13.61 percent to the Department of Juvenile Justice. The Department of Juvenile Justice must apply the funds generated by this item to offset the nonstate share of allowable costs of operating juvenile detention centers so that per diem costs charged to local governments utilizing the juvenile detention centers do not exceed twenty-five dollars a day. Notwithstanding this provision of law, the director of the department may waive, reduce, defer, or reimburse the charges paid by local governments for juvenile detention placements. The department may apply the remainder of the funds generated by this item, if any, to operational or capital expenses associated with regional evaluation centers; and

(12) .12 percent to the Office of the State Treasurer to defray the administrative expenses associated with the collecting and distributing the revenue of these assessments.

(D) The revenue retained by the municipality under subsection (B) must be used for the provision of services for the victims of crime including those required by law. These funds must be appropriated for the exclusive purpose of providing victim services as required by Article 15, Chapter 3, Title 16; specifically, those service requirements that are imposed on local law enforcement, local detention facilities, prosecutors, and the summary courts. First priority must be given to those victims' assistance programs which are required by Article 15, Chapter 3, Title 16 and second priority must be given to programs which expand victims' services beyond those required by Article 15, Chapter 3, Title 16. All unused funds must be carried forward from year to year and used exclusively for the provision of services for victims of crime. All unused funds must be separately identified in the governmental



entity's adopted budget as funds unused and carried forward from previous years."

G. Section 14-1-210(A) of the 1976 Code is amended to read:

“(A)Based upon a random selection process, the State Auditor shall periodically examine the books, accounts, receipts, disbursements, vouchers, and any records considered necessary of the county treasurers, municipal treasurers, county clerks of court, magistrates, and municipal courts to report whether or not the assessments, surcharges, fees, fines, forfeitures, escheatments, or other monetary penalties imposed or mandated, or both, by law in family court, circuit court, magistrates court, and municipal court are properly collected and remitted to the State. In addition, these audits shall determine if the proper amount of funds have been reported, retained, and allocated for victim services in accordance with the law. These audits must be performed in accordance with standard auditing practices to include the right to respond to findings before the publishing of the audit report. The State Auditor shall submit a copy of the completed audit report to the chairmen of the House Ways and Means Committee, Senate Finance Committee, House Judiciary Committee, Senate Judiciary Committee, and the Governor. If the State Auditor finds that a jurisdiction has over remitted the state's portion of the funds collected by the jurisdiction or over reported or over retained crime victim funds, the State Auditor shall notify the State Treasurer to make the appropriate adjustment to that jurisdiction. If the State Auditor finds that a jurisdiction has under remitted, incorrectly reported, incorrectly retained, or incorrectly allocated the State or victim services portion of the funds collected by the jurisdiction, the State Auditor shall determine where the error was made. If the error is determined to have been made by the county or municipal treasurer's office, the State Auditor shall notify the Office of the Attorney General, South Carolina Crime Victim Services Division, Department of Crime Victim Compensation for the crime victim portion and the chief administrator of the county or municipality of the findings and, if full payment has not been made by the county or municipality within ninety days of the audit notification, the State Treasurer shall adjust the jurisdiction's State Aid to Subdivisions Act funding in an amount equal to the amount determined by the State Auditor to be the state's portion; or equal to the amount incorrectly reported, retained, or allocated pursuant to Sections 14-1-206, 14-1-207, 14-1-208, and 14-1-211.

If an error is determined to have been made at the magistrate, municipal, family, or circuit courts, the State Auditor shall notify the

responsible office, their supervising authority, and the Chief Justice of the State. If full payment has not been made by the court within ninety days of the audit notification, the chief magistrate or municipal court or clerk of court shall remit an amount equal to the amount determined by the State Auditor to be the state's portion or the crime victim fund portion within ninety days of the audit notification."

**South Carolina Crime Victim Services Division, appointment of division director, Department of Crime Victim Compensation, appointment of department deputy director, conforming amendments reflecting transfer of certain victim services**

SECTION 5. A. Section 16-3-1110 of the 1976 Code, as last amended by Act 58 of 2015, is further amended to read:

"Section 16-3-1110. (A) For the purpose of this article and Articles 14 and 15 of this chapter:

(1) 'Board' means the South Carolina Crime Victim Advisory Board.

(2) 'Claimant' means any person filing a claim pursuant to this article.

(3) 'Fund' means the South Carolina Victim Compensation Fund, which is administered by the Office of the Attorney General, South Carolina Crime Victim Services Division.

(4) 'Director' means the Director of the Office of the Attorney General, South Carolina Crime Victim Services Division who is appointed by the Attorney General.

(5) 'Field representative' means a field representative of the Office of the Attorney General, South Carolina Crime Victim Services Division, Department of Crime Victim Compensation assigned to handle a claim.

(6) 'Crime' means an act which is defined as a crime by state, federal, or common law, including terrorism as defined in Section 2331 of Title 18, United States Code. Unless injury or death was recklessly or intentionally inflicted, 'crime' does not include an act involving the operation of a motor vehicle, boat, or aircraft.

(7) 'Recklessly or intentionally' inflicted injury or death includes, but is not limited to, injury or death resulting from an act which violates Sections 56-5-1210, 56-5-2910, 56-5-2920, or 56-5-2930 or from the use of a motor vehicle, boat, or aircraft to flee the scene of a crime in which the driver of the motor vehicle, boat, or aircraft knowingly participated.

(8) 'Victim' means a person who suffers direct or threatened physical, emotional, or financial harm as the result of an act by someone else, which is a crime. The term includes immediate family members of a homicide victim or of any other victim who is either incompetent or a minor and includes an intervenor. The term also includes a minor who is a witness to a domestic violence offense pursuant to Section 16-25-20 or Section 16-25-65.

(9) 'Intervenor' means a person other than a law enforcement officer performing normal duties, who goes to the aid of another, acting not recklessly, to prevent the commission of a crime or lawfully apprehend a person reasonably suspected of having committed a crime.

(10) 'Panel' means a three-member panel of the board designated by the board chairman to hear appeals.

(11) 'Restitution' means payment for all injuries, specific losses, and expenses sustained by a crime victim resulting from an offender's criminal conduct. It includes, but is not limited to:

- (a) medical and psychological counseling expenses;
- (b) specific damages and economic losses;
- (c) funeral expenses and related costs;
- (d) vehicle impoundment fees;
- (e) child care costs; and
- (f) transportation related to a victim's participation in the criminal justice process.

(B) Restitution does not include awards for pain and suffering, wrongful death, emotional distress, or loss of consortium.

Restitution orders do not limit any civil claims a crime victim may file.

(C) Notwithstanding any other provision of law, the applicable statute of limitations for a crime victim, who has a cause of action against an incarcerated offender based upon the incident which made the person a victim, is tolled and does not expire until three years after the offender's release from the sentence including probation and parole time or three years after release from commitment pursuant to Chapter 48 of Title 44, whichever is later. However, this provision shall not shorten any other tolling period of the statute of limitations which may exist for the crime victim."

B. Section 16-3-1120 of the 1976 Code is amended to read:

"Section 16-3-1120. (A) A director of the South Carolina Crime Victim Services Division must be appointed by the Attorney General and shall serve at his pleasure. The director is responsible for administering

the provisions of this article. Included among the duties of the director is the responsibility, with approval of the South Carolina Crime Victim Advisory Board as established in this article, for developing and administering a plan for informing the public of the availability of the benefits provided under this article and procedures for filing claims for the benefits.

(B) The director, upon approval by the South Carolina Crime Victim Advisory Board, has the following additional powers and duties:

(1) to appoint a deputy director of the Department of Crime Victim Compensation, and staff necessary for the operation of the department, and to contract for services. The director shall recommend the salary for the deputy director and other staff members, as allowed by statute or applicable law;

(2) to request from the Attorney General, South Carolina Law Enforcement Division, solicitors, magistrates, judges, county and municipal police departments, and any other agency or department such assistance and data as will enable the director to determine whether, and the extent to which, a claimant qualifies for awards. Any person, agency, or department listed above is authorized to provide the director with the information requested upon receipt of a request from the director. Any provision of law providing for confidentiality of juvenile records does not apply to a request of the deputy director, the director, the board, or a panel of the board pursuant to this section;

(3) to reopen previously decided award cases as the director or deputy director considers necessary;

(4) to require the submission of medical records as are needed by the board, a panel of the board, or deputy director or his staff and, when necessary, to direct medical examination of the victim;

(5) to take or cause to be taken affidavits or depositions within or without the State. This power may be delegated to the deputy director or the board or its panel;

(6) to render each year to the Governor and to the General Assembly a written report of the activities of the Department of Crime Victim Compensation and the Victim Compensation Fund pursuant to this article;

(7) to delegate the authority to the deputy director to reject incomplete claims for awards or assistance;

(8) to render awards to victims of crime or to those other persons entitled to receive awards in the manner authorized by this article. The power may be delegated to the deputy director;

(9) to apply for funds from, and to submit all necessary forms to, any federal agency participating in a cooperative program to compensate victims of crime;

(10) to delegate to the board or a panel of the board on appeal matters any power of the director or deputy director.”

C. Section 16-3-1140 of the 1976 Code is amended to read:

“Section 16-3-1140. (A) The claimant may, within thirty days after receipt of the report of the decision of the deputy director, make an application in writing to the deputy director for review of the decision.

(B) Upon receipt of an application for review pursuant to subsection (A), the deputy director shall forward all relevant documents and information to the Chairman of the Crime Victim Advisory Board. The chairman shall appoint a three-member panel of the board which shall review the records and affirm or modify the decision of the deputy director; provided, that the chairman may order, in his discretion, that any particular case must be heard by the full board. If considered necessary by the board or its panel or if requested by the claimant, the board or its panel shall order a hearing prior to rendering a decision. At the hearing any relevant evidence, not legally privileged, is admissible. The board or its panel shall render a decision within ninety days after completion of the investigation. The action of the board or its panel is final and nonappealable. If the deputy director receives no application for review pursuant to subsection (A), his decision becomes the final decision of the Department of Crime Victim Compensation.

(C) The board or its panel, for purposes of this article, may subpoena witnesses, administer or cause to be administered oaths, and examine such parts of the books and records of the parties to proceedings as relate to questions in dispute.

(D) The deputy director shall within ten days after receipt of the board’s or panel’s final decision make a report to the claimant including a copy of the final decision and the reasons why the decision was made.”

D. Section 16-3-1150 of the 1976 Code is amended to read:

“Section 16-3-1150. Notwithstanding the provisions of Section 16-3-1130, if it appears to the deputy director that the claim is one with respect to which an award probably will be made and undue hardship will result to the claimant, if immediate payment is not made, the deputy director may make one or more emergency awards to the claimant pending a final decision in the case, provided that:

- (1) the amount of each emergency award shall not exceed five hundred dollars;
- (2) the total amount of such emergency awards shall not exceed one thousand dollars;
- (3) the amount of such emergency awards must be deducted from any final award made to the claimant; and
- (4) the excess of the amount of any emergency award over the amount of the final award, or the full amount of any emergency award if no final award is made, must be repaid by the claimant to the Victim Compensation Fund as created by this article.”

E. Section 16-3-1160 of the 1976 Code is amended to read:

“Section 16-3-1160. (A) There is created a board to be known as the South Carolina Crime Victim Advisory Board to consist of eleven members to be appointed by the Attorney General. Of the original seven members, at least two of the members shall have been admitted to practice law in this State for not less than five years next preceding their appointment, one member shall be a physician licensed to practice medicine under the laws of this State, and one member shall have at least four years’ administrative experience in a court-related Victim’s Assistance Fund, provided that such a qualified person is available. Of the four additional members, one must be a law enforcement officer with at least five years’ administrative experience, one shall have at least five years’ experience in directing sexual assault prevention or treatment services, one shall have at least five years’ experience in providing services for domestic violence victims, and one shall have been a victim of crime.

(B) The term of office of each appointed member is five years and until his successor is appointed and qualified. Of those seven members first appointed, two shall serve for a term of one year, two for a term of two years, one for a term of three years, one for a term of four years, and one for a term of five years, with the initial terms to be designated by the Attorney General when making the initial appointments. The initial terms of four additional members to be appointed as provided in this section are for two, three, four, and five years, respectively, the initial term of each member to be designated by the Attorney General when making the appointment. The Attorney General shall select a chairman. The board may elect a secretary and other officers as deemed necessary.

(C) Any vacancy must be filled for the remainder of the unexpired term by appointment in the same manner of the initial appointments. On June 30, 2017, the terms of the members of the board currently serving

shall terminate, and members serving on that date, or subsequently appointed by the Attorney General, are eligible for reappointment at the discretion of the Attorney General.

The board shall meet at least twice each year and must be subject to the call of the chairperson, to consider improvements in and monitor the effectiveness of the Victim Compensation Fund, and to review and comment on the budget and approve the regulations pertaining to the Victim Compensation Fund and the Victim/Witness Assistance Program of Article 14. The members of the board shall receive the same subsistence, mileage, and per diem as is provided by law for members of state boards, committees, and commissions, to be paid from the Victim Compensation Fund as created by this article.”

F. Section 16-3-1170 of the 1976 Code is amended to read:

“Section 16-3-1170. (A) No award may be made unless:

- (1) a crime was committed;
- (2) the crime directly resulted in physical or psychic trauma to the victim;
- (3) the crime was promptly reported to the proper authority and recorded in police records; and
- (4) the claimant or other award recipient has fully cooperated with all law enforcement agencies and with the Office of the Attorney General, South Carolina Crime Victim Services Division, Department of Crime Victim Compensation.

(B) For the purposes of subsection (A)(3), a crime reported more than forty-eight hours after its occurrence is not ‘promptly reported’, absent a showing of special circumstances or causes which justify the delay.”

G. Section 16-3-1180(C) and (E) of the 1976 Code is amended to read:

“(C) The aggregate of award to and on behalf of victims may not exceed fifteen thousand dollars unless the Crime Victim Advisory Board, by two-thirds vote, and the director concur that extraordinary circumstances exist. In this case, the award may not exceed twenty-five thousand dollars.

(E) A previously decided award may be reopened for the purpose of increasing the compensation previously awarded, subject to the maximum provided in this article. In this case the Office of the Attorney General, South Carolina Crime Victim Services Division, Department of Crime Victim Compensation shall send immediately to the claimant a

copy of the notice changing the award. This review may not affect the award as regards any monies paid, and the review may not be made after eighteen months from the date of the last payment of compensation pursuant to an award under this article unless the director or deputy director determines there is a need to reopen the case as specified in Section 16-3-1120(B)(3).”

H. Section 16-3-1220 of the 1976 Code is amended to read:

“Section 16-3-1220. A person listed in Section 16-3-1210 is not eligible to recover under this article if the person:

(1) committed or aided in the commission of the crime upon which the claim is based or engaged in other unlawful activity which contributed to or aggravated the resulting injury;

(2) is the surviving parent, spouse, or dependent of a deceased victim who would have been barred by subsection (1) had he survived;

(3) is a dependent of the offender who committed the crime upon which the claim is based, and the offender would be a principal beneficiary of the award.”

I. Section 16-3-1230 of the 1976 Code is amended to read:

“Section 16-3-1230. (A) A claim may be filed by a person eligible to receive an award, as provided in Section 16-3-1210, or, if the person is an incompetent or a minor, by his parent or legal guardian or other individual authorized to administer his affairs.

(B) A claim must be filed by the claimant not later than one hundred eighty days after the latest of the following events:

(1) the occurrence of the crime upon which the claim is based;

(2) the death of the victim;

(3) the discovery by the law enforcement agency that the occurrence was the result of crime; or

(4) the manifestation of a mental or physical injury is diagnosed as a result of a crime committed against a minor.

(C) Upon good cause shown, the time for filing may be extended for a period not to exceed four years after the occurrence, diagnosed manifestation, or death. ‘Good cause’ for the above purposes includes reliance upon advice of an official victim assistance specialist who either misinformed or neglected to inform a victim of rights and benefits of the Victim Compensation Fund but does not mean simply ignorance of the law.



(D) Claims must be filed in the Department of Crime Victim Compensation with input from the board by conventional mail, facsimile, in person, or through another electronic submission mechanism approved by the director. The director shall accept for filing all claims submitted by persons eligible pursuant to subsection (A) and meeting the requirements as to the form of the claim contained in the form developed by the Office of the Attorney General, South Carolina Crime Victim Services Division, Department of Crime Victim Compensation.”

J. Section 16-3-1240 of the 1976 Code is amended to read:

“Section 16-3-1240. It is unlawful, except for purposes directly connected with the administration of the fund, for any person to solicit, disclose, receive, or make use of or authorize, knowingly permit, participate in or acquiesce in the use of any list, or names of, or information concerning persons applying for or receiving awards pursuant to the provisions of this article without the written consent of the applicant or recipient. The records, papers, files, and communications of the board, its panel, and the director and his staff must be regarded as confidential information and privileged and not subject to disclosure under the Freedom of Information Act as contained in Chapter 4, Title 30.”

K. Section 16-3-1260 of the 1976 Code is amended to read:

“Section 16-3-1260. (A) A payment of benefits to, or on behalf of, a victim or intervenor, or eligible family member under this article creates a debt due and owing to the State by a person as determined by a court of competent jurisdiction of this State, who has committed the criminal act.

(B) The circuit court, when placing on probation a person who owes a debt to the State as a consequence of a criminal act, may set as a condition of probation the payment of the debt or a portion of the debt to the State. The court also may set the schedule or amounts of payments subject to modification based on change of circumstances.

(C) The Department of Probation, Parole and Pardon Services shall also have the right to make payment of the debt or a portion of the debt to the State a condition of parole or community supervision.

(D) When a juvenile is adjudicated delinquent in a Family Court proceeding involving a crime upon which a claim under this article can be made, the family court, in its discretion, may order that the juvenile

pay the debt to the Office of the Attorney General, South Carolina Crime Victim Services Division, Department of Crime Victim Compensation, as created by this article, as an adult would have to pay had an adult committed the crime. Any assessments ordered may be made a condition of probation as provided in Section 63-19-1410.

(E) Payments authorized or required under this section must be paid to the Office of the Attorney General, South Carolina Crime Victim Services Division. The Director of the Office of the Attorney General, South Carolina Crime Victim Services Division, together with the Deputy Director of the Department of Crime Victim Compensation, shall coordinate the development of policies and procedures for the South Carolina Department of Corrections, the Department of Juvenile Justice, the South Carolina Office of Court Administration, the Department of Probation, Parole and Pardon Services, and the South Carolina Board of Probation, Parole and Pardon Services to assure that victim restitution programs are administered in an effective manner to increase payments into the fund.

(F) Restitution payments to the Office of the Attorney General, South Carolina Crime Victim Services Division, Department of Crime Victim Compensation, Victim Compensation Fund may be made by the Department of Corrections from wages accumulated by offenders in its custody who are subject to this article, except that offenders' wages must not be used for this purpose if monthly wages are at or below minimums required to purchase basic necessities."

L. Section 16-3-1290 of the 1976 Code is amended to read:

"Section 16-3-1290. (A) There is hereby created a special fund to be known as the Victim Compensation Fund for the purpose of providing for the payment of all necessary and proper expenses incurred by the operation of the fund and the payment of claims. The State Treasurer is the custodian of the fund and all monies in the fund are held by the State Treasurer.

(B) The funds placed in the Victim Compensation Fund shall consist of all money appropriated by the General Assembly, if any, for the purpose of compensating claimants under this article and money recovered on behalf of the State pursuant to this article by subrogation or other action, recovered by court order, received from the federal government, received from additional court costs, received from assessments or fines, or received from any other public or private source, pursuant to this article.

(C) All administrative costs of this article, except the director's salary, must be paid out of money collected pursuant to this article which has been deposited in the fund.

(D) Interest earned on all monies held in the fund shall be remitted to the general fund of the State.”

M. Section 16-3-1330 of the 1976 Code is amended to read:

“Section 16-3-1330. (A) When the director determines that projected revenue in any fiscal year will be insufficient to pay projected claims or awards in the amounts provided pursuant to the provisions of this article, he shall reduce the amount of all claims or awards by an amount equal to the ratio of projected revenue to the total projected claims or awards cost. When these reductions are required, the director shall inform the public through the media of the reductions as promptly as possible. The reductions apply to all claims or awards not paid as of the effective date of the reductions order.

(B) Any award is specifically not a claim against the State if it cannot be paid due to a lack of funds in the Victim Compensation Fund.”

N. Section 16-3-1340 of the 1976 Code is amended to read:

“Section 16-3-1340. (A) A claimant may be represented by an attorney in proceedings under this article. Attorneys' fees must be paid from the Victim Compensation Fund, subject to the approval of the director, except that in the event of an appeal pursuant to Section 16-3-1140, attorneys' fees are subject to the approval of the board or its panel hearing the appeal. Attorneys within the Office of the Attorney General shall represent the Department of Crime Victim Compensation in proceedings under this article.

(B) Any person who receives any fee or other consideration or any gratuity on account of services so rendered, unless the consideration or gratuity is approved by the deputy director, or who makes it a business to solicit employment for a lawyer or for himself in respect to any claim or award for compensation is guilty of a misdemeanor and, upon conviction must for each offense, be punished by a fine of not more than five hundred dollars or by imprisonment not more than one year, or both.”

O. Section 16-3-1350 of the 1976 Code is amended to read:

“Section 16-3-1350. (A) The State must ensure that a victim of criminal sexual conduct in any degree, criminal sexual conduct with a minor in any degree, or child sexual abuse must not bear the cost of his or her routine medicolegal exam following the assault.

(B) These exams must be standardized relevant to medical treatment and to gathering evidence from the body of the victim and must be based on and meet minimum standards for rape exam protocol as developed by the South Carolina Law Enforcement Division, the South Carolina Hospital Association, and the Office of the Attorney General, South Carolina Crime Victim Services Division with production costs to be paid from funds appropriated for the Victim Compensation Fund. These exams must include treatment for sexually transmitted diseases, and must include medication for pregnancy prevention if indicated and if desired. The South Carolina Law Enforcement Division must distribute these exam kits to any licensed health care facility providing sexual assault exams. When dealing with a victim of criminal sexual assault, the law enforcement agency immediately must transport the victim to the nearest licensed health care facility which performs sexual assault exams. A health care facility providing sexual assault exams must use the standardized protocol described in this subsection.

(C) A licensed health care facility, upon completion of a routine sexual assault exam as described in subsection (B) performed on a victim of criminal sexual conduct in any degree, criminal sexual conduct with a minor in any degree, or child sexual abuse, may file a claim for reimbursement directly to the Office of the Attorney General, South Carolina Crime Victim Services Division, Department of Crime Victim Compensation if the offense occurred in South Carolina. The department must develop procedures for health care facilities to follow when filing a claim with respect to the privacy of the victim. Health care facility personnel must obtain information necessary for the claim at the time of the exam, if possible. The department must reimburse eligible health care facilities directly from the fund.

(D) The Office of the Attorney General, South Carolina Crime Victim Services Division, Department of Crime Victim Compensation must utilize existing funds appropriated from the general fund for the purpose of compensating licensed health care facilities for the cost of routine medical exams for sexual assault victims as described above. When the director determines that projected reimbursements in a fiscal year provided in this section exceed funds appropriated for payment of these reimbursements, he must direct the payment of the additional services from the fund. For the purpose of this particular exam, the one hundred dollar deductible is waived for award eligibility under the fund.

The department must develop appropriate guidelines and procedures and distribute them to law enforcement agencies and appropriate health care facilities.”

**Department of Crime Victim Services Training, Provider Certification, and Statistical Analysis created, Victim Services Coordinating Council, Crime Victim Services Division director or designee to serve as chair of council, conforming amendments reflecting transfer of certain victim services**

SECTION 6. Article 14, Chapter 3, Title 16 of the 1976 Code is amended to read:

“Article 14

Crime Victim Services Training, Provider Certification,  
and Statistical Analysis

Section 16-3-1410. (A) The Department of Crime Victim Services Training, Provider Certification, and Statistical Analysis is created within the Office of the Attorney General, South Carolina Crime Victim Services Division. The Director of the Crime Victim Services Division shall appoint a deputy director of the department.

(B) The Department of Crime Victim Services Training, Provider Certification, and Statistical Analysis shall:

- (1) provide oversight of training, education, and certification of victim assistance programs;
- (2) in cooperation with the Victim Services Coordinating Council, promulgate training standards and requirements;
- (3) approve training curricula for credit hours toward certification;
- (4) provide victim service provider certification;
- (5) maintain records of certified victim service providers; and
- (6) collect and analyze statistical data gathered from providers; grant providers; grant recipients; all victim services funding streams; and local, state, and federal crime data and publish analysis, needs assessments, and reports.

(C) Public crime victim assistance programs shall ensure that all victim service providers employed in their respective offices are certified through the department.

(1) Private, nonprofit programs shall ensure that all crime victim service providers in these nonprofit programs are certified by a Victim Services Coordinating Council-approved certification program. Victim

Services Coordinating Council approval must include review of the program to ensure that requirements are commensurate with the certification requirements for public victim assistance service providers.

(2) Crime victim service providers, serving in public or private nonprofit programs and employed on the effective date of this article, are exempt from basic certification requirements but must meet annual continuing education requirements to maintain certification. Crime victim service providers, serving in public or private nonprofit programs and employed after the effective date of this article, are required to complete the basic certification requirements within one year from the date of employment and to meet annual continuing education requirements to maintain certification throughout their employment.

(3) The mandatory minimum certification requirements, as promulgated by the deputy director, may not exceed fifteen hours, and the mandatory minimum requirements for continuing advocacy education, as promulgated by the deputy director, may not exceed twelve hours.

(4) Nothing in this section shall prevent an entity from requiring, or an individual from seeking, additional certification credits beyond the basic required hours.

Section 16-3-1420. For purposes of this article:

(1) 'Victim service provider' means a person:

(a) who is employed by a local government or state agency and whose job duties involve providing victim assistance as mandated by South Carolina law; or

(b) whose job duties involve providing direct services to victims and who is employed by an organization that is incorporated in South Carolina, holds a certificate of authority in South Carolina, or is registered as a charitable organization in South Carolina, and the organization's mission is victim assistance or advocacy and the organization is privately funded or receives funds from federal, state, or local governments to provide services to victims.

'Victim service provider' does not include a municipal court judge, magistrates court judge, circuit court judge, special circuit court judge, or family court judge.

(2) 'Witness' means a person who has been or is expected to be summoned to testify for the prosecution or who by reason of having relevant information is subject to call or likely to be called as a witness for the prosecution, whether or not an action or proceeding is commenced.

Section 16-3-1430. (A) The Department of Crime Victim Services Training, Provider Certification, and Statistical Analysis, in collaboration with the Department of Crime Victim Compensation, is authorized to provide the following victim assistance services, contingent upon the availability of funds in the Victim Compensation Fund:

(1) provide information, training, and technical assistance to state and local agencies and groups involved in victim and domestic violence assistance, such as the Attorney General's Office, the solicitors' offices, law enforcement agencies, judges, hospital staff, rape crisis centers, and spouse abuse shelters;

(2) provide recommendations to the Governor and General Assembly on needed legislation and services for victims;

(3) serve as a clearinghouse of victim information;

(4) develop ongoing public awareness and programs to assist victims, such as newsletters, brochures, television and radio spots and programs, and news articles;

(5) provide staff support for a Victim Services Coordinating Council representative of all agencies and groups involved in victim and domestic violence services to improve coordination efforts, suggest policy and procedural improvements to those agencies and groups as needed, and recommend needed statutory changes to the General Assembly; and

(6) coordinate the development and implementation of policy and guidelines for the treatment of victims with appropriate agencies.

(B) The Victim Services Coordinating Council shall consist of the following twenty-two members:

(1) the Director of the Office of the Attorney General, South Carolina Crime Victim Services Division, or his designee, who shall serve as chairperson;

(2) the Director of the South Carolina Department of Probation, Parole and Pardon Services, or his designee;

(3) the Director of the South Carolina Department of Corrections, or his designee;

(4) the Director of the South Carolina Department of Juvenile Justice, or his designee;

(5) the Director of the South Carolina Commission on Prosecution Coordination, or his designee;

(6) the deputy directors of the three departments and the ombudsman under the Office of the Attorney General, South Carolina Crime Victim Services Division;

(7) the Director of the South Carolina Sheriffs' Association, or his designee;

(8) the President of the South Carolina Police Chiefs Association, or his designee;

(9) the President of the South Carolina Jail Administrators' Association, or his designee;

(10) the President of the Solicitors' Advocate Forum, or his designee;

(11) the President of the Law Enforcement Victim Advocate Association, or his designee;

(12) the Director of the South Carolina Coalition Against Domestic Violence and Sexual Assault, or his designee;

(13) the Attorney General, or his designee;

(14) three representatives appointed by the State Office of Victim Assistance for a term of two years and until their successors are appointed and qualified for each of the following categories:

(a) one representative of university or campus services;

(b) one representative of a statewide child advocacy organization; and

(c) one crime victim; and

(15) three at-large seats elected upon two-thirds vote of the other eighteen members of the Victim Services Coordinating Council for a term of two years and until their successors are appointed and qualified, at least one of whom must be a crime victim and two of which must be representatives of community-based nongovernmental organizations.

The Victim Services Coordinating Council shall solicit input on issues affecting relevant stakeholders when those stakeholders are not explicitly represented. The Victim Services Coordinating Council shall meet at least four times per year."

**Department of Crime Victim Ombudsman created, procedures for complaints regarding the division, conforming amendments reflecting transfer of certain victim services**

SECTION 7. Article 16, Chapter 3, Title 16 of the 1976 Code is amended to read:



## “Article 16

## Crime Victim Ombudsman

Section 16-3-1610. As used in this article:

(1) ‘Criminal and juvenile justice system’ means circuit solicitors and members of their staffs; the Attorney General and his staff; law enforcement agencies and officers; adult and juvenile probation, parole, and correctional agencies and officers; officials responsible for victims’ compensation and other services which benefit victims of crime, and state, county, and municipal victim advocacy and victim assistance personnel.

(2) ‘Victim assistance program’ means an entity, whether governmental, corporate, nonprofit, partnership, or individual, which provides, is required by law to provide, or claims to provide services or assistance, or both to victims on an ongoing basis.

(3) ‘Victim’ means a person who suffers direct or threatened physical, emotional, or financial harm as the result of an act by someone else, which is a crime. The term includes immediate family members of a homicide victim or of any other victim who is either incompetent or a minor and includes an intervenor.

Section 16-3-1620. (A) The Department of Crime Victim Ombudsman is created in the Office of the Attorney General, South Carolina Crime Victim Services Division. The Crime Victim Ombudsman is appointed by the Director of the Crime Victim Services Division.

(B) The Crime Victim Ombudsman shall:

(1) refer crime victims to the appropriate element of the criminal and juvenile justice systems or victim assistance programs, or both, when services are requested by crime victims or are necessary as determined by the ombudsman;

(2) act as a liaison between elements of the criminal and juvenile justice systems, victim assistance programs, and crime victims when the need for liaison services is recognized by the ombudsman; and

(3) review and attempt to resolve complaints against elements of the criminal and juvenile justice systems or victim assistance programs, or both, made to the ombudsman by victims of criminal activity within the state’s jurisdiction.

Section 16-3-1630. Upon receipt of a written complaint that contains specific allegations and is signed by a victim of criminal activity within

the state's jurisdiction, the ombudsman shall forward copies of the complaint to the person, program, and agency against whom it makes allegations, and conduct an inquiry into the allegations stated in the complaint.

In carrying out the inquiry, the ombudsman is authorized to request and receive information and documents from the complainant, elements of the criminal and juvenile justice systems, and victim assistance programs that are pertinent to the inquiry. Following each inquiry, the ombudsman shall issue a report verbally or in writing to the complainant and the persons or agencies that are the object of the complaint and recommendations that in the ombudsman's opinion will assist all parties. The persons or agencies that are the subject of the complaint shall respond, within a reasonable time, to the ombudsman regarding actions taken, if any, as a result of the ombudsman's report and recommendations.

The ombudsman shall prepare a public annual report, not identifying individual agencies or individuals, summarizing his activity. The annual report must be submitted directly to the Governor, General Assembly, elements of the criminal and juvenile justice systems, and victim assistance programs.

Section 16-3-1640. Information and files requested and received by the ombudsman are confidential and retain their confidential status at all times. Juvenile records obtained under this section may be released only in accordance with provisions of the Children's Code.

Section 16-3-1650. All elements of the criminal and juvenile justice systems and victim assistance programs shall cooperate with the ombudsman in carrying out the duties described in Sections 16-3-1620 and 16-3-1630.

Section 16-3-1660. A victim's exercise of rights granted by this article is not grounds for dismissing a criminal proceeding or setting aside a conviction or sentence.

Section 16-3-1670. This article does not create a cause of action on behalf of a person against an element of the criminal and juvenile justice systems, victim assistance programs, the State, or any agency or person responsible for the enforcement of rights and provision of services set forth in this chapter.

Section 16-3-1680. The Department of Crime Victim Ombudsman through the Crime Victim Services Division may recommend to the Attorney General those regulations necessary to assist it in performing its required duties as provided by this chapter.

Section 16-3-1690. Complaints regarding any allegations against the Office of the Attorney General, Crime Victim Services Division or any of its affiliated departments concerning crime victim services should be submitted in writing to the Crime Victim Ombudsman, who shall cause a rotating three-person panel of the Crime Victim Services Coordinating Council chosen by him to record, review, and respond to the allegations. Appeal of the three-person panel's response or any decision made by the panel regarding the allegations will be heard by the State Inspector General under the authority provided by the provisions of Chapter 6, Title 1. The State Inspector General shall provide the procedures for this appeal process, including, but not limited to, a written finding at the end of the appeal process, which must be provided to the complainant and to the Attorney General and the Director of the Crime Victim Services Division."

**Department of Crime Victim Assistance Grants created, solicitation and administration of certain grants and awards, Public Safety Coordinating Council membership revised, conforming amendments reflecting transfer of certain victim services**

SECTION 8. A. Chapter 3, Title 16 of the 1976 Code is amended by adding:

“Article 12

Crime Victim Assistance Grants

Section 16-3-1095. (A) The Department of Crime Victim Assistance Grants is created within the Office of the Attorney General, South Carolina Crime Victim Services Division to administer the Victims of Crime Act grants, the Violence Against Women Act grants, and the State Victim's Assistance Program grants. The Director of the Crime Victim Services Division shall appoint a deputy director of the department.

(B) The deputy director shall establish a process to solicit and administer the disbursement of funds for Victims of Crime Act grants, the Violence Against Women Act grants, and the State Victim's Assistance Program grants available under Public Law 98-473

establishing the Victims of Crime Act of 1984, and the Violence Against Women Act (VAWA-I) established under Title IV of the Violent Crime Control and Law Enforcement Act of 1994, Public Law No. 103-322, 108 Stat. 1796 (September 13, 1994), and administer all other crime victim service funding as provided by law, including, but not limited to, the authority to solicit for federal formula or discretionary grant awards and foundation funding.”

B. Section 23-6-500 of the 1976 Code is amended to read:

“Section 23-6-500. There is created a council to administer certain responsibilities of the Department of Public Safety and coordinate certain activities between the department, the Office of the Attorney General, the South Carolina Law Enforcement Division and municipal and county law enforcement agencies. The council is to be known as the South Carolina Public Safety Coordinating Council.”

C. Section 23-6-510 of the 1976 Code is amended to read:

“Section 23-6-510. (A) The council is composed of the following persons for terms as indicated:

- (1) the Governor or his designee, to serve as chairman, for the term of the Governor;
- (2) the Chief of the South Carolina Law Enforcement Division for the term of office for which he is appointed;
- (3) the Chairman of the Senate Judiciary Committee for his term of office in the Senate or his designee;
- (4) the Chairman of the House of Representatives Judiciary Committee for his term of office in the House of Representatives or his designee;
- (5) the Director of the Department of Public Safety;
- (6) a sheriff appointed by the Governor for the term of office for which he is elected;
- (7) the Attorney General or his designee;
- (8) a municipal police chief appointed by the Governor for a term of two years;
- (9) a victim representative appointed by the Governor for a term of four years; and
- (10) a victim with a documented history of victimization appointed by the Attorney General for a term of four years.

(B) Any vacancy occurring must be filled in the manner of the original appointment for the unexpired portion of the term.”

D. Section 23-6-520 of the 1976 Code is amended to read:

“Section 23-6-520. The council has the following duties to:

(1) recommend a hiring and promotion policy for commissioned personnel or officers to be administered under the sole authority of the director;

(2) establish a process for the solicitation of applications for public safety grants and to review and approve the disbursement of funds available under Section 402 of Chapter 4 of Title 1 of the Federal Highway Safety Program, Public Law 89-564 in a fair and equitable manner;

(3) coordinate the use of department personnel by other state or local agencies or political subdivisions;

(4) advise and consult on questions of jurisdiction and law enforcement and public safety activities between the Department of Public Safety, the South Carolina Law Enforcement Division and law enforcement agencies of local political subdivisions; and

(5) in collaboration with the Office of the Attorney General, South Carolina Crime Victim Services Division, Department of Crime Victim Assistance grants, establish a process to solicit and administer the disbursement of funds for Victims of Crime Act grants, the Violence Against Women Act grants, the State Victim’s Assistance Program grants available under Public Law 98-473 establishing the Victims of Crime Act of 1984 and the Violence Against Women Act (VAWA-I) established under Title IV of the Violent Crime Control and Law Enforcement Act of 1994, Public Law No. 103-322, 108 Stat. 1796 (September 13, 1994), and all other crime victim service funding as provided by law, including, but not limited to, the authority to solicit for federal formula or discretionary grant awards and foundation funding.”

**Seizure and forfeiture of equipment used in crimes, conforming amendments reflecting transfer of certain victim services**

SECTION 9. Section 16-15-445(C) of the 1976 Code is amended to read:

“(C) Subject to the limitations of subsection (B), property forfeited pursuant to court order must be destroyed by the arresting law enforcement agency, unless that law enforcement agency can show good cause for retaining the property. Ownership of property so retained vests in the arresting law enforcement agency which may use the property in

the performance of its duties, destroy it, or sell it at public auction. Retained property may be sold at public auction after giving notice, in a newspaper of general circulation in the county, of the date, time, and place of the auction and a description of the property to be auctioned. After payment of the expenses of the auction, one-half of the net proceeds may be retained by the arresting law enforcement agency, and one-half must be remitted to the State Treasurer for deposit to the credit of the Office of the Attorney General, South Carolina Crime Victim Services Division, Department of Crime Victim Compensation, Victim Compensation Fund.”

**Prison Industries, prisoner wages, conforming amendments reflecting transfer of certain victim services**

SECTION 10. Section 24-3-40(A)(2)(b) of the 1976 Code, as last amended by Act 237 of 2010, is further amended to read:

“(b) if the prisoner is employed in a prison industry program, ten percent must be directed to the Office of the Attorney General, South Carolina Crime Victim Services Division, Department of Crime Victim Compensation, Victim Compensation Fund for use in training, program development, victim compensation, and general administrative support pursuant to Section 16-3-1410 and ten percent must be retained by the department to support services provided by the department to victims of the incarcerated population.”

**Department of Juvenile Justice, juvenile wages, conforming amendments reflecting transfer of certain victim services**

SECTION 11. Section 63-19-480 of the 1976 Code is amended to read:

“Section 63-19-480. There is created a fund within the Department of Juvenile Justice for the compensation of victims of crime. All contributions deducted from a juvenile’s wages pursuant to Section 63-19-450(E)(3) or 63-19-460(C)(3) must be deposited into this fund. Of the amount contributed to the fund by each juvenile, ninety-five percent must be paid by the department on behalf of the juvenile as restitution to the victim or victims of the juvenile’s adjudicated crime as ordered by the family court or the releasing entity, and five percent must be submitted to the Office of the Attorney General, South Carolina Crime Victim Services Division, Department of Crime Victim

Compensation, Victim Compensation Fund. If the amount of restitution ordered has been paid in full or if there is no victim of the juvenile's adjudicated crime, the juvenile's contributions must be submitted to the Office of the Attorney General, South Carolina Crime Victim Services Division, Department of Crime Victim Compensation, Victim Compensation Fund."

**Filing fees, distribution of fees, Uniform Supplemental Schedule Form, conforming amendments reflecting transfer of certain victim services**

PART III

Uniform Supplemental Schedule Form

SECTION 12. A. Section 14-1-206(E) of the 1976 Code is amended to read:

"(E) To ensure that fines and assessments imposed pursuant to this section and Section 14-1-209(A) are properly collected and remitted to the State Treasurer, the annual independent external audit required to be performed for each county pursuant to Section 4-9-150 must include a review of the accounting controls over the collection, reporting, and distribution of fines and assessments from the point of collection to the point of distribution and a Uniform Supplemental Schedule Form detailing all fines and assessments collected by the clerk of court for the court of general sessions, the amount remitted to the county treasurer, and the amount remitted to the State Treasurer.

(1) To the extent that records are made available in the format determined pursuant to subsection (E)(4), the Uniform Supplemental Schedule Form developed by the Office of the Attorney General, South Carolina Crime Victim Services Division, must be used by all counties and municipalities and must include the following elements:

- (a) all fines collected by the clerk of court for the court of general sessions;
- (b) all assessments collected by the clerk of court for the court of general sessions;
- (c) the amount of fines retained by the county treasurer;
- (d) the amount of assessments retained by the county treasurer;
- (e) the amount of fines and assessments remitted to the State Treasurer pursuant to this section; and

(f) the total funds, by source, allocated to victim services activities, how those funds were expended, and any balances carried forward.

(2) The Uniform Supplemental Schedule Form must be included in the external auditor's report as required by generally accepted auditing standards when information accompanies the basic financial statements in auditor submitted documents.

(3) Within thirty days of issuance of the audited financial statement, the county must submit to the State Treasurer a copy of the audited financial statement and a statement of the actual cost associated with the preparation of the Uniform Supplemental Schedule Form required in this subsection. Upon submission to the State Treasurer, the county may retain and pay from the fines and assessments collected pursuant to this section the actual expense charged by the external auditor for the preparation of the Uniform Supplemental Schedule Form required in this subsection, not to exceed one thousand dollars each year.

(4) The clerk of court and county treasurer shall keep records of fines and assessments required to be reviewed pursuant to this subsection in the format determined by the county council and make those records available for review."

B. Section 14-1-207(E) of the 1976 Code is amended to read:

"(E) To ensure that fines and assessments imposed pursuant to this section and Section 14-1-209(A) are properly collected and remitted to the State Treasurer, the annual independent external audit required to be performed for each county pursuant to Section 4-9-150 must include a review of the accounting controls over the collection, reporting, and distribution of fines and assessments from the point of collection to the point of distribution and a Uniform Supplemental Schedule Form detailing all fines and assessments collected by the magistrate's court of that county, the amount remitted to the county treasurer, and the amount remitted to the State Treasurer.

(1) To the extent that records are made available in the format determined pursuant to subsection (E)(4), the Uniform Supplemental Schedule Form developed by the Office of the Attorney General, South Carolina Crime Victim Services Division, must be used by all counties and municipalities to report victim services funds and must include the following elements:

- (a) all fines collected by the magistrate's court;
- (b) all assessments collected by the magistrate's court;
- (c) the amount of fines retained by the county treasurer;



- (d) the amount of assessments retained by the county treasurer;
- (e) the amount of fines and assessments remitted to the State Treasurer pursuant to this section; and
- (f) the total funds, by source, allocated to victim services activities, how those funds were expended, and any balances carried forward.

(2) The Uniform Supplemental Schedule Form must be included in the external auditor's report as required by generally accepted auditing standards when information accompanies the basic financial statements in auditor submitted documents.

(3) Within thirty days of issuance of the audited financial statement, the county must submit to the State Treasurer a copy of the audited financial statement and a statement of the actual cost associated with the preparation of the Uniform Supplemental Schedule Form required in this section. Upon submission to the State Treasurer, the county may retain and pay from the fines and assessments collected pursuant to this section the actual expense charged by the external auditor for the preparation of the Uniform Supplemental Schedule Form required in this subsection, not to exceed one thousand dollars each year.

(4) The clerk of court and county treasurer shall keep records of fines and assessments required to be reviewed pursuant to this subsection in the format determined by the county council and make those records available for review.”

C. Section 14-1-208(E) of the 1976 Code is amended to read:

“(E) To ensure that fines and assessments imposed pursuant to this section and Section 14-1-209(A) are properly collected and remitted to the State Treasurer, the annual independent external audit required to be performed for each municipality pursuant to Section 5-7-240 must include a review of the accounting controls over the collection, reporting, and distribution of fines and assessments from the point of collection to the point of distribution and a Uniform Supplemental Schedule Form detailing all fines and assessments collected at the court level, the amount remitted to the municipal treasurer, and the amount remitted to the State Treasurer.

(1) To the extent that records are made available in the format determined pursuant to subsection (E)(4), the Uniform Supplemental Schedule Form developed by the Office of the Attorney General, South Carolina Crime Victim Services Division, must be used by all counties and municipalities to report their crime victim services funds and must include the following elements:

- (a) all fines collected by the clerk of court for the municipal court;
- (b) all assessments collected by the clerk of court for the municipal court;
- (c) the amount of fines retained by the municipal treasurer;
- (d) the amount of assessments retained by the municipal treasurer;
- (e) the amount of fines and assessments remitted to the State Treasurer pursuant to this section; and
- (f) the total funds, by source, allocated to victim services activities, how those funds were expended, and any balances carried forward.

(2) The Uniform Supplemental Schedule Form must be included in the external auditor's report as required by generally accepted auditing standards when information accompanies the basic financial statements in auditor submitted documents.

(3) Within thirty days of issuance of the audited financial statement, the municipality must submit to the State Treasurer a copy of the audited financial statement and a statement of the actual cost associated with the preparation of the Uniform Supplemental Schedule Form required in this section. Upon submission to the State Treasurer, the municipality may retain and pay from the fines and assessments collected pursuant to this section the actual expense charged by the external auditor for the preparation of the Uniform Supplemental Schedule Form required in this subsection, not to exceed one thousand dollars each year.

(4) The clerk of court and municipal treasurer shall keep records of fines and assessments required to be reviewed pursuant to this subsection in the format determined by the municipal governing body and make those records available for review.”

**Funding, training and technical assistance, programmatic and financial audit, cooperation with audit**

PART IV

SECTION 13. A. Chapter 1, Title 14 of the 1976 Code is amended by adding:

“Section 14-1-211.5. The Department of Crime Victim Assistance Grants shall offer training and technical assistance to each municipality

and county annually on the acceptable use of both priority one and priority two funds and funds available for competitive bid.”

B. Chapter 1, Title 14 of the 1976 Code is amended by adding:

“Section 14-1-211.6. (A) If the State Auditor finds that any county treasurer, municipal treasurer, county clerk of court, magistrate, or municipal court has not properly allocated revenue generated from court fines, fines, and assessments to the crime victim funds or has not properly expended crime victim funds, pursuant to Sections 14-1-206(B) and (D), 14-1-207(B) and (D), 14-1-208(B) and (D), and 14-1-211(B), the State Auditor shall notify the Office of the Attorney General, South Carolina Crime Victim Services Division. The division is authorized to conduct an audit, which must include both a programmatic review and financial audit of any entity or nonprofit organization receiving victim assistance funding, based on the referrals from the State Auditor or complaints of a specific nature received by the division to ensure that crime victim funds are expended in accordance with the law. Guidelines for the expenditure of these funds shall be developed in collaboration with the Victim Services Coordinating Council. The Victim Services Coordinating Council, in collaboration with the director of the division, shall develop these guidelines to ensure any expenditure that meets the parameters of Article 15, Chapter 3, Title 16 is an allowable expenditure.

(B) Any local entity or nonprofit organization that receives funding from revenue generated from crime victim funds is required to submit their budget for the expenditure of these funds to the Office of the Attorney General, South Carolina Crime Victim Services Division within thirty days of the budget’s approval by the governing body of the entity or nonprofit organization. Failure to comply with this provision shall cause the division to initiate a programmatic review and a financial audit of the entity’s or nonprofit organization’s expenditures of victim assistance funds. Additionally, the division will place the name of the noncompliant entity or nonprofit organization on its website, where it shall remain until such time as the noncompliant entity or nonprofit organization is in compliance with the terms of this section.

(C) Any entity or nonprofit organization receiving victim assistance funding must cooperate and provide expenditure and program data requested by the division. If the division finds an error, the entity or nonprofit organization has ninety days to rectify the error. An error constitutes an entity or nonprofit organization spending victim assistance funding on unauthorized items as determined by the division. If the entity or nonprofit organization fails to cooperate with the programmatic

review and financial audit or to rectify the error within ninety days, the division shall assess and collect a penalty in the amount of the unauthorized expenditure plus fifteen hundred dollars against the entity or nonprofit organization for improper expenditures. This penalty which includes the fifteen hundred dollars must be paid within thirty days of the notification by the division to the entity or nonprofit organization that the entity or nonprofit organization is in noncompliance with the provisions of this section. All penalties received by the division shall be credited to the general fund of the State. If the penalty is not received by the division within thirty days of the notification, the political subdivision must deduct the amount of the penalty from the entity's or nonprofit organization's subsequent fiscal year appropriation."

#### **References to restructured crime victim services entities**

##### PART V

##### References to Restructured Entities

SECTION 14. Any reference in the 1976 Code to the South Carolina Victims' Compensation Fund, or any other variation thereof, shall mean the South Carolina Victim Compensation Fund administered by the Office of the Attorney General, South Carolina Crime Victim Services Division, Department of Crime Victim Compensation, Victim Compensation Fund.

Any reference in the 1976 Code to the State Office of Victim Assistance, or any variation thereof, shall mean the Office of the Attorney General, South Carolina Crime Victim Services Division.

Any reference in the 1976 Code to the Office of the Crime Victims' Ombudsman of the Governor's Office, or any variation thereof, shall mean the Office of the Attorney General, South Carolina Crime Victim Services Division, Department of Crime Victim Ombudsman.

#### **Savings clause**

##### PART VI

##### Savings and Severability

SECTION 15. The repeal or amendment by this act of any law, whether temporary, permanent, civil, or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter,

discharge, release, or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

**Severability clause**

SECTION 16. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this act and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

**Time effective**

## PART VII

## Time Effective

SECTION 17. This act takes effect on July 1, 2017.

Ratified the 6<sup>th</sup> day of June, 2017.

Approved the 10<sup>th</sup> day of June, 2017.

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