**Wednesday, March 19, 2014**

**(Statewide Session)**

~~Indicates Matter Stricken~~

## Indicates New Matter

The Senate assembled at 2:00 P.M., the hour to which it stood adjourned, and was called to order by the PRESIDENT.

A quorum being present, the proceedings were opened with a devotion by the Chaplain as follows:

In the “Parable of the Talents” the master declared:

“ ‘Well done, good and faithful servant!’ ” (Matthew 25:21a)

Let us pray:

Glorious Lord, what a marvelous and all-embracing word of praise for work well-done and for labor enriched with love. May that be the ultimate word of praise genuinely earned by each of these Senators, O God: the direct result of their effective and compassionate exercise of duty on behalf of everyone all across the social and economic spectrum in this State. To every one of these leaders may we one day joyfully proclaim: “Well done, good and faithful servant!” We praise You, Lord, in Your loving name. Amen.

The PRESIDENT called for Petitions, Memorials, Presentments of Grand Juries and such like papers.

**REGULATION RECEIVED**

The following was received and referred to the appropriate committee for consideration:

Document No. 4452

Agency: Board of Long Term Health Care Administrators

Chapter: 93

Statutory Authority: 1976 Code Sections 40-1-70 and 40-35-60

SUBJECT: Requirements of Licensure for Long Term Health Care Administrators

Received by Lieutenant Governor March 19, 2014

Referred to Medical Affairs Committee

Legislative Review Expiration February 23, 2015

**Doctor of the Day**

Senator LARRY MARTIN introduced Dr. Lori Carnsew of Easley, S.C., Doctor of the Day. Dr. Carnsew is President of SC Academy of Family Physicians.

**Leave of Absence**

On motion of Senator McELVEEN, at 4:00 P.M., Senator KIMPSON was granted a leave of absence for the balance of the day.

**Leave of Absence**

At 4:30 P.M., Senator CAMPBELL requested a leave of absence from 5:00 - 7:00 P.M.

**Expression of Personal Interest**

Senator CLEARY rose for an Expression of Personal Interest.

**Expression of Personal Interest**

Senator HUTTO rose for an Expression of Personal Interest.

**Expression of Personal Interest**

Senator CORBIN rose for an Expression of Personal Interest.

**Remarks by Senator CORBIN**

Lady and gentlemen of the Senate. Do you all remember last year when we were doing the Early Voting Bill? I tried to get the amendment put on it that if you were caught and convicted of voter fraud, it would be a mandatory 10 year jail sentence and that is because we wanted to keep purity in our elections. I think everyone would be in favor of that amendment. That is the cornerstone and the bedrock of our society in this republic we live in.

My wife told me an interesting story. Did you hear about the lady, I think she was from New York, and she was very well off? She had a large bank account and she had the bank paying all of her bills for her as she aged. She actually died and she remained dead in her apartment for six years and nobody knew she was dead. She had no family or relatives that called or visited. When they found her, the body had mummified. The unique thing about this story is that she had voted in the last four election cycles. I just wanted to share this fact that I thought you all might find interesting.

On motion of Senator BRYANT, with unanimous consent, the remarks of Senator CORBIN were ordered printed in the Journal.

**CO-SPONSORS ADDED**

The following co-sponsors were added to the respective Bills:

S. 204 Sen. Fair

S. 1094 Sen. Fair

**INTRODUCTION OF BILLS AND RESOLUTIONS**

The following were introduced:

S. 1133 -- Senator Turner: A SENATE RESOLUTION TO CONGRATULATE GREENVILLE'S MARGARET L. WYATT, M.D., P.A., UPON THE OCCASION OF HER RETIREMENT, TO COMMEND HER FOR HER MANY YEARS OF DEDICATED SERVICE AS A MEDICAL PROFESSIONAL, AND TO WISH HER MUCH HAPPINESS AND FULFILLMENT IN ALL HER FUTURE ENDEAVORS.

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The Senate Resolution was adopted.

S. 1134 -- Senator Courson: A CONCURRENT RESOLUTION TO RECOGNIZE AND HONOR THE REVEREND DR. JAMES FRASER LYON IV FOR HIS MANY YEARS OF FAITHFUL SERVICE TO GOD, THE CHURCH, AND HER PEOPLE IN THE SACRAMENT OF HOLY ORDERS OF THE PRIESTHOOD AND TO COMMEND HIM FOR BECOMING THE LONGEST-SERVING RECTOR AT THE EPISCOPAL CHURCH OF THE GOOD SHEPHERD IN COLUMBIA.

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The Concurrent Resolution was adopted, ordered sent to the House.

S. 1135 -- Senators Peeler and Grooms: A BILL TO AMEND SECTION 12-28-110, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO DEFINITIONS CONCERNING MOTOR FUEL USER FEES, SO AS TO INCLUDE LIQUEFIED NATURAL GAS WITHIN THE DEFINITION OF "ALTERNATIVE FUEL"; BY ADDING SECTION 12-28-230 SO AS TO PROVIDE THE MANNER IN WHICH NATURAL GAS AND LIQUEFIED NATURAL GAS MUST BE DISPENSED; TO AMEND SECTION 12-28-310, RELATING TO THE MOTOR FUEL USER FEE, SO AS TO IMPOSE THE FEE ON LIQUEFIED NATURAL GAS AND COMPRESSED NATURAL GAS; TO AMEND SECTION 56-5-4160, AS AMENDED, RELATING TO VEHICLE WEIGHTS AND LOADS, SO AS TO ALLOW FOR AN ADDITIONAL TWO THOUSAND POUNDS OF WEIGHT FOR CERTAIN VEHICLES FUELED BY NATURAL GAS; TO AMEND ARTICLE 23, CHAPTER 37, TITLE 12, RELATING TO MOTOR CARRIERS, SO AS TO DEFINE TERMS, TO PROVIDE THAT THE ARTICLE DOES NOT APPLY TO A SMALL COMMERCIAL VEHICLE, TO PROVIDE THAT CERTAIN VEHICLES ARE ASSESSED AND APPORTIONED BASED ON A ROAD USE FEE INSTEAD OF PROPERTY TAXES, TO PROVIDE THAT THE ROAD USE FEE IS DUE AT THE SAME TIME AS REGISTRATION FEES, TO PROVIDE FOR THE DISTRIBUTION OF THE ROAD USE FEE, AND TO EXEMPT CERTAIN SEMITRAILERS, TRAILERS, LARGE COMMERCIAL MOTOR VEHICLES, AND BUSES FROM AD VALOREM TAXATION; TO AMEND SECTION 56-3-376, RELATING TO THE REGISTRATION OF MOTOR VEHICLES, SO AS TO PROVIDE A REGISTRATION SYSTEM FOR LARGE COMMERCIAL MOTOR VEHICLES AND BUSES; TO AMEND SECTION 56-3-120, RELATING TO EXEMPTIONS FROM THE REGISTRATION PROCESS, SO AS TO MAKE CONFORMING CHANGES; TO AMEND SECTION 56-3-610, RELATING TO THE PAYMENT OF REGISTRATION FEES, SO AS TO MAKE CONFORMING CHANGES; TO AMEND SECTION 56-3-660, RELATING TO REGISTRATION FEES, SO AS TO PROVIDE THAT FEES FOR LICENSING AND REGISTRATION AND THE ROAD USE FEE MAY BE CREDITED OR PRORATED IF THE FEE EXCEEDS FOUR HUNDRED DOLLARS INSTEAD OF EIGHT HUNDRED DOLLARS, AND TO MAKE CONFORMING CHANGES; TO AMEND SECTION 58-23-620, AS AMENDED, RELATING TO THE IMPOSITION OF LOCAL FEES, SO AS TO APPORTION CERTAIN LICENSE FEES AND TAXES; TO AMEND SECTION 12-37-2610, RELATING TO THE TAX YEAR FOR MOTOR VEHICLES, SO AS TO MAKE CONFORMING CHANGES; TO AMEND SECTION 12-37-2650, RELATING TO THE ISSUANCE OF TAX NOTICES, SO AS TO MAKE CONFORMING CHANGES; AND TO REPEAL SECTION 56-5-145 RELATING TO THE DEFINITION OF "AUTOMOTIVE THREE-WHEELED VEHICLE".

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Read the first time and referred to the Committee on Finance.

S. 1136 -- Senators Shealy, Hembree, Bennett, Johnson, Campbell, Cleary, Turner, Cromer and McElveen: A BILL TO AMEND ARTICLE 9, CHAPTER 1, TITLE 1 OF THE 1976 CODE, BY ADDING SECTION 1-1-720, RELATING TO STATE EMBLEMS, TO DESIGNATE BARBECUE AS THE OFFICIAL STATE PICNIC CUISINE.

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Read the first time and referred to the Committee on Judiciary.

S. 1137 -- Senator L. Martin: A BILL TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 44-48-180, SO AS TO PROVIDE THAT A SEXUALLY VIOLENT PREDATOR'S SUPERVISION BY THE DEPARTMENT OF PROBATION, PAROLE AND PARDON SERVICES IS TOLLED DURING THE SEXUALLY VIOLENT PREDATOR'S PERIOD OF CIVIL COMMITMENT.

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Read the first time and referred to the Committee on Medical Affairs.

S. 1138 -- Senators Thurmond, Turner, Bright, Shealy and Davis: A SENATE RESOLUTION TO AMEND RULE 32, RELATING TO THE ORDER OF BUSINESS OF THE SENATE, TO PROVIDE THAT A BILL OR RESOLUTION CO-SPONSORED BY TWENTY-SEVEN OR MORE MEMBERS AT THE TIME OF INTRODUCTION IS CONSIDERED A CONSENSUS BILL AND MUST BE PLACED ON THE CALENDAR WITHOUT REFERENCE, TO PROVIDE THAT A CONSENSUS BILL MUST BE PRINTED ON THE CALENDAR FOR THREE STATEWIDE LEGISLATIVE DAYS PRIOR TO CONSIDERATION, AND TO ESTABLISH AN ORDER OF BUSINESS TO CONSIDER CONTESTED CONSENSUS BILLS.

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The Senate Resolution was introduced and referred to the Committee on Rules.

S. 1139 -- Senators Thurmond, Turner, Young, Massey, Gregory, Bennett, Hembree, Bright, Bryant, Shealy and Davis: A SENATE RESOLUTION TO AMEND THE RULES OF THE SENATE BY ADDING RULE 55, RELATING TO EARMARKS, TO PROVIDE FOR THE DISCLOSURE OF INFORMATION SURROUNDING EARMARKS REQUESTED BY MEMBERS OF THE SENATE FOR INCLUSION IN AN APPROPRIATIONS BILL, TO PROVIDE DEFINITIONS APPLICABLE FOR THIS DISCLOSURE, AND TO PROVIDE FOR THE ENFORCEMENT OF THESE DISCLOSURE REQUIREMENTS.

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Senator THURMOND spoke on the Resolution.

The Senate Resolution was introduced and referred to the Committee on Rules.

S. 1140 -- Senator Scott: A SENATE RESOLUTION TO RECOGNIZE AND HONOR MARY B. WILLIAMS, OF RICHLAND COUNTY, SECRETARY OF ZION PILGRIM BAPTIST CHURCH, UPON THE OCCASION OF HER RETIREMENT AFTER SIXTY YEARS OF FAITHFUL SERVICE, AND TO WISH HER CONTINUED SUCCESS AND HAPPINESS IN ALL HER FUTURE ENDEAVORS.

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The Senate Resolution was adopted.

S. 1141 -- Senators Thurmond, Young, Gregory, Turner, Hembree, Sheheen and Davis: A SENATE RESOLUTION TO AMEND RULE 32B OF THE RULES OF THE SENATE, RELATING TO THE CONTESTED CALENDAR, BY ADDING THAT A SENATOR MAY CAUSE NO MORE THAN THREE BILLS OR RESOLUTIONS TO APPEAR ON THE CONTESTED STATEWIDE CALENDAR BY HAVING PLACED A MINORITY REPORT ON THE BILL OR RESOLUTION DURING CONSIDERATION OF THE BILL OR RESOLUTION IN COMMITTEE.

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The Senate Resolution was introduced and referred to the Committee on Rules.

S. 1142 -- Senator Hayes: A SENATE RESOLUTION TO CONGRATULATE GABRIEL DAVID D'AGOSTINO OF YORK COUNTY FOR ACHIEVING THE ELITE RANK OF EAGLE SCOUT, TO COMMEND HIM FOR HIS HARD WORK AND DETERMINATION IN REACHING THIS GOAL, AND TO WISH HIM EVERY SUCCESS IN ALL HIS FUTURE ENDEAVORS.

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The Senate Resolution was adopted.

H. 4833 -- Reps. Clemmons, Limehouse, Southard and Hixon: A CONCURRENT RESOLUTION TO MEMORIALIZE THE CONGRESS OF THE UNITED STATES TO DEFEAT H.R. 1518 AND S. 1406 WHICH WOULD ENACT EXCESSIVE GUIDELINES RELATING TO THE PRACTICE OF SORING THE TENNESSEE WALKING HORSE, AND ADOPT ALTERNATIVE LEGISLATION PROPOSED BY THE TENNESSEE WALKING HORSE INDUSTRY THAT ADDRESSES THIS ISSUE AND PROTECTS THE INDUSTRY.

The Concurrent Resolution was introduced and referred to the Committee on Agriculture and Natural Resources.

H. 4851 -- Reps. Gilliard, Whipper, Limehouse, Merrill, Crosby, Mack, Goldfinch, Horne, McCoy, Rivers and Sottile: A CONCURRENT RESOLUTION TO REQUEST THAT THE DEPARTMENT OF TRANSPORTATION NAME THE INTERSECTION OF MALL DRIVE AND LACROSS ROAD IN CHARLESTON COUNTY "MICHAEL 'MICKEY' S. WHATLEY INTERSECTION" AND ERECT APPROPRIATE MARKERS OR SIGNS AT THIS LOCATION THAT CONTAIN THE WORDS "MICHAEL 'MICKEY' S. WHATLEY INTERSECTION".

The Concurrent Resolution was introduced and referred to the Committee on Transportation.

H. 4922 -- Reps. G. M. Smith, Rutherford, Cobb-Hunter, Sandifer, Weeks, Delleney, White, Gilliard, Anderson and Hosey: A BILL TO AMEND SECTION 1-13-80, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO UNLAWFUL EMPLOYMENT PRACTICES AND EXCEPTIONS, SO AS TO PROVIDE THAT IT IS NOT AN UNLAWFUL EMPLOYMENT PRACTICE FOR A PRIVATE EMPLOYER TO GIVE HIRING PREFERENCES TO A VETERAN, AND TO EXTEND THE PREFERENCE TO THE VETERAN'S SPOUSE IF THE VETERAN HAS A SERVICE-CONNECTED PERMANENT AND TOTAL DISABILITY.

Read the first time and referred to the Committee on Judiciary.

H. 4926 -- Reps. Harrell, Alexander, Allison, Anderson, Anthony, Atwater, Bales, Ballentine, Bannister, Barfield, Bedingfield, Bernstein, Bingham, Bowen, Bowers, Branham, Brannon, G.A. Brown, R.L. Brown, Burns, Chumley, Clemmons, Clyburn, Cobb‑Hunter, Cole, H.A. Crawford, K.R. Crawford, Crosby, Daning, Delleney, Dillard, Douglas, Edge, Erickson, Felder, Finlay, Forrester, Funderburk, Gagnon, Gambrell, George, Gilliard, Goldfinch, Govan, Hamilton, Hardee, Hardwick, Hart, Hayes, Henderson, Herbkersman, Hiott, Hixon, Hodges, Horne, Hosey, Howard, Huggins, Jefferson, Kennedy, King, Knight, Limehouse, Loftis, Long, Lowe, Lucas, Mack, McCoy, McEachern, M.S. McLeod, W.J. McLeod, Merrill, Mitchell, D.C. Moss, V.S. Moss, Munnerlyn, Murphy, Nanney, Neal, Newton, Norman, Norrell, R.L. Ott, Owens, Parks, Patrick, Pitts, Pope, Putnam, Quinn, Ridgeway, Riley, Rivers, Robinson‑Simpson, Rutherford, Ryhal, Sabb, Sandifer, Sellers, Simrill, Skelton, G.M. Smith, G.R. Smith, J.E. Smith, J.R. Smith, Sottile, Southard, Spires, Stavrinakis, Stringer, Tallon, Taylor, Thayer, Toole, Vick, Weeks, Wells, Whipper, White, Whitmire, Williams, Willis and Wood: A CONCURRENT RESOLUTION TO INVITE THE CHIEF JUSTICE OF THE SOUTH CAROLINA SUPREME COURT, THE HONORABLE JEAN HOEFER TOAL, TO ADDRESS THE GENERAL ASSEMBLY IN JOINT SESSION ON THE STATE OF THE JUDICIARY AT 11:30 A.M. ON WEDNESDAY, APRIL 9, 2014.

On motion of Senator LARRY MARTIN, with unanimous consent, the Concurrent Resolution was adopted and ordered returned to the House.

H. 4929 -- Rep. Allison: A CONCURRENT RESOLUTION TO URGE ALL HOSPITALS IN THIS STATE TO OFFER TO INPATIENTS SIXTY-FIVE YEARS OF AGE AND OLDER, PRIOR TO DISCHARGE, IMMUNIZATION AGAINST THE INFLUENZA VIRUS, AND TO STIPULATE THE TERMS AND CONDITIONS UNDER WHICH THIS OFFER SHOULD BE MADE.

The Concurrent Resolution was introduced and referred to the Committee on Medical Affairs.

H. 4930 -- Reps. Pope, Alexander, Allison, Anderson, Anthony, Atwater, Bales, Ballentine, Bannister, Barfield, Bedingfield, Bernstein, Bingham, Bowen, Bowers, Branham, Brannon, G. A. Brown, R. L. Brown, Burns, Chumley, Clemmons, Clyburn, Cobb-Hunter, Cole, H. A. Crawford, K. R. Crawford, Crosby, Daning, Delleney, Dillard, Douglas, Edge, Erickson, Felder, Finlay, Forrester, Funderburk, Gagnon, Gambrell, George, Gilliard, Goldfinch, Govan, Hamilton, Hardee, Hardwick, Harrell, Hart, Hayes, Henderson, Herbkersman, Hiott, Hixon, Hodges, Horne, Hosey, Howard, Huggins, Jefferson, Kennedy, King, Knight, Limehouse, Loftis, Long, Lowe, Lucas, Mack, McCoy, McEachern, M. S. McLeod, W. J. McLeod, Merrill, Mitchell, D. C. Moss, V. S. Moss, Munnerlyn, Murphy, Nanney, Neal, Newton, Norman, Norrell, R. L. Ott, Owens, Parks, Patrick, Pitts, Putnam, Quinn, Ridgeway, Riley, Rivers, Robinson-Simpson, Rutherford, Ryhal, Sabb, Sandifer, Sellers, Simrill, Skelton, G. M. Smith, G. R. Smith, J. E. Smith, J. R. Smith, Sottile, Southard, Spires, Stavrinakis, Stringer, Tallon, Taylor, Thayer, Toole, Vick, Weeks, Wells, Whipper, White, Whitmire, Williams, Willis and Wood: A CONCURRENT RESOLUTION TO RECOGNIZE THE RIGHTS OF CITIZENS WITH DOWN SYNDROME, TO PROMOTE THEIR INCLUSION AND WELL-BEING, AND TO DECLARE MARCH 21, 2014, AS "DOWN SYNDROME DAY" IN SOUTH CAROLINA.

The Concurrent Resolution was adopted, ordered returned to the House.

H. 4931 -- Reps. Simrill, Pope, Norman, Felder, King, Delleney, D. C. Moss, V. S. Moss and Long: A CONCURRENT RESOLUTION TO RECOGNIZE AND HONOR DR. JAYNE MARIE "JAMIE" COMSTOCK ON THE OCCASION OF HER INAUGURATION AS THE TENTH PRESIDENT OF WINTHROP UNIVERSITY AND TO WISH HER MUCH SUCCESS IN HER NEW POSITION.

The Concurrent Resolution was adopted, ordered returned to the House.

H. 4935 -- Reps. Govan, Jefferson, Williams, Clyburn, Stavrinakis, McCoy, Sabb, Mitchell, Burns, Hosey, Cobb-Hunter, Neal, Anderson, Alexander, Branham, George, Hodges, Kennedy, Mack, Norrell, Pitts, Ridgeway, Rivers, Ryhal, Wells, Allison, Anthony, Atwater, Bales, Ballentine, Bannister, Barfield, Bedingfield, Bernstein, Bingham, Bowen, Bowers, Brannon, G. A. Brown, R. L. Brown, Chumley, Clemmons, Cole, H. A. Crawford, K. R. Crawford, Crosby, Daning, Delleney, Dillard, Douglas, Edge, Erickson, Felder, Finlay, Forrester, Funderburk, Gagnon, Gambrell, Gilliard, Goldfinch, Hamilton, Hardee, Hardwick, Harrell, Hart, Hayes, Henderson, Herbkersman, Hiott, Hixon, Horne, Howard, Huggins, King, Knight, Limehouse, Loftis, Long, Lowe, Lucas, McEachern, M. S. McLeod, W. J. McLeod, Merrill, D. C. Moss, V. S. Moss, Munnerlyn, Murphy, Nanney, Newton, Norman, R. L. Ott, Owens, Parks, Patrick, Pope, Putnam, Quinn, Riley, Robinson-Simpson, Rutherford, Sandifer, Sellers, Simrill, Skelton, G. M. Smith, G. R. Smith, J. E. Smith, J. R. Smith, Sottile, Southard, Spires, Stringer, Tallon, Taylor, Thayer, Toole, Vick, Weeks, Whipper, White, Whitmire, Willis and Wood: A CONCURRENT RESOLUTION TO ENCOURAGE ALL CITIZENS OF SOUTH CAROLINA TO INCREASE THEIR KNOWLEDGE OF WISE FINANCIAL STEWARDSHIP AND TO DECLARE APRIL 2014 AS FINANCIAL LITERACY MONTH.

The Concurrent Resolution was introduced and referred to the Committee on Banking and Insurance.

**REPORTS OF STANDING COMMITTEES**

Senator COURSON from the Committee on Education submitted a majority favorable with amendment and Senator HUTTO a minority unfavorable report on:

S. 300 -- Senators Grooms, Bryant, Bright, S. Martin, Fair, Campsen, Davis, Shealy, Verdin and Thurmond: A BILL TO AMEND ARTICLE 5, CHAPTER 1, TITLE 59 OF THE 1976 CODE, RELATING TO GENERAL PROVISIONS CONCERNING EDUCATION, BY ADDING SECTION 59‑1‑490 TO PROVIDE THAT THE COMMON CORE STANDARDS MAY NOT BE IMPOSED ON SOUTH CAROLINA.

Ordered for consideration tomorrow.

Senator HUTTO from the Committee on Judiciary submitted a majority favorable with amendment and Senator CORBIN a minority unfavorable report on:

S. 375 -- Senators Hutto, L. Martin, Johnson and Rankin: A BILL TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING CHAPTER 38 TO TITLE 6 SO AS TO ENACT THE “DILAPIDATED BUILDINGS ACT”, TO PROVIDE DEFINITIONS, TO PROVIDE THAT A MUNICIPALITY MAY BRING A CAUSE OF ACTION AGAINST THE OWNER OF PROPERTY NOT IN SUBSTANTIAL COMPLIANCE WITH CERTAIN MUNICIPAL ORDINANCES, TO IDENTIFY WHO MAY SERVE AS A COURT‑APPOINTED RECEIVER FOR PROPERTY SUBJECT TO THIS CAUSE OF ACTION, TO DESIGNATE THE POWERS OF A COURT‑APPOINTED RECEIVER, TO ESTABLISH REPORTING REQUIREMENTS OF THE MUNICIPALITY CONCERNING A VIOLATION AGAINST WHICH THE MUNICIPALITY MAY BRING A CAUSE OF ACTION UNDER THIS ACT, AND TO PROVIDE CERTAIN REMEDIES AND PROCEDURES.

Ordered for consideration tomorrow.

Senator BENNETT from the Committee on Judiciary submitted a favorable with amendment report on:

S. 817 -- Senator L. Martin: A BILL TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 23‑3‑47 SO AS TO REQUIRE PERSONS SEEKING CERTAIN POSITIONS OR WHO VOLUNTEER OR SERVE IN A POSITION SUPPORTED, SPONSORED, OR ADMINISTERED BY THE SOUTH CAROLINA COMMISSION ON NATIONAL AND COMMUNITY SERVICE TO UNDERGO A STATE AND NATIONAL CRIMINAL HISTORY BACKGROUND CHECK AND TO PROVIDE PROCEDURES TO BE FOLLOWED AND FOR THE COSTS OF THE BACKGROUND CHECKS.

Ordered for consideration tomorrow.

Senator COURSON from the Committee on Education submitted a majority favorable with amendment and Senator HUTTO a minority unfavorable report on:

S. 888 -- Senators Campsen, Courson, Hayes, Grooms, Peeler, L. Martin, Verdin and Turner: A BILL TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, SO AS TO ENACT THE “ACADEMIC STANDARDS ACCOUNTABILITY ACT”; BY ADDING SECTION 59‑18‑355 SO AS TO PROVIDE THAT CERTAIN RECOMMENDED REVISIONS AND OTHER CHANGES OR ADDITIONS TO A STATEWIDE CORE ACADEMIC AREA CONTENT STANDARD THAT THE STATE BOARD OF EDUCATION OTHERWISE CONSIDERS FOR APPROVAL AS AN ACCOUNTABILITY MEASURE MUST RECEIVE BOTH THE ADVICE AND CONSENT OF THE EDUCATION OVERSIGHT COMMITTEE AND THE APPROVAL OF THE GENERAL ASSEMBLY BY JOINT RESOLUTION TO BE ADOPTED AND IMPLEMENTED, EXCEPT THAT GENERAL ASSEMBLY APPROVAL IS NOT NEEDED FOR A REVISION, CHANGE, OR ADDITION DEVELOPED BY THE STATE DEPARTMENT OF EDUCATION, TO PROVIDE THAT CERTAIN RECOMMENDED REVISIONS AND OTHER CHANGES OR ADDITIONS TO STATEWIDE ACADEMIC ASSESSMENTS THAT THE BOARD OTHERWISE CONSIDERS FOR APPROVAL AS AN ACCOUNTABILITY MEASURE MUST RECEIVE THE ADVICE AND CONSENT OF THE COMMITTEE TO BE ADOPTED AND IMPLEMENTED, TO PROVIDE THE COMMITTEE AND THE DEPARTMENT SHALL NOTIFY THE GENERAL ASSEMBLY AND THE GOVERNOR BEFORE INITIATING A CHANGE TO AN EXISTING STATEWIDE ACADEMIC CONTENT STANDARD OR STATEWIDE ACADEMIC ASSESSMENT, AND TO PROVIDE THAT THE CODE SECTION MAY NOT BE INTERPRETED TO PREVENT THE DEPARTMENT, BOARD, AND COMMITTEE FROM CONSIDERING THE BEST PRACTICES IN EDUCATION STANDARDS AND ASSESSMENTS WHILE DEVELOPING ITS OWN STANDARDS; TO AMEND SECTION 59‑18‑320, AS AMENDED, RELATING TO THE REQUIREMENT THAT NEW STANDARDS AND ASSESSMENTS REQUIRED TO BE DEVELOPED AND ADOPTED BY THE STATE BOARD OF EDUCATION THROUGH THE DEPARTMENT OF EDUCATION FOR USE AS AN ACCOUNTABILITY MEASURE MUST BE DEVELOPED AND ADOPTED UPON THE ADVICE AND CONSENT OF THE EDUCATION OVERSIGHT COMMITTEE, SO AS TO DELETE THE REQUIREMENT; AND TO AMEND SECTION 59‑18‑350, AS AMENDED, RELATING TO A MANDATORY CYCLICAL REVIEW OF STATE STANDARDS AND ASSESSMENTS, SO AS TO MAKE CONFORMING CHANGES.

Ordered for consideration tomorrow.

Senator GROOMS from the Committee on Transportation submitted a favorable report on:

S. 1037 -- Senator Fair: A BILL TO AMEND SECTION 56‑1‑148 OF THE 1976 CODE, RELATING TO THE IDENTIFYING CODE AFFIXED ON THE DRIVER’S LICENSE OF A PERSON CONVICTED OF CERTAIN CRIMES, TO REMOVE THE FIFTY DOLLAR FEE ASSOCIATED WITH THE IDENTIFYING CODE.

Ordered for consideration tomorrow.

Senator CAMPSEN from the Committee on Fish, Game and Forestry submitted a favorable report on:

S. 1070 -- Senator Campsen: A BILL TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 50‑11‑525 SO AS TO PROVIDE THE DEPARTMENT OF NATURAL RESOURCES THE AUTHORITY TO PROMULGATE REGULATIONS GOVERNING CERTAIN AREAS TO ESTABLISH SEASONS, DATES, AREAS, BAG LIMITS, AND OTHER RESTRICTIONS FOR HUNTING AND TAKING WILD TURKEY; AND TO AMEND SECTION 50‑11‑520, AS AMENDED, 50‑11‑530, 50‑11‑540, AND 50‑11‑544, ALL RELATING TO THE DEPARTMENT OF NATURAL RESOURCES’ REGULATION OF THE HUNTING OF WILD TURKEYS, SO AS TO REVISE THE SEASON FOR THE HUNTING AND TAKING OF MALE WILD TURKEYS, TO ESTABLISH “SOUTH CAROLINA YOUTH TURKEY HUNTING DAY”, TO ESTABLISH BAG LIMITS FOR THE TAKING OF MALE WILD TURKEYS, TO PROVIDE THAT THE DEPARTMENT MUST CONDUCT AN ANALYSIS OF THE STATE’S WILD TURKEY RESOURCES AND ISSUE A REPORT TO THE GENERAL ASSEMBLY WHICH RECOMMENDS CHANGES TO THE WILD TURKEY SEASON AND BAG LIMITS, TO REVISE THE DEPARTMENT’S AUTHORITY TO REGULATE THE HUNTING OF WILD TURKEYS, AND TO ALLOW IT TO PROMULGATE EMERGENCY REGULATIONS FOR THE PROPER CONTROL OF THE HARVESTING OF WILD TURKEYS, TO REVISE THE PENALTIES FOR VIOLATING THE PROVISIONS THAT REGULATE THE HUNTING OF WILD TURKEY, AND TO PROVIDE THAT ALL WILD TURKEY TRANSPORTATION TAGS MUST BE VALIDATED AS PRESCRIBED BY THE DEPARTMENT BEFORE A TURKEY IS MOVED FROM THE POINT OF KILL.

Ordered for consideration tomorrow.

Senator CAMPSEN from the Committee on Fish, Game and Forestry submitted a favorable report on:

S. 1071 -- Senator Campsen: A BILL TO AMEND SECTION 50‑1‑60, AS AMENDED, SECTIONS 50‑11‑120, 50‑11‑150, AND SECTIONS 50‑11‑310, 50‑11‑335, 50‑11‑430, ALL AS AMENDED, RELATING TO THE DIVISION OF THE STATE INTO GAME ZONES, SMALL GAME SEASONS, SMALL GAME BAG LIMITS, THE OPEN SEASON FOR ANTLERED DEER, THE BAG LIMIT ON ANTLERED DEER, AND BEAR HUNTING, SO AS TO DECREASE THE NUMBER OF GAME ZONES, REVISE THE DATES FOR THE VARIOUS SMALL GAME SEASONS, TO REVISE THE SMALL GAME BAG LIMITS FOR THE VARIOUS GAME ZONES, REVISE THE DATES FOR THE VARIOUS ANTLERED DEER OPEN SEASON; AND TO REPEAL SECTION 50‑11‑2110 RELATING TO FIELD TRIALS IN AND PERMITS FOR GAME ZONE NINE.

Ordered for consideration tomorrow.

Senator BRYANT from the Committee on Invitations polled out S. 1111 favorable:

S. 1111 -- Senators Alexander, O’Dell, Pinckney and Lourie: A CONCURRENT RESOLUTION TO DESIGNATE THE MONTH OF MAY 2014 AS “MENTAL HEALTH MONTH” IN SOUTH CAROLINA AND TO RAISE AWARENESS AND UNDERSTANDING OF MENTAL ILLNESS AND THE NEED FOR APPROPRIATE AND ACCESSIBLE SERVICES FOR ALL PEOPLE WITH MENTAL ILLNESS.

**Poll of the Invitations Committee**

**Polled 10; Ayes 10; Nays 0; Not Voting 1**

**AYES**

Bryant McGill Reese

Verdin Campsen Cromer

Malloy Cleary Johnson

Kimpson

**Total--10**

**NAYS**

**Total--0**

**NOT VOTING**

Alexander

**Total--1**

Ordered for consideration tomorrow.

Senator LEATHERMAN from the Committee on Finance submitted a favorable with amendment report on:

H. 3021 -- Reps. Clemmons, Sellers, R.L. Brown, Putnam, Kennedy, Gilliard, Toole, Branham, Rutherford, King and Cobb‑Hunter: A BILL TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING CHAPTER 55 TO TITLE 11 SO AS TO ENACT THE IRAN DIVESTMENT ACT OF 2013 AND TO PROHIBIT CERTAIN INVESTMENTS AND CONTRACTS WITH PERSONS DEEMED TO BE ENGAGING IN INVESTMENT ACTIVITIES IN IRAN.

Ordered for consideration tomorrow.

Senator COLEMAN from the Committee on Judiciary submitted a favorable with amendment report on:

H. 3124 -- Reps. Bingham, Taylor, Long and M.S. McLeod: A BILL TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 63‑7‑315 SO AS TO PROHIBIT AN EMPLOYER FROM DISMISSING, DEMOTING, SUSPENDING, OR DISCIPLINING AN EMPLOYEE WHO REPORTS CHILD ABUSE OR NEGLECT, WHETHER REQUIRED OR PERMITTED TO REPORT; AND TO CREATE A CAUSE OF ACTION FOR REINSTATEMENT AND BACK PAY WHICH AN EMPLOYEE MAY BRING AGAINST AN EMPLOYER WHO VIOLATES THIS PROHIBITION.

Ordered for consideration tomorrow.

Senator GROOMS from the Committee on Transportation submitted a favorable report on:

H. 3191 -- Reps. Cole and Tallon: A BILL TO AMEND SECTIONS 56‑5‑130 AND 56‑5‑140, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE DEFINITION OF THE TERMS “MOTOR VEHICLE” AND “MOTORCYCLE”, SO AS TO PROVIDE THAT MOPEDS ARE MOTOR VEHICLES AND NOT MOTORCYCLES.

Ordered for consideration tomorrow.

Senator YOUNG from the Committee on Judiciary submitted a favorable with amendment report on:

H. 4259 -- Reps. Goldfinch and Clemmons: A BILL TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 16‑17‑760 SO AS TO ENACT THE “SOUTH CAROLINA MILITARY SERVICE INTEGRITY AND PRESERVATION ACT”, TO PROVIDE THAT A PERSON WHO, WITH THE INTENT OF SECURING A TANGIBLE BENEFIT, KNOWINGLY AND FALSELY REPRESENTS HIMSELF TO HAVE SERVED IN THE ARMED FORCES OF THE UNITED STATES OR TO HAVE BEEN AWARDED A DECORATION, MEDAL, RIBBON, OR OTHER DEVICE AUTHORIZED BY CONGRESS OR PURSUANT TO FEDERAL LAW FOR THE ARMED FORCES OF THE UNITED STATES, IS GUILTY OF A MISDEMEANOR.

Ordered for consideration tomorrow.

Senator GROOMS from the Committee on Transportation submitted a favorable report on:

H. 4385 -- Rep. Parks: A CONCURRENT RESOLUTION TO REQUEST THAT THE DEPARTMENT OF TRANSPORTATION NAME THE PORTION OF UNITED STATES HIGHWAY 178 IN GREENWOOD COUNTY FROM ITS INTERSECTION WITH “MAYS CROSSROADS” TO ITS INTERSECTION WITH UNITED STATES HIGHWAY 25 “DR. BENJAMIN E. MAYS HIGHWAY”, AND THAT APPROPRIATE MARKERS OR SIGNS BE ERECTED ALONG THIS PORTION OF HIGHWAY THAT CONTAIN THE WORDS “DR. BENJAMIN E. MAYS HIGHWAY”.

Ordered for consideration tomorrow.

Senator JOHNSON from the Committee on Judiciary submitted a favorable with amendment report on:

H. 4482 -- Rep. Ridgeway: A BILL TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 1‑1‑691 SO AS TO PROVIDE THAT THE WOOLY MAMMOTH IS DESIGNATED AS THE OFFICIAL STATE FOSSIL OF SOUTH CAROLINA.

Ordered for consideration tomorrow.

Senator BRYANT from the Committee on Invitations polled out H. 4873 favorable:

H. 4873 -- Rep. Cobb‑Hunter: A CONCURRENT RESOLUTION TO AFFIRM THE DEDICATION OF THE GENERAL ASSEMBLY TO THE FUTURE SUCCESS OF SOUTH CAROLINA’S YOUNG PEOPLE AND TO THE PREVENTION OF CHILD ABUSE AND NEGLECT AND TO DECLARE THE MONTH OF APRIL AS “CHILD ABUSE PREVENTION MONTH” IN THE STATE OF SOUTH CAROLINA.

**Poll of the Invitations Committee**

**Polled 10; Ayes 10; Nays 0; Not Voting 1**

**AYES**

Bryant McGill Reese

Verdin Campsen Cromer

Malloy Cleary Johnson

Kimpson

**Total--10**

**NAYS**

**Total--0**

**NOT VOTING**

Alexander

**Total--1**

Ordered for consideration tomorrow.

**Appointments Reported**

Senator LARRY MARTIN from the Committee on Judiciary submitted a favorable report on:

**Statewide Appointments**

Initial Appointment, South Carolina State Ethics Commission, with the term to commence June 30, 2010, and to expire June 30, 2015

At-Large:

Thomas Miller Galardi, 140 Foxwood Dr., Aiken, SC 29803 *VICE* George Manley

Received as information.

Initial Appointment, South Carolina State Ethics Commission, with the term to commence June 30, 2013, and to expire June 30, 2018

1st Congressional District:

Francis E. Grimball, 723 Kirk Ct., Mt. Pleasant, SC 29464 *VICE* Dr. Richard H. Fitzgerald

Received as information.

**Message from the House**

Columbia, S.C., March 19, 2014

Mr. President and Senators:

The House respectfully informs your Honorable Body that it has returned the following Bill to the Senate with amendments:

S. 148 -- Senators Shealy, Bryant, Gregory and Alexander: A BILL TO AMEND CHAPTER 20, TITLE 37 OF THE 1976 CODE, RELATING TO CONSUMER IDENTITY THEFT PROTECTION, BY ADDING SECTION 37‑20‑161 TO PROVIDE FOR CERTAIN MEASURES TO SAFEGUARD A CLASS OF “PROTECTED CONSUMERS” FROM BECOMING VICTIMS OF IDENTITY THEFT, TO ALLOW REPRESENTATIVES, PROVIDING SUFFICIENT PROOF OF AUTHORITY, TO PLACE A PREEMPTIVE SECURITY FREEZE ON PROTECTED CONSUMER’S CREDIT REPORTS, TO PROVIDE THE LIMITATIONS OF THIS SECTION, TO PROVIDE REQUIREMENTS TO IMPLEMENT A SECURITY FREEZE, TO PROVIDE FOR THE DURATION AND EXTENT OF A SECURITY FREEZE, AND TO PROVIDE TERMS FOR REMOVAL OF A SECURITY FREEZE ON A PROTECTED CONSUMER’S CREDIT REPORT OR RECORD.

Very respectfully,

Speaker of the House

Received as information.

**HOUSE CONCURRENCES**

S. 1097 -- Senator Alexander: A CONCURRENT RESOLUTION TO AFFIRM THE DEDICATION OF THE GENERAL ASSEMBLY TO THE FUTURE SUCCESS OF SOUTH CAROLINA’S YOUNG PEOPLE AND TO THE PREVENTION OF CHILD ABUSE AND NEGLECT AND TO DECLARE THE MONTH OF APRIL AS “CHILD ABUSE PREVENTION MONTH” IN THE STATE OF SOUTH CAROLINA.

Returned with concurrence.

Received as information.

S. 1112 -- Senator Jackson: A CONCURRENT RESOLUTION TO RECOGNIZE AND HONOR THE INDEPENDENT COLLEGES AND UNIVERSITIES IN SOUTH CAROLINA DURING “INDEPENDENT COLLEGE AND UNIVERSITY WEEK”, APRIL 7 THROUGH 11, 2014, AND ON “INDEPENDENT COLLEGE AND UNIVERSITY DAY”, APRIL 9, 2014, FOR THEIR OUTSTANDING CONTRIBUTIONS IN EDUCATING THE YOUNG ADULTS OF OUR STATE AND NATION.

Returned with concurrence.

Received as information.

S. 1126 -- Senator Bennett: A CONCURRENT RESOLUTION TO CONGRATULATE RACHEL REYNOLDS ON HER GRADUATION FROM SUMMERVILLE HIGH SCHOOL, TO COMMEND HER FOR HER COURAGE, AND TO WISH HER THE RICHEST BLESSINGS OF GOD IN THE DAYS AHEAD.

Returned with concurrence.

Received as information.

**THE SENATE PROCEEDED TO A CALL OF THE UNCONTESTED LOCAL AND STATEWIDE CALENDAR.**

**ORDERED ENROLLED FOR RATIFICATION**

The following Bill was read the third time and, having received three readings in both Houses, it was ordered that the title be changed to that of an Act and enrolled for Ratification:

H. 3784 -- Reps. J.E. Smith, Pitts, Vick and Harrell: A BILL TO AMEND SECTION 59‑114‑30, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE NATIONAL GUARD COLLEGE ASSISTANCE PROGRAM, SO AS TO CLARIFY THAT EACH ACADEMIC YEAR’S ANNUAL MAXIMUM GRANT MUST BE BASED ON THE AMOUNT OF AVAILABLE PROGRAM FUNDS; TO AMEND SECTION 59‑114‑40, AS AMENDED, RELATING TO THE NATIONAL GUARD COLLEGE ASSISTANCE PROGRAM QUALIFICATION REQUIREMENTS, SO AS TO PROVIDE THAT NATIONAL GUARD MEMBERS BECOME ELIGIBLE FOR COLLEGE ASSISTANCE PROGRAM GRANTS UPON COMPLETION OF BASIC TRAINING AND ADVANCED INDIVIDUAL TRAINING; AND TO AMEND SECTION 59‑114‑65, RELATING TO GRANT AVAILABILITY, SO AS TO ALLOW APPROPRIATIONS TO THE NATIONAL GUARD COLLEGE ASSISTANCE PROGRAM TO BE CARRIED FORWARD TO A SUBSEQUENT FISCAL YEAR AND EXPENDED FOR THE SAME PURPOSE, AND TO EXEMPT APPROPRIATIONS TO THE NATIONAL GUARD COLLEGE ASSISTANCE PROGRAM FROM MIDYEAR BUDGET REDUCTIONS.

**HOUSE BILL RETURNED**

The following House Bill was read the third time and ordered returned to the House with amendments:

H. 4347 -- Reps. Bannister, Cobb‑Hunter, McCoy, Allison, Whipper and Gilliard: A BILL TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, SO AS TO ENACT THE “SOUTH CAROLINA CHILDREN’S ADVOCACY MEDICAL RESPONSE SYSTEM ACT” BY ADDING ARTICLE 4 TO CHAPTER 11, TITLE 63 SO AS TO CREATE THE SOUTH CAROLINA CHILDREN’S ADVOCACY MEDICAL RESPONSE SYSTEM, A PROGRAM TO PROVIDE COORDINATION AND MEDICAL SERVICE RESOURCES STATEWIDE TO AGENCIES AND ENTITIES THAT RESPOND TO VICTIMS OF CHILD ABUSE AND NEGLECT, AND TO PROVIDE FOR THE DUTIES AND RESPONSIBILITIES OF THE PROGRAM; AND TO AMEND SECTION 63‑11‑310, RELATING TO RESPONSIBILITIES OF CHILDREN’S ADVOCACY CENTERS, SO AS TO REQUIRE THESE CENTERS TO COMPLY WITH REQUIREMENTS OF THE SOUTH CAROLINA CHILDREN’S MEDICAL RESPONSE SYSTEM AND OTHERWISE COORDINATE WITH THE PROGRAM.

**THIRD READING BILLS**

The following Bills and Joint Resolution were read the third time and ordered sent to the House of Representatives:

S. 1033 -- Senators Campbell, Leatherman, Setzler, O’Dell and Alexander: A BILL TO AMEND CHAPTER 2, TITLE 12 OF THE 1976 CODE, RELATING TO TAXATION, BY ADDING SECTION 12‑2‑110, TO PROVIDE AN OUT‑OF‑STATE BUSINESS THAT CONDUCTS OPERATIONS WITHIN THIS STATE FOR THE PURPOSES OF PERFORMING WORK OR SERVICES RELATED TO A DECLARED STATE DISASTER OR EMERGENCY DURING A DISASTER PERIOD MUST NOT BE CONSIDERED TO HAVE ESTABLISHED A LEVEL OF PRESENCE THAT WOULD REQUIRE THAT BUSINESS TO REGISTER, FILE, AND REMIT STATE OR LOCAL TAXES OR THAT WOULD REQUIRE THAT BUSINESS OR ITS OUT‑OF‑STATE EMPLOYEES TO BE SUBJECT TO ANY STATE LICENSING OR REGISTRATION REQUIREMENTS OR ANY COMBINATION OF THESE ACTIONS.

S. 1034 -- Senator L. Martin: A JOINT RESOLUTION TO ADOPT REVISED CODE VOLUMES 5 AND 8 OF THE CODE OF LAWS OF SOUTH CAROLINA, 1976, TO THE EXTENT OF THEIR CONTENTS, AS THE ONLY GENERAL PERMANENT STATUTORY LAW OF THE STATE AS OF JANUARY 1, 2014.

S. 882 -- Senator Sheheen: A BILL TO AMEND SECTION 41-27-210 OF THE 1976 CODE, RELATING TO THE DEFINITION OF EMPLOYMENT; TO PROVIDE THAT INDIVIDUALS THAT TRANSPORT VEHICLES FOR AUTOMOBILE DEALERS UNDER CERTAIN CIRCUMSTANCES ARE EXCLUDED FROM THE DEFINITION; AND TO PROVIDE FOR THOSE CIRCUMSTANCES.

S. 1065 -- Senator Hayes: A BILL TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING ARTICLE 5 TO CHAPTER 43, TITLE 38 SO AS TO PROVIDE FOR THE LIMITED LICENSING OF SELF‑STORAGE FACILITIES TO SELL OR OFFER INSURANCE.

**CARRIED OVER**

S. 511 -- Senator Campsen: A BILL TO AMEND SECTION 12‑43‑220, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE FOUR PERCENT SPECIAL ASSESSMENT RATIO, SO AS TO PROVIDE THAT AN ELIGIBILITY PROVISION REQUIRING A CERTAIN OWNERSHIP PERCENTAGE DOES NOT APPLY IF THE PROPERTY IS HELD BY A TRUST, FAMILY LIMITED PARTNERSHIP, OR LIMITED LIABILITY COMPANY UNDER CERTAIN SITUATIONS.

On motion of Senator MALLOY, the Bill was carried over.

S. 841 -- Senator Cleary: A BILL TO AMEND ARTICLE 1, CHAPTER 13, TITLE 63, SOUTH CAROLINA CODE OF LAWS, 1976, RELATING TO THE REGULATION OF CHILDCARE FACILITIES, BY ADDING SECTION 63-13-185, SO AS TO PROHIBIT THE ADMINISTRATION OF MEDICATION TO A CHILD BY AN EMPLOYEE OR VOLUNTEER OF A CHILDCARE FACILITY WITHOUT PARENTAL PERMISSION, AND TO INCLUDE EXCEPTIONS IN CIRCUMSTANCES OF EMERGENCIES, AND TO PROVIDE PENALTIES.

On motion of Senator MALLOY, the Bill was carried over.

S. 908 -- Senator Hayes: A BILL TO AMEND SECTION 38‑9‑310, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO DEFINITIONS CONCERNING RISK‑BASED CAPITAL, SO AS TO REVISE EXISTING DEFINITIONS AND DEFINE ADDITIONAL TERMS; TO AMEND SECTION 38‑9‑320, RELATING TO PREPARING AND SUBMITTING A RISK‑BASED CAPITAL REPORT, SO AS TO PROVIDE FOR DETERMINING A HEALTH ORGANIZATION’S RISK‑BASED CAPITAL REPORT AND TO PROVIDE THAT EACH RISK FOR A LIFE AND HEALTH INSURER, PROPERTY AND CASUALTY INSURER, AND A HEALTH ORGANIZATION MUST BE DETERMINED IN A CERTAIN MANNER; TO AMEND SECTION 38‑9‑330, AS AMENDED, RELATING TO COMPANY ACTION LEVEL EVENTS, SO AS TO ADD AN ADDITIONAL EVENT CONCERNING A HEALTH ORGANIZATION, AMONG OTHER THINGS; TO AMEND SECTION 38‑9‑360, RELATING TO THE ROLE OF THE DIRECTOR OF THE DEPARTMENT OF INSURANCE WHEN A MANDATORY CONTROL LEVEL EVENT OCCURS, SO AS TO ADD PROVISIONS CONCERNING HEALTH ORGANIZATIONS; TO AMEND SECTION 38‑9‑370, RELATING TO HEARINGS AVAILABLE TO A LICENSEE TO CHALLENGE A DETERMINATION OR ACTION BY THE DIRECTOR IN RESPONSE TO A MANDATORY CONTROL LEVEL EVENT, SO AS TO PROVIDE A LICENSEE MAY HAVE THE HEARING CONFIDENTIALLY, ON THE RECORD, AND BEFORE THE DIRECTOR UPON PROVISION OF CERTAIN NOTICE, AND TO PROVIDE THE DIRECTOR SHALL SET A DATE FOR THE HEARING IN A CERTAIN MANNER; TO AMEND SECTION 38‑9‑380, RELATING TO THE CONFIDENTIALITY OF RISK‑BASED CAPITAL REPORTS AND ADJUSTED RISK‑BASED CAPITAL REPORTS, SO AS TO PROVIDE CIRCUMSTANCES IN WHICH THE DIRECTOR MAY SHARE, RECEIVE, AND USE CERTAIN RELATED INFORMATION THAT IS CONFIDENTIAL AND PRIVILEGED; TO AMEND SECTION 38‑9‑430, RELATING TO EXEMPTIONS FROM REPORTING REQUIREMENTS, SO AS TO ADD PROVISIONS CONCERNING DOMESTIC HEALTH ORGANIZATIONS; AND TO AMEND SECTION 38‑9‑340, SECTION 38‑9‑350, SECTION 38‑9‑365, SECTION 38‑9‑390, SECTION 38‑9‑400, SECTION 38‑9‑440, AND SECTION 38‑9‑460, ALL RELATING TO CAPITAL, SURPLUS, RESERVES, AND OTHER FINANCIAL MATTERS, SO AS TO MAKE CONFORMING CHANGES.

On motion of Senator MALLOY, the Bill was carried over.

H. 3797 -- Reps. Sandifer and Erickson: A BILL TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 38‑90‑165 SO AS TO PROVIDE THAT THE DIRECTOR OF THE DEPARTMENT OF INSURANCE MAY DECLARE A CAPTIVE INSURANCE COMPANY INACTIVE IN CERTAIN CIRCUMSTANCES AND THAT THE DIRECTOR MAY MODIFY THE MINIMUM TAX PREMIUM APPLICABLE TO THE COMPANY DURING INACTIVITY; BY ADDING SECTION 38‑90‑215 SO AS TO PROVIDE A PROTECTED CELL MAY BE EITHER INCORPORATED OR UNINCORPORATED, AND TO PROVIDE REQUIREMENTS FOR EACH; BY ADDING SECTION 38‑90‑250 SO AS TO PROVIDE THE DEPARTMENT MUST CONSIDER A LICENSED CAPTIVE INSURANCE COMPANY THAT MEETS THE REQUIREMENTS OF AN INSURER FOR ISSUANCE OF A CERTIFICATE OF AUTHORITY TO ACT AS AN INSURER; TO AMEND SECTION 38‑90‑10, AS AMENDED, RELATING TO DEFINITIONS CONCERNING CAPTIVE INSURANCE COMPANIES, SO AS TO PROVIDE ADDITIONAL TERMS AND REVISE DEFINITIONS OF CERTAIN EXISTING TERMS; TO AMEND SECTION 38‑90‑20, AS AMENDED, RELATING TO THE DOCUMENTATION REQUIRED FOR LICENSING CAPTIVE INSURANCE COMPANIES, SO AS TO REMOVE THE REQUIREMENT OF A CERTIFICATE OF GENERAL GOOD ISSUED BY THE DIRECTOR; TO AMEND SECTION 38‑90‑35, RELATING TO THE CONFIDENTIALITY OF INFORMATION CONCERNING CAPTIVE INSURANCE COMPANIES SUBMITTED TO THE DEPARTMENT OF INSURANCE, SO AS TO REVISE REQUIREMENTS FOR MAKING THE INFORMATION SUBJECT TO DISCOVERY IN A CIVIL ACTION; TO AMEND SECTION 38‑90‑40, AS AMENDED, RELATING TO CAPITALIZATION REQUIREMENTS, SECURITY REQUIREMENTS, AND RESTRICTIONS ON DIVIDEND PAYMENTS FOR CAPTIVE INSURANCE COMPANIES, SO AS TO REVISE THE FORM OF CAPITAL REQUIRED FOR A CAPTIVE INSURANCE COMPANY THAT IS NOT A SPONSORED CAPTIVE INSURANCE COMPANY THAT ASSUMES RISK, AND TO REVISE REQUIREMENTS FOR CONTRIBUTIONS TO A CAPTIVE INSURANCE COMPANY INCORPORATED AS A NONPROFIT, AMONG OTHER THINGS; TO AMEND SECTION 38‑90‑50, AS AMENDED, RELATING TO FREE SURPLUS REQUIREMENTS OF A CAPTIVE INSURANCE COMPANY, SO AS TO REVISE THE FORM OF CAPITAL REQUIRED FOR A CAPTIVE INSURANCE COMPANY THAT IS NOT A SPONSORED CAPTIVE INSURANCE COMPANY THAT ASSUMES RISK; TO AMEND SECTION 38‑90‑55, AS AMENDED, RELATING TO THE INCORPORATION OF CAPTIVE INSURANCE COMPANIES, SO AS TO DELETE PROVISIONS CONCERNING THE MINIMUM NUMBER AND STATUS OF INCORPORATORS, PREREQUISITES TO TRANSMITTING ARTICLES OF INCORPORATION TO THE SECRETARY OF STATE, AND THE ISSUANCE OF CAPITAL STOCK AT PAR VALUE; TO AMEND SECTION 38‑90‑60, AS AMENDED, RELATING TO INCORPORATION OPTIONS AND REQUIREMENTS FOR CAPTIVE INSURANCE COMPANIES, SO AS TO REVISE THE AVAILABLE OPTIONS; TO AMEND SECTION 38‑90‑80, AS AMENDED, RELATING TO INSPECTIONS AND EXAMINATIONS OF CAPTIVE INSURANCE COMPANIES BY THE DEPARTMENT, SO AS TO DELETE REFERENCES TO PURE CAPTIVE INSURANCE COMPANIES AND SPECIAL PURPOSE CAPTIVE INSURANCE COMPANIES; TO AMEND SECTION 38‑90‑90, AS AMENDED, RELATING TO THE SUSPENSION OR REVOCATION OF A CAPTIVE INSURANCE LICENSE, SO AS TO MAKE A GRAMMATICAL CHANGE; TO AMEND SECTION 38‑90‑100, AS AMENDED, RELATING TO THE LOANS BY CAPTIVE INSURANCE COMPANIES, SO AS TO PROVIDE A SPONSORED CAPTIVE INSURANCE COMPANY MAY MAKE LOANS TO ITS PARENT COMPANY IN CERTAIN CIRCUMSTANCES; TO AMEND SECTION 38‑90‑130, AS AMENDED, RELATING THE PROHIBITION AGAINST PARTICIPATION IN PLAN, POOL, ASSOCIATION, GUARANTY, OR INSOLVENCY FUNDS BY CAPTIVE INSURANCE COMPANIES, SO AS TO PROVIDE CAPTIVE INSURANCE COMPANIES, INCLUDING PURE CAPTIVE INSURANCE COMPANIES, MAY PARTICIPATE IN A POOL FOR THE PURPOSE OF COMMERCIAL RISK SHARING, AMONG OTHER THINGS; TO AMEND SECTION 38‑90‑180, AS AMENDED, RELATING TO THE APPLICABILITY OF CERTAIN PROVISIONS RELATING TO INSURANCE, SO AS TO PROVIDE REQUIREMENTS FOR THE NAME OF NEW CAPTIVE INSURANCE COMPANIES, TO PROVIDE CIRCUMSTANCES IN WHICH A SPONSORED CAPTIVE INSURANCE COMPANY MAY ESTABLISH PROTECTED CELLS, INCLUDING REQUIREMENTS FOR A PLAN OF OPERATION, THE ATTRIBUTIONS OF ASSETS AND LIABILITIES BETWEEN A PROTECTED CELL AND THE GENERAL ACCOUNT OF THE SPONSORED CAPTIVE INSURANCE COMPANY, AND ADMINISTRATIVE AND ACCOUNTING PROCEDURES; TO AMEND SECTION 38‑90‑210, RELATING TO THE SEPARATE ACCOUNTING OF PROTECTED CELLS WHEN ESTABLISHED, SO AS TO REQUIRE THIS ACCOUNTING MUST REFLECT THE PARTICIPANTS OF THE PROTECTED CELL IN ADDITION TO EXISTING REQUIREMENTS; TO AMEND SECTION 38‑90‑220, AS AMENDED, RELATING TO CERTAIN REQUIREMENTS APPLICABLE TO SPONSORS OF CAPTIVE INSURANCE COMPANIES, SO AS TO REVISE THE REQUIREMENTS; TO AMEND SECTION 38‑90‑230, AS AMENDED, RELATING TO PARTICIPANTS IN SPONSORED CAPTIVE INSURANCE COMPANIES, SO AS TO PROVIDE THAT PROTECTED CELLS ASSETS ARE ONLY AVAILABLE TO CREDITORS OF THE SPONSORED CAPTIVE INSURANCE COMPANY AND RELATED REQUIREMENTS, AND TO PROVIDE REQUIREMENTS CONCERNING OBLIGATIONS OF SPONSORED CAPTIVE INSURANCE COMPANIES WITH RESPECT TO PROTECTED CELLS AND ITS GENERAL ACCOUNT; TO AMEND SECTION 38‑90‑240, RELATING TO THE ELIGIBILITY OF A LICENSED CAPTIVE INSURANCE COMPANY FOR CERTIFICATE OF AUTHORITY TO ACT AS INSURER, SO AS TO DELETE THE EXISTING LANGUAGE AND TO PROVIDE FOR WHO MAY PARTICIPATE IN A SPONSORED CAPTIVE INSURANCE COMPANY AND OBLIGATIONS OF THESE PARTICIPANTS, AND TO PROVIDE SPONSORED CAPTIVE INSURANCE COMPANIES MAY NOT BE USED TO FACILITATE INSURANCE SECURITIZATION TRANSACTIONS; TO AMEND SECTION 38‑90‑450, AS AMENDED, RELATING TO ORGANIZATION REQUIREMENTS FOR SPECIAL PURPOSE FINANCIAL CAPTIVES, SO AS TO DELETE PROVISIONS CONCERNING THE MINIMUM NUMBER AND STATUS OF INCORPORATORS, AND PREREQUISITES TO TRANSMITTING ARTICLES OF INCORPORATION TO THE SECRETARY OF STATE; AND TO REPEAL SECTION 38‑90‑235 RELATING TO TERMS AND CONDITIONS FOR PROTECTED CELL INSURANCE COMPANIES TO APPLY TO SPONSORED CAPTIVE INSURANCE COMPANIES.

On motion of Senator MALLOY, the Bill was carried over.

H. 3459 -- Reps. Sandifer, Bales, J.E. Smith and Erickson: A BILL TO AMEND SECTION 40‑2‑10, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE SOUTH CAROLINA BOARD OF ACCOUNTANCY, SO AS TO PROVIDE THE DEPARTMENT OF LABOR, LICENSING AND REGULATION SHALL DESIGNATE CERTAIN PERSONNEL FOR THE EXCLUSIVE USE OF THE BOARD, TO PROHIBIT THE DEPARTMENT FROM ASSIGNING OTHER WORK TO THESE PERSONNEL WITHOUT APPROVAL OF THE BOARD, AND TO PROVIDE THESE PERSONNEL MAY BE TERMINATED BY THE DIRECTOR OF A MAJORITY OF THE BOARD; TO AMEND SECTION 40‑2‑30, RELATING TO THE PRACTICE OF ACCOUNTANCY, SO AS TO PROVIDE A CERTIFIED PUBLIC ACCOUNTANT LICENSED BY THE BOARD IS EXEMPT FROM LICENSURE REQUIREMENTS OF PRIVATE SECURITY AND INVESTIGATION AGENCIES; AND TO AMEND SECTION 40‑2‑70, RELATING TO POWERS AND DUTIES OF THE BOARD, SO AS TO PROVIDE THE BOARD MAY CONDUCT PERIODIC INSPECTIONS OF LICENSEES OR FIRMS; AND TO AMEND SECTION 40‑2‑80, RELATING TO INVESTIGATIONS OF ALLEGED VIOLATIONS, SO AS TO PROVIDE THE DEPARTMENT SHALL DIRECT THE INVESTIGATOR ASSIGNED TO THE BOARD TO INVESTIGATE AN ALLEGED VIOLATION TO DETERMINE THE EXISTENCE OF PROBABLE CAUSE MERITING FURTHER PROCEEDINGS.

On motion of Senator MALLOY, the Bill was carried over.

S. 661 -- Senators S. Martin, Bryant, Bright and Grooms: A BILL TO AMEND TITLE 44 OF THE 1976 CODE, RELATING TO HEALTH, TO ENACT THE “AGENDA 21 PROTECTION ACT” BY ADDING CHAPTER 137 TO PROHIBIT THIS STATE AND ITS POLITICAL SUBDIVISIONS FROM ADOPTING AND DEVELOPING ENVIRONMENTAL AND DEVELOPMENTAL POLICIES THAT, WITHOUT DUE PROCESS, WOULD INFRINGE OR RESTRICT THE PRIVATE PROPERTY RIGHTS OF THE OWNER OF THE PROPERTY.

On motion of Senator SHANE MARTIN, the Bill was carried over.

S. 862 -- Senators Shealy and Turner: A BILL TO AMEND SECTION 40‑59‑260 OF THE 1976 CODE, RELATING TO THE EXCEPTION FOR PROJECTS BY A PROPERTY OWNER FOR PERSONAL USE, TO PROVIDE THAT AN OWNER OF RESIDENTIAL PROPERTY WHO IMPROVES THE PROPERTY OR WHO BUILDS OR IMPROVES THE STRUCTURES OR APPURTENANCES ON THE PROPERTY AT A COST OF MORE THAN TWO THOUSAND FIVE HUNDRED DOLLARS SHALL NOT WITHIN TWO YEARS AFTER COMPLETION OR ISSUANCE OF A CERTIFICATE OFFER THE STRUCTURE FOR SALE OR RENT, AND CONSTRUCTION OR IMPROVEMENTS TO THE STRUCTURE, GROUP OF STRUCTURES, OR APPURTENANCES THAT COST THE OWNER‑BUILDER LESS THAN TWO THOUSAND FIVE HUNDRED DOLLARS ARE NOT EVIDENCE OF “SALE” OR “RENT” FOR THE PURPOSES OF THIS SECTION.

On motion of Senator SHEALY, the Bill was carried over.

H. 3919 -- Reps. Owens, Bowen, Patrick, Taylor, Anderson, Allison, Brannon, Loftis, Ballentine, Rivers, Huggins, Knight, Simrill, King, Willis, Whitmire, McCoy, Anthony, Crosby, Neal, Clyburn, Barfield, Bedingfield, R.L. Brown, Cobb‑Hunter, George, Hayes, Hiott, Hixon, Hosey, Lucas, Pope, Putnam, G.R. Smith, Wells, Wood, Whipper, Mitchell, Robinson‑Simpson and Dillard: A BILL TO AMEND SECTION 59‑18‑310, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE EXIT EXAM REQUIRED FOR HIGH SCHOOL GRADUATION, SO AS TO PROVIDE THAT ALL STUDENTS MUST TAKE THE EXIT EXAM TO GRADUATE BUT NEED NOT ATTAIN ANY MINIMUM SCORE ON THE EXIT EXAM TO GRADUATE, TO PROVIDE AN ELIGIBLE STUDENT WHO PREVIOUSLY FAILED TO RECEIVE A HIGH SCHOOL DIPLOMA OR WAS DENIED GRADUATION SOLELY FOR FAILING THE EXIT EXAM MAY REENROLL IN HIGH SCHOOL AND WILL NOT HAVE TO PASS THE EXIT EXAM TO RECEIVE A HIGH SCHOOL DIPLOMA, AND TO REQUIRE THE DEPARTMENT OF EDUCATION TO REMOVE ANY CONFLICTING REQUIREMENTS AND PROMULGATE CONFORMING CHANGES IN ITS APPLICABLE REGULATIONS; TO AMEND SECTION 59‑48‑35, RELATING TO REQUIREMENTS FOR A DIPLOMA FROM THE SPECIAL SCHOOL OF SCIENCE AND MATHEMATICS, AND SECTION 59‑139‑60, RELATING TO THE DUTY OF THE STATE BOARD OF EDUCATION TO REVIEW STUDENT PERFORMANCE ON ASSESSMENT TESTING AND TO MONITOR THE PERFORMANCE OF SCHOOLS AND SCHOOL DISTRICTS, ALL SO AS TO MAKE CONFORMING CHANGES; AND TO CREATE THE HIGH SCHOOL ASSESSMENT STUDY COMMITTEE TO CONSIDER WHETHER THE HIGH SCHOOL ASSESSMENT PROGRAM SHOULD REMAIN THE ACCOUNTABILITY ASSESSMENT USED BY THE STATE AND TO RECOMMEND AN ALTERNATIVE IF NECESSARY, TO PROVIDE FOR THE COMPOSITION AND STAFFING OF THE STUDY COMMITTEE, TO REQUIRE THE COMMITTEE REPORT CERTAIN INFORMATION TO THE GENERAL ASSEMBLY, AND TO PROVIDE FOR THE TERMINATION OF THE STUDY COMMITTEE.

On motion of Senator HAYES, the Bill was carried over.

**AMENDED, CARRIED OVER**

S. 561 -- Senator L. Martin: A BILL TO AMEND SECTION 16‑17‑680 OF THE CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE PURCHASING, SELLING, AND TRANSPORTING OF NONFERROUS METALS, SO AS TO DEFINE THE TERM “COIL” AND PROVIDE THAT A SECONDARY METALS RECYCLER MUST NOT PURCHASE OR OTHERWISE ACQUIRE A COIL.

The Senate proceeded to a consideration of the Bill, the question being the third reading of the Bill.

**Motion Under Rule 26B**

Senator SETZLER asked unanimous consent to make a motion to take up further amendments pursuant to the provisions of Rule 26B.

There was no objection.

Senator SETZLER proposed the following amendment (JUD0561.006), which was adopted:

Amend the bill, as and if amended, page 1, by striking lines 27-30, and inserting:

/ (1) ‘Coil’ means a copper, aluminum, or aluminum‑copper condensing coil or evaporation coil. The term includes, but is not limited to, coil from a commercial or residential heating or air-conditioning system. The term does not include coil from a window air‑conditioning system, if the coil is contained within the system, or coil from an automobile condenser. /

Renumber sections to conform.

Amend title to conform.

Senator SETZLER explained the amendment.

The amendment was adopted.

On motion of Senator VERDIN, the Bill was carried over.

**AMENDED, CARRIED OVER**

S. 940 -- Senators Young, Massey, Setzler and Peeler: A BILL TO AMEND SECTION 4‑10‑470, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE EDUCATION CAPITAL IMPROVEMENTS SALES AND USE TAX, SO AS TO ALLOW A COUNTY THAT DOES NOT COLLECT A CERTAIN AMOUNT IN ACCOMMODATIONS TAX TO IMPOSE THE SALES TAX SO LONG AS NO PORTION OF THE COUNTY AREA IS SUBJECT TO MORE THAN TWO PERCENT TOTAL SALES TAX.

The Senate proceeded to a consideration of the Bill, the question being the adoption of the previously proposed amendment as follows.

Senator YOUNG proposed the following amendment (BH\940C015.BH.DG14), which was adopted:

Amend the bill, as and if amended, SECTION 1, page 2, by striking lines 1 - 6 and inserting:

/ (c) the county collected at least seven hundred fifty thousand dollars in state accommodations taxes as imposed pursuant to Section 12‑36‑920(A) in Fiscal Year 2012-2013. /

Renumber sections to conform.

Amend title to conform.

Senator YOUNG explained the amendment.

The amendment was adopted.

On motion of Senator YOUNG, the Bill was carried over.

**COMMITTEE AMENDMENT ADOPTED**

**CARRIED OVER**

H. 3592 -- Reps. Sandifer and Loftis: A BILL TO AMEND ARTICLE 8, CHAPTER 52, TITLE 48, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE “ENERGY INDEPENDENCE AND SUSTAINABLE CONSTRUCTION ACT OF 2007”, SO AS TO DELETE CERTAIN DEFINITIONS, TO CHANGE CERTIFICATION STANDARDS WITH WHICH MAJOR FACILITY PROJECTS MUST COMPLY, TO ELIMINATE REFERENCE TO THE LEED AND GREEN GLOBES CERTIFICATION RATING SYSTEMS, AND TO MAKE TECHNICAL CORRECTIONS.

The Senate proceeded to a consideration of the Bill, the question being the adoption of the amendment proposed by the Committee on Agriculture and Natural Resources.

The Committee on Agriculture and Natural Resources proposed the following amendment (3592R003.PGC), which was adopted:

Amend the bill, as and if amended, by striking all after the enacting words and inserting:

/ SECTION 1. Article 8, Chapter 52, Title 48 of the 1976 Code is amended by adding:

“Section 48‑52‑825. (A)(1)(a) The board shall automatically adopt by reference the most current editions of the rating systems developed by Green Building Initiative and U.S. Green Building Council’s Leadership in Energy and Environmental Design used for certification pursuant to this article. Upon adoption, the most current edition of the rating system shall be used for certification purposes under this article. Provided, however, that the most current edition of the rating system shall be subject to regulations concerning that edition of the rating system when promulgated pursuant to item (2).

(b) In the event that two rating systems from the same organization have been adopted by reference and are effective concurrently for certification purposes, then either rating system may be utilized to certify projects as required pursuant to this article. The latter of the two rating systems to be adopted by reference pursuant to subsection (A) shall be deemed to be the most current edition of the rating system for purposes of review and regulation pursuant to subsection (B).

(2) The board shall refer new or updated rating systems to the Energy Independence and Sustainable Construction Advisory Committee for consideration pursuant to Section 48‑52‑865(B) immediately upon the release of the new or updated rating system and prior to the rating system’s effective date. After receiving the advisory committee’s recommendations, the board shall promulgate regulations to amend the rating system under consideration to remove specific provisions, provided that the recommended amendments would not so alter the rating system as to render certification under the rating system impossible. If the advisory committee does not make a recommendation within the time period prescribed in Section 48‑52‑865(B)(2) the board, upon consultation with the State Engineer, shall proceed with promulgating regulations as provided in this item.

(B) The regulations promulgated pursuant to subsection (A) must provide that the rating systems provide certification credits for, preference for, and promotes building materials or furnishings, including, but not limited to, wood grown in this State, and masonry, plastics, concrete, steel, textiles, and wood that are manufactured or produced within the State. The regulations promulgated may not place at a disadvantage building materials or furnishings that are manufactured or produced within the State.

Section 48‑52‑827. A major facility project, as defined in Section 48‑52‑810(10), requesting third‑party certification shall not be allowed to seek a rating credit or point for building product disclosure and optimization credit that requires material ingredient reporting; and, the language would apply to any subsequent editions of rating systems developed by the Green Building Initiative, the U.S. Green Building Council’s Leadership in Energy and Environmental Design, or third‑party certification initiatives.”

SECTION 2. Article 8, Chapter 52, Title 48 of the 1976 Code is amended by adding:

“Section 48‑52‑865. (A)(1) There is established the Energy Independence and Sustainable Construction Advisory Committee. The committee shall consist of thirteen members, ten of which shall be appointed by the Governor for terms of four years until their successors are appointed and qualified. The committee shall be composed of the following:

(a) the State Engineer, or his designee, who shall serve as chairman;

(b) the Director of the State Energy Office, or his designee;

(c) the Director of the Department of Health and Environmental Control, or his designee;

(d) one member recommended by the Association of General Contractors;

(e) two members recommended by the Commission on Higher Education, one of which shall be appointed from either a research university or a comprehensive teaching institution and one of which shall be appointed from either a regional two‑year campus of the University of South Carolina or a technical college;

(f) one member recommended by the South Carolina Manufacturer’s Alliance;

(g) one member recommended by the American Chemistry Council;

(h) one member recommended by the South Carolina Chapter of the American Institute of Architects;

(i) one member recommended by the South Carolina Forestry Association;

(j) one member recommended by the South Carolina Council of Engineering and Surveying Societies;

(k) one member recommended by the South Carolina Chapter of the American Society of Heating, Refrigerating and Air Conditioning Engineers; and

(l) one member recommended by the conservation community.

(2) When making appointments to the committee, the Governor shall appoint members that have subject area expertise related to the design, engineering, construction, operation, maintenance, management, energy management, or growing or manufacturing products used in major facility projects certified under this article.

(B)(1) The committee shall:

(a) review and analyze all rating systems referred to it by the board pursuant to Section 48‑52‑825;

(b) closely monitor the development of new rating systems, or updates to existing rating systems, to expedite review and analysis of the new or updated rating systems pursuant to subitem (a);

(c) review and analyze rating systems in use concerning the rating systems’ effectiveness in meeting the goals set forth in Section 48‑52‑820;

(d) make recommendations to the State Engineer concerning the promulgation of regulations concerning rating systems referred to it by the board pursuant to Section 48‑52‑825;

(e) report to the board concerning the effectiveness of current rating systems in meeting the goals set forth in Section 48‑52‑820; and

(f) develop and implement a methodology by which the cost‑benefit ratio of the rating systems may be measured so that the State may consider the return on its investment for projects subject to this chapter.

(2) The committee shall make recommendations to the board concerning the promulgation of regulations relating to rating systems referred to it by the board pursuant to Section 48‑52‑825 no later than thirty days after the referral. The thirty day review time shall commence on the day of referral.

(C)(1) The committee shall meet as soon as practicable after being referred new rating systems pursuant to Section 48‑52‑820.

(2) Except as provided in subitem (1), the committee shall meet quarterly, or more frequently as necessary upon the call of the chair or a majority of the membership.

(3) Seven members constitutes a quorum to transact committee business.

(D) Vacancies on the committee shall be filled in the manner of the original appointment.

(E) Members of the committee shall not receive per diem, mileage, and subsistence as provided by law for members of boards, commissions, and committees.”

SECTION 3. Section 48‑52‑810(1) of the 1976 Code is amended to read:

“(1) ‘Board’ means the State ~~Budget and Control Board~~ Fiscal Accountability Authority’s governing board.”

SECTION 4. Section 48-52-830(A)(2) is amended to read:

“(2) In obtaining certification as receiving two globes using the Green Globes Rating System, a major facility project must earn at least twenty percent of the available points for energy performance under ‘C.1.1 Energy Consumption’. In obtaining certification as meeting the LEED Silver standard, a major facility project must earn at least forty percent of the available points for energy performance under ‘EA Credit ~~1~~: Optimize Energy Performance’. The State Engineer's Office may waive the requirements of this item for a proposed major facility project should it determine that the costs of meeting this item are not economically feasible. The State Engineer's Office shall notify the board of the reason for the issuance of a waiver.”

SECTION 5. SECTION 3 takes effect July 1, 2015. All other provisions contained in this act take effect upon approval by the Governor. /

Renumber sections to conform.

Amend title to conform.

Senator CAMPBELL explained the committee amendment.

The committee amendment was adopted.

The question then was second reading of the Bill.

On motion of Senator SHANE MARTIN, the Bill was carried over.

**COMMITTEE AMENDMENT ADOPTED**

**READ THE SECOND TIME**

S. 343 -- Senator Hayes: A BILL TO AMEND CHAPTER 7, TITLE 36, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO ARTICLE 7 OF THE UNIFORM COMMERCIAL CODE, SO AS TO REVISE THE CHAPTER IN ITS ENTIRETY IN ORDER TO PROVIDE FOR THE USE OF ELECTRONIC DOCUMENTS OF TITLE AND TO MAKE CONFORMING CHANGES.

The Senate proceeded to a consideration of the Bill, the question being the adoption of the amendment proposed by the Committee on Judiciary.

The Committee on Judiciary proposed the following amendment (JUD0343.003), which was adopted:

Amend the bill, as and if amended, by striking the bill in its entirety and inserting the following:

/ A BILL

TO AMEND CHAPTER 1, TITLE 36, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO GENERAL PROVISIONS OF THE UNIFORM COMMERCIAL CODE, SO AS TO MAKE CONFORMING AND TECHNICAL CORRECTIONS IN ORDER FOR CHAPTER 1 TO REMAIN CONSISTENT WITH OTHER REVISED CHAPTERS; TO MAKE CERTAIN CHANGES TO CLARIFY AMBIGUITIES THAT HAVE ARISEN OVER THE YEARS; TO MAKE CERTAIN SUBSTANTIVE CHANGES, INCLUDING CHANGES RELATED TO THE EXPANSION OF THE DEFINITION OF GOOD FAITH AND THE RELEVANCE OF COURSE OF PERFORMANCE IN CONTRACT INTERPRETATION; TO AMEND CHAPTER 7, TITLE 36, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO ARTICLE 7 OF THE UNIFORM COMMERCIAL CODE, SO AS TO REVISE THE CHAPTER IN ITS ENTIRETY IN ORDER TO PROVIDE FOR THE USE OF ELECTRONIC DOCUMENTS OF TITLE AND TO MAKE CONFORMING CHANGES; TO MAKE CONFORMING CHANGES IN OTHER CHAPTERS OF THE UNIFORM COMMERCIAL CODE; AND TO REPEAL SECTIONS 36‑2‑208 AND 36‑2A‑207.

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

SECTION 1. Chapter 1, Title 36 of the 1976 Code is amended to read:

“CHAPTER 1

Commercial Code-General Provisions

Part 1

Short Title, Construction, Application

and Subject Matter of the Act

Section 36‑1‑101. (1) This ~~act~~ title shall be known and may be cited as the Uniform Commercial Code.

(2) This chapter may be cited as Uniform Commercial Code‑General Provisions.

Section 36‑1‑102. This chapter applies to a transaction to the extent that it is governed by another chapter of this title, known as the Uniform Commercial Code.

Section ~~36‑1‑102~~ 36‑1‑103. ~~(1)~~(a) This ~~act~~ title ~~shall~~ must be liberally construed and applied to promote its underlying purposes and policies~~.~~, which are:

~~(2)~~ ~~Underlying purposes and policies of this act are~~

~~(a)~~(1) to simplify, clarify, and modernize the law governing commercial transactions;

~~(b)~~(2) to permit the continued expansion of commercial practices through custom, usage, and agreement of the parties;

~~(c)~~(3) to make uniform the law among the various jurisdictions.

~~(3)~~ ~~The effect of provisions of this act may be varied by agreement, except as otherwise provided in this act and except that the obligations of good faith, diligence, reasonableness and care prescribed by this act may not be disclaimed by agreement but the parties may by agreement determine the standards by which the performance of such obligations is to be measured if such standards are not manifestly unreasonable.~~

~~(4)~~ ~~The presence in certain provisions of this act of the words ‘unless otherwise agreed’ or words of similar import does not imply that the effect of other provisions may not be varied by agreement under subsection (3).~~

~~(5)~~ ~~In this act unless the context otherwise requires~~

~~(a)~~ ~~words in the singular number include the plural, and in the plural include the singular;~~

~~(b)~~ ~~words of the masculine gender include the feminine and the neuter, and when the sense so indicates words of the neuter gender may refer to any gender.~~

~~Section 36‑1‑103.~~

(b) Unless displaced by the particular provisions of this ~~act~~ title, the principles of law and equity, including the law merchant and the law relative to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, or other validating or invalidating cause shall supplement its provisions.

SOUTH CAROLINA REPORTER’S COMMENTS

With minor stylistic changes, revised Section 36‑1‑103 combines former Section 36‑1‑102(1) and (2). Subsection (1) of former Section 36‑1‑102 provided that ‘[t]his act shall be liberally construed and applied to promote its underlying purposes and policies’ and subsection (2) identified those purposes and policies. Except for changing the references to ‘this act’ in the former statute to ‘the Uniform Commercial Code’ and making ‘minor stylistic changes,’ the language of subsection (a) is the same as former Section 1‑102(1) and (2).

Section 36‑1‑104. ~~This act~~The Uniform Commercial Code, being a general ~~act~~ enactment of chapters under Title 36, intended as a unified coverage of its subject matter, no part of it shall be ~~deemed~~ considered to be impliedly repealed by subsequent legislation if such construction can reasonably be avoided.

SOUTH CAROLINA REPORTER’S COMMENTS

With the exception of changing the reference from ‘this act’ to ‘the Uniform Commercial Code,’ revised Section 36‑1‑104 is identical to former Section 36‑1‑104. In Atlas Food Systems and Services, Inc. v. Crane National Vendors Division of Unidynamics Corp., 319 S.C. 556, 462 S.E.2d 858 (1995), the court held that under former Section 36‑1‑104, a 1988 amendment to S.C. Code Ann. Section 15‑3‑530(1) reducing the general contract statute of limitations to three years, did not repeal, by implication, the preexisting six year statute of limitations for breach of contract obligations under Article 2 of the Uniform Commercial Code, now codified at S.C. Code Ann. Section 36‑2‑725(1) (2003).

~~Section 36‑1‑105.~~ ~~(1)~~ ~~Except as provided in this section, when a transaction bears a reasonable relation to this State and also to another state or nation the parties may agree that the law either of this State or of another state or nation shall govern their rights and duties. Failing an agreement this title applies to transactions bearing an appropriate relation to this State.~~

~~(2)~~ ~~Where one of the following provisions of this title specifies the applicable law, that provision governs and a contrary agreement is effective only to the extent permitted by the law (including the conflict of laws rules) so specified:~~

~~Rights of seller’s creditors against sold goods. Section 36‑2‑402.~~

~~Applicability of the Chapter on Leases. Sections 36‑2A‑102, 36‑2A‑105 and 36‑2A‑106.~~

~~Applicability of the Chapter on Bank Deposits and Collections. Section 36‑4‑102.~~

~~Governing law in the Chapter on Funds Transfers. Section 36‑4A‑507.~~

~~Letters of credit. Sections 35‑5‑116.~~

~~Applicability of the Chapter on Investment Securities. Section 36‑8‑110.~~

~~Law governing perfection, the effect of perfection or nonperfection, and the priority of security interests and agricultural liens. Sections 36‑9‑301 through 36‑9‑307.’~~

~~Section 36‑1‑106.~~ ~~(1)~~ ~~The remedies provided by this act shall be liberally administered to the end that the aggrieved party may be put in as good a position as if the other party had fully performed but neither consequential or special nor penal damages may be had except as specifically provided in this act or by other rule of law.~~

~~(2)~~ ~~Any right or obligation declared by this act is enforceable by action unless the provision declaring it specifies a different and limited effect.~~

~~Section 36‑1‑107.~~ ~~Any claim or right arising out of an alleged breach can be discharged in whole or in part without consideration by waiver or renunciation.~~

Section ~~36‑1‑108.~~ 36‑1‑105. If any provision or clause of this ~~act~~ title or its application ~~thereof~~ to any person or circumstance~~s~~ is held invalid, ~~such~~ the invalidity ~~shall~~ does not affect other provisions or applications of this ~~act which~~ title that can be given effect without the invalid provision or application, and to this end the provisions of this ~~act~~ title are ~~declared to be~~ severable.

SOUTH CAROLINA REPORTER’S COMMENTS

Except for changing references from ‘this act’ to ‘the Uniform Commercial Code,’ revised Section 36‑1‑105 is identical to former Section 36‑1‑108. Neither the appellate courts of South Carolina nor the federal courts have interpreted former Section 36‑1‑108.

Section 36‑1‑106. In the Uniform Commercial Code, unless the statutory context otherwise requires:

(a) words in the singular number include the plural, and those in the plural include the singular; and

(b) words of any gender also refer to any other gender.

SOUTH CAROLINA REPORTER’S COMMENTS

With the exception of minor stylistic changes, revised Section 36‑1‑106 is identical to former Section 36‑1‑102(5). Neither the appellate courts of South Carolina nor the federal courts have interpreted former Section 36‑1‑102(5).

Section ~~36‑1‑109~~ 36‑1‑107. Section captions are part~~s~~ of ~~this act, but the comments are not parts of the act~~ the Uniform Commercial Code, with the exception of the subsection headings of Chapter 9, Title 36, which are not part of the provisions. The Official Comments, prepared by the Uniform Law Commission with the intent of aiding the user in understanding the provisions of each chapter, are to be included by the Code Commissioner in the annotated versions of this title, but are not considered part of the provisions of this title and do not indicate legislative intent.

SOUTH CAROLINA REPORTER’S COMMENTS

Section captions are part of the Uniform Commercial Code, but neither the Official Comments nor the South Carolina Reporter’s Comments are part of the Uniform Commercial Code. Moreover, the Official Comments should not be relied upon as legislative history in interpreting provisions of the statute.

Section 36‑1‑108. This title modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., except that nothing in this title modifies, limits, or supersedes Section 7001 (c) of that act or authorizes electronic delivery of any of the notices described in Section 7003(b) of that act.

SOUTH CAROLINA REPORTER’S COMMENTS

Revised Section 36‑1‑108 is an ‘E‑Sign Shield’ provision drafted to exempt revised Article 1 from the effect of Section 7001 of the Federal Electronic Signatures in Global and National Commerce Act [‘E‑Sign’], 15 U.S.C. Section 7001. As a general rule, in transactions affecting interstate or foreign commerce, Section 7001 preempts any statute that denies legal effect, validity, or enforceability to a signature, contract, or other record solely because it is in electronic form. However, 15 U.S.C. Section 7002(a) empowers the states to exempt state law from the provisions of Section 7001. Under Section 7002(a)(1), a state can supersede the provisions of Section 7001 by enacting the 1999 Official Text of the Uniform Electronic Transactions Act [UETA]. In the alternative, a state can supersede the provisions of Section 7001 by enacting a statute that meets the requirements of Section 7002(a)(2). The Drafters assert that revised Article 1, including revised Section 1‑108 meets the requirements of Section 7002(a)(2), and exempts revised Article 1 from preemption. *See* Revised Section 1‑108, Official Comment 1.

Part 2

General Definitions and Principles of Interpretation

Section 36‑1‑201. (a) Unless the context otherwise requires, words or phrases defined in this section, or in the additional definitions contained in other chapters of the Uniform Commercial Code that apply to particular chapters or parts thereof, have the meanings stated.

(b) Subject to ~~additional~~ definitions contained in ~~the subsequent~~ other chapters of this ~~act which are applicable~~ title that apply to ~~specific~~ particular chapters or parts thereof~~, and unless the context otherwise requires, in this act~~:

(1) ‘Action’, in the sense of a judicial proceeding, includes recoupment, counterclaim, set‑off, suit in equity, and any other ~~proceedings~~ proceeding in which rights are determined.

(2) ‘Aggrieved party’ means a party entitled to ~~resort to~~ pursue a remedy.

(3) ‘Agreement’, as distinguished from ‘contract’, means the bargain of the parties in fact, as found in their language or ~~by implication~~ inferred from other circumstances, including course of performance, course of dealing, or usage of trade ~~or course of performance~~ as provided in ~~this act (Sections 36‑1‑205 and 36‑2‑208)~~ Section 36‑1‑303. ~~Whether an agreement has legal consequences is determined by the provisions of this act, if applicable; otherwise by the law of contracts (Section 36‑1‑103). (Compare ‘Contract.’)~~

(4) ‘Bank’ means ~~any~~ a person engaged in the business of banking and includes a savings bank, savings and loan association, credit union, and trust company.

(5) ‘Bearer’ means ~~the~~ a person in control of a negotiable electronic document of title or a person in possession of ~~an~~ a negotiable instrument, a negotiable tangible document of title, or certificated security that is payable to bearer or indorsed in blank.

(6) ‘Bill of lading’ means a document of title evidencing the receipt of goods for shipment issued by a person engaged in the business of directly or indirectly transporting or forwarding goods~~, and includes an airbill. ‘Airbill’ means a document serving for air transportation as a bill of lading does for marine or rail transportation, and includes an air consignment note or air waybill~~. The term does not include a warehouse receipt.

(7) ‘Branch’ includes a separately incorporated foreign branch of a bank.

(8) ‘Burden of establishing’ a fact means the burden of persuading the ~~triers~~ trier of fact that the existence of the fact is more probable than its nonexistence.

(9) ‘Buyer in ordinary course of business’ means a person ~~who~~ that buys goods in good faith ~~and~~, without knowledge that the sale ~~to him is in violation of~~ violates the ~~ownership~~ rights ~~or security interest~~ of ~~a third party~~ another person in the goods ~~buys~~, and in ordinary course from a person, other than a pawnbroker, in the business of selling goods of that kind. ~~but does not include a pawnbroker.~~ A person buys goods in the ordinary course if the sale to the person comports with the usual or customary practices in the kind of business in which the seller is engaged or with the seller’s own usual or customary practices. ~~All~~ A ~~persons~~ person ~~who~~ that ~~sell minerals or the like (including~~ sells oil, ~~and~~ gas~~)~~, or other minerals at the wellhead or minehead ~~are considered to be~~ is a ~~persons~~ person in the business of selling goods of that kind. ~~‘Buying’~~ A buyer in the ordinary course of business may buy ~~may be~~ for cash, ~~or~~ by exchange of other property, or on secured or unsecured credit, and may acquire ~~includes receiving~~ goods or documents of title under a preexisting contract for sale. Only a buyer that takes possession of the goods or has a right to recover the goods from the seller under Chapter 2 may be a buyer in the ordinary course of business. ~~but~~ ‘Buyer in ordinary course of business’ does not include a person that acquires goods in a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(10) ‘Conspicuous’~~:~~, with reference to a term, ~~or clause is conspicuous when it is so written~~ means so written, displayed, or presented that a reasonable person against ~~whom~~ which it is to operate ought to have noticed it. Whether a term is ‘conspicuous’ or not is a decision for the court. Conspicuous terms include the following:

(A) ~~A printed~~ a heading in capitals ~~(as Nonnegotiable Bill of Lading) is conspicuous.~~ equal to or greater in size than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same or lesser size; and

(B) ~~Language~~ language in the body of a ~~form~~ record or display ~~is ‘conspicuous’ if it is~~ in larger ~~or other contrasting~~ type ~~or color~~ than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same size, or set off from surrounding text of the same size by symbols or other marks that call attention to the language. ~~But in a telegram any stated term is ‘conspicuous.’ Whether a term or clause is ‘conspicuous’ or not is for decision by the court.~~

(11) ‘Consumer’ means an individual who enters into a transaction primarily for personal, family, or household purposes.

~~(11)~~(12) ‘Contract’, as distinguished from ‘agreement’, means the total legal obligation ~~which~~ that results from the parties’ agreement as ~~affected~~ determined by ~~this act~~ the Uniform Commercial Code as supplemented by ~~and~~ any other applicable ~~rules of law~~ laws. ~~(Compare ‘Agreement.’)~~

~~(12)~~(13) ‘Creditor’ includes a general creditor, a secured creditor, a lien creditor, and any representative of creditors, including an assignee for the benefit of creditors, a trustee in bankruptcy, a receiver in equity, and an executor or administrator of an insolvent debtor’s or assignor’s estate.

~~(13)~~(14) ‘Defendant’ includes a person in the position of defendant in a ~~cross‑action or~~ counterclaim, cross-claim, or third-party claim.

~~(14)~~(15) ‘Delivery’, with respect to ~~instruments~~ an electronic document of title means voluntary transfer of control, and with respect to an instrument, ~~documents~~ a tangible document of title, or chattel paper ~~or certificated securities~~ means voluntary transfer of possession.

~~(15)~~(16) ‘Document of title’ means a record (i) that in the regular course of business or financing is treated as adequately evidencing that the person in possession or control of the record is entitled to receive, control, hold, and dispose of the record and the goods the record covers and (ii) that purports to be issued by or addressed to a bailee and to cover goods in the bailee’s possession that are either identified or are fungible portions of an identified mass. The term includes a bill of lading, transport document, dock warrant, dock receipt, warehouse receipt or order for the delivery of goods, and also any other document which in the regular course of business or financing is treated as adequately evidencing that the person in possession of it is entitled to receive, hold, and dispose of the document and the goods it covers. ~~To be a document of title, a document must purport to be issued by or addressed to a bailee and purport to cover goods in the bailee’s possession which are either identified or are fungible portions of an identified mass.~~ An electronic document of title means a document of title evidenced by a record consisting of information stored in an electronic medium. A tangible document of title means a document of title evidenced by a record consisting of information that is inscribed on a tangible medium.

~~(16)~~(17) ‘Fault’ means ~~wrongful act, omission or breach~~ a default, breach, or wrongful act or omission.

~~(17)~~(18) ‘Fungible goods’ ~~with respect to goods or securities~~ means:

(A) goods ~~or securities~~ of which any unit ~~is~~, by nature or usage of trade, is the equivalent of any other like unit~~.~~; or

(B) ~~Goods which are not fungible shall be deemed fungible for the purposes of this act to the extent that under a particular agreement or document unlike units are treated as equivalents.~~ goods that by agreement are treated as equivalent.

~~(18)~~(19) ‘Genuine’ means free of forgery or counterfeiting.

~~(19)~~(20) ‘Good faith’, except as otherwise provided in Chapter 5, means honesty in fact and the observance of reasonable commercial standards of fair dealing. ~~in the conduct or transaction concerned.~~

~~(20)~~(21) ‘Holder’ means:

(A) ~~a~~ the person ~~who is~~ in possession of a ~~document of title or an~~ negotiable instrument ~~or a certificated investment security drawn, issued, or indorsed to him or to his order or to bearer or in blank~~ that is payable either to bearer or an identified person that is the person in possession;

(B) the person in possession of a negotiable tangible document of title if the goods are deliverable either to bearer or to the order of the person in possession; or

(C) the person in control of a negotiable electronic document of title.

~~(21) To ‘honor’ is to pay or to accept and pay, or where a credit so engages to purchase or discount a draft complying with the terms of the credit.~~

(22) ‘Insolvency ~~proceedings~~ proceeding’ includes ~~any~~ an assignment for the benefit of creditors or other proceedings intended to liquidate or rehabilitate the estate of the person involved.

(23) ~~A person is ‘insolvent’ who either~~ ‘Insolvent’ means:

(A) having generally ceased to pay ~~his~~ debts in the ordinary course of business other than as a result of a bona fide dispute;

(B) ~~or cannot~~ being unable to pay ~~his~~ debts as they become due; or

(C) ~~is~~ being insolvent within the meaning of ~~the~~ Federal Bankruptcy Law.

(24) ‘Money’ means a medium of exchange currently authorized or adopted by a domestic or foreign government ~~as a part of its currency~~. The term includes a monetary unit of account established by an intergovernmental organization or by agreement between two or more countries.

~~(25) A person has ‘notice’ of a fact when~~

~~(a) he has actual knowledge of it; or~~

~~(b) he has received a notice or notification of it; or~~

~~(c) from all the facts and circumstances known to him at the time in question he has reason to know that it exists.~~

~~A person ‘knows’ or has ‘knowledge’ of a fact when he has actual knowledge of it. ‘Discover’ or ‘learn’ or a word or phrase of similar import refers to knowledge rather than to reason to know. The time and circumstances under which a notice or notification may cease to be effective are not determined by this act.~~

~~(26) A person ‘notifies’ or ‘gives’ a notice or notification to another by taking such steps as may be reasonably required to inform the other in ordinary course whether or not such other actually comes to know of it. A person ‘receives’ a notice or notification when~~

~~(a) it comes to his attention; or~~

~~(b) it is duly delivered at the place of business through which the contract was made or at any other place held out by him as the place for receipt of such communications.~~

~~(27) Notice, knowledge or a notice or notification received by an organization is effective for a particular transaction from the time when it is brought to the attention of the individual conducting that transaction, and in any event from the time when it would have been brought to his attention if the organization had exercised due diligence. An organization exercises due diligence if it maintains reasonable routines for communicating significant information to the person conducting the transaction and there is reasonable compliance with the routines. Due diligence does not require an individual acting for the organization to communicate information unless such communication is part of his regular duties or unless he has reason to know of the transaction and that the transaction would be materially affected by the information.~~

~~(28) ‘Organization’ includes a corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, or any other legal or commercial entity.~~

(25) ‘Organization’ means a person other than an individual.

~~(29)~~(26) ‘Party’, as ~~distinct~~ distinguished from ‘third party’, means a person ~~who~~ that has engaged in a transaction or made an agreement ~~within~~ subject to the Uniform Commercial Code ~~this act~~.

~~(30)~~(27) ‘Person’ ~~includes~~ means an individual, ~~or an organization~~ corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, public corporation, or any other legal or commercial entity. ~~(See Section 36‑1‑102).~~

~~(31) ‘Presumption’ or ‘presumed’ means that the trier of fact must find the existence of the fact presumed unless and until evidence is introduced which would support a finding of its nonexistence.~~

(28) ‘Present value’ means the amount as of a date certain of one or more sums payable in the future, discounted to the date certain by use of either an interest rate specified by the parties if that rate is not manifestly unreasonable at the time the transaction is entered into or, if an interest rate is not so specified, a commercially reasonable rate that takes into account the facts and circumstances at the time the transaction is entered into.

~~(32)~~(29) ‘Purchase’ ~~includes~~ means taking by sale, lease, discount, negotiation, mortgage, pledge, lien, security interest, issue or reissue, gift or any other voluntary transaction creating an interest in property.

~~(33)~~(30) ‘Purchaser’ means a person ~~who~~ that takes by purchase.

(31) ‘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.

~~(34)~~(32) ‘Remedy’ means any remedial right to which an aggrieved party is entitled with or without resort to a tribunal.

~~(35)~~(33) ‘Representative’ ~~includes~~ means a person empowered to act for another, including an agent, an officer of a corporation or association, and a trustee, executor or administrator of an estate~~, or any other person empowered to act for another~~.

~~(36)~~(34) ~~‘Rights’~~ ‘Right’ includes ~~remedies~~ remedy.

~~(37)~~ ~~‘Security interest’ means an interest in personal property or fixtures which secures payment or performance of an obligation. The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer (Section 36‑2‑401) is limited in effect to a reservation of a ‘security interest’. The term also includes any interest of a buyer of accounts or chattel paper which is subject to Chapter 9. The special property interest of a buyer of goods on identification of those goods to a contract for sale under Section 36‑2‑401 is not a ‘security interest’, but a buyer also may acquire a ‘security interest’ by complying with Chapter 9. Unless a consignment is intended as security, reservation of title under a lease or consignment is not a ‘security interest’, but a consignment in any event is subject to the provisions on consignment sales ( Section 36‑2‑326).~~

~~(A)~~ ~~Whether a transaction creates a lease or security interest is determined by the facts of each case; however, a transaction creates a security interest if the consideration the lessee is to pay the lessor for the right to possession and use of the goods is an obligation for the term of the lease not subject to termination by the lessee, and~~

~~(1)~~ ~~the original term of the lease is equal to or greater than the remaining economic life of the goods,~~

~~(2)~~ ~~the lessee is bound to renew the lease for the remaining economic life of the goods or is bound to become the owner of the goods,~~

~~(3)~~ ~~the lessee has an option to renew the lease for the remaining economic life of the goods for no additional consideration or nominal additional consideration upon compliance with the lease agreement, or~~

~~(4)~~ ~~the lessee has an option to become the owner of the goods for no additional consideration or nominal additional consideration upon compliance with the lease agreement.~~

~~(B)~~ ~~A transaction does not create a security interest merely because it provides that~~

~~(1)~~ ~~the present value of the consideration the lessee is obligated to pay the lessor for the right to possession and use of the goods is substantially equal to or is greater than the fair market value of the goods at the time the lease is entered into,~~

~~(2)~~ ~~the lessee assumes risk of loss of the goods, or agrees to pay taxes, insurance, filing, recording, or registration fees, or service or maintenance costs with respect to the goods,~~

~~(3)~~ ~~the lessee has an option to renew the lease or to become the owner of the goods,~~

~~(4)~~ ~~the lessee has an option to renew the lease for a fixed rent that is equal to or greater than the reasonably predictable fair market rent for the use of the goods for the term of the renewal at the time the option is to be performed, or~~

~~(5)~~ ~~the lessee has an option to become the owner of the goods for a fixed price that is equal to or greater than the reasonably predictable fair market value of the goods at the time the option is to be performed.~~

~~For Purposes of this subsection (37):~~

~~Additional consideration is not nominal if (i) when the option to renew the lease is granted to the lessee the rent is stated to be the fair market rent for the use of the goods for the term of the renewal determined at the time the option is to be performed, or (ii) when the option to become the owner of the goods is granted to the lessee the price is stated to be the fair market value of the goods determined at the time the option is to be performed. Additional consideration is nominal if it is less than the lessee’s reasonably predictable cost of performing under the lease agreement if the option is not exercised;~~

~~‘Reasonably predictable’ and ‘remaining economic life of the goods’ are to be determined with reference to the facts and circumstances at the time the transaction is entered into; and~~

~~‘Present value’ means the amount as of a date certain of one or more sums payable in the future, discounted to the date certain. The discount is determined by the interest rate specified by the parties if the rate is not manifestly unreasonable at the time the transaction is entered into; otherwise, the discount is determined by a commercially reasonable rate that takes into account the facts and circumstances of each case at the time the transaction was entered into.~~

(35) ‘Security interest’ means an interest in personal property or fixtures, which secures payment or performance of an obligation. ‘Security interest’ includes any interest of a consignor and a buyer of accounts, chattel paper, a payment intangible, or a promissory note in a transaction that is subject to Chapter 9. ‘Security interest’ does not include the special property interest of a buyer of goods on identification of those goods to a contract for sale under Section 36‑2‑401, but a buyer may also acquire a ‘security interest’ by complying with Chapter 9. Except as otherwise provided in Section 36‑2‑505, the right of a seller or lessor of goods under Chapter 2 or 2A to retain or acquire possession of the goods is not a ‘security interest’, but a seller or lessor may also acquire a ‘security interest’ by complying with Chapter 9. The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer under Section 36‑2‑401 is limited in effect to a reservation of a ‘security interest’. Whether a transaction in the form of a lease creates a ‘security interest’ is determined pursuant to Section 36‑1‑203.

~~(38)~~(36) ‘Send’ in connection with ~~any~~ a writing, record, or notice means:

(A) to deposit in the mail or deliver for transmission by any other usual means of communication with postage or cost of transmission provided for and properly addressed and in the case of an instrument to an address specified thereon or otherwise agreed, or if there be none to any address reasonable under the circumstances~~. The receipt of any writing or notice within the time at which it would have arrived if properly sent has the effect of a proper sending.~~ ; or

(B) in any other way, to cause to be received any records or notice within the time it would have arrived if properly sent.

~~(39)~~(37) ‘Signed’ includes using any symbol executed or adopted ~~by a party~~ with present intention to ~~authenticate~~ adopt or accept a writing.

(38) ‘State’ means a State of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

~~(40)~~(39) ‘Surety’ includes a guarantor or other secondary obligor.

~~(41)~~ ~~‘Telegram’ includes a message transmitted by radio, teletype, cable, any mechanical method of transmission, or the like.~~

~~(42)~~(40) ‘Term’ means ~~that~~ a portion of an agreement ~~which~~ that relates to a particular matter.

~~(43)~~(41) ~~‘Unauthorized’ signature or indorsement~~ ‘Unauthorized signature’ means ~~one~~ a signature made without actual, implied or apparent authority. ~~and includes a~~ The term includes a forgery.

~~(44) ‘Value.’ Except as otherwise provided with respect to negotiable instruments and bank collections (Sections 36‑3‑303, 36‑4‑208 and 36‑4‑209) a person gives ‘value’ for rights if he acquires them~~

~~(a) in return for a binding commitment to extend credit or for the extension of immediately available credit whether or not drawn upon and whether or not a charge‑back is provided for in the event of difficulties in collection; or~~

~~(b) as security for or in total or partial satisfaction of a preexisting claim; or~~

~~(c) by accepting delivery pursuant to a preexisting contract for purchase; or~~

~~(d) generally, in return for any consideration sufficient to support a simple contract.~~

~~(45)~~(42) ‘Warehouse receipt’ means a ~~receipt~~ document of title issued by a person engaged in the business of storing goods for hire.

~~(46)~~(43) ~~‘Written’ or~~ ‘Writing’ includes printing, typewriting or any other intentional reduction to tangible form. ‘Written’ has a corresponding meaning.

SOUTH CAROLINA REPORTER’S COMMENTS

1. Definitions Deleted: The 2014 amendments to Article 1 delete the definitions of ‘honor’ and ‘telegram,’ terms that were defined in former Section 36‑1‑201(21) and (41).

2. Definitions Reformulated as substantive provisions and codified in separate sections of Article 1:

a. Notice, Knowledge, Notifications, Receiving Notice: Former Section 36‑1‑201(25)–(27) defined notice, knowledge, notification, and related terms. The 2014 amendment deleted those definitions from revised Section 36‑1‑201, and codified them in revised Section 36‑1‑202.

b. Presumption: Former Section 36‑1‑201(31) defined the term presumption. The 2014 amendments to Article 1 delete that definition from revised Section 36‑1‑201. However, the 2014 amendments codify, as revised Section 36‑1‑206, the definition of presumption in former Section 36‑1‑201(31), making only changes of style.

c. Value: Former Section 36‑1‑201(44) defined the term ‘value’. The 2014 amendments to Article 1 do not include value among the terms defined in revised Section 36‑1‑201(b). However, the amendments codified, without substantive change, the definition in former Section 36‑1‑201(44) in revised Section 36‑1‑204.

d. Distinguishing a lease from a security interest: In 2001, the definition of security interest in former Section 36‑1‑201(37) was amended to include rules for determining whether a transaction in the form of a lease creates an Article 9 security interest. The 2014 amendments delete those rules from the definition of security interest in revised Section 36‑1‑201(35), but codify them in substantively identical form in revised Section 36‑1‑203.

2. New definitions and terms added by the 2014 amendments to the list of definitions in revised Section 36‑1‑201(b):

a. Consumer—Section 36‑1‑201(b)(11): The 2014 amendments add consumer to terms defined in revised Section 36‑1‑201(b). Revised Section 36‑1‑201(b)(11) defines consumer as an individual entering into a transaction primarily for personal family or household purposes. The definition is consistent with the use of the term under Article 9. *See* S.C. Code Section 36‑9‑102(a)(22)–(26).

b. Present Value—Section 36‑1‑201(b)(28): Although present value was not separately defined in former Section 36‑1‑201, the rules for distinguishing leases from security interests were codified in former Section 36‑1‑201(37), under the definition of ‘security interest.’ The 2014 amendments define ‘Present value’ in revised Section 36‑1‑201(28). The 2014 amendments delete the rules for distinguishing leases from security interests from the revised definition of security interest, but codify them in revised Section 36‑1‑203.

c. Record—Section 36‑1‑201(b)(31): The 2014 amendments to former Section 36‑1‑201 add ‘record’ to the list of defined terms. Revised Section 36‑1‑201(b)(31) provides that record means information that is inscribed on a tangible medium or stored in an electronic or other medium and is retrievable in perceivable form. The term encompasses both written and electronic communications. Although new to Article 1, in 2001, the provisions of Article 9 were revised to include a substantively identical definition of record. *See* Section 36‑9‑102(a)(70).

d. State—Section 36‑1‑201(b)(38): The 2014 amendments add the definition of ‘State’ that is used in all acts prepared by the National Conference on Uniform State Laws or its successor, the Uniform Laws Commission.

3. Substantive changes to the definitions or terms defined in both former Section 36-1-201 and revised Section 36‑1‑201(b) in the 2014 amendments:

a. Bearer—Section 36‑1‑201(b)(5): The definition of bearer is amended to include a person in control of negotiable electronic documents of title as well as a person in possession of a negotiable tangible document of title. The amendment, equating control of a negotiable electronic document of title with possession of negotiable tangible document of title, is one of a set of provisions drafted to facilitate the recognition of electronic documents.

b. Bill of Lading—Section 36‑1‑201(b)(6): The 2014 amendments delete the reference to ‘airbills’ from the definition of a bill of lading because it is no longer necessary. In addition, the revised Section 36‑1‑201(b)(6) expressly states that the definition of a bill of lading does not include a warehouse receipt.

c. Buyer in Ordinary Course of Business—Section 36‑1‑201(b)(9): The 2014 amendments make two significant revisions to the definition of buyer in ordinary course of business. First, revised Section 36‑1‑201(b)(9) provides some guidelines for determining when a person buys goods ‘in the ordinary course.’ Under the revised definition, a buyer buys in the ordinary course if the sale ‘comports with the usual or customary practices in the kind of business in which the seller is engaged’ or with the ‘seller’s own usual or customary practices.’ Second, to qualify as a buyer in ordinary course of business, under the revised definition, a buyer must have possession of the goods or the right to recover the goods from the seller under Article 2. *See* S.C. Code Sections 36‑2‑501, 36‑2‑502, and 36‑2‑716.

d. Delivery—Section 36‑1‑201(b)(15): The definition of delivery is amended to include the voluntary transfer of control of an electronic document of title as well as the voluntary transfer of possession of a tangible document of title. This amendment is one of a set of related provisions designed to facilitate the recognition of electronic documents of title.

e. Document of Title—Section 36‑1‑201(b)(16): The revised definition of document of title explicitly makes the obligation or designation of a bailee essential to a document of title. Revised Section 36‑1‑201(b)(16) also defines ‘electronic document of title’ and ‘tangible document of title.’ An electronic document of title is a document of title evidenced by a record consisting of information stored in an electronic medium. A tangible document of title is a document of title evidenced by a record consisting of information inscribed on a tangible medium. Note that the term ‘record,’ used in defining both electronic and tangible documents of title, is defined in revised Section 36‑1‑201(b)(31) as ‘information that is inscribed on a tangible medium or stored in an electronic or other medium and is retrievable in perceivable form.’

f. Good Faith—36‑1‑201(b)(20): The definition of good faith in Article 1 is amended to require observance of reasonable commercial standards of fair dealing as well as honesty in fact.

g. Holder—Section 36‑1‑201(b)(21): The 2014 amendments restructures and substantively revises the definition of holder.

Subsection (A) applies to negotiable instruments and revises the definition of holder to conform to the use of the term in the revision of Article 3 that became effective in 2008. Subsection (B) governs negotiable tangible documents of title and provides that a person is a holder, if the person has possession of the document and the goods covered are deliverable either to the bearer or to the order of the person in possession of the document. Subsection (C) applies to negotiable electronic documents of title and provides that the person in control of the document is a holder.

h. Security Interest—Section 36‑1‑201(b)(35): In addition to deleting the rules for distinguishing a lease from security interest from the definition of a security interest, the 2014 amendments further revise the definition to reflect changes in the scope of Article 9. Under revised Section 36‑1‑201(b)(35), the definition includes the interest of an Article 9 consignor, as well as rights acquired by a buyer of accounts, chattel paper, payment intangibles, or promissory notes. *See* Section 36‑9‑109(a)(3) & (4).

i. Signed—Section 36‑1‑201(b)(37) : The definition of signed adopts the standard used in Article 9 to define the term ‘authenticate.’ However, under the definition in revised Section 36‑1‑201(b)(37), only records in writing can be signed.

j. Warehouse Receipt—Section 36‑1‑201(b)(42): The definition of warehouse receipt is revised to state expressly that a warehouse receipt is a document of title.

4. Definitions of the following terms that are defined in both former Section 36‑1‑201 and revised Section 36‑1‑201(b) as clarified by the 2014 amendments:

a. Agreement—Section 36‑1‑201(b)(3): The revised definition of agreement emphasizes the distinction between an agreement and a contract. The amendment also cites revised Section 36‑1‑303 as the basis for inferring terms of an agreement from course of performance, course of dealing, and usage of trade.

b. Bank—Section 36‑1‑201(b)(4): Revised Section 36‑1‑201(b)(4) adopts the definition of bank currently codified in Section 36‑4‑105(1).

c. Conspicuous—Section 36‑1‑201(b)(10): The definition of conspicuous is amended to provide more specific examples of terms that are conspicuous.

d. Contract—Section 36‑1‑201(b)(12): The revised definition emphasizes the distinction between an agreement and a contract.

e. Fungible Goods—Section 36‑1‑201(b)(18): The revised definition eliminates a reference to securities because Article 8 no longer uses the term fungible to describe securities.

f. Insolvent—Section 36‑1‑201(b)(23): The revised definition clarifies that there are three alternative tests to determine whether a person is insolvent.

g. Money—Section 36‑1‑201(b)(24): The revised definition provides that a medium of exchange constitutes money only if it is currently authorized by a government. The revised definition also includes a monetary unit of account established by an intergovernmental organization or an agreement between two or more governments.

h. Purchase—Section 36‑1‑201(b)(29): The revised definition of purchase includes taking an interest in property by lease.

i. Surety—Section 36‑1‑201(b)(39): The revised definition includes not only guarantors, but also other secondary obligors.

4. Definitions from the former Section 36-1-201adopted and included in revised Section 36-1-201(b) without substantive changes:

a. Action

b. Aggrieved party

c. Branch

d. Burden of establishing

e. Creditor

f. Fault

g. Genuine

h. Insolvency Proceeding

i. Organization

j. Party

k. Person

l. Purchaser

m. Remedy

n. Representative

o. Right

p. Send

q. Term

r. Unauthorized Signature

Section 36‑1‑202. ~~A document in due form purporting to be a bill of lading, policy or certificate of insurance, official weigher’s or inspector’s certificate, consular invoice, or any other document authorized or required by the contract to be issued by a third party shall be prima facie evidence of its own authenticity and genuineness and of the facts stated in the document by the third party.~~

(a) Subject to subsection (f), a person has ‘notice’ of a fact if the person:

(1) has actual knowledge of it;

(2) has received a notice or notification of it;

(3) from all the facts and circumstances known to the person at the time in question, has reason to know that it exists.

(b) ‘Knowledge’ means actual knowledge. ‘Knows’ has a corresponding meaning.

(c) ‘Discover’, ‘learn’, or words of similar import refer to knowledge rather than to reason to know.

(d) A person ‘notifies’ or ‘gives’ a notice or notification to another person by taking such steps as may be reasonably required to inform the other person in ordinary course, whether or not the other person actually comes to know of it.

(e) Subject to subsection (f), a person ‘receives’ a notice or notification when:

(1) it comes to that person’s attention; or

(2) it is duly delivered in a form reasonable under the circumstances at the place of business through which the contract was made or at another location held out by that person as the place for receipt of such communications.

(f) Notice, knowledge, or a notice or notification received by an organization is effective for a particular transaction from the time it is brought to the attention of the individual conducting that transaction and, in any event, from the time it would have been brought to the individual’s attention if the organization had exercised due diligence. An organization exercises due diligence if it maintains reasonable routines for communicating significant information to the person conducting the transaction and there is reasonable compliance with the routines. Due diligence does not require an individual acting for the organization to communicate information unless the communication is part of the individual’s regular duties or the individual has reason to know of the transaction and that the transaction would be materially affected by the information.

SOUTH CAROLINA REPORTER’S COMMENTS

This section is derived from former Sections 36‑1‑201(25)–(27). Subsection (a), specifying when a person has notice of a fact, is identical to former Section 36‑1‑201(25)(a)–(c). Subsection (b), defining ‘knowledge’ and ‘knows’ is adopted without substantive changes from the second paragraph of former Section 36‑1‑201(25). Subsection (c), defining ‘discover’ and ‘learn,’ is also substantively identical to the second paragraph of former Section 36‑1‑201(25). Subsection (d), specifying when a person ‘notifies’ or gives ‘notice or notification,’ is substantively identical to the first sentence of former Section 36‑1‑201(26). Subsection (e), specifying when a person receives notice, is substantively identical to the second sentence of former Section 36‑1‑201(26), but unlike the former statute, subsection (e) expressly states that the receipt of notice or notification by a person is subject to the rules of determining when notification received by an organization is effective. Subsection (f), specifying when notification received by an organization is effective, is substantially identical Section 36‑1‑201 (27).

NOTE: Former Section 36‑1‑202 provided that a document in due form purporting to be a bill of lading or any other document authorized or required to be issued by a third party was prima facie evidence of its own authority, genuineness, and of the facts stated in the document by a third party. With minor stylistic changes, former Section 36‑1‑202 is codified in revised Section 36‑1‑307.

Section 36‑1‑203. ~~Every contract or duty within this act imposes an obligation of good faith in its performance or enforcement.~~

(a) Whether a transaction in the form of a lease creates a lease or security interest is determined by the facts of each case.

(b) A transaction in the form of a lease creates a security interest if the consideration that the lessee is to pay the lessor for the right to possession and use of the goods is an obligation for the term of the lease and is not subject to termination by the lessee, and;

(1) the original term of the lease is equal to or greater than the remaining economic life of the goods;

(2) the lessee is bound to renew the lease for the remaining economic life of the goods or is bound to become the owner of the goods;

(3) the lessee has an option to renew the lease for the remaining economic life of the goods for no additional consideration or for nominal additional consideration upon compliance with the lease agreement; or

(4) the lessee has an option to become the owner of the goods for no additional consideration or for nominal additional consideration upon compliance with the lease agreement.

(c) A transaction in the form of a lease does not create a security interest merely because:

(1) the present value of the consideration the lessee is obligated to pay the lessor for the right to possession and use of the goods is substantially equal to or is greater than the fair market value of the goods at the time the lease is entered into;

(2) the lessee assumes risk of loss of the goods;

(3) the lessee agrees to pay, with respect to the goods, taxes, insurance, filing, recording, or registration fees, or service or maintenance costs;

(4) the lessee has an option to renew the lease or to become the owner of the goods;

(5) the lessee has an option to renew the lease for a fixed rent that is equal to or greater than the reasonably predictable fair market rent for the use of the goods for the term of the renewal at the time the option is to be performed; or

(6) the lessee has an option to become the owner of the goods for a fixed price that is equal to or greater than the reasonably predictable fair market value of the goods at the time the option is to be performed.

(d) Additional consideration is nominal if it is less than the lessee’s reasonably predictable cost of performing under the lease agreement if the option is not exercised. Additional consideration is not nominal if:

(1) when the option to renew the lease is granted to the lessee, the rent is stated to be the fair market rent for the use of the goods for the term of the renewal determined at the time the option is to be performed; or

(2) when the option to become the owner of the goods is granted to the lessee, the price is stated to be the fair market value of the goods determined at the time the option is to be performed.

(e) The ‘remaining economic life of the goods’ and ‘reasonably predictable’ fair market rent, fair market value, or cost of performing under the lease agreement must be determined with reference to the facts and circumstances at the time the transaction is entered into.

SOUTH CAROLINA REPORTER’S COMMENTS

With one exception, this section is substantively identical to the portion of former Section 36‑1‑201(37) that provided the rules and process for distinguishing between a lease and a transaction creating a security interest. The exception is that revised Section 36‑1‑203 does not include the definition of present value , which is codified in revised Section 36‑1‑201(b)(28).

NOTE: Former Section 36‑1‑203 imposed the obligation of good faith in the performance and enforcement of contract within the scope of the code. The obligation of good faith is now imposed under revised Section 36‑1‑304.

Section 36‑1‑204. ~~(1)~~ ~~Whenever this act requires any action to be taken within a reasonable time, any time which is not manifestly unreasonable may be fixed by agreement.~~

~~(2)~~ ~~What is a reasonable time for taking any action depends on the nature, purpose and circumstances of such action.~~

~~(3)~~ ~~An action is taken ‘seasonably’ when it is taken at or within the time agreed or if no time is agreed at or within a reasonable time.~~ Except as otherwise provided in Chapters 3, 4, 4A, 5, and 6 of this title, a person gives value for rights if the person acquires them:

(a) in return for a binding commitment to extend credit or for the extension of immediately available credit, whether or not drawn upon and whether or not a charge‑back is provided for in the event of difficulties in collection; or

(b) as security for, or in total or partial satisfaction of, a preexisting claim; or

(c) by accepting delivery under a preexisting contract for purchase; or

(d) in return for any consideration sufficient to support a simple contract.

SOUTH CAROLINA REPORTER’S COMMENTS

The definition of value in revised Section 36‑1‑204 is unchanged from former Section 36‑1‑201(44).

NOTE: Former Section 36‑1‑204 defined the terms ‘reasonable time’ and ‘seasonably.’ Those terms are now defined in revised Section 36‑1‑205.

Section 36‑1‑205. ~~(1)~~ ~~A course of dealing is a sequence of previous conduct between the parties to a particular transaction which is fairly to be regarded as establishing a common basis of understanding for interpreting their expressions and other conduct.~~

~~(2)~~ ~~A usage of trade is any practice or method of dealing having such regularity of observance in a place, vocation or trade as to justify an expectation that it will be observed with respect to the transaction in question. The existence and scope of such a usage are to be proved as facts. If it is established that such a usage is embodied in a written trade code or similar writing the interpretation of the writing is for the court.~~

~~(3)~~ ~~A course of dealing between parties and any usage of trade in the vocation or trade in which they are engaged or of which they are or should be aware give particular meaning to and supplement or qualify terms of an agreement.~~

~~(4) The express terms of an agreement and an applicable course of dealing or usage of trade shall be construed wherever reasonable as consistent with each other; but when such construction is unreasonable express terms control both course of dealing and usage of trade and course of dealing controls usage of trade.~~

~~(5)~~ ~~An applicable usage of trade in the place where any part of performance is to occur shall be used in interpreting the agreement as to that part of the performance.~~

~~(6)~~ ~~Evidence of a relevant usage of trade offered by one party is not admissible unless and until he has given the other party such notice as the court finds sufficient to prevent unfair surprise to the latter.~~ (a) Whether a time for taking an action required by the Uniform Commercial Code is reasonable depends on the nature, purpose, and circumstances of the action.

(b) An action is taken seasonably if it is taken at or within the time agreed or, if no time is agreed, at or within a reasonable time.

SOUTH CAROLINA REPORTER’S COMMENTS

Revised Section 36‑1‑205 is based upon former Section 36‑1‑205(2)‑(3) and provides the same standards for determining a ‘reasonable time’ within which to take an action required by the Uniform Commercial Code and whether an action is taken ‘seasonably’. The revised statute, however, does not include a provision comparable to former Section 36‑1‑204(1), addressing agreements to define a reasonable time.

NOTE: Former Section 36‑1‑205 defined ‘course of dealing’ and ‘usage of trade’ and provided standards under which evidence of a course of dealing or usage of trade were used to interpret, supplement, and qualify the express terms of an agreement. The substance of former Section 36‑1‑205 is now codified in revised Section 36‑1‑303.

Section 36‑1‑206. ~~(1)~~ ~~Except in cases described in subsection (2) of this section a contract for the sale of personal property is not enforceable by way of action or defense beyond five thousand dollars in amount or value of remedy unless there is some writing which indicates that a contract for sale has been made between the parties at a defined or stated price, reasonably identifies the subject matter, and is signed by the party against whom enforcement is sought or by his authorized agent.~~

~~(2)~~ ~~Subsection (1) of this section does not apply to contract for the sale of goods (Section 36‑1‑201) nor of securities (Section 36‑8‑113) nor to security agreements (Section 36‑9‑203).~~ Whenever the provisions of this title create a ‘presumption’ with respect to a fact, or provide that a fact is ‘presumed’, the trier of fact must find the existence of the fact unless and until evidence is introduced that supports a finding of its nonexistence.

SOUTH CAROLINA REPORTER’S COMMENTS

This section defines the terms presumption and presumed when the Uniform Commercial Code creates a presumption with respect to a fact or provides that a fact is presumed. The section is based upon the definition of presumption in former Section 36‑1‑201(31). A presumption under both the former and revised definitions imposes an obligation upon the party against whom the presumption is made to come forward with evidence to rebut the existence of the presumed fact. The definitions do not shift the burden of persuasion.

NOTE: Former Section 36‑1‑206 constituted a general statute of frauds for contracts for the sale of personal property, but that provision is now deleted, as it was determined by the drafters that such a provision was better imposed by a state law and was not necessary under a uniform commercial provision.

~~Section 36‑1‑207.~~ ~~A party who with explicit reservation of rights performs or promises performance or assents to performance in a manner demanded or offered by the other party does not thereby prejudice the rights reserved. Such words as ‘without prejudice,’ ‘under protest’ or the like are sufficient.~~

~~Section 36‑1‑208.~~ ~~A term providing that one party or his successor in interest may accelerate payment or performance or require collateral or additional collateral ‘at will’ or ‘when he deems himself insecure’ or in words of similar import shall be construed to mean that he shall have power to do so only if he in good faith believes that the prospect of payment or performance is impaired. The burden of establishing lack of good faith is on the party against whom the power has been exercised.~~

Part 3

Territorial Applicability and General Rules

Section 36‑1‑301. (a) Except as otherwise provided in this section, when a transaction bears a reasonable relation to this state and also to another state or nation, the parties may agree that the law either of this state or of such other state or nation shall govern their rights and duties.

(b) In the absence of an agreement effective under subsection (a), and except as provided in subsection (c), the Uniform Commercial Code applies to transactions bearing an appropriate relation to this State.

(c) If one of the following provisions of the Uniform Commercial Code specifies the applicable law, that provision governs and a contrary agreement is effective only to the extent permitted by law so specified:

(1) Section 36‑2‑402;

(2) Sections 36‑2A‑105 and 36‑2A‑106;

(3) Section 36‑4‑102;

(4) Section 36‑4A‑507;

(5) Section 36‑5‑116;

(6) Section 36‑8‑110;

(7) Sections 36‑9‑301 through 36‑9‑307.

SOUTH CAROLINA REPORTER’S COMMENTS

This section is substantively identical to former Section 36‑1‑105.

Section 36‑1‑302. (a) Except as otherwise provided in subsection (b) or elsewhere in the Uniform Commercial Code, the effect of provisions of the Uniform Commercial Code may be varied by agreement.

(b) The obligations of good faith, diligence, reasonableness, and care prescribed by the Uniform Commercial Code may not be disclaimed by agreement. The parties, by agreement, may determine the standards by which the performance of those obligations is to be measured if those standards are not manifestly unreasonable. Whenever the Uniform Commercial Code requires an action to be taken within a reasonable time, a time that is not manifestly unreasonable may be fixed by agreement.

(c) The presence in certain provisions of the Uniform Commercial Code of the phrase ‘unless otherwise agreed’, or words of similar import, does not imply that the effect of other provisions may not be varied by agreement under this section.

SOUTH CAROLINA REPORTER’S COMMENTS

This section combines the rules from former Sections 36‑1‑102(3) (variation by agreement), 36‑1‑102(4) (provisions not including phrase ‘unless otherwise provided’ may be varied by agreement), and Section 36‑1‑204(1) (fixing reasonable time by agreement). This section makes no substantive changes from those provisions.

Section 36‑1‑303. (a) A ‘course of performance’ is a sequence of conduct between the parties to a particular transaction that exists if:

(1) the agreement of the parties with respect to the transaction involves repeated occasions for performance by a party; and

(2) the other party, with knowledge of the nature of the performance and opportunity for objection to it, accepts the performance or acquiesces in it without objection.

(b) A ‘course of dealing’ is a sequence of conduct concerning previous transactions between the parties to a particular transaction that is fairly to be regarded as establishing a common basis of understanding for interpreting their expressions and other conduct.

(c) A ‘usage of trade’ is any practice or method of dealing having such regularity of observance in a place, vocation, or trade as to justify an expectation that it will be observed with respect to the transaction in question. The existence and scope of such a usage must be proved as facts. If it is established that such a usage is embodied in a trade code or similar record, the interpretation of the record is a question of law.

(d) A course of performance or course of dealing between the parties or usage of trade in the vocation or trade in which they are engaged or of which they are or should be aware is relevant in ascertaining the meaning of the parties’ agreement, may give particular meaning to specific terms of the agreement, and may supplement or qualify the terms of the agreement. A usage of trade applicable in the place in which part of the performance under the agreement is to occur may be so utilized as to that part of the performance.

(e) Except as otherwise provided in subsection (f), the express terms of an agreement and any applicable course of performance, course of dealing, or usage of trade must be construed whenever reasonable as consistent with each other. If such a construction is unreasonable:

(1) express terms prevail over course of performance, course of dealing, and usage of trade;

(2) course of performance prevails over course of dealing and usage of trade; and

(3) course of dealing prevails over usage of trade.

(f) Subject to Section 36‑2‑209, a course of performance is relevant to show a waive or modification of any term inconsistent with the course of performance.

(g) Evidence of a relevant usage of trade offered by one party is not admissible unless that party has given the other party notice that the court finds sufficient to prevent unfair surprise to the other party.

SOUTH CAROLINA REPORTER’S COMMENTS

Subsections (a)–(c) define ‘course of performance,’ ‘course of dealing,’ and ‘usage of trade,’ based upon Section 36‑2‑208(1) (course of performance), former Section 36‑1‑205(1) (course of dealing) and former Section 36‑1‑205(2) (usage of trade). Subsection (d) is based upon Section 36‑2‑208 and former Section 36‑1‑205(3) and provides that a course of performance, course of dealing, and usage of trade are relevant in ascertaining the meaning of the parties’ agreement and may supplement or qualify the terms of the agreement. Subsection (e) is based upon Section 36‑2‑208(2) and former Section 36‑1‑205(4) and provides the hierarchy of express terms and terms implied from course of performance, course of dealing, and usage of trade in determining the terms of an agreement. Subsection (f) is based upon Section 36‑2‑208(3) and provides that a course of performance is relevant to show a waiver or modification of any term inconsistent with the course of performance.

Section 36‑1‑304. Every contract or duty within the Uniform Commercial Code imposes an obligation of good faith in its performance and enforcement.

SOUTH CAROLINA REPORTER’S COMMENTS

This section is substantively identical to former Section 36‑1‑203.

Section 36‑1‑305. (a) The remedies provided by the Uniform Commercial Code must be liberally administered to the end that the aggrieved party may be put in as good a position as if the other party had fully performed, but neither consequential or special damages nor penal damages may be had except as specifically provided in the Uniform Commercial Code or by other rule of law.

(b) Any right or obligation declared by the Uniform Commercial Code is enforceable by action unless the provision declaring it specifies a different and limited effect.

SOUTH CAROLINA REPORTER’S COMMENTS

This section is substantively identical to former Section 36‑1‑106.

Section 36‑1‑306. A claim or right arising out of an alleged breach may be discharged in whole or in part without consideration by agreement of the aggrieved party in an authenticated record.

SOUTH CAROLINA REPORTER’S COMMENTS

This section replaces former Section 36‑1‑107, which at the time of its enactment in 1966 was inconsistent with the Official Text of former Section 1‑107. The Official Text of former Section 1‑107 provided that a claim for breach of contract could be discharged without consideration by a written waiver or renunciation signed and delivered by the aggrieved party. Former Section 36‑1‑207 did not condition the discharge of a claim for breach upon the aggrieved party signing and delivering a written waiver or renunciation of the claim. Under revised Section 36‑1‑306, a claim for breach may be discharged without consideration by agreement of the aggrieved party in an authenticated record. The revision effects two changes to former Section 36‑1‑107. First, revised Section 36‑1‑306 makes it clear that the discharge of a claim for breach requires the aggrieved party’s agreement. Second, that agreement must be evidenced by a record authenticated by the aggrieved party. The authenticated record requirement may be satisfied either by a signed writing or an authentic electronic record.

Section 36‑1‑307. A document in due form purporting to be a bill of lading, policy or certificate of insurance, official weigher’s or inspector’s certificate, consular invoice, or any other document authorized or required by the contract to be issued by a third party is prima facie evidence of its own authenticity and genuineness and of the facts stated in the document by the third party.

SOUTH CAROLINA REPORTER’S COMMENTS

This section is substantively identical to former Section 36‑1‑202.

Section 36‑1‑308. (a) A party that with explicit reservation of rights performs or promises performance or assents to performance in a manner demanded or offered by the other party does not thereby prejudice the rights reserved. Such words as ‘without prejudice’, ‘under protest’, or the like are sufficient.

(b) Subsection (a) does not apply to an accord and satisfaction.

SOUTH CAROLINA REPORTER’S COMMENTS

Subsection (a) is substantively identical to former Section 36‑1‑207. Subsection (b) provides that subsection (a) does not apply to an accord and satisfaction. The rules governing accord and satisfaction are codified in Section 36‑3‑311.

Section 36‑1‑309. A term providing that one party or that party’s successor in interest may accelerate payment or performance or require collateral or additional collateral ‘at will’ or when the party ‘deems itself insecure’, or words of similar import, means that the party has power to do so only if that party in good faith believes that the prospect of payment or performance is impaired. The burden of establishing lack of good faith is on the party against which the power has been exercised.

SOUTH CAROLINA REPORTER’S COMMENTS

This section is substantively identical to former Section 36‑1‑208.

Section 36‑1‑310. An obligation may be issued as subordinated to performance of another obligation of the person obligated, or a creditor may subordinate its right to performance of an obligation by agreement with either the person obligated or another creditor of the person obligated. Subordination does not create a security interest as against either the common debtor or a subordinated creditor.”

SOUTH CAROLINA REPORTER’S COMMENTS

This section is based upon former Section 1‑209, an optional provision proposed in 1966, but never enacted in South Carolina. The purpose of the provision is to make it clear that a subordination agreement does not create a security interest unless so intended.

SECTION 2. Chapter 7, Title 36 of the 1976 Code is amended to read:

“CHAPTER 7

Commercial Code‑Warehouse Receipts, Bills of Lading and Other Documents of Title

PART 1

General

Section 36‑7‑101. This chapter must be known and may be cited as Uniform Commercial Code‑Documents of Title.

Section 36-7-102. ~~(1)~~(a) In this chapter, unless the context otherwise requires:

~~(a)~~ (1) ‘Bailee’ means the person who by a warehouse receipt, bill of lading or other document of title acknowledges possession of goods and contracts to deliver them.

(2) ‘Carrier’ means a person who issues a bill of lading.

~~(b)~~(3) ‘Consignee’ means the person named in a bill of lading to whom or to whose order the bill promises delivery.

~~(c)~~(4) ‘Consignor’ means the person named in a bill of lading as the person from whom the goods have been received for shipment.

~~(d)~~(5) ‘Delivery order’ means a ~~written order~~ record that contains an order to deliver goods directed to a warehouse~~man~~, carrier or other person ~~who~~ that in the ordinary course of business issues warehouse receipts or bills of lading.

~~(e)~~(6) ‘Document’ means document of title as defined in the general definitions in Chapter 1 of this title ~~(Section 36‑1‑201)~~.

(7) ‘Reserved.’

~~(f)~~(8) ‘Goods’ means all things ~~which~~ that are treated as movable for the purposes of a contract ~~of~~ for storage or transportation.

~~(g)~~(9) ‘Issuer’ means a bailee who issues a document of title or, in the case of an unaccepted delivery order, the person who orders the possessor of goods to deliver. ~~except that in relation to an unaccepted delivery order it means the person who orders the possessor of goods to deliver.~~ ~~Issuer~~ The term includes ~~any~~ a person for whom an agent or employee purports to act in issuing a document if the agent or employee has real or apparent authority to issue documents, even if the issuer did not receive any goods, the goods were misdescribed, or in any other respect the agent or employee violated the issuer’s instructions ~~notwithstanding that the issuer received no goods or that the goods were misdescribed or that in any other respect the agent or employee violated his instructions~~.

~~(h)~~(10) ‘Person entitled under the document’ means the holder, in the case of a negotiable document of title, or the person to whom delivery of the goods is to be made by the terms of, or pursuant to, instructions in a record under, a negotiable document of title.

(11) ‘Reserved.’

(12) ‘Sign’ means, with present intent to authenticate or adopt a record, to:

(A) execute or adopt a tangible symbol; or

(B) attach to or logically associate with the record an electronic sound, symbol, or process.

(13) ‘Shipper’ means a person that enters into a contract of transportation with a carrier.

(14) ‘Warehouseman’ ~~is~~ or ‘Warehouse’ means a person engaged in the business of storing goods for hire.

~~(2)~~ ~~Other definitions applying to this chapter or to specified parts thereof, and the sections in which they appear are:~~

~~‘Duly negotiate.’ Section 36‑7‑501.~~

~~‘Person entitled under the document.’ Section 36‑7‑403(4).~~

~~(3)~~(b) Definitions in other chapters applying to this chapter and the sections in which they appear are:

(1) ‘Contract for sale.’ Section 36‑2‑106;~~.~~

(2) ‘Lessee in the ordinary course of business.’ Section 36‑2A‑103; and

~~‘Overseas’ Section 36‑2‑323.~~

(3) ‘Receipt of goods.’ Section 36‑2‑103.

~~(4)~~(c) In addition, Chapter 1 of this title contains general definitions and principles of construction and interpretation applicable throughout this chapter.

SOUTH CAROLINA REPORTER’S COMMENTS

The 2014 amendments include a set of new definitions that were drafted to provide a framework for the development of electronic documents of title and to facilitate the electronic mediums for the storage and communications. Some of these new definitions are codified in revised Article 1 and others appear as amendments to the provisions of Article 7. Four of the new definitions in the 2014 amendments that provide the basic foundation and essential framework for the further development of electronic documents of title are codified in revised Article 1. The definition of document of title in revised Section 36–1‑201(b)(16) includes a definition of an electronic document of title as ‘a document of title evidenced by a record consisting of information stored in an electronic medium.’ Moreover, new definitions of the terms ‘bearer’, ‘delivered’, and ‘holder,’ codified in revised Section 36–1‑201(b)(5), (15) and (21)(c), provide a framework for the process of negotiating electronic documents provided for in the 2014 amendments and codified in revised Section 36–7‑501(b). The 2014 amendments also include new definitions of terms in Article 7 that were drafted to facilitate electronic mediums. The definition of ‘Record’ in revised Section 36–1‑201(b)(37) and the new definition of ‘Signed’ in Section 36–7‑102(a)(12) serve this function. Moreover, the amendment substituting the term ‘record’ for the term ‘written order’ in the definition of ‘Delivery order’ in Section 36–7‑102(a)(5) facilitates the use of electronic mediums for the storage and communication of information. The 2014 amendments include new definitions of the terms ‘carrier’ and ‘shipper.’ Section 36‑7‑102(a)(2) defines carrier as a person who issues a bill of lading and Section 36–7‑102(a) defines shipper as a person who enters into a contract of transportation with a carrier. The 2014 amendments remove the definition the definition of the ‘person entitled under the document’ from Section 36–7‑403 and includes it in Section 36–7‑102 as subsection (a)(10).

Section 36-7-103. (a) ~~To the extent that any treaty or statute of the United States, regulatory statute of this State or tariff, classification or regulation filed or issued pursuant thereto is applicable, the provisions of this chapter are subject thereto~~ This chapter is subject to any treaty or statute of the United States or regulatory statute of this state , or lawfully published tariff, to the extent the treaty, statute, regulatory statute or tariff is applicable.

(b) This chapter does not modify or repeal any law prescribing the form or content of a document of title or the services or facilities to be afforded by a bailee, or otherwise regulating a bailee’s business in respects not specifically treated in this chapter. However, violation of such a law does not affect the status of a document of title that otherwise is within the definition of a document of title.

(c) This chapter modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act (15 U.S.C. Section 7001, et. seq.) but does not modify, limit, or supersede Section 101(c) of that act (15 U.S.C. Section 7001(c)) or authorize electronic delivery of any of the notices described in Section 103(b) of that act (15 U.S.C. Section 7003(b)).

(d) To the extent there is a conflict between the Uniform Electronics Act and this chapter, this chapter governs.

Section 36-7-104. ~~(1)~~(a) ~~A~~ Except as provided in subsection (c), a warehouse receipt, bill of lading, or other document of title is negotiable ~~(a)~~ if by its terms the goods are to be delivered to bearer or to the order of a named person~~; or (b) where recognized in overseas trade, if it runs to a named person or assigns~~.

~~(2)~~(b) ~~Any other document~~ A document of title other than one described in subsection (a) is nonnegotiable. A bill of lading ~~in which it is stated~~ stating that the goods are consigned to a named person is not made negotiable by a provision that the goods are to be delivered only against ~~a written order~~ an order in a record signed by the same or another named person.

(c) A document of title is nonnegotiable if, at the time it is issued, the document has a conspicuous legend, however expressed, that it is nonnegotiable.

SOUTH CAROLINA REPORTER’S COMMENTS

The 2014 amendments added subsection (c), which provides that, notwithstanding subsection (a), a document of title is nonnegotiable if at the time it was issued it had a conspicuous legend stating that it is nonnegotiable.

Section 36-7-105. (a) ~~The omission from either part 2 or part 3 of this chapter of a provision corresponding to a provision made in the other part does not imply that a corresponding rule of law is not applicable.~~ Upon request of a person entitled under an electronic document of title, the issuer of the electronic document may issue a tangible document of title as a substitute for the electronic document if:

(1) the person entitled under the electronic document surrenders control of the document to the issuer; and

(2) the tangible document when issued contains a statement that it is issued in substitution for the electronic document.

(b) Upon issuance of a tangible document of title in substitution for an electronic document of title in accordance with subsection (a):

(1) the electronic document ceases to have any effect or validity; and

(2) the person that procured issuance of the tangible document warrants to all subsequent persons entitled under the tangible document that the warrantor was a person entitled under the electronic document when the warrantor surrendered control of the electronic document to the issuer.

(c) Upon request of a person entitled under a tangible document of title, the issuer of the tangible document may issue an electronic document of title as a substitute for the tangible document if:

(1) the person entitled under the tangible document surrenders possession of the document to the issuer; and

(2) the electronic document when issued contains a statement that it is issued in substitution for the tangible document.

(d) Upon issuance of an electronic document of title in substitution for a tangible document of title in accordance with subsection (c):

(1) the tangible document ceases to have any effect or validity; and

(2) the person that procured issuance of the electronic document warrants to all subsequent persons entitled under the electronic document that the warrantor was a person entitled under the tangible document when the warrantor surrendered possession of the tangible document to the issuer.

SOUTH CAROLINA REPORTER’S COMMENTS

This section provides a process under which a person entitled under a document of title issued in one medium may request the issuer to issue a document of title in a different medium. For example, if the person in control of an electronic negotiable document of title and therefore the person entitled under that document, requests that the issuer of the electronic document issue a tangible document as a substitute for the electronic, revised Section 36‑7‑105(a) allows the issuer to issue a tangible document as a substitute for the electronic document, provided the holder surrenders control of the electronic document to the issuer and the tangible record, when issued, states that it was issued in substitution for an electronic document. A person entitled under a tangible negotiable record can invoke the same process to obtain an electronic document in substitution for the tangible record. Note that the issuer is not obligated to issue a substitute document in the other medium in response to the request of the person entitled. Nevertheless, providing a process to convert a document of title issued in one medium for a document in the other medium provides flexibility that may result in greater use and acceptance of electronic documents.

Section 36‑7‑106. (a) A person has control of an electronic document of title if a system employed for evidencing the transfer of interests in the electronic document reliably establishes that person as the person to which the electronic document was issued or transferred.

(b) A system satisfies subsection (a), and a person is deemed to have control of an electronic document of title, if the document is created, stored, and assigned in such a manner that:

(1) a single authoritative copy of the document exists which is unique, identifiable, and, except as otherwise provided in paragraphs (4), (5), and (6), unalterable;

(2) the authoritative copy identifies the person asserting control as:

(A) the person to which the document was issued; or

(B) if the authoritative copy indicates that the document has been transferred, the person to which the document was most recently transferred;

(3) the authoritative copy is communicated to and maintained by the person asserting control or its designated custodian;

(4) copies or amendments that add or change an identified assignee of the authoritative copy can be made only with the consent of the person asserting control;

(5) each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy; and

(6) any amendment of the authoritative copy is readily identifiable as authorized or unauthorized.

SOUTH CAROLINA REPORTER’S COMMENTS

Control of an electronic document of title is the legal equivalent of indorsement and possession of a tangible document of title. For transactions utilizing electronic documents of title to function efficiently, all parties to the transaction must be able to readily and reliably identify the person who has control of an electronic document. Revised Section 36‑7‑106 provides the standard that a system evidencing transfers of electronic documents must meet to establish control.

PART 2

Warehouse Receipts: Special Provisions

Section 36‑7‑201. ~~(1)~~(a) A warehouse receipt may be issued by any ~~warehouseman~~ warehouse.

~~(2)~~(b) ~~Where~~ If goods, including distilled spirits and agricultural commodities, are stored under a statute requiring a bond against withdrawal or a license for the issuance of receipts in the nature of warehouse receipts, a receipt issued for the goods ~~has like effect as~~ is deemed to be a warehouse receipt even though issued by a person ~~who~~ that is the owner of the goods and is not a warehouse~~man~~.

Section 36-7-202. ~~(1)~~(a) A warehouse receipt need not be in any particular form.

~~(2)~~(b) Unless a warehouse receipt ~~embodies within its written or printed terms~~ provides for each of the following, the warehouse~~man~~ is liable for damages caused ~~by the omission to a person injured thereby~~ to a person injured by its omission:

~~(a)~~(1) a statement of the location of the warehouse facility where the goods are stored;

~~(b)~~(2) the date of issue of the receipt;

~~(c)~~(3) the ~~consecutive number~~ unique identification code of the receipt;

~~(d)~~(4) a statement whether the goods received will be delivered to the bearer, to a ~~specified~~ named person, or to a ~~specified~~ named person or ~~his~~ the person’s order;

~~(e)~~(5) the rate of storage and handling charges, ~~except that where~~ unless goods are stored under a field warehousing arrangement, in which case a statement of that fact is sufficient on a nonnegotiable receipt;

~~(f)~~(6) a description of the goods or of the packages containing them;

~~(g)~~(7) the signature of the warehouse~~man~~, ~~which may be made by his authorized~~ or its agent;

~~(h)~~(8) if the receipt is issued for goods ~~of which~~ that the warehouse~~man is owner~~ owns, either solely ~~or~~ , jointly, or in common with others, a statement of the fact of ~~such~~ that ownership; and

~~(i)~~(9) a statement of the amount of advances made and of liabilities incurred for which the warehouse~~man~~ claims a lien or security interest pursuant to Section 36‑7‑209 ~~(Section 36‑7‑209)~~. If the precise amount of ~~such~~ advances made or ~~of such~~ liabilities incurred is, at the time of the issue of the receipt, unknown to the warehouse~~man~~ or to ~~his~~ its agent ~~who issues it~~ that issued the receipt, a statement of the fact that advances have been made or liabilities incurred and the purpose ~~thereof~~ of the advances or liabilities is sufficient.

~~(3)~~(c) A warehouse~~man~~ may insert in ~~his~~ its receipt any ~~other~~ terms ~~which~~ that are not contrary to the provisions of this ~~act~~ title and do not impair ~~his~~ its obligation of delivery pursuant to Section 36‑7‑403 ~~(Section 36‑7‑403)~~ or ~~his~~ its duty of care pursuant to Section 36‑7‑204~~(Section 36‑7‑204)~~. Any contrary provision~~s~~ ~~shall be~~ is ineffective.

Section 36-7-203. A party to or purchaser for value in good faith of a document of title other than a bill of lading ~~relying~~ that relies ~~in either case~~ upon the description ~~therein~~ of the goods in the document may recover from the issuer damages caused by the nonreceipt or misdescription of the goods, except to the extent that:

(1) the document conspicuously indicates that the issuer does not know whether ~~any part or~~ all or part of the goods in fact were received or conform to the description, ~~as where~~ such as the case in which the description is in terms of marks or labels or kind, quantity or condition, or the receipt or description is qualified by ‘contents, condition and quality unknown,’ ‘said to contain’ or ~~the like~~ words of similar import, if ~~such~~ the indication ~~be~~ is true~~,~~; or

(2) the party or purchaser otherwise has notice of the nonreceipt or misdescription.

Section 36-7-204. ~~(1)~~(a) A ~~warehouseman~~ warehouse is liable for damages for loss of or injury to the goods caused by ~~his~~ its failure to exercise ~~such~~ care ~~in~~ with regard to ~~them~~ the goods that ~~as~~ a reasonably careful ~~man~~ person would exercise under ~~like~~ similar circumstances. ~~but unless~~ Unless otherwise agreed, ~~he~~ the warehouse is not liable for damages ~~which~~ that could not have been avoided by the exercise of ~~such~~ that care.

~~(2)~~(b) Damages may be limited by a term in the warehouse receipt, ~~or~~ storage agreement, or tariff limiting the amount of liability in case of loss or damage~~, and setting forth a specific liability per article or item, or value per unit of weight,~~ beyond which the ~~warehouseman shall not be~~ warehouse is not liable~~; provided, however, that such liability may on written request of the bailor at the time of signing such storage agreement or within a reasonable time after receipt of the warehouse receipt be increased on part or all of the goods thereunder, in which event increased rates may be charged based on such increased valuation, but that no such increase shall be permitted contrary to a lawful limitation of liability contained in the warehouseman’s tariff, if any. No such limitation is effective with respect to the warehouseman’s liability for conversion to his own use~~. This limitation is not effective with respect to the liability of the warehouse for conversion to its own use. On request of the bailor in a record at the time of signing the storage agreement or within a reasonable time after receipt of the warehouse receipt, the liability of the warehouse may be increased on part or on all of the goods covered by the storage agreement or the warehouse receipt. In this event, increased rates may be changed based on an increased valuation of the goods.

~~(3)~~(c) Reasonable provisions as to the time and manner or presenting claims and ~~instituting~~ commencing actions based on the bailment may be included in the warehouse receipt, storage agreement, or tariff.

SOUTH CAROLINA REPORTER’S COMMENTS

Section 36‑7‑204(a) revises the requirements for an effective agreement to limit a warehouse’s liability in order to conform to modern business practices.

Section 36-7-205. A buyer in the ordinary course of business of fungible goods sold and delivered by a warehouse~~man~~ ~~who is also~~ that also is in the business of buying and selling such goods takes the goods free of any claim under a warehouse receipt even ~~though~~ if the receipt is negotiable and ~~it~~ has been duly negotiated.

Section 36-7-206. ~~(1)~~(a) A warehouse~~man may on notifying~~ ,by giving notice to the person on whose account the goods are held and any other person known to claim ~~or~~ an interest in the goods, may require payment of any charges and removal of the goods from the warehouse at the termination of the period of storage fixed by the document of title, or, if ~~no~~ a period is not fixed, within a stated period not less than thirty days after the ~~notification~~ warehouse gives notice. If the goods are not removed before the date specified in the ~~notification~~ notice, the warehouse~~man~~ may sell them ~~in accordance with the provisions of the section on enforcement of a warehouseman’s lien (Section 36‑7‑210)~~ pursuant to Section 36‑7‑210.

~~(2)~~(b) If a warehouse~~man~~ in good faith believes that the goods are about to deteriorate or decline in value to less than the amount of ~~his~~ its lien within the time ~~prescribed~~ provided in subsection ~~(1)~~(a) and Section 36‑7‑210, ~~for notification, advertisement and sale,~~ the warehouse~~man~~ may specify in the ~~notification~~ notice given under subsection (a) any reasonable shorter time for removal of the goods and*,* ~~in case~~ if the goods are not removed, may sell them at public sale held not less than one week after a single advertisement or posting.

~~(3)~~(c) If, as a result of a quality or condition of the goods of which the warehouse~~man~~ ~~had no~~ did not have notice at the time of deposit, the goods are a hazard to other property or to the warehouse or to persons, the warehouse~~man~~ may sell the goods at public or private sale without advertisement or posting on reasonable notification to all persons known to claim an interest in the goods. If the warehouse~~man~~, after a reasonable effort, is unable to sell the goods ~~he~~ it may dispose of them in any lawful manner and ~~shall incur no~~ does not incur liability by reason of ~~such~~ that disposition.

~~(4)~~(d) The warehouse~~man~~ must deliver the goods to any person entitled to ~~them~~ the goods under this chapter upon due demand made at any time ~~prior~~ before to sale or other disposition under this section.

~~(5)~~(e) The warehouse~~man~~ may satisfy ~~his~~ its lien from the proceeds of any sale or disposition under this section but must hold the balance for delivery on the demand of any person to ~~whom he~~ which the warehouse would have been bound to deliver the goods.

Section 36-7-207. ~~(1)~~(a) Unless the warehouse receipt otherwise provides, a warehouse~~man~~ ~~must~~ shall keep separate the goods covered by each receipt so as to permit at all times identification and delivery of those goods. However, ~~except that~~ different lots of fungible goods may be commingled.

~~(2)~~(b) If different lots of ~~Fungible~~ fungible goods are ~~so~~ commingled, the goods are owned in common by the persons entitled ~~thereto~~ to them and the warehouse~~man~~ is severally liable to each owner for ~~that owner’s~~ the share of that owner. ~~Where~~ If, because of overissue, a mass of fungible goods is insufficient to meet all the receipts which the warehouse~~man~~ has issued against it, the persons entitled include all holders to ~~whom~~ which overissued receipts have been duly negotiated.

Section 36-7-208. ~~Where~~ If a blank in a negotiable tangible warehouse receipt has been filled in without authority, a good‑faith purchaser for value and without notice of the ~~want~~ lack of authority may treat the insertion as authorized. Any other unauthorized alteration leaves any tangible or electronic warehouse receipt enforceable against the issuer according to its original tenor.

Section 36-7-209. ~~(1)~~(a) A warehouse~~man~~ has a lien against the bailor on the goods covered by a warehouse receipt or storage agreement or on the proceeds thereof in ~~his~~ its possession for charges for storage or transportation, ~~(~~including demurrage and terminal charges~~)~~, insurance, labor, or other charges, present or future in relation to the goods, and for expenses necessary for preservation of the goods or reasonably incurred in their sale pursuant to law. If the person on whose account the goods are held is liable for ~~like~~ similar charges or expenses in relation to other goods whenever deposited and it is stated in the warehouse receipt or storage agreement that a lien is claimed for charges and expenses in relation to other goods, the warehouse~~man~~ also has a lien against ~~him~~ the goods covered by the warehouse receipt or storage agreement or on the proceeds of them in its possession for those ~~such~~ charges and expenses, whether or not the other goods have been delivered by the warehouse~~man~~. ~~But~~ However, as against a person to whom a negotiable warehouse receipt is duly negotiated, a warehouse~~man~~’s lien is limited to charges in an amount or at a rate specified on the receipt or, if no charges are so specified, then to a reasonable charge for storage of the specific goods covered by the receipt subsequent to the date of the receipt.

~~(2)~~(b) ~~The~~ A warehouse~~man~~ may also reserve a security interest against the bailor for a maximum amount specified on the receipt for charges other than those specified in subsection ~~(1)~~(a), such as for money advanced and interest. ~~Such a~~ The security interest is governed by the chapter on secured transactions (Chapter 9).

~~(3)~~(c) A warehouse~~man~~’s lien for charges and expenses under subsection ~~(1)~~(a) or a security interest under subsection ~~(2)~~(b) is also effective against any person who so entrusted the bailor with possession of the goods that a pledge of them by ~~him~~ the bailor to a good-faith purchaser for value would have been valid. However, the lien or security interest ~~but~~ is not effective against a person that before issuance of a document of title had a legal interest or a perfected security interest in the goods and that did not:~~as to whom the document confers no right in the goods covered by it under Section 36‑7‑503~~

(1) deliver or entrust the goods or any document of title covering the goods to the bailor or the nominee of the bailor with:

(A) actual or apparent authority to ship, store, or sell;

(B) power to obtain delivery under Section 7‑403; or

(C) power of disposition under Sections 36‑2‑403, 36‑2A‑304(2), 36‑2A‑305(2), 36‑9‑320, or 36‑9‑321(c), or other statute of rule of law; or

(2) acquiesce in the procurement of the bailor or its nominee of any document.

(d) The lien of a warehouse on household goods for charges and expenses in relation to the goods under subsection (a) also is effective against all other persons if the depositor was the legal possessor of the goods at the time of the deposit. In this subsection, the term ‘household goods’ means furniture, furnishings, or personal effects used by the depositor in a dwelling.

~~(4)~~(e) A warehouse~~man~~ loses its lien on any goods ~~which he~~ that it voluntarily delivers or ~~which he~~ unjustifiably refuses to deliver.

Section 36-7-210. ~~(1)~~(a) Except as provided in subsection ~~(2)~~(b), a ~~warehouseman’s~~ warehouse’s lien may be enforced by public or private sale of the goods, in ~~block~~ bulk or in ~~parcels~~ packages, at any time or place and on any terms which are commercially reasonable, after notifying all persons known to claim an interest in the goods. ~~Such~~ This notification must include a statement of the amount due, the nature of the proposed sale and the time and place of any public sale. The fact that a better price could have been obtained by a sale at a different time or in a ~~different~~ method different from that selected by the warehouse~~man~~ is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. The warehouse sells in a commercially reasonable manner if the warehouse ~~If the warehouseman either~~ sells the goods in the usual manner in any recognized market ~~therefor,~~ for the goods it ~~or if he~~ sells at the price current in ~~such~~ that market at the time of ~~his~~ the sale, or ~~if he has~~ otherwise ~~sold~~ sells the goods in conformity with commercially reasonable practices among dealers in the type of goods sold~~, he has sold in a commercially reasonable manner~~. A sale of more goods than apparently necessary to be offered to ~~insure~~ ensure satisfaction of the obligation is not commercially reasonable except in cases covered by the preceding sentence.

~~(2)~~(b) A ~~warehouseman’s lien on goods other than goods stored by a merchant in the course of his business may be enforced only as follows~~ warehouse may enforce its lien on goods, other than goods stored by a merchant in the course of its business, only if the following requirements are satisfied:

~~(a)~~(1) All persons known to claim an interest in the goods must be notified.

~~(b)~~(2) ~~The notification must be delivered in person or sent by registered or certified letter to the last known address of any person to be notified.~~

~~(c)~~The notification must include an itemized statement of the claim, a description of the goods subject to the lien, a demand for payment within a specified time not less than ten days after receipt of the notification, and a conspicuous statement that unless the claim is paid within that time the goods will be advertised for sale and sold by auction at a specified time and place.

~~(d)~~(3) The sale must conform to the terms of the notification.

~~(e)~~(4) The sale must be held at the nearest suitable place to ~~that~~ where the goods are held or stored.

~~(f)~~(5) After the expiration of the time given in the notification, an advertisement of the sale must be published once a week for two weeks consecutively in a newspaper of general circulation where the sale is to be held. The advertisement must include a description of the goods, the name of the person on whose account they are being held, and the time and place of the sale. The sale must take place at least fifteen days after the first publication. If there is no newspaper of general circulation where the sale is to be held, the advertisement must be posted at least ten days before the sale in not less than six conspicuous places in the neighborhood of the proposed sale.

~~(3)~~(c) Before any sale pursuant to this section any person claiming a right in the goods may pay the amount necessary to satisfy the lien and the reasonable expenses incurred ~~under~~ in complying pursuant to this section. In that event the goods must not be sold, but must be retained by the warehouseman subject to the terms of the receipt and this chapter.

~~(4)~~(d) ~~The warehouseman~~ A warehouse may buy at any public sale held pursuant to this section.

~~(5)~~(e) A purchaser in good faith of goods sold to enforce a warehouseman’s lien takes the goods free of any rights of persons against whom the lien was valid, despite noncompliance by the warehouseman with the requirements of this section.

~~(6)~~(f) ~~The warehouseman~~ A warehouse may satisfy ~~his~~ its lien from the proceeds of any sale pursuant to this section but ~~must~~ shall hold the balance, if any, for delivery on demand to any person to ~~whom he~~ which the warehouse would have been bound to deliver the goods.

~~(7)~~(g) The rights provided by this section ~~shall be~~ are in addition to all other rights allowed by law to a creditor against ~~his~~ a debtor.

~~(8)~~(h) ~~Where~~ If a lien is on goods stored by a merchant in the course of his business the lien may be enforced in accordance with either subsection ~~(1)~~(a) or ~~(2)~~(b).

~~(9)~~(i) ~~The warehouseman~~ A warehouse is liable for damages caused by failure to comply with the requirements for sale under this section and, in case of willful violation, is liable for conversion.

PART 3

Bills of Lading: Special Provisions

Section 36-7-301. ~~(1)~~(a) A consignee of a nonnegotiable bill of lading ~~who~~ which has given value in good faith, or a holder to ~~whom~~ which a negotiable bill has been duly negotiated, relying in either case upon the description ~~therein~~ of the goods in the bill~~,~~ or upon the date ~~therein~~ shown in the bill, may recover from the issuer damages caused by the misdating of the bill or the nonreceipt or misdescription of the goods, except to the extent that the ~~document~~ bill of lading indicates that the issuer does not know whether any part or all of the goods in fact were received or conform to the description, such as in a case in which ~~where~~ the description is in terms of marks or labels or kind, quantity, or condition or the receipt or description is qualified by ‘contents or condition of contents of packages unknown,’ ‘said to contain,’ ‘shipper’s weight, load and count’ or ~~the like~~ words of similar import, if ~~such~~ that indication ~~be~~ is true.

~~(2)~~(b) ~~When~~ If goods are loaded by ~~an~~ the issuer of a bill of lading:

(1) the issuer ~~must~~ shall count the packages of goods if shipped in packages ~~package freight~~ and ascertain the kind and quantity if shipped in bulk ~~freight.~~; and

(2) ~~In such cases~~ words such as ‘shipper’s weight, load and count’ or other words of similar import indicating that the description was made by the shipper are ineffective except as to ~~freight~~ goods concealed by packages.

~~(3)~~(c) ~~When~~ If bulk ~~freight is~~ goods are loaded by a shipper ~~who~~ that makes available to the issuer of a bill of lading adequate facilities for weighing ~~such freight~~ those goods, ~~an~~ the issuer ~~who is a common carrier must~~ shall ascertain the kind and quantity within a reasonable time after receiving the ~~written request of the shipper~~ shipper’s request in a record to do so. In ~~such~~ that case~~s~~ ‘shipper’s weight’ or ~~other~~ words of ~~like purport~~ similar import are ineffective.

~~(4)~~(d) The issuer of a bill of lading, ~~may be inserting in the bill~~ by including in the bill the words ‘shipper’s weight, load and count’ or ~~other words~~ of ~~like purport~~ similar import, may indicate that the goods were loaded by the shipper~~;~~  , and if ~~such~~ that statement ~~be~~ is true, the issuer ~~shall not be~~ is not liable for damages caused by the improper loading. ~~But their~~ However, omission of those words does not imply liability for ~~such~~ damages caused by improper loading.

~~(5)~~(e) ~~The~~ A shipper ~~shall be deemed to have guaranteed~~ guarantees to ~~th~~e an issuer the accuracy at the time of shipment of the description, marks, labels, number, kind, quantity, condition and weight, as furnished by ~~him~~ the shipper; and the shipper shall indemnify the issuer against damage caused by inaccuracies in ~~such~~ those particulars. ~~The right of the issuer to such indemnity shall in no way limit his responsibility and liability~~ This right of indemnity does not limit the issuer’s responsibility or liability under the contract of carriage to any person other than the shipper.

Section 36-7-302. ~~(1)~~(a) The issuer of a through bill of lading or other document of title embodying an undertaking to be performed in part by a person~~s~~ acting as its agent~~s~~ or by ~~connecting carriers~~ a performing carrier is liable to anyone entitled to recover on the bill or other document for any breach by ~~such~~ the other person~~s~~ or by ~~a connecting~~ the performing carrier of its obligation under the bill or other document. ~~but~~ However, to the extent that the bill covers an undertaking to be performed overseas or in territory not contiguous to the continental United States or an undertaking including matters other than transportation, this liability for breach by the other party or the performing carrier may be varied by agreement of the parties.

~~(2)~~(b) ~~Where~~ If goods covered by a through bill of lading or other document of title embodying an undertaking to be performed in part by a person~~s~~ other than the issuer are received by ~~any such~~ that person, ~~he~~ the person is subject, with respect to ~~his~~ its own performance while the goods are in ~~his~~ its possession, to the obligation of the issuer. ~~His~~ The person’s obligation is discharged by delivery of the goods to another ~~such~~ person pursuant to the bill or other document, and does not include liability for breach by any other ~~such~~ persons or by the issuer.

~~(3)~~(c) The issuer of ~~such~~ a through bill of lading or other document of title described in subsection (a) ~~shall be~~ is entitled to recover from the ~~connecting~~ performing carrier or ~~such~~ other person in possession of the goods when the breach of the obligation under the bill or other document occurred~~,~~:

(1) the amount it may be required to pay to ~~anyone~~ any person entitled to recover on the bill or other document ~~therefor~~ for the breach, as may be evidenced by any receipt, judgment, or transcript of judgment ~~thereof,~~ ; and

(2) the amount of any expense reasonably incurred by ~~it~~ the issuer in defending any action ~~brought by anyone~~ commenced by any person entitled to recover on the bill or other document ~~therefor~~ for the breach.

Section 36-7-303. ~~(1)~~(a) Unless the bill of lading otherwise provides, ~~the~~ a carrier may deliver the goods to a person or destination other than that stated in the bill or may otherwise dispose of the goods, without liability for misdelivery, on instructions from:

~~(a)~~(1) the holder of a negotiable bill; ~~or~~

~~(b)~~(2) the consignor on a nonnegotiable bill, ~~notwithstanding contrary instructions from the consignee~~ even if the consignee has given contrary instructions; ~~or~~

~~(c)~~(3) the consignee on a nonnegotiable bill in the absence of contrary instructions from the consignor, if the goods have arrived at the billed destination or if the consignee is in possession of the tangible bill or in control of the electronic bill; or

~~(d)~~(4) the consignee on a nonnegotiable bill, if ~~he~~ the consignee is entitled as against the consignor to dispose of ~~them~~ the goods.

~~(2)~~(b) Unless ~~such~~ instructions described in subsection (a) are ~~noted on~~ included in a negotiable bill of lading, a person to ~~whom~~ which the bill is duly negotiated ~~can~~ may hold the bailee according to the original terms.

Section 36-7-304. ~~(1)~~(a) Except ~~where~~ as customary in ~~overseas~~ international transportation, a tangible bill of lading ~~must~~ shall not be issued in a set of parts. The issuer is liable for damages caused by violation of this subsection.

~~(2)~~(b) ~~Where a~~ If a tangible bill of lading is lawfully ~~drawn~~ issued in a set of parts, each of which ~~is numbered~~ contains an identification code and is expressed to be valid only if the goods have not been delivered against any other part, the whole of the parts constitutes one bill.

~~(3)~~(c) ~~Where a~~ If a tangible bill of lading is lawfully issued in a set of parts and different parts are negotiated to different persons, the title of the holder to ~~whom~~ which the first due negotiation is made prevails as to both the document of title and the goods even ~~though~~ if any later holder may have received the goods from the carrier in good faith and discharged the carrier’s obligation by surrender of ~~his~~ its part.

~~(4)~~(d) ~~Any~~ A person ~~who~~ that negotiates or transfers a single part of a tangible bill of lading ~~drawn~~ issued in a set is liable to holders of that part as if it were the whole set.

~~(5)~~(e) The bailee ~~is obliged to~~ shall deliver in accordance with ~~part~~ Part 4 of this chapter against the first presented part of a tangible bill of lading lawfully ~~drawn~~ issued in a set. ~~Such delivery~~ Delivery in this manner discharges the bailee’s obligation on the whole bill.

Section 36-7-305. ~~(1)~~(a) Instead of issuing a bill of lading to the consignor at the place of shipment, a carrier, ~~may~~ at the request of the consignor, may procure the bill to be issued at destination or at any other place designated in the request.

~~(2)~~(b) Upon request of ~~anyone~~ any person entitled as against ~~the~~ a carrier to control the goods while in transit and on surrender of possession or control of any outstanding bill of lading or other receipt covering ~~such~~ the goods, the issuer, subject to Section 36‑7‑105, may procure a substitute bill to be issued at any place designated in the request.

Section 36-7-306. An unauthorized alteration or filling in of a blank in a bill of lading leaves the bill enforceable according to its original tenor.

Section 36-7-307. ~~(1)~~(a) A carrier has a lien on the goods covered by a bill of lading or on the proceeds thereof in its possession for charges ~~subsequent to~~ after the date of ~~its~~ the carrier’s receipt of the goods for storage or transportation, ~~(~~including demurrage and terminal charges~~)~~, and for expenses necessary for preservation of the goods incident to their transportation or reasonably incurred in their sale pursuant to law. ~~But~~ However, against a purchaser for value of a negotiable bill of lading, a carrier’s lien is limited to charges stated in the bill or the applicable tariffs~~,~~ or, if no charges are stated, then to a reasonable charge.

~~(2)~~(b) A lien for charges and expenses under subsection ~~(1)~~(a) on goods ~~which~~ that the carrier was required by law to receive for transportation is effective against the consignor or any person entitled to the goods unless the carrier had notice that the consignor lacked authority to subject the goods to ~~such~~ those charges and expenses. Any other lien under subsection ~~(1)~~(a) is effective against the consignor and any person ~~who~~ that permitted the bailor to have control or possession of the goods unless the carrier had notice that the bailor lacked ~~such~~ authority.

~~(3)~~(c) A carrier loses ~~his~~ its lien on any goods ~~which he~~ that it voluntarily delivers or ~~which he~~ unjustifiably refuses to deliver.

Section 36-7-308. ~~(1)~~(a) A carrier’s lien on goods may be enforced by public or private sale of the goods, in bulk or in ~~parcels~~ packages, at any time or place and on any terms ~~which~~ that are commercially reasonable, after notifying all persons known to claim an interest in the goods. ~~Such~~ The notification must include a statement of the amount due, the nature of the proposed sale, and the time and place of any public sale. The fact that a better price could have been obtained by a sale at a different time or in a ~~different~~ method different from that selected by the carrier is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. ~~If the~~ The carrier ~~either~~ sells ~~the~~ goods in ~~the usual~~ a commercially reasonable manner if the carrier sells the goods in the usual manner in any recognized market therefor, ~~or if he~~ sells at the price current in ~~such~~ that market at the time of ~~his~~ the sale, or ~~if he has~~ otherwise ~~sold~~ sells in conformity with commercially reasonable practices among dealers in the type of goods sold ~~he has sold in a commercially reasonable manner~~. A sale of more goods than apparently necessary to be offered to ensure satisfaction of the obligation is not commercially reasonable, except in cases covered by the preceding sentence.

~~(2)~~(b) Before any sale pursuant to this section, any person claiming a right in the goods may pay the amount necessary to satisfy the lien and the reasonable expenses incurred in complying with ~~under~~ this section. In that event, the goods ~~must~~ shall not be sold, but must be retained by the carrier, subject to the terms of the bill and this chapter.

~~(3)~~(c) ~~The~~ A carrier may buy at any public sale pursuant to this section.

~~(4)~~(d) A purchaser in good faith of goods sold to enforce a carrier’s lien takes the goods free of any rights of persons against ~~whom~~ which the lien was valid, despite the carrier’s noncompliance ~~by the carrier~~ with ~~the requirements of~~ this section.

~~(5)~~(e) ~~The~~ A carrier may satisfy ~~his~~ its lien from the proceeds of any sale pursuant to this section but must hold the balance, if any, for delivery on demand to any person to ~~whom~~ which ~~he~~ the carrier would have been bound to deliver the goods.

~~(6)~~(f) The rights provided by this section ~~shall be~~ are in addition to all other rights allowed by law to a creditor against ~~his~~ a debtor.

~~(7)~~(g) A carrier’s lien may be enforced ~~in accordance with~~ pursuant to either subsection ~~(1)~~(a) or the procedure set forth in subsection ~~(2)~~(b) of Section 36‑7‑210.

~~(8)~~(h) ~~The~~ A carrier is liable for damages caused by failure to comply with the requirements for sale under this section, and in case of willful violation, is liable for conversion.

Section 36-7-309. ~~(1)~~(a) A carrier ~~who~~ that issues a bill of lading, whether negotiable or nonnegotiable, ~~must~~ shall exercise the degree of care in relation to the goods which a reasonably careful ~~man~~ person would exercise under ~~like~~ similar circumstances. This subsection does not ~~repeal or change any law or rule of law which~~ affect any statute, regulation, or rule of law that imposes liability upon a common carrier for damages not caused by its negligence.

~~(2)~~(b) Damages may be limited by a ~~provision~~ term in the bill of lading or in a transportation agreement that the carrier’s liability shall not exceed a value stated in the ~~document~~ bill or transportation agreement if the carrier’s rates are dependent upon value and the consignor ~~by the carrier’s tariff~~ is afforded an opportunity to declare a higher value ~~or a value as lawfully provided in the tariff, or where no tariff is filed he~~ and the consignor is ~~otherwise~~ advised of ~~such~~ the opportunity.~~; but no~~ However, such a limitation is not effective with respect to the carrier’s liability for conversion to its own use.

~~(3)~~(c) Reasonable provisions as to the time and manner of presenting claims and ~~instituting~~ commencing actions based on the shipment may be included in a bill of lading or ~~tariff~~ a transportation agreement.

PART 4

Warehouse Receipts and Bill of Lading: General Obligations

Section 36-7-401. The obligations imposed by this chapter on an issuer apply to a document of title ~~regardless of the fact that~~ even if:

~~(a)~~(1) the document ~~may~~ does not comply with the requirements of this chapter or of any other ~~law or regulation~~ statute, rule, or regulation regarding its issue, form or content; ~~or~~

~~(b)~~(2) the issuer ~~may have~~ violated laws regulating the conduct of ~~his~~ its business; ~~or~~

~~(c)~~(3) the goods covered by the document were owned by the bailee ~~at the time~~ when the document was issued; or

~~(d)~~(4) the person issuing the document ~~does not come within the definition of warehouseman~~ is not a warehouse ~~if it purports~~ but the document purports to be a warehouse receipt.

Section 36-7-402. ~~Neither a~~ A duplicate ~~nor~~ or any other document of title purporting to cover goods already represented by an outstanding document of the same issuer ~~confers~~ does not confer any right in the goods, except as provided in the case of tangible bills of lading in a set of parts, overissue of documents for fungible goods, ~~and~~ substitutes for lost, stolen or destroyed documents, or substitute documents issued pursuant to Section 36‑7‑105. ~~But the~~ The issuer is liable for damages caused by ~~his~~ its overissue or failure to identify a duplicate document as such by conspicuous notation ~~on its face~~.

Section 36-7-403. ~~(1)~~(a) ~~The bailee must~~ A bailee shall deliver the goods to a person entitled under ~~the~~ a document of title ~~who~~ if the person complies with subsections ~~(2)~~(b) and ~~(3)~~(c), unless and to the extent that the bailee establishes any of the following:

~~(a)~~(1) delivery of the goods to a person whose receipt was rightful as against the claimant;

~~(b)~~(2) damage to or delay, loss, or destruction of the goods for which the bailee is not liable;

~~(c)~~(3) previous sale or other disposition of the goods in lawful enforcement of a lien or on a warehouse~~man~~’s lawful termination of storage;

~~(d)~~(4) the exercise by a seller of ~~his~~ its right to stop delivery pursuant to ~~the provisions of the Chapter on sales (Section 36‑2‑705)~~ Section 36‑2‑705 or by a lessor of its right to stop delivery pursuant to Section 36‑2A‑526;

~~(e)~~(5) a diversion, reconsignment, or other disposition pursuant to ~~the provisions of this Chapter (Section 36‑7‑303) or tariff regulating such right~~ Section 36‑7‑303;

~~(f)~~(6) release, satisfaction or any other ~~fact affording a~~ personal defense against the claimant; or

~~(g)~~(7) any other lawful excuse.

~~(2)~~(b) A person claiming goods covered by a document of title ~~must~~ shall satisfy the bailee’s lien ~~where~~ if the bailee so requests or ~~where~~ if the bailee is prohibited by law from delivering the goods until the charges are paid.

~~(3)~~(c) Unless ~~the~~ a person claiming the goods is ~~one~~ a person against ~~whom~~ which the document of title does not confer a ~~confers no~~ right under Section 36‑7‑503 ~~(1)~~(a)~~,~~:

(1) ~~he must~~the person claiming under a document shall surrender possession or control of any outstanding negotiable document covering the goods for cancellation or ~~notation~~ indication of partial deliveries ~~any outstanding negotiable document covering the goods,~~ and;

(2) the bailee ~~must~~ shall cancel the document or conspicuously ~~note~~ indicate in the document the partial delivery ~~thereon~~ or ~~be~~ the bailee is liable to any person to ~~whom~~ which the document is duly negotiated.

~~(4) “Person entitled under the document” means holder in the case of a negotiable document, or the person to whom delivery is to be made by the terms of or pursuant to written instructions under a nonnegotiable document.~~

Section 36-7-404. A bailee ~~who~~ that in good faith ~~including observance of reasonable commercial standards~~ has received goods and delivered or otherwise disposed of ~~them~~ the goods according to the terms of ~~the~~ a document of title or pursuant to this chapter is not liable ~~therefor. This rule applies even though~~ for the goods even if:

(1) the person from ~~whom he~~ which the bailee received the goods ~~had no~~ did not have authority to procure the document or to dispose of the goods ~~and even though~~; or

(2) the person to ~~whom he~~ which the bailee delivered the goods ~~had no~~ did not have authority to receive ~~them~~ the goods.

PART 5

Warehouse Receipts and Bills of Lading: Negotiation and Transfer

Section 36-7-501. (a) The following rules apply to a negotiable tangible document of title:

(1) ~~A negotiable document of title running~~ If the document’s original terms run to the order of a named person, the document is negotiated by ~~his~~ the named person’s indorsement and delivery. After ~~his~~ the named person’s indorsement in blank or to bearer, any person ~~can~~ may negotiate ~~it~~ the document by delivery alone.

(2)~~(a)~~ ~~A negotiable document of title is also negotiated by delivery alone when by its original terms it runs to bearer~~ If the document’s original terms run to bearer, it is negotiated by delivery alone.

~~(b)~~(3) ~~When a document running~~ If the document’s original terms run to the order of a named person and it is delivered to ~~him~~ the named person, the effect is the same as if the document had been negotiated.

~~(3)~~(4) Negotiation of ~~a negotiable~~ the document ~~of title~~ after it has been indorsed to a ~~specified~~ named person requires indorsement by the ~~special indorsee~~ named person and ~~as well as~~ delivery.

~~(4)~~(5) A ~~negotiable~~ document ~~of title~~ is ‘duly negotiated’ ~~when~~ if it is negotiated in the manner stated in this section to a holder ~~who~~ that purchases it in good faith, without notice of any defense against or claim to it on the part of any person, and for value, unless it is established that the negotiation is not in the regular course of business or financing or involves ~~receiving~~ taking delivery of the document in settlement or payment of a ~~money~~ monetary obligation.

(b) The following rules apply to a negotiable electronic document of title:

(1) If the document’s original terms run to the order of a named person or bearer, the document is negotiated by delivery of the document to another person. Indorsement by the named person is not required to negotiate the document.

(2) If the document’s original terms run to the order of a named person and the named person has control of the document, the effect is the same as if the document had been negotiated.

(3) A document is ‘duly negotiated’ if it is negotiated in the manner stated in this subsection to a holder that purchases it in good faith, without notice of any defense against or claim to it on the part of any person, and for value, unless it is established that the negotiation is not in the regular course of business or financing or involves taking delivery of the document in settlement or payment of a monetary obligation.

(c)~~(5)~~ Indorsement of a nonnegotiable document of title neither makes it negotiable nor adds to the transferee’s rights.

(d)~~(6)~~ The naming in a negotiable bill of lading of a person to be notified of the arrival of the goods does not limit the negotiability of the bill ~~nor~~ or constitute notice to a purchaser ~~thereof~~ of the bill of any interest of ~~such~~ that person in the goods.

SOUTH CAROLINA REPORTER’S COMMENTS

The 2014 amendment added the requirements for negotiation and due negotiation of a negotiable electronic document of title that are codified at Section 36‑7‑501(b).

Section 36-7-502. ~~(1)~~(a) Subject to ~~the following section (~~Section 36‑7‑503~~)~~ and ~~to the provisions of Section 36‑7‑205 on fungible goods~~ Section 36-7-503, a holder to ~~whom~~ which a negotiable document of title has been duly negotiated acquires thereby:

~~(a)~~(1) title to the document;

~~(b)~~(2) title to the goods;

~~(c)~~(3) all rights accruing under the law of agency or estoppel, including rights to goods delivered to the bailee after the document was issued; and

~~(d)~~(4) the direct obligation of the issuer to hold or deliver the goods according to the terms of the document free of any defense or claim by ~~him~~ the issuer except those arising under the terms of the document or under this chapter ~~. In~~, but in the case of a delivery order, the bailee’s obligation accrues only upon the bailee’s acceptance of the delivery order and the obligation acquired by the holder is that the issuer and any indorser will procure the acceptance of the bailee.

~~(2)~~(b) Subject to ~~the following section (~~Section 36‑7‑503~~)~~, title and rights ~~so~~ acquired by due negotiation are not defeated by any stoppage of the goods represented by the document of title or by surrender of ~~such~~ the goods by the bailee, and are not impaired even ~~though the negotiation or any prior negotiation constituted a breach of duty or even~~ if:

(1) the due negotiation or any prior due negotiation constituted a breach of duty;

(2) ~~though~~ any person has been deprived of possession of ~~the~~ a negotiable tangible document or control of a negotiable electronic document by misrepresentation, fraud, accident, mistake, duress, loss, theft or conversion~~,~~; or

(3) ~~even though~~ a previous sale or other transfer of the goods or document has been made to a third person.

Section 36-7-503. ~~(1)~~(a) A document of title confers no right in goods against a person ~~who~~ that before issuance of the document had a legal interest or a perfected security interest in ~~them~~ the goods and ~~who neither~~ that did not:

~~(a)~~(1) deliver~~ed~~ or entrust~~ed~~ ~~them~~ the goods or any document of title covering ~~them~~ the goods to the bailor or ~~his~~ the bailor’s nominee with:

(A) actual or apparent authority to ship, store or sell;

(B) ~~or with~~ power to obtain delivery under ~~this chapter (~~Section 36‑7‑403~~)~~; or

(C) ~~with~~ power of disposition under ~~this act (~~Sections 36‑2‑403, 36-2A-304(2), 36-2A-305(2), 36-9-320, ~~and 36‑9‑307)~~ or 36-9-321(c), or other statute or rule of law; ~~nor~~ or

~~(b)~~(2) acquiesce~~d~~ in the procurement by the bailor or ~~his~~ the bailor’s nominee of any document ~~of title~~.

~~(2)~~(b) Title to goods based upon an unaccepted delivery order is subject to the rights of ~~anyone~~ any person to ~~whom~~ which a negotiable warehouse receipt or bill of lading covering the goods has been duly negotiated. ~~Such a~~ That title may be defeated under ~~the next section (~~Section 36‑7‑504~~)~~ to the same extent as the rights of the issuer or a transferee from the issuer.

~~(3)~~(c) Title to goods based upon a bill of lading issued to a freight forwarder is subject to the rights of ~~anyone~~ any person to ~~whom~~ which a bill issued by the freight forwarder is duly negotiated~~;~~. ~~but~~ However, delivery by the carrier in accordance with ~~part~~ Part 4 of this chapter pursuant to its own bill of lading discharges the carrier’s obligation to deliver.

Section 36-7-504. ~~(1)~~(a) A transferee of a document of title, whether negotiable or nonnegotiable, to ~~whom~~ which the document has been delivered but not duly negotiated, acquires the title and rights ~~which his~~ that its transferor had or had actual authority to convey.

~~(2)~~(b) In the case of a transfer of a nonnegotiable document of title, until but not after the bailee receives ~~notification~~ notice of the transfer, the rights of the transferee may be defeated:

~~(a)~~(1) by those creditors of the transferor ~~who~~ which could treat the ~~sale~~ transfer as void under Section 36‑2‑402 or Section 36-2A-308; ~~or~~

~~(b)~~(2) by a buyer from the transferor in ordinary course of business if the bailee has delivered the goods to the buyer or received notification of ~~his~~ the buyer’s rights; ~~or~~

(3) by a lessee from the transferor in ordinary course of business if the bailee has delivered the goods to the lessee or received notification of the lessee’s rights; or

~~(c)~~(4) as against the bailee, by good faith dealings of the bailee with the transferor.

~~(3)~~(c) A diversion or other change of shipping instructions by the consignor in a nonnegotiable bill of lading ~~which~~ that causes the bailee not to deliver to the consignee defeats the consignee’s title to the goods if ~~they~~ the goods have been delivered to a buyer in ordinary course of business or lessee in ordinary course of business and, in any event, defeats the consignee’s rights against the bailee.

~~(4)~~(d) Delivery of the goods pursuant to a nonnegotiable document may be stopped by a seller under Section 36‑2‑705 or a lessor under Section 36-2A-526, ~~and~~ subject to the requirements of due notification ~~there provided~~ in those sections. A bailee honoring the seller’s or lessor’s instructions is entitled to be indemnified by the seller or lessor against any resulting loss or expense.

Section 36-7-505. The indorsement of a tangible document of title issued by a bailee does not make the indorser liable for any default by the bailee or by previous indorsers.

Section 36-7-506. The transferee of a negotiable tangible document of title has a specifically enforceable right to have ~~his~~ its transferor supply any necessary indorsement, but the transfer becomes a negotiation only as of the time the indorsement is supplied.

Section 36-7-507. ~~Where~~ If a person negotiates or ~~transfers~~ delivers a document of title for value, otherwise than as a mere intermediary under ~~the next following section (~~Section 36‑7‑508~~)~~, then unless otherwise agreed ~~he~~ the transferor, in addition to any warranty made in selling or leasing the goods, warrants to ~~his~~ its immediate purchaser only that: ~~in addition to any warranty made in selling the goods~~

~~(a)~~(1) ~~that~~ the document is genuine; ~~and~~

~~(b)~~(2) ~~that he~~ the transferor ~~has no~~ does not have knowledge of any fact ~~which~~ that would impair ~~its~~ the document’s validity or worth; and

~~(c)~~(3) ~~that his~~ the negotiation or ~~transfer~~ delivery is rightful and fully effective with respect to the title to the document and the goods it represents.

Section 36-7-508. A collecting bank or other intermediary known to be entrusted with documents of title on behalf of another or with collection of a draft or other claim against delivery of documents warrants by ~~such~~ the delivery of the documents only its own good faith and authority~~. This rule applies~~ even ~~though~~ if the collecting bank or other intermediary has purchased or made advances against the claim or draft to be collected.

Section 36‑7‑509. ~~The question whether~~ Whether a document of title is adequate to fulfill the obligations of a contract for sale, a contract for lease, or the conditions of a letter of credit is ~~governed~~ determined by the Chapters on sales (Chapter 2), leases (Chapter 2A), and on letters of credit (Chapter 5).

PART 6

Warehouse Receipts and Bills of Lading: Miscellaneous Provisions

Section 36‑7‑601. ~~(1)~~(a) If a document ~~has been~~ of title is lost, stolen or destroyed, a court may order delivery of the goods or issuance of a substitute document and the bailee may without liability to any person comply with ~~such~~ the order. If the document was negotiable ~~the claimant must post security approved by the court to indemnify any person who may suffer loss as a result of nonsurrender of the document~~, a court may not order delivery of the goods or issuance of a substitute document without the claimant’s posting security unless it finds that any person that may suffer loss as a result of nonsurrender of possession or control of the document is adequately protected against the loss. If the document was ~~not negotiable~~ nonnegotiable, ~~such security may be required at the discretion of the court~~ the court may require security. The court may also ~~in its discretion~~ order payment of the bailee’s reasonable costs and ~~counsel~~ attorney’s fees in any action under this subsection.

~~(2)~~(b) A bailee ~~who~~ that, without a court order, delivers goods to a person claiming under a missing negotiable document of title is liable to any person injured thereby. ~~, and if~~ If the delivery is not in good faith, the bailee is ~~becomes~~ liable for conversion. Delivery in good faith is not conversion ~~if made in accordance with a filed classification or tariff or, where no classification or tariff is filed,~~ if the claimant posts security with the bailee in an amount at least double the value of the goods at the time of posting to indemnify any person injured by the delivery ~~who~~ that files a notice of claim within one year after the delivery.

Section 36‑7‑602. ~~Except where the~~ Unless a document of title was originally issued upon delivery of the goods by a person ~~who~~ that ~~had no~~ did not have power to dispose of them, ~~no lien attaches~~ a lien does not attach by virtue of any judicial process to goods in the possession of a bailee for which a negotiable document of title is outstanding unless possession or control of the document ~~be~~ is first surrendered to the bailee or ~~its~~ the document’s negotiation is enjoined. ~~, and the~~ The bailee shall not be compelled to deliver the goods pursuant to process until possession or control of the document is surrendered to the ~~him or impounded by~~ bailee or to the court. ~~One who purchases~~ A purchaser of the document for value without notice of the process or injunction takes free of the lien imposed by judicial process.

Section 36‑7‑603. If more than one person claims title to or possession of the goods, the bailee is excused from delivery until ~~he~~ the bailee has ~~had~~ a reasonable time to ascertain the validity of the adverse claims or to ~~bring~~ commence an action ~~to compel all claimants to interplead and may compel such~~ for interpleader~~,~~. The bailee may assert an interpleader either in defending an action for nondelivery of the goods, or by original action~~, whichever is appropriate~~.”

SECTION 3. Section 36‑2‑103(1) of the 1976 Code is amended to read:

“(1) In this chapter unless the context otherwise requires:

(a) ‘Buyer’ means a person who buys or contracts to buy goods.

(b) ~~‘Good faith’ in the case of a merchant means honesty in fact and the observance of reasonable commercial standards of fair dealing in the trade~~ [Reserved].

(c) ‘Receipt’ of goods means taking physical possession of them.

(d) ‘Seller’ means a person who sells or contracts to sell goods.”

SECTION 4. Section 36-2-103(3) of the 1976 Code is amended to read:

“(3) ‘Control’ as provided in Section 36-7-106 and the ~~The~~ following definitions in other Chapters of Title 36 apply to this Chapter:

‘Check.’ Section 36‑3‑104.

‘Consignee.’ Section 36‑7‑102.

‘Consignor.’ Section 36‑7‑102.

‘Consumer goods.’ Section ~~36‑9‑109~~ 36-9-102.

‘Dishonor.’ Section 36‑3‑507.

‘Draft.’ Section 36‑3‑104.”

SECTION 5. Section 36-2-104(2) of the 1976 Code is amended to read:

“(2) ‘Financing agency’ means a bank, finance company or other person who in the ordinary course of business makes advances against goods or documents of title or who by arrangement with either the seller or the buyer intervenes in ordinary course to make or collect payment due or claimed under the contract for sale, as by purchasing or paying the seller’s draft or making advances against it or by merely taking it for collection whether or not documents of title accompany or are associated with the draft. ‘Financing agency’ includes also a bank or other person who similarly intervenes between persons who are in the position of seller and buyer in respect to the goods (Section 36‑2‑707).”

SECTION 6. Section 36‑2‑202 of the 1976 Code is amended to read:

“Section 36‑2‑202. Terms with respect to which the confirmatory memoranda of the parties agree or which are otherwise set forth in a writing intended by the parties as a final expression of their agreement with respect to such terms as are included therein may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement but may be explained or supplemented:

(a) by course of performance, course of dealing, or usage of trade (Section ~~36‑1‑205~~ 36‑1‑303) ~~or by course of performance (Section 36‑2‑208)~~; and

(b) by evidence of consistent additional terms unless the court finds the writing to have been intended also as a complete and exclusive statement of the terms of the agreement.”

SECTION 7. Section 36-2-310(c) of the 1976 Code is amended to read:

“(c) if delivery is authorized and made by way of documents of title otherwise than by subsection (b) then payment is due regardless of where the goods are to be received (i) at the time and place at which the buyer is to receive delivery of the tangible documents or (ii) at the time the buyer is to receive delivery of the electronic documents and at the seller’s place of business or if none, the seller’s residence ~~regardless of where the goods are to be received~~; and”

SECTION 8. Section 36-2-323(2) of the 1976 Code is amended to read:

“(2) Where in a case within subsection (1) a tangible bill of lading has been issued in a set of parts, unless otherwise agreed if the documents are not to be sent from abroad the buyer may demand tender of the full set; otherwise only one part of the bill of lading need be tendered. Even if the agreement expressly requires a full set

(a) due tender of a single part is acceptable within the provisions of this chapter on cure of improper delivery (subsection (1) of Section 36‑2‑508); and

(b) even though the full set is demanded, if the documents are sent from abroad the person tendering an incomplete set may nevertheless require payment upon furnishing an indemnity which the buyer in good faith deems adequate.”

SECTION 9. Section 36-2-401(3)of the 1976 Code is amended to read:

“(3) Unless otherwise explicitly agreed where delivery is to be made without moving the goods,

(a) if the seller is to deliver a tangible document of title, title passes at the time when and the place where he delivers such documents and if the seller is to deliver an electronic document of title, title passes when the seller delivers the document; or

(b) if the goods are at the time of contracting already identified and no documents of title are to be delivered, title passes at the time and place of contracting.”

SECTION 10. Section 36-2-503(4) and (5) of the 1976 Code are amended to read:

“(4) Where goods are in the possession of a bailee and are to be delivered without being moved

(a) tender requires that the seller either tender a negotiable document of title covering such goods or procure acknowledgment by the bailee of the buyer’s right to possession of the goods; but

(b) tender to the buyer of a nonnegotiable document of title or of a ~~written direction to~~ record directing the bailee to deliver is sufficient tender unless the buyer seasonably objects, and except as otherwise provided in Chapter 9 receipt by the bailee of notification of the buyer’s rights fixes those rights as against the bailee and all third persons; but risk of loss of the goods and of any failure by the bailee to honor the nonnegotiable document of title or to obey the direction remains on the seller until the buyer has had a reasonable time to present the document or direction, and a refusal by the bailee to honor the document or to obey the direction defeats the tender.

(5) Where the contract requires the seller to deliver documents

(a) he must tender all such documents in correct form, except as provided in this chapter with respect to bills of lading in a set (subsection (2) of Section 36‑2‑323); and

(b) tender through customary banking channels is sufficient and dishonor of a draft accompanying or associated with the documents constitutes nonacceptance or rejection.”

SECTION 11. Section 36-2-505(1)(b) and (2) of the 1976 Code are amended to read:

“(b) a nonnegotiable bill of lading to himself or his nominee reserves possession of the goods as security but except in a case of conditional delivery (subsection (2) of Section 36‑2‑507) a nonnegotiable bill of lading naming the buyer as consignee reserves no security interest even though the seller retains possession or control of the bill of lading.

(2) When shipment by the seller with reservation of a security interest is in violation of the contract for sale it constitutes an improper contract for transportation within the preceding section (Section 36‑2‑504) but impairs neither the rights given to the buyer by shipment and identification of the goods to the contract nor the seller’s powers as a holder of a negotiable document of title.”

SECTION 12. Section 36-2-506(2) of the 1976 Code is amended to read:

“(2) The right to reimbursement of a financing agency which has in good faith honored or purchased the draft under commitment to or authority from the buyer is not impaired by subsequent discovery of defects with reference to any relevant document which was apparently regular ~~on its face~~.”

SECTION 13. Section 36-2-509(2) of the 1976 Code is amended to read:

“(2) Where the goods are held by a bailee to be delivered without being moved, the risk of loss passes to the buyer

(a) on his receipt of possession or control of a negotiable document of title covering the goods; or

(b) on acknowledgment by the bailee of the buyer’s right to possession of the goods; or

(c) after his receipt of possession or control of a nonnegotiable document of title or other ~~written~~ direction to deliver in a record, as provided in subsection (4)(b) of Section 36‑2‑503.”

SECTION 14. Section 36-2-605(2) of the 1976 Code is amended to read:

“(2) Payment against documents made without reservation of rights precludes recovery of the payment for defects apparent ~~on the face of~~ in the documents.”

SECTION 15. Section 36-2-705(3)(c) of the 1976 Code is amended to read:

“(c) If a negotiable document of title has been issued for goods the bailee is not obliged to obey a notification to stop until surrender of possession or control of the document.”

SECTION 16. Section 36-2A-103(1)(a) and (o) of the 1976 Code are amended to read:

“(a) ‘Buyer in ordinary course of business’ means a person who in good faith and without knowledge that the sale to him is in violation of the ownership rights or security interest or leasehold interest of a third party in the goods, buys in ordinary course from a person in the business of selling goods of that kind but does not include a pawnbroker. ‘Buying’ may be for cash or by exchange of other property or on secured or unsecured credit and includes ~~receiving~~ acquiring goods or documents of title under a pre‑existing contract for sale but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(o) ‘Lessee in ordinary course of business’ means a person who in good faith and without knowledge that the lease to ~~him~~ the person is in violation of the ownership rights or security interest or leasehold interest of a third party in the goods leases in ordinary course from a person in the business of selling or leasing goods of that kind but does not include a pawnbroker. ‘Leasing’ may be for cash or by exchange of other property or on secured or unsecured credit and includes ~~receiving~~ acquiring goods or documents of title under a pre‑existing lease contract but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.”

SECTION 17. Section 36‑2A‑103(3) of the 1976 Code is amended to read:

“(3) The following definitions in other chapters apply to this chapter:

‘Account’. ~~Section 36‑9‑106~~ Section 36-9-102 .

‘Between merchants’. Section 36‑2‑104(3).

‘Buyer’. Section 36‑2‑103(1)(a).

‘Chattel paper’. ~~Section 36‑9‑105(1)(b)~~ Section 36-9-102.

‘Consumer goods’. ~~Section 36‑9‑109(1)~~ Section 36-9-102.

‘Document’. ~~Section 36‑9‑105(1)(f)~~ Section 36-9-102.

‘Entrusting’. Section 36‑2‑403(3).

‘General intangibles’. Section 36‑9‑102(a)(42).

~~‘Good faith’. Section 36‑2‑103(1)(b).~~

‘Instrument’. ~~Section 36‑9‑105(1)(i)~~ Section 36-9-102.

‘Merchant’. Section 36‑2‑104(1).

‘Mortgage’. ~~Section 36‑9‑105(1)(j)~~ Section 36-9-102.

‘Pursuant to commitment’. ~~Section 36‑9‑105(1)(k)~~ Section 36-9-102.

‘Receipt’. Section 36‑2‑103(1)(c).

‘Sale’. Section 36‑2‑106(1).

‘Sale on approval’. Section 36‑2‑326.

‘Sale or return’. Section 36‑2‑326.

‘Seller’. Section 36‑2‑103(1)(d).”

SECTION 18. Section 36‑2A‑501(4) of the 1976 Code is amended to read:

“(4) Except as otherwise provided in Section ~~36‑1‑106(1)~~ 36‑1‑305(a) or this chapter or the lease agreement, the rights and remedies referred to in subsections (2) and (3) are cumulative.”

SECTION 19. Section 36-2A-514(2) of the 1976 Code is amended to read:

“(2) A lessee’s failure to reserve rights when paying rent or other consideration against documents precludes recovery of the payment for defects apparent ~~on the face of~~ in the documents.”

SECTION 20. Section 36‑2A‑518(2) of the 1976 Code is amended to read:

“(2) Except as otherwise provided with respect to damages liquidated in the lease agreement (Section 36‑2A‑504) or otherwise determined pursuant to agreement of the parties (Sections ~~36‑1‑102(3)~~ 36‑1‑302 and 36‑2A‑503), if a lessee’s cover is by a lease agreement substantially similar to the original lease agreement and the new lease agreement is made in good faith and in a commercially reasonable manner, the lessee may recover from the lessor as damages (i) the present value, as of the date of the commencement of the term of the new lease agreement, of the rent under the new lease agreement applicable to that period of the new lease term which is comparable to the then remaining term of the original lease agreement minus the present value as of the same date of the total rent for the then remaining lease term of the original lease agreement, and (ii) any incidental or consequential damages, less expenses saved in consequence of the lessor’s default.”

SECTION 21. Section 36‑2A‑519(1) of the 1976 Code is amended to read:

“(1) Except as otherwise provided with respect to damages liquidated in the lease agreement (Section 36‑2A‑504) or otherwise determined pursuant to agreement of the parties (Sections ~~36‑1‑102(3)~~ 36‑1‑302 and 36‑2A‑503), if a lessee elects not to cover or a lessee elects to cover and the cover is by lease agreement that for any reason does not qualify for treatment under Section 36‑2A‑518(2), or is by purchase or otherwise, the measure of damages for nondelivery or repudiation by the lessor or for rejection or revocation of acceptance by the lessee is the present value, as of the date of the default, of the then market rent minus the present value as of the same date of the original rent, computed for the remaining lease term of the original lease agreement, together with incidental and consequential damages, less expenses saved in consequence of the lessor’s default.”

SECTION 22. Section 36‑2A‑527(2) of the 1976 Code is amended to read:

“(2) Except as otherwise provided with respect to damages liquidated in the lease agreement (Section 36‑2A‑504) or otherwise determined pursuant to agreement of the parties (Sections ~~36‑1‑102(3)~~ 36‑1‑302 and 36‑2A‑503), if the disposition is by lease agreement substantially similar to the original lease agreement and the new lease agreement is made in good faith and in a commercially reasonable manner, the lessor may recover from the lessee as damages (i) accrued and unpaid rent as of the date of the commencement of the term of the new lease agreement, (ii) the present value, as of the same date, of the total rent for the then remaining lease term of the original lease agreement minus the present value, as of the same date, of the rent under the new lease agreement applicable to that period of the new lease term which is comparable to the then remaining term of the original lease agreement, and (iii) any incidental damages allowed under Section 36‑2A‑530, less expenses saved in consequence of the lessee’s default.”

SECTION 23. Section 36‑2A‑528(1) of the 1976 Code is amended to read:

“(1) Except as otherwise provided with respect to damages liquidated in the lease agreement (Section 36‑2A‑504) or otherwise determined pursuant to agreement of the parties (Sections ~~36‑1‑102(3)~~ Section 36‑1‑302 and 36‑2A‑503), if a lessor elects to retain the goods or a lessor elects to dispose of the goods and the disposition is by lease agreement that for any reason does not qualify for treatment under Section 36‑2A‑527(2), or is by sale or otherwise, the lessor may recover from the lessee as damages for a default of the type described in Section 36‑2A‑523(1) or 36‑2A‑523(3)(a), or, if agreed, for other default of the lessee, (i) accrued and unpaid rent as of the date of default if the lessee has never taken possession of the goods, or, if the lessee has taken possession of the goods, as of the date the lessor repossesses the goods or an earlier date on which the lessee makes a tender of the goods to the lessor, (ii) the present value as of the date determined under clause (i) of the total rent for the then remaining lease term of the original lease agreement minus the present value as of the same date of the market rent at the place where the goods are located computed for the same lease term, and (iii) any incidental damages allowed under Section 36‑2A‑530, less expenses saved in consequence of the lessee’s default.”

SECTION 24. Section 36‑3‑103(a)(6) and (a)(13) of the 1976 Code is amended to read:

“(6) ~~‘Good faith’ means honesty in fact and the observance of reasonable commercial standards of fair dealing~~ ‘[Reserved]’.

“(13) ‘Prove’ with respect to a fact means to meet the burden of establishing the fact (Section 36‑1‑201(b)(8)).”

SECTION 25. Section 36‑4‑104(c) of the 1976 Code, as amended by Act 204 of 2008, is further amended to read:

“(c) ‘Control’ as provided in Section 36-7-106 and the ~~The~~ following definitions in other chapters apply to this chapter:

‘Acceptance’ Section 36‑3‑409.

‘Alteration’ Section 36‑3‑407.

‘Cashier’s check’ Section 36‑3‑104.

‘Certificate of deposit’ Section 36‑3‑104.

‘Certified check’ Section 36‑3‑409.

‘Check’ Section 36‑3‑104.

~~‘Good Faith’ Section 36-3-103~~.

‘Holder in due course’ Section 36‑3‑302.

‘Instrument’ Section 36‑3‑104.

‘Notice of dishonor’ Section 36‑3‑503.

‘Order’ Section 36‑3‑103.

‘Ordinary care’ Section 36‑3‑103.

‘Person entitled to enforce’ Section 36‑3‑301.

‘Presentment’ Section 36‑3‑501.

‘Promise’ Section 36‑3‑103.

‘Prove’ Section 36‑3‑103.

‘Record’ Section 36‑3‑103.

‘Remotely‑Created consumer item’ Section 36‑3‑103.

‘Teller’s check’ Section 36‑3‑104.

‘Unauthorized signature’ Section 36‑3‑403.”

SECTION 26. Section 36-4-210(c) of the 1976 Code is amended to read:

“(c) Receipt by a collecting bank of a final settlement for an item is a realization on its security interest in the item, accompanying documents, and proceeds. So long as the bank does not receive final settlement for the item or give up possession of the item or possession or control of the accompanying documents for purposes other than collection, the security interest continues to that extent and is subject to Chapter 9, but:

(1) no security agreement is necessary to make the security interest enforceable (Section 36‑9‑203(b)(3)(A));

(2) no filing is required to perfect the security interest; and

(3) the security interest has priority over conflicting perfected security interests in the item, accompanying documents, or proceeds.”

SECTION 27. Section 36‑4A‑105(a)(6) and (7) of the 1976 Code are amended to read:

“(6) ~~‘Good faith’ means honesty in fact and the observance of reasonable commercial standards of fair dealing~~ [Reserved].

(7) ‘Prove’ with respect to a fact means to meet the burden of establishing the fact (Section 36‑1‑201(b)(8)).”

SECTION 28. Section 36‑4A‑106(a) of the 1976 Code is amended to read:

“(a) The time of receipt of a payment order or communication canceling or amending a payment order is determined by the rules applicable to receipt of a notice stated in Section ~~36‑1‑201(27)~~ 36‑1‑202. A receiving bank may fix a cut‑off time or times on a funds‑transfer business day for the receipt and processing of payment orders and communications canceling or amending payment orders. Different cut‑off times may apply to payment orders, cancellations, or amendments, or to different categories of payment orders, cancellations, or amendments. A cut‑off time may apply to senders generally or different cut‑off times may apply to different senders or categories of payment orders. If a payment order or communication canceling or amending a payment order is received after the close of a funds‑transfer business day or after the appropriate cut‑off time on a funds‑transfer business day, the receiving bank may treat the payment order or communication as received at the opening of the next funds‑transfer business day.”

SECTION 29. Section 36‑4A‑204(b) of the 1976 Code is amended to read:

“(b) Reasonable time under subsection (a) may be fixed by agreement as stated in Section ~~36‑1‑204(1)~~ 36‑1‑302(b), but the obligation of a receiving bank to refund payment as stated in subsection (a) may not otherwise be varied by agreement.”

SECTION 30. Section 36‑5‑103(c) of the 1976 Code is amended to read:

“(c) With the exception of this subsection, subsections (a) and (d), Sections 36‑5‑102(a)(9) and (10), 36‑5‑106(d), and 36‑5‑114(d), and except to the extent prohibited in Sections ~~36‑1‑102(3)~~ 36‑1‑302 and 36‑5‑117(d), the effect of this chapter may be varied by agreement or by a provision stated or incorporated by reference in an undertaking. A term in an agreement or undertaking generally excusing liability or generally limiting remedies for failure to perform obligations is not sufficient to vary obligations prescribed by this chapter.”

SECTION 31. Section 36‑8‑102(a)(10) of the 1976 Code is amended to read:

“(10) ~~‘Good faith,’ for purposes of the obligation of good faith in the performance or enforcement of contracts or duties within this chapter, means honesty in fact and the observance of reasonable commercial standards of fair dealing~~ [Reserved].”

SECTION 32. Section 36-8-103 of the 1976 Code is amended by adding subsection (g) at the end to read:

“(g) A document of title is not a financial asset unless Section 36-8-102(a)(9)(iii) applies.”

SECTION 33. Section 36‑9‑102(a)(30) and (a)(43) of the 1976 Code are amended to read:

“(30) ‘Document’ means a document of title or a receipt of the type described in Section ~~36‑7‑201(2)~~ 36-7-201(b).

(43) ~~‘Good faith’ means honesty in fact and the observance of reasonable commercial standards of fair dealing~~ [Reserved].”

SECTION 34. Section 36-9-102(b) of the 1976 Code is amended to read:

“(b) ‘Control’ as provided in Section 36-7-106 and the ~~The~~ following definitions in other chapters apply to this chapter:

‘Applicant’ Section 36-5-102.

‘Beneficiary’ Section 36‑5‑102.

‘Broker’ Section 36‑8‑102.

‘Certificated security’ Section 36‑8‑102.

‘Check’ Section 36‑3‑104.

‘Clearing corporation’ Section 36‑8‑102.

‘Contract for sale’ Section 36‑2‑106.

‘Customer’ Section 36‑4‑104.

‘Entitlement holder’ Section 36‑8‑102.

‘Financial asset’ Section 36‑8‑102.

‘Holder in due course’ Section 36‑3‑302.

‘Issuer’ (with respect to a letter of credit or letter‑of‑credit right) Section ~~36‑5‑103~~ 36-5-102.

‘Issuer’ (with respect to a security) Section 36‑8‑201.

‘Issuer’ (with respect to documents of title) Section 36-7-102.

‘Lease’ Section 36‑2A‑103.

‘Lease agreement’ Section 36‑2A‑103.

‘Lease contract’ Section 36‑2A‑103.

‘Leasehold interest’ Section 36‑2A‑103.

‘Lessee’ Section 36‑2A‑103.

‘Lessee in ordinary course of business’ Section 36‑2A‑103.

‘Lessor’ Section 36‑2A‑103.

‘Lessor’s residual interest’ Section 36‑2A‑103.

‘Letter of credit’ Section ~~36‑5‑103~~ 36-5-102.

‘Merchant’ Section 36‑2‑104.

‘Negotiable instrument’ Section 36‑3‑104.

‘Nominated person’ Section 36-5-102.

‘Note’ Section 36‑3‑104.

‘Proceeds of a letter of credit’ Section 36-5-114.

‘Sale’ Section 36‑2‑106.

‘Securities account’ Section 36‑8‑501.

‘Securities intermediary’ Section 36‑8‑102.

‘Security’ Section 36‑8‑102.

‘Security certificate’ Section 36‑8‑102.

‘Security entitlement’ Section 36‑8‑102.

‘Uncertificated security’ Section 36‑8‑102.”

SECTION 35. Section 36-9-203(b)(3)(D) of the 1976 Code is amended to read:

“(D) the collateral is deposit accounts, electronic chattel paper, investment property, ~~or~~ letter‑of‑credit rights, or electronic documents and the secured party has control under Section 36-7-106, 36‑9‑104, 36‑9‑105, 36‑9‑106, or 36‑9‑107 pursuant to the debtor’s security agreement.”

SECTION 36. Section 36-9-207(c) of the 1976 Code is amended to read:

“(c) Except as otherwise provided in subsection (d), a secured party having possession of collateral or control of collateral under Section 36-7-106, 36‑9‑104, 36‑9‑105 , 36‑9‑106, or 36‑9‑107:

(1) may hold as additional security any proceeds, except money or funds, received from the collateral;

(2) shall apply money or funds received from the collateral to reduce the secured obligation, unless remitted to the debtor; and

(3) may create a security interest in the collateral.”

SECTION 37. Section 36-9-208(b)(4) and (5) of the 1976 Code are amended to read:

“(4) a secured party having control of investment property under Section 36‑8‑106(d)(2) or 36‑9‑106(b) shall send to the securities intermediary or commodity intermediary with which the security entitlement or commodity contract is maintained an authenticated record that releases the securities intermediary or commodity intermediary from any further obligation to comply with entitlement orders or directions originated by the secured party; ~~and~~

(5) a secured party having control of a letter-of-credit right under Section 36‑9‑107 shall send to each person having an unfulfilled obligation to pay or deliver proceeds of the letter of credit to the secured party an authenticated release from any further obligation to pay or deliver proceeds of the letter of credit to the secured party; and

(6) a secured party having control of an electronic document shall:

(A) give control of the electronic document to the debtor or its designated custodian;

(B) if the debtor designates a custodian that is the designated custodian with which the authoritative copy of the electronic document is maintained for the secured party, communicate to the custodian an authenticated record releasing the designated custodian from any further obligation to comply with instructions originated by the secured party and instructing the custodian to comply with instructions originated by the debtor; and

(C) take appropriate action to enable the debtor or its designated custodian to make copies of or revisions to the authoritative copy which add or change an identified assignee of the authoritative copy without the consent of the secured party.”

SECTION 38. Section 36-9-301(3) of the 1976 Code is amended to read:

“(3) Except as otherwise provided in item (4), while tangible negotiable documents, goods, instruments, money, or tangible chattel paper is located in a jurisdiction, the local law of that jurisdiction governs:

(A) perfection of a security interest in the goods by filing a fixture filing;

(B) perfection of a security interest in timber to be cut; and

(C) the effect of perfection or nonperfection and the priority of a nonpossessory security interest in the collateral.”

SECTION 39. Section 36-9-310(b) of the 1976 Code is amended to read:

“(b) The filing of a financing statement is not necessary to perfect a security interest:

(1) that is perfected under Section 36‑9‑308(d), (e), (f), or (g);

(2) that is perfected under Section 36‑9‑309 when it attaches;

(3) in property subject to a statute, regulation, or treaty described in Section 36‑9‑311(a);

(4) in goods in possession of a bailee which is perfected under Section 36‑9‑312(d)(1) or (2);

(5) in certificated securities, documents, goods, or instruments which is perfected without filing, control, or possession under Section 36‑9‑312(e), (f), or (g);

(6) in collateral in the secured party’s possession under Section 36‑9‑313;

(7) in a certificated security which is perfected by delivery of the security certificate to the secured party under Section 36‑9‑313;

(8) in deposit accounts, electronic chattel paper, electronic documents, investment property, or letter-of-credit rights which is perfected by control under Section 36‑9‑314;

(9) in proceeds which is perfected under Section 36‑9‑315; or

(10) that is perfected under Section 36‑9‑316.”

SECTION 40. Section 36-9-312(e) of the 1976 Code is amended to read:

“(e) A security interest in certificated securities, negotiable documents, or instruments is perfected without filing or the taking of possession or control for a period of twenty days from the time it attaches to the extent that it arises for new value given under an authenticated security agreement.”

SECTION 41. Section 36-9-313(a) of the 1976 Code is amended to read:

“(a) Except as otherwise provided in subsection (b), a secured party may perfect a security interest in tangible negotiable documents, goods, instruments, money, or tangible chattel paper by taking possession of the collateral. A secured party may perfect a security interest in certificated securities by taking delivery of the certificated securities under Section 36‑8‑301.”

SECTION 42. Section 36-9-314(a) and (b) of the 1976 Code are amended to read:

“(a) A security interest in investment property, deposit accounts, letter-of-credit rights, ~~or~~ electronic chattel paper, or electronic documents may be perfected by control of the collateral under Section 36-7-106, 36‑9‑104, 36‑9‑105, 36‑9‑106, or 36‑9‑107.

(b) A security interest in deposit accounts, electronic chattel paper, ~~or~~ letter-of-credit rights, or electronic documents is perfected by control under Section 36-7-106, 36‑9‑104, 36‑9‑105, or 36‑9‑107 when the secured party obtains control and remains perfected by control only while the secured party retains control.”

SECTION 43. Section 36-9-317(b), (c), and (d) of the 1976 Code are amended to read:

“(b) Except as otherwise provided in subsection (e), a buyer, other than a secured party, of tangible chattel paper,tangible documents, goods, instruments, or a certificated security takes free of a security interest or agricultural lien if the buyer gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

(c) Except as otherwise provided in subsection (e), a lessee of goods takes free of a security interest or agricultural lien if the lessee gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

(d) A licensee of a general intangible or a buyer, other than a secured party, of ~~collateral other than tangible chattel paper, tangible documents, goods, instruments, or~~ accounts, electronic chattel paper, electronic documents, general intangibles, or investment property other than a certificated security takes free of a security interest if the licensee or buyer gives value without knowledge of the security interest and before it is perfected.”

SECTION 44. Section 36-9-338(2) of the 1976 Code is amended to read:

“(2) a purchaser, other than a secured party, of the collateral takes free of the security interest or agricultural lien to the extent that, in reasonable reliance upon the incorrect information, the purchaser gives value and, in the case of tangible chattel paper, tangible documents, goods, instruments, or a security certificate, receives delivery of the collateral.”

SECTION 45. Section 36-9-601(b) of the 1976 Code is amended to read:

“(b) A secured party in possession of collateral or control of collateral under Section 36-7-106, 36‑9‑104, 36‑9‑105, 36‑9‑106, or 36‑9‑107 has the rights and duties provided in Section 36‑9‑207.”

SECTION 46. Sections 36‑2‑208 and 36‑2A‑207 of the 1976 Code are repealed.

SECTION 47. 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 in that each provision relates directly to or in conjunction with other sections within the subject of the Uniform Commercial Code, as stated in the title. 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 this act.

SECTION 48. After enactment of the provisions of this act, the Code Commissioner is instructed to insert the Official Comments, as amended, available from the Uniform Law Commission at http://uniformlaws.org., into the annotated versions of the provisions of this act, as contained in the South Carolina Code of Laws, after the appropriate provision and before the S.C. Reporter’s Comments, to the extent that S.C. Reporter’s Comments follow a provision. The Official Comments, prepared by the Uniform Law Commission with the intent of aiding the user in understanding the provisions to the Uniform Commercial Code, are not considered part of this act and do not indicate legislative intent.

SECTION 49. The provisions of this act are severable. If any section, subsection, paragraph, subparagraph, item, subitem, 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 the act, the General Assembly hereby declaring that it would have passed each and every section, subsection, paragraph, subparagraph, item, subitem, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, items, subitems, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

SECTION 50. The provisions of this act apply prospectively. To the extent that issues arise based upon rights or obligations that arise prior to the effective date of this act, prior law applies to resolve those issues. Transactions, documents of title, or bailment validly entered into before the effective date of this act and the rights, duties, and interests arising from them remain valid thereafter and may be terminated, completed, consummated, or enforced as required or permitted by any statute or other law amended or repealed by this act, as though the repeal or amendment had not occurred.

SECTION 51. This Act becomes effective on October 1, 2014. It applies to transactions entered into and events occurring after that date./

Renumber sections to conform.

Amend title to conform.

Senator HAYES explained the committee amendment.

The committee amendment was adopted.

The question then was second reading of the Bill.

The "ayes" and "nays" were demanded and taken, resulting as follows:

**Ayes 39; Nays 4**

**AYES**

Alexander Allen Bennett

Campbell Campsen Cleary

Coleman Courson Cromer

Davis Fair Gregory

Grooms Hayes Hembree

Hutto Jackson Johnson

Kimpson Leatherman Lourie

Malloy *Martin, Larry* Massey

McElveen McGill Nicholson

O'Dell Peeler Rankin

Reese Setzler Shealy

Sheheen Thurmond Turner

Verdin Williams Young

**Total--39**

**NAYS**

Bright Bryant Corbin

*Martin, Shane*

**Total--4**

There being no further amendments, the Bill was read the second time, passed and ordered to a third reading.

**COMMITTEE AMENDMENT ADOPTED**

**READ THE SECOND TIME**

S. 1026 -- Senator Alexander: A BILL TO AMEND SECTION 29‑5‑440, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO SUITS ON CONTRACTOR PAYMENT BONDS, SO AS TO PROVIDE THAT CERTAIN WRITTEN NOTICE REQUIRED OF A REMOTE CLAIMANT MUST BE SENT BY CERTIFIED OR REGISTERED MAIL, AND MUST GENERALLY CONFORM WITH STATUTORY LIMITS ON THE AGGREGATE AMOUNT OF LIENS FILED BY A SUB‑SUBCONTRACTOR OR SUPPLIER; TO PROVIDE ANY PAYMENT BOND SURETY FOR THE BONDED CONTRACTOR SHALL HAVE THE SAME RIGHTS AND DEFENSES OF THE BONDED CONTRACTOR; TO MAKE THE LANGUAGE APPLICABLE TO ANY PAYMENT BOND WHETHER PRIVATE, COMMON LAW, PUBLIC, OR STATUTORY IN NATURE, WHEN THE BONDS ARE NOT OTHERWISE REQUIRED OR GOVERNED BY STATUTE; AND TO PROVIDE NECESSARY DEFINITIONS.

The Senate proceeded to a consideration of the Bill, the question being the adoption of the amendment proposed by the Committee on Banking and Insurance.

The Committee on Banking and Insurance proposed the following amendment (AGM\1026C001.AGM.AB14), which was adopted:

Amend the bill, as and if amended, deleting all after the enacting words and inserting:

/ SECTION 1. Section 29‑5‑440 of the 1976 Code is amended to read:

“Section 29‑5‑440. Every person who has furnished labor, material, or rental equipment to a bonded contractor or its subcontractors in the prosecution of work provided for in any contract for construction, and who has not been paid in full therefor before the expiration of a period of ninety days after the day on which the last of the labor was done or performed by him or material or rental equipment was furnished or supplied by him for which such claim is made, shall have the right to sue on the payment bond for the amount, or the balance thereof, unpaid at the time of the institution of such suit and to prosecute such action to final execution and judgment for the sum or sums justly due him.

A remote claimant shall have a right of action on the payment bond only upon giving written notice by certified or registered mail to the bonded contractor within ninety days from the date on which such person did or performed the last of the labor or furnished or supplied the last of the material or rental equipment upon which such claim is made. However, in no event shall the aggregate amount of any claim against such payment bond by a remote claimant exceed the amount due by the bonded contractor to the person to whom the remote claimant has supplied labor, materials, rental equipment, or services, unless the remote claimant has provided notice of furnishing labor, materials, or rental equipment to the bonded contractor. Such written notice to the bonded contractor ~~shall be personally served or sent by fax or sent by electronic mail or sent by registered or certified mail, postage prepaid,~~ must generally conform to the requirements of Section 29‑5‑20(B) and sent by certified or registered mail to the bonded contractor at any place the bonded contractor maintains a permanent office for the conduct of its business, or at the current address as shown on the records of the Department of Labor, Licensing and Regulation. After receiving the notice of furnishing labor, materials, or rental equipment, no payment by the bonded contractor shall lessen the amount recoverable by the remote claimant. However, in no event shall the aggregate amount of claims on the payment bond exceed the penal sum of the bond.

No suit under this section shall be commenced after the expiration of one year after the last date of furnishing or providing labor, services, materials, or rental equipment.

For purposes of this section, ‘bonded contractor’ means a contractor or subcontractor furnishing a payment bond, and ‘remote claimant’ means a person having a direct contractual relationship with a subcontractor or supplier of a bonded contractor, but no contractual relationship expressed or implied with the bonded contractor. Any payment bond surety for the bonded contractor must have the same rights and defenses of the bonded contractor as provided in this section.

This section shall apply to any payment bond, whether statutory, public, common law, or private in nature, that is issued in connection with a construction project or other improvements to real property within South Carolina when such payment bonds are not otherwise required or governed by any other applicable section of the South Carolina Code of Laws.

For the purposes of this section:

(1) ‘Statutory bonds’ or ‘public bonds’ means bonds that are either:

(a) provided because required by statute and in accordance with the minimum guidelines set forth in this section; or

(b) contain either express or implied reference to the provisions of this section.

(2) ‘Common law bonds’ or ‘private bonds’ means bonds that are either:

(a) not required by statute, such as a bond voluntarily provided to meet a contractual agreement between parties; or

(b) required by statute but that specifically deviates from the statutory requirements to provide broader protection.”

SECTION 2. Section 11‑1‑120 of the 1976 Code is amended to read:

“Section 11‑1‑120. When the State or a county, city, public service district, or other political subdivision thereof, or other public entity contracts for construction and requires the person or entity performing the work to furnish a payment bond not governed by Section 11‑35‑3030(2)(c) or Section 57‑5‑1660(b), for the protection of persons who furnish labor, material, or rental equipment to the contractor or its subcontractors for the work specified in the contract, the following provisions shall apply.

Every person who has furnished labor, material, or rental equipment to a bonded contractor or its subcontractors in the prosecution of the work provided for in the contract for construction, and who has not been paid in full therefor before the expiration of a period of ninety days after the day on which the last of the labor was done or performed by him or material or rental equipment was furnished or supplied by him for which such claim is made, shall have the right to sue on such bond for the amount, or the balance thereof, unpaid at the time of the institution of such suit and to prosecute such action to final execution and judgment for the sum or sums justly due him.

A remote claimant shall have a right of action on the payment bond only upon giving written notice by certified or registered mail to the bonded contractor within ninety days from the date on which such person did or performed the last of the labor or furnished or supplied the last of the material or rental equipment upon which such claim is made. However, in no event shall the aggregate amount of any claim against such payment bond by a remote claimant exceed the amount due by the bonded contractor to the person to whom the remote claimant has supplied labor, materials, rental equipment, or services, unless the remote claimant has provided notice of furnishing labor, materials, or rental equipment to the bonded contractor. Such written notice to the bonded contractor ~~shall be personally served or sent by fax or sent by electronic mail or sent by registered or certified mail, postage prepaid,~~ must generally conform to the requirements of Section 29‑5‑20(B) and sent by certified mail or registered mail to the bonded contractor at any place the bonded contractor maintains a permanent office for the conduct of its business, or at the current address as shown on the records of the Department of Labor, Licensing and Regulation. After receiving the notice of furnishing labor, materials, or rental equipment, no payment by the bonded contractor shall lessen the amount recoverable by the remote claimant. However, in no event shall the aggregate amount of claims on the payment bond exceed the penal sum of the bond.

No suit under this section shall be commenced after the expiration of one year after the last date of providing or furnishing labor, materials, rental equipment, or services.

For purposes of this section, "bonded contractor" means a contractor or subcontractor furnishing a payment bond, and ‘remote claimant’ means a person having a direct contractual relationship with a subcontractor or supplier of a bonded contractor, but no contractual relationship expressed or implied with the bonded contractor. Any payment bond surety for the bonded contractor must have the same rights and defenses of the bonded contractor as provided in this section.

If the State, or county, city, public service district, or other political subdivision of the State, or other public entity contracts for construction and requires the contractor to furnish a payment bond pursuant to this section, the State, political subdivision of this State, or other public entity of this State may not exact that the payment bond be furnished by a particular surety company or through a particular agent or broker.”

SECTION 3. Section 11‑35‑3030(2)(c) of the 1976 Code is amended to read:

“(c) Suits on Payment Bonds‑Right to Institute. A person who has furnished labor, material, or rental equipment to a bonded contractor or his subcontractors for the work specified in the contract, and who has not been paid in full for it before the expiration of a period of ninety days after the day on which the last of the labor was done or performed by the person or material or rental equipment was furnished or supplied by the person for which the claim is made, has the right to sue on the payment bond for the amount, or the balance of it, unpaid at the time of institution of the suit and to prosecute the action for the sum or sums justly due the person. A remote claimant has a right of action on the payment bond only upon giving written notice to the contractor within ninety days from the date on which the person did or performed the last of the labor or furnished or supplied the last of the material or rental equipment upon which the claim is made, stating with substantial accuracy the amount claimed as unpaid and the name of the party to whom the material or rental equipment was furnished or supplied or for whom the labor was done or performed. The written notice to the bonded contractor must be served personally or served by mailing the notice by registered or certified mail, postage prepaid, in an envelope addressed to the bonded contractor at any place the bonded contractor maintains a permanent office for the conduct of its business, or at the current address as shown on the records of the Department of Labor, Licensing and Regulation. The aggregate amount of a claim against the payment bond by a remote claimant may not exceed the amount due by the bonded contractor to the person to whom the remote claimant has supplied labor, materials, rental equipment, or services, unless the remote claimant has provided notice of furnishing labor, materials, or rental equipment to the bonded contractor. The written notice to the bonded contractor must ~~be served personally or sent by fax or by electronic mail or by registered or certified mail, postage prepaid,~~ generally conform to the requirements of Section 29‑5‑20(B) and sent by certified or registered mail to the bonded contractor at any place the bonded contractor maintains a permanent office for the conduct of its business, or at the current address as shown on the records of the Department of Labor, Licensing and Regulation. After receiving the notice of furnishing labor, materials, or rental equipment, payment by the bonded contractor may not lessen the amount recoverable by the remote claimant. The aggregate amount of claims on the payment bond may not exceed the penal sum of the bond. A suit under this section must not be commenced after the expiration of one year after the last date of furnishing or providing labor, services, materials, or rental equipment.

A suit under this section must not be commenced after the expiration of one year after the last date of furnishing or providing labor, services, materials, or rental equipment.

For purposes of this section, ‘bonded contractor’ means the contractor or subcontractor furnishing the payment bond, and ‘remote claimant’ means a person having a direct contractual relationship with a subcontractor or supplier of a bonded contractor, but no expressed or implied contractual relationship with the bonded contractor. Any payment bond surety for the bonded contractor must have the same rights and defenses of the bonded contractor as provided in this section.”

SECTION 4. Section 57‑5‑1660(b) of the 1976 Code is amended to read:

“(b) Every person who has furnished labor, material, or rental equipment in the prosecution of the work provided for in such contract, in respect of which such a bond has been furnished under this section and who has not been paid in full therefor before the expiration of a period of ninety days after the day on which the last of the labor was done or performed by him or material or rental equipment was furnished or supplied by him for which such claim is made, shall have the right to sue on such bond for the amount, or the balance thereof, unpaid at the time of the institution of such suit and to prosecute such action to final execution and judgment for the sum or sums justly due him. A remote claimant shall have a right of action upon the bond only upon giving written notice by certified or registered mail to the contractor within ninety days from the date on which such person did or performed the last of the labor or furnished or supplied the last of the material or rental equipment for which claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom material or rental equipment was furnished or supplied or for whom labor was done or performed. However, in no event shall the aggregate amount of any claim against such payment bond by a remote claimant exceed the amount due by the bonded contractor to the person to whom the remote claimant has supplied labor, materials, rental equipment, or services, unless the remote claimant has provided notice of furnishing labor, materials, or rental equipment to the bonded contractor. Such written notice to the bonded contractor ~~shall be personally served or sent by fax or sent by electronic mail or sent by registered or certified mail, postage prepaid,~~ must generally conform to the requirements of Section 29‑5‑70(B) and sent by certified or registered mail to the bonded contractor at any place the bonded contractor maintains a permanent office for the conduct of his business, or at the current address as shown on the records of the Department of Labor, Licensing and Regulation. After receiving the notice of furnishing labor, materials, or rental equipment, no payment by the bonded contractor shall lessen the amount recoverable by the remote claimant. However, in no event shall the aggregate amount of claims on the payment bond exceed the penal sum of the bond.

For purposes of this section, ‘bonded contractor’ means the contractor or subcontractor furnishing the payment bond, and ‘remote claimant’ means a person having a direct contractual relationship with a subcontractor or supplier, but no contractual relationship expressed or implied with the bonded contractor. No suit under this section shall be commenced after the expiration of one year after the date of the final settlement of the contract. Any payment bond surety for the bonded contractor must have the same rights and defenses of the bonded contractor as provided in this section.”

SECTION 5. This act takes effect upon approval by the Governor. /

Renumber sections to conform.

Amend title to conform.

Senator CROMER explained the committee amendment.

The committee amendment was adopted.

The question then was second reading of the Bill.

The "ayes" and "nays" were demanded and taken, resulting as follows:

**Ayes 43; Nays 0**

**AYES**

Alexander Allen Bennett

Bright Bryant Campbell

Campsen Cleary Coleman

Corbin Courson Cromer

Davis Fair Gregory

Grooms Hayes Hembree

Hutto Jackson Johnson

Kimpson Leatherman Lourie

Malloy *Martin, Larry Martin, Shane*

Massey Matthews McElveen

McGill Nicholson O'Dell

Peeler Rankin Setzler

Shealy Sheheen Thurmond

Turner Verdin Williams

Young

**Total--43**

**NAYS**

**Total--0**

There being no further amendments, the Bill was read the second time, passed and ordered to a third reading.

**READ THE SECOND TIME**

S. 1130 -- Labor, Commerce and Industry Committee: A JOINT RESOLUTION TO APPROVE REGULATIONS OF THE BUILDING CODES COUNCIL, RELATING TO IRC SECTION R312.2 WINDOW FALL PROTECTION, DESIGNATED AS REGULATION DOCUMENT NUMBER 4435, PURSUANT TO THE PROVISIONS OF ARTICLE 1, CHAPTER 23, TITLE 1 OF THE 1976 CODE.

The Senate proceeded to a consideration of the Resolution, the question being the second reading of the Joint Resolution.

Senator MASSEY explained the Joint Resolution.

The question then was second reading of the Joint Resolution.

The "ayes" and "nays" were demanded and taken, resulting as follows:

**Ayes 40; Nays 3**

**AYES**

Alexander Allen Bennett

Campbell Campsen Cleary

Coleman Corbin Courson

Cromer Davis Fair

Gregory Grooms Hayes

Hembree Hutto Jackson

Johnson Kimpson Leatherman

Lourie Malloy *Martin, Larry*

Massey Matthews McElveen

McGill Nicholson O'Dell

Peeler Rankin Reese

Shealy Sheheen Thurmond

Turner Verdin Williams

Young

**Total--40**

**NAYS**

Bright Bryant *Martin, Shane*

**Total--3**

The Joint Resolution was read the second time and ordered placed on the Third Reading Calendar.

**THE CALL OF THE UNCONTESTED CALENDAR HAVING BEEN COMPLETED, THE SENATE PROCEEDED TO THE MOTION PERIOD.**

**MOTION ADOPTED**

At 3:22 P.M., on motion of Senator PEELER, the Senate agreed to dispense with the balance of the Motion Period.

Senator CLEARY moved to table the motion to dispense with the balance of the Motion Period.

The "ayes" and "nays" were demanded and taken, resulting as follows:

**Ayes 20; Nays 23**

**AYES**

Allen Bright Bryant

Cleary Coleman Hutto

Johnson Kimpson Lourie

Malloy *Martin, Shane* Matthews

McElveen McGill Nicholson

Rankin Reese Setzler

Sheheen Williams

**Total--20**

**NAYS**

Alexander Bennett Campbell

Campsen Corbin Courson

Cromer Davis Fair

Gregory Grooms Hayes

Hembree Leatherman *Martin, Larry*

Massey O'Dell Peeler

Shealy Thurmond Turner

Verdin Young

**Total--23**

The Senate refused to table the motion to dispense the balance of the motion period.

The question then was the motion to dispense with the balance of the motion period.

The Senate agreed to dispense the balance of the Motion Period.

**HAVING DISPENSED WITH THE MOTION PERIOD, THE SENATE PROCEEDED TO A CONSIDERATION OF BILLS AND RESOLUTIONS RETURNED FROM THE HOUSE.**

**HOUSE AMENDMENTS AMENDED**

**RETURNED TO THE HOUSE**

S. 19 -- Senators Ford, Campsen and Shealy: A BILL TO AMEND SECTION 17-15-55, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO BOND AND THE AUTHORITY OF THE CIRCUIT COURT TO REVOKE BOND UNDER CERTAIN CIRCUMSTANCES, SO AS TO INCLUDE THE COMMISSION OF A SUBSEQUENT VIOLENT CRIME BY A PERSON RELEASED ON BOND IN THE PURVIEW OF THE STATUTE AND TO ADD AN ADDITIONAL PENALTY IF A PERSON COMMITS A GENERAL SESSIONS COURT OFFENSE WHILE ON RELEASE ON BOND.

The House returned the Bill with amendments.

The Senate proceeded to a consideration of the Bill, the question being concurrence in the House amendments.

Senator MALLOY explained the House amendments.

**Amendment No. 2**

Senator MALLOY proposed the following amendment (JUD0019.004), which was adopted:

Amend the bill, as and if amended, by adding an appropriately numbered section to read:

/ SECTION \_\_. (A) There is created the “Study Committee on Bonds” to review the bond laws of the State and make recommendations to the General Assembly concerning proposed changes to the bond laws.

(B) The study committee must be composed of three members of the Senate, appointed by the Chairman of the Senate Judiciary Committee, and three members of the House of Representatives, appointed by the Chairman of the House Judiciary Committee.

(C) Vacancies in the membership of the study committee must be filled for the remainder of the unexpired term in the manner of original appointment.

(D) The Chairmen of the Senate and House Judiciary Committees shall provide appropriate staffing for the study committee.

(E) The study committee shall make a report of its recommendations to the General Assembly by December 31, 2014, at which time the study committee must be dissolved. /

Renumber sections to conform.

Amend title to conform.

The question then was the adoption of the amendment.

The "ayes" and "nays" were demanded and taken, resulting as follows:

**Ayes 43; Nays 0**

**AYES**

Alexander Allen Bennett

Bright Bryant Campbell

Campsen Cleary Coleman

Corbin Courson Cromer

Davis Fair Gregory

Grooms Hayes Hembree

Hutto Jackson Johnson

Leatherman Lourie Malloy

*Martin, Larry Martin, Shane* Massey

Matthews McElveen McGill

Nicholson O'Dell Peeler

Rankin Reese Scott

Setzler Shealy Thurmond

Turner Verdin Williams

Young

**Total--43**

**NAYS**

**Total--0**

The amendment was adopted.

The Bill was ordered returned to the House of Representatives with amendments.

**Expression of Personal Interest**

Senator LOURIE rose for an Expression of Personal Interest.

**THE SENATE PROCEEDED TO THE INTERRUPTED DEBATE.**

**SECOND READING FAILED**

H. 3101 -- Reps. Chumley, Taylor, G.R. Smith, Huggins, Wells, Henderson, Crosby, Atwater, Long, Wood, Toole, Willis, Clemmons, Hardwick, Hardee, Goldfinch, Bedingfield, D.C. Moss, Loftis, Nanney, Pitts, Putnam, V.S. Moss, Owens, Barfield, H.A. Crawford, Stringer, Hamilton, Burns, Tallon, Kennedy, Allison, Murphy, Delleney, Horne, Daning and Brannon: A BILL TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, SO AS TO ENACT THE “SOUTH CAROLINA FREEDOM OF HEALTH CARE PROTECTION ACT” BY ADDING ARTICLE 21 TO CHAPTER 71, TITLE 38 SO AS TO RENDER NULL AND VOID CERTAIN UNCONSTITUTIONAL LAWS ENACTED BY THE CONGRESS OF THE UNITED STATES TAKING CONTROL OVER THE HEALTH INSURANCE INDUSTRY AND MANDATING THAT INDIVIDUALS PURCHASE HEALTH INSURANCE UNDER THREAT OF PENALTY; TO PROHIBIT CERTAIN INDIVIDUALS FROM ENFORCING OR ATTEMPTING TO ENFORCE SUCH UNCONSTITUTIONAL LAWS; AND TO ESTABLISH CRIMINAL PENALTIES AND CIVIL LIABILITY FOR VIOLATING THIS ARTICLE.

The Senate proceeded to a consideration of the Bill, the question being the adoption of the previously proposed amendment.

**Amendment No. P8-2**

Senator NICHOLSON proposed the following amendment (MS\3101C045.MS.AHB14), which was ruled out of order:

Amend the amendment bearing document number S‑RES\Amend\3101R013.TD (Amendment No. 2), as and if amended, by deleting Section 1-1-1915(A)(1), as contained in SECTION 1, and inserting:

/ (1) implement or participate in the establishment of a health insurance exchange by the State or a political subdivision of the State, or assist in the enrollment of any person in any health insurance exchange with or to a federal agency or employee, or any other person acting on behalf of, in conjunction with, or in support of, any health insurance exchange offering health insurance to employers or residents of this State in order to facilitate any portion of Section 1501 and 1513 of the ACA, commonly known as the ACA’s individual mandate to purchase insurance coverage and the ACA’s employer mandate to provide health insurance coverage, respectively; /

Renumber sections to conform.

Amend title to conform.

Senator NICHOLSON explained the perfecting amendment.

Senator HUTTO spoke on the perfecting amendment.

**Motion Adopted**

On motion of Senator FAIR, with unanimous consent, Senators SHEALY, YOUNG and FAIR were granted leave to attend a meeting and were granted leave to vote from the balcony.

At 5:23 P.M., Senator PEELER moved under the provisions of Rule 15A to vote on the entire matter of H. 3945.

**Point of Order**

Senator SETZLER raised a Point of Order that the Bill had not been under debate for a sufficient amount of time before a motion under Rule 15A could be made.

The PRESIDENT sustained the Point of Order.

Senator HUTTO resumed speaking on the amendment.

**Motion Under Rule** **15A Adopted**

At 5:30 P.M., Senator PEELER moved under the provisions of Rule 15A to vote on the entire matter of H. 3945.

The "ayes" and "nays" were demanded and taken, resulting as follows:

**Ayes 25; Nays 18**

**AYES**

Alexander Bennett Bright

Bryant Campbell Campsen

Cleary Corbin Courson

Cromer Davis Fair

Gregory Grooms Hayes

Hembree *Martin, Larry Martin, Shane*

Massey Peeler Shealy

Thurmond Turner Verdin

Young

**Total--25**

**NAYS**

Allen Coleman Hutto

Jackson Johnson Leatherman

Lourie Malloy Matthews

McElveen McGill Nicholson

Rankin Reese Scott

Setzler Sheheen Williams

**Total--18**

Having received the necessary vote, the motion under Rule 15A was adopted.

**Point of Order**

Senator HUTTO raised a Point of Order on Amendment No. 2 that under Rule 24A the amendment was out of order inasmuch as it was not germane to the Bill.

**Amendment No. 2**

Senator DAVIS proposed the following amendment (3101R013.TD), which was ruled out of order:

Amend the bill, as and if amended, by striking all after the title and inserting:

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

“Article 30

ACA Anti‑Commandeering Act

Section 1‑1‑1900. This article may be cited as the ‘ACA Anti‑Commandeering Act.’

Section 1‑1‑1905. For purposes of this article:

(1) ‘ACA’ means the Patient Protection and Affordable Care Act, signed by President Barack Obama on March 23, 2010, and any amendments thereto.

(2) ‘health insurance’ means any policy of insurance that meets the definition provided by Section 38‑1‑20.

(3) ‘health insurance exchange’ means an American Health Benefit Exchange established by the federal government, any state, or political subdivision of a state, or any other entity that may otherwise qualify to establish an exchange pursuant to the ACA.

(4) ‘public body’ means any department of the State, any state board, commission, agency, and authority, any public or governmental body or political subdivision of the State, including counties, municipalities, townships, and school districts.

Section 1‑1‑1910. The General Assembly finds:

(1) that significant portions of the ACA constitute an unprecedented overreach by the U.S. Congress and the federal government into areas of law and regulation that involve the exercise of powers and duties that are patently reserved to the States and the people themselves under the United States Constitution;

(2) that those portions of the ACA that require employers to provide and individuals to obtain health insurance are particularly offensive to the rights and freedoms of the residents of this State;

(3) that pursuant to and in furtherance of the fundamental principle of state sovereignty, the federal government may not command our State’s officers, agents, or employees to participate in the enforcement or facilitation of any federal program the General Assembly determines to be offensive to fundamental freedoms guaranteed to our State’s residents;

(4) that this right to be free from the commandeering hand of the federal government has been most notably recognized by the United States Supreme Court in *Printz v. United States* when the Court held: ‘The Federal Government may neither issue directives requiring the States to address particular problems, nor command the States’ officers, or those of their political subdivisions, to administer or enforce a federal regulatory program;’

(5) that the State has the duty and obligation to refuse to participate in the facilitation and enforcement of those provisions of the ACA that are patently offensive to the principle of state sovereignty and so significantly infringe upon the rights and freedom of all South Carolinians; and

(6) that the anti‑commandeering principles recognized by the U.S. Supreme Court in *Printz v. United States* are predicated upon the constitutional proposition that the State has the absolute and sovereign right to interpose and refuse to assist in the enforcement of any federal program, and the prohibitions contained in this article are a full and fair exercise of the sovereign power of this State in support of and in compliance with the anti‑commandeering principles recognized by the U.S. Supreme Court in *Printz v. United States*;

(7) that expanding Medicaid as described in 42 U.S.C. § 1396a(a)(10)(A)(i)(VIII) would cost between $600 millon and $1.9 billion of state funds between 2014 and 2020, and South Carolina should not expand under this ACA section, but should work to meet current commitments to current populations whom are the most vulnerable; and

(8) that expanding Medicaid as described in 42 U.S.C. § 1396a(a)(10)(A)(i)(VIII) does not address root causes of health issues and does not reform the health system.

Section 1‑1‑1915. (A) Notwithstanding any provision of law, regulation, rule, or order to the contrary, a public official, officer, or employee of a public body, or any other person or entity during the provision of services on behalf of a public body, shall not:

(1) implement or participate in the establishment of a health insurance exchange by the State or a political subdivision of the State, or assist in the enrollment of any person in any health insurance exchange, or provide any other material support, participation, or assistance, with or to a federal agency or employee, or any other person acting on behalf of, in conjunction with, or in support of, any health insurance exchange offering health insurance to employers or residents of this State in order to facilitate any portion of Section 1501 and 1513 of the ACA, commonly known as the ACA’s individual mandate to purchase insurance coverage and the ACA’s employer mandate to provide health insurance coverage, respectively;

(2) enforce or aid in the enforcement of Section 1501 of the ACA requiring an individual to maintain minimum essential coverage, commonly known as the ACA’s individual mandate to purchase insurance coverage;

(3) enforce or aid in the enforcement of Section 1513 of the ACA imposing a shared responsibility on employers who do not provide health insurance to full‑time employees, commonly known as the employer’s mandate to provide health insurance coverage;

(4) utilize any assets, state funds or funds authorized or allocated by the State to any public body, in whole or in part, to engage in any activity that aids in the enforcement of any federal act, law, order, rule, or regulation intended to give effect to or facilitate the enforcement of Sections 1501 or 1513 of the ACA;

(5) apply for, seek, or receive any public or private grant, allocation, donation, or funds of any kind to be used to support the enrollment of any person in any health insurance exchange offering health insurance to employers or residents of this State in order to facilitate any portion of Section 1501 and 1513 of the ACA; and

(6) apply for or utilize any assets, state funds, or funds authorized or allocated by the State to any public body, in whole or in part, to engage in any activity that aids in the enforcement of any federal act, law, order, rule, or regulation intended to give effect to or facilitate the enforcement of any other portion of the ACA.

(B) The provisions of subsection (A) shall not apply to:

(1) those portions of the ACA that set forth standards, regulations or other requirements that must be discharged by the South Carolina Department of Health and Human Services in connection with providing Medicaid services to those who qualify for these services under the state standards that are currently in place, which do not and must not include those who would qualify under the Medicaid population expansion authorized by the ACA as set forth in 42 U.S.C. § 1396a(a)(10)(A)(i)(VIII);

(2) those portions of the ACA which provide the South Carolina Department of Health and Human Services with flexibility in administering the Medicaid program;

(3) those portions of the ACA that set forth standards, regulations or other requirements that must be discharged by providers of Medicare and Medicaid services in order to secure Medicare and Medicaid reimbursements;

(4) those portions of the ACA that relate to or affect the discharge by the South Carolina Department of Revenue of its obligations pursuant to any shared or reciprocal programs between the State and the federal government, to include, but not limited to, the State Income Tax Levy Program; and

(5) those portions of the ACA and any enacting or subsequent standards, regulations, or other requirements that must be discharged by or have a material impact on the duties of the South Carolina Department of Insurance in connection with the regulation of the business of insurance in this State or that impact, or have the potential to impact, the regulation of the business of insurance in this State and the overall health of the health insurance marketplace, including the affordability and availability of coverage. This includes, but is not limited to, any activity resulting from the duties of the Director of Insurance, as amended by this act and promulgated under S.C. Code of Laws Section 38‑3‑110 and Article 21, Chapter 71 of Title 38 as it relates to the registration of navigators. This further includes activities related to consumer education and assistance on health insurance issues as long as the department does not enroll consumers in coverage offered through the health insurance exchange as prohibited under this section.

(C) A violation of this section is considered sufficient cause to remove or terminate, as provided by law, a state officer, official, or employee.

Section 1‑1‑1920. Notwithstanding the prohibitions in Section 1‑1‑1915, a public official, officer, or employee of a public body is not prohibited by this article from complying with federal laws and relevant statutes governing their respective obligations and responsibilities, including their responsibility to administer the Medicaid program in compliance with federal statutes, regulations, and policies, nor does this Act limit the South Carolina Department of Health and Human Services’ ability to apply for, request, or otherwise develop innovation waivers as set forth in Section 1332 of the ACA.

Section 1‑1‑1925. Notwithstanding any other provision of law, the state shall not establish, facilitate, implement, or participate in expanding Medicaid as described in 42 U.S.C. § 1396a(a)(10)(A)(VIII), which is commonly known as the expansion of the Medicaid program pursuant to the ACA.”

SECTION 2. Chapter 11, Title 11 of the 1976 Code is amended by adding:

“Article 6

The Transparency in ACA Grants and Programs Act

Section 11‑11‑500. This Article may be cited as the ‘Transparency in ACA Grants and Programs Act.’

Section 11‑11‑510. For purposes of this article:

(1) ‘ACA’ means the Patient Protection and Affordable Care Act, signed by President Barack Obama on March 23, 2010, and any amendments thereto.

(2) ‘public body’ means any department of the State, any state board, commission, agency, and authority, any public or governmental body or political subdivision of the State, including counties, municipalities, townships, school districts, and special purpose districts.

Section 11‑11‑520. The General Assembly finds:

(1) that the ACA creates new grant and program funding that, if applied for and received by a state, subjects the state to certain agreements and stipulations, the full impact of which is not often readily understood;

(2) that the ACA intrudes into individual liberty, makes massive new spending commitments, assumes unrealistic future cost savings, raises taxes and fees, and increases federal control over health care, and the acceptance by a state of a grant authorized by the ACA might facilitate these undesirable public‑policy outcomes; and

(3) that the General Assembly believes South Carolina must pay vigilant attention to how new ACA grants and programs will be used in the state and exercise discretion, rather than making application for every available grant and implementing every program, irrespective of the consequences.

Section 11‑11‑530. (A) No department of the State or any state board, commission or agency shall apply for or receive any grants from any federal agency provided for or authorized by the ACA or any other related provision, or request any dollars to implement, either purposefully or in practice, any program contained in or described by the ACA, except in a manner that complies with the procedure provided by this section. The requesting entity must post on its website on or before the date on which the Governor submits the executive budget pursuant to Section 11‑11‑70:

(1) a full and detailed list of each program,

(2) the amount of federal and state funds requested,

(3) every regulation, mandate, requirement or action that will result from the program’s implementation or expenditure of the funds, and a description of each and every type of business and individual that would be affected by any regulation, mandate, or requirement,

(4) the authority by which the federal government directs the program,

(5) the authority by which the state directs the program,

(6) the method by which the State would receive the funds, any and all agreements, plans or documents the State would have to submit to federal authorities including the name of those authorities that would specifically sign any authorization of the State that would allow federal authorities to hold the State accountable,

(7) any and all specific reporting or implementation requirements for the State,

(8) any penalties imposed by the federal government on the State for any breach of the terms as described in writing by the public body and by federal authorities,

(9) any and all projected costs to any public body, business, or individual associated with the program, and

(10) the stated goals, expected results, and costs of the program as described in writing by the public body and by the federal authorities overseeing the program, and the specific process by which the public body will measure the results of the program each year.

(C) Any public body requesting any federal funds to implement any program contained in or described by the ACA must submit the request to the Governor as part of the public body’s budget request pursuant to Section 11‑11‑30. The public body must post the request on the requesting body’s website on or before the date on which the Governor submits the executive budget pursuant to Section 11‑11‑70, and the information posted must be specifically detailed and noted as being related to the ACA, and include a description of the connection to the ACA and the specific means by which the Governor will measure the results of each program.

(D) Any public body’s request for federal funds to implement any program contained in or described by the ACA shall not be authorized or allowed unless it is included by the Governor in the executive budget and subsequently considered jointly by the House Ways and Means Committee and the Senate Finance Committee pursuant to the provisions of Section 11‑11‑90. In order to be included in the state budget, a program must receive a separate affirmative recorded vote of each house of the General Assembly.

(E) Any public official who receives any benefit from any program described in this section, whether directly or through any business with which the official has any relationship, must disclose the full nature of the relationship and the income derived on the official’s annual Statement of Economic Interest, and must also include any income or benefit received by an immediate family member.

(F) In order to be included in any subsequent state budget, a program must be approved fully in the manner provided by this section.”

SECTION 3. Section 38‑3‑110 is amended by adding an appropriately numbered new subsection to read:

“( ) The director must take reasonable steps and all appropriate action to limit federal intrusion into the regulation of the business of insurance in this State. This includes, but is not limited to, regulation of the insurance products offered through any exchange or other insurance marketplace operating in the State pursuant to any federal act, regulation, or action, including the Patient Protection and Affordable Care Act of 2010 and its enacting regulations.”

SECTION 4. Chapter 71, Title 38 of the 1976 Code is amended by adding:

“Article 21

Navigator Registration Act

Section 38‑71‑3010. This act may be cited as the ‘Navigator Registration Act.’

Section 38‑71‑3020. The General Assembly finds:

(1) that the provisions of the federal Patient Protection and Affordable Care Act have caused the formation of a federal health insurance exchange, which will operate in South Carolina under federal law and employ individuals or entities whose role will be to direct individuals and companies to health insurance policies on the health insurance exchange;

(2) that state registration of these individuals and entities, to ensure that they are trained and knowledgeable in the subject matter of individual and group health insurance coverage, is necessary to avoid substantial risk to the health, safety, and welfare of the residents of this State;

(3) that the U.S. Congress, in the McCarran‑Ferguson Act of 1945, the Gramm‑Leach‑Bliley Act of 1999, and in other enactments, has declared that states should regulate the business of insurance and affirmed that the continued regulation of the insurance industry by the states was in the public’s best interest;

(4) that the federal Centers for Medicare and Medicaid Services are charged with the legal duty of implementing certain aspects of the federal Patient Protection and Affordable Care Act and has recognized, through regulations including, but not limited to, the General Guidance on Federally‑facilitated Exchanges, p. 4, CMS 2012, and 77 Fed. Reg. 18309, 18448, published March 27, 2012, the responsibility of the states’ departments of insurance in the licensure and regulation of a person, commonly referred to as a ‘health care navigator,’ who receives grant monies from the United States Department of Health and Human Services, a state or a health insurance exchange, or private money to perform an activity or duty identified in 42 U.S.C. Section 18031(i);

(5) that the federal government providing navigators a role in the facilitation and implementation of the Patient Protection and Affordable Care Act is not absolute and does not prohibit complementary regulation of these individuals and their activities by states, and that the provisions of this article fairly balances the interests of the federal government in providing for the implementation of its program with the interests of the states in protecting their residents from fraudulent and unscrupulous acts by persons of questionable moral character.

Section 38‑71‑3030. For the purposes of this article:

(1) ‘Department’ means the South Carolina Department of Insurance.

(2) ‘Navigator’ means a person who is selected to perform the activities and duties identified in 42 U.S.C. Section 18031(i) and includes a person who receives grant monies from the United States Department of Health and Human Services, a state or a health insurance exchange, or private funds to perform an activity or duty identified in 42 U.S.C. Section 18031(i).

(3) ‘Exchange’ means an American Health Benefit Exchange established by the federal government, any state, or political subdivision of a state, as provided for in the ACA.

Section 38‑71‑3040. Except as otherwise provided in this title, this chapter applies to any individual or entity registered as a navigator in South Carolina. It does not apply to licensed life, accident and health insurance producers or licensed life and health insurance companies. This chapter does not apply to any individual or entity that provides assistance to consumers under, and in compliance with state or federal authority other than Section 42 U.S.C. Section 18031 to the extent the individual or entity is providing assistance consistent with that state or federal authority.

Section 38‑71‑3050. An individual or entity shall not act as or purport to be a navigator in this State or provide the services of a navigator unless the individual or entity registers with the department by submitting an application and paying the following registration and registration renewal fee of twenty‑five dollars, if the applicant is an individual, or one hundred dollars, if the applicant is some other entity.

Section 38‑71‑3055. The registration fee and registration renewal fee is nonrefundable and fully earned upon payment. All fees collected from navigators are to be used by the department to implement and enforce the requirements of this article and the provisions of Title 38.

Section 38‑71‑3060. (A) To register as a navigator in South Carolina, an entity shall:

(1) provide proof the entity is domiciled in the United States;

(2) establish procedures for the handling of personally identifiable and nonpublic information;

(3) provide the department with a copy of the entity’s authority to operate in South Carolina;

(4) designate an officer to act as the responsible party on behalf of the entity and to submit to a background check;

(5) provide a list of individuals performing navigator services on behalf of, or under the supervision of, the entity on a form prescribed by the department;

(6) provide proof that the individual has complied with the applicable federal education and registration requirements of the ACA and of this article;

(7) provide and maintain on file with the department a current business address for notices and other regulatory information; and

(8) complete and provide to the department a registration application which must be renewed biennially.

(B) To register as a navigator, an individual must:

(1) be at least 18 years of age;

(2) provide proof that the individual is a citizen of the United States and has complied with all state and federal laws pertaining to employment in South Carolina and the United States;

(3) provide evidence that the individual 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;

(4) provide proof that the individual has complied with the applicable federal education and registration requirements of the ACA and of this article;

(5) provide and maintain on file with the department a current business address for notices and other regulatory information;

(6) identify the navigator entity that the individual represents or is employed or associated with; and

(7) complete and provide the department with a navigator registration application which must be renewed biennially.

(C) The department may deny, suspend or revoke the registration of a navigator registered individual or entity if:

(1) the navigator is convicted of a felony offense;

(2) the navigator is convicted of a misdemeanor offense involving fraud or dishonesty;

(3) the department, after investigation, concludes that the navigator has provided false or fraudulent information to consumers or otherwise deceived or dealt unjustly with the residents of the State of South Carolina as defined in Section 38‑43‑130; or

(4) the navigator has engaged in intentional or negligent conduct that has resulted in the release of a consumer’s personally identifiable information.

(D) An entity registered as a navigator shall report to the department all unauthorized releases of a consumer’s personally identifiable information. The entity shall report this unauthorized release of personally identifiable information to the affected individual whose personal information was released within twenty‑four hours after discovering, investigating and verifying the breach.

(E) Notwithstanding another provision of law, a navigator shall not sell, solicit, or negotiate insurance in this State for any class or classes of insurance when assisting an individual with enrollment or performing any other insurance navigator activities or duties through a health insurance exchange established or operating in this State, including an exchange established or operated by the United States Department of Health and Human Services without first being licensed as a producer in accordance with applicable South Carolina law.

(F) A navigator and his administrative staff shall keep all personally identifiable information secure pursuant to Title 45, Part 155 of the Code of Federal Regulations. The department shall revoke the registration of a navigator who fails to comply with the requirements of this article.

(G) The department shall maintain a website for the purpose of providing the public with a complete list of all currently registered navigators in this State.

Section 38‑71‑3070. A person acting as a navigator pursuant to 42 U.S.C. Section 18031(i) on the effective date of this act shall register within ninety days after the effective date of this act with the department as provided in this article in order to continue performing the duties and activities of a navigator in this State after the effective date of this act. An entity that receives grant monies from the United States Department of Health and Human Services, a health insurance exchange, or private money to perform an activity or duty identified in 42 U.S.C. Section 18031(i) shall register within ninety days of receiving the grant monies with the department as provided in this article in order to begin performing the duties and activities of a navigator in this State.

Section 38‑71‑3080. An entity employing an individual as a navigator shall require that individual to register with the department within thirty days after successfully completing the federal education and registration requirements for navigators.

Section 38‑71‑3090. An entity employing an individual registered as a navigator shall notify the department, in writing, of any change in the status of a navigator, including but not limited to suspension, termination, or resignation, within thirty days of the status change.

Section 38‑71‑4000. A person who violates the provisions of this article shall be subject to the penalties and disciplinary action set forth in Section 38‑2‑10.

Section 38‑71‑4010. Unless registered with the Department as a navigator under this Article, an entity or individual may not:

(1) use the term ‘navigator’ as part of an entity’s name or website address or in an individual’s title; or

(2) imply or represent that the entity or individual is a navigator in advertising or outreach material.

Section 38‑71‑4020. The department may promulgate regulations necessary to carry out the provisions of this article.

Section 38‑71‑4030. The director or his designee is authorized to impose additional requirements on registrants or applicants for registration under this article through administrative action so long as those requirements are consistent with the requirements applicable to individual licensees of the department as set forth in statute or regulation.

Section 38‑71‑4040. If a court of competent jurisdiction holds that any provision of this article or its application to any person or circumstance is invalid for any reason, the invalidity does not affect other provisions or applications of this article that can be given effect without the invalid provision or application.”

SECTION 5. (A) The Governor is hereby authorized and requested to communicate this act to the legislatures of the several states, to assure them that this State considers the Union was established for specified purposes, and particularly for those specified in the United States Constitution to be friendly to the peace, happiness, and prosperity of all the states; that faithful to that Constitution, according to the plain intent and meaning in which it was understood and accorded to by the several states, the State of South Carolina is sincerely anxious for its preservation; that it does also believe that to take from the states all of the powers of self‑government, and transfer them to a general and consolidated government, without regard to the special delegations and reservations solemnly agreed to by the States in that Constitution, is not for the peace, happiness or prosperity of the States; and that therefore, the State of South Carolina is determined, as it doubts not most of its sister states are, never to submit to un‑delegated, and consequently unlimited, powers claimed to be possessed by any man or body of men.

(B) The Governor is hereby authorized and requested to call on our sister states for an expression of their sentiments on the Patient Protection and Affordable Care Act of 2010, plainly declaring whether these acts are or are not authorized by the United States Constitution; that it is the position of the State of South Carolina that the Patient Protection and Affordable Care Act of 2010 amounts to an undisguised declaration that the Constitution is not meant to be the measure of the powers of the federal government, but that it will proceed in the exercise over the State of South Carolina and its sister states of all powers whatsoever. That our sister states view this action as seizing the rights of the States and consolidating them in the hands of the federal government with a power assumed to bind the states, but in all cases whatsoever, by laws made, not with their consent, but by others against their consent. That this would be to surrender the form of government we have chosen, and to live under one deriving its powers from its own will, and not from our authority; and that the sister states recurring to their natural right, will concur with the State of South Carolina in declaring the Patient Protection and Affordable Care Act of 2010 void, and of no force, and will each unite with the State of South Carolina in requesting its immediate repeal, and also pass legislation similar to this act within their own state legislatures.

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

Renumber sections to conform.

Amend title to conform.

Senator GROOMS spoke on the Point of Order.

Senator DAVIS spoke on the Point of Order.

Senator HUTTO spoke on the Point of Order.

Senator CAMPSEN spoke on the Point of Order.

The PRESIDENT sustained the Point of Order.

Amendment No. 2 was ruled out of order.

**Amendment No. 3**

Senator HUTTO proposed the following amendment (NL\3101C006.NL.DG13), which was not adopted:

Amend the bill, as and if amended, page 2, by striking line 14 and inserting:

/ Whereas, the intent of this legislation is to nullify actions of the government of the United States that conflict with the Constitution of the this State. /

Renumber sections to conform.

Amend title to conform.

Senator DAVIS argued contra to the amendment and Senator HUTTO argued in favor.

Senator MATTHEWS spoke contra to the amendment.

The question then was the adoption of the amendment.

The "ayes" and "nays" were demanded and taken, resulting as follows:

**Ayes 0; Nays 39; Present 1**

**AYES**

**Total--0**

**NAYS**

Alexander Bennett Bright

Bryant Campsen Cleary

Corbin Courson Cromer

Davis Fair Gregory

Grooms Hayes Hembree

Hutto Jackson Johnson

Leatherman Lourie Malloy

*Martin, Larry Martin, Shane* Massey

Matthews McElveen McGill

Peeler Rankin Reese

Scott Setzler Shealy

Sheheen Thurmond Turner

Verdin Williams Young

**Total--39**

**PRESENT**

Allen

**Total--1**

The amendment was not adopted.

**Motion Failed**

Senator COLEMAN moved that the Senate stand adjourned.

The "ayes" and "nays" were demanded and taken, resulting as follows:

**Ayes 11; Nays 29**

**AYES**

Allen Coleman Hutto

Jackson Johnson Malloy

Matthews Reese Scott

Setzler Sheheen

**Total--11**

**NAYS**

Alexander Bennett Bright

Bryant Cleary Corbin

Courson Cromer Davis

Fair Gregory Grooms

Hayes Hembree Leatherman

Lourie *Martin, Larry Martin, Shane*

Massey McElveen McGill

Peeler Rankin Shealy

Thurmond Turner Verdin

Williams Young

**Total--29**

The Senate refused to stand adjourned.

Senator HUTTO moved that the Senate stand in recess.

**Point of Order**

Senator DAVIS raised a Point of Order that a motion to recede was not in order when cloture has been invoked pursuant to Rule 15A.

The PRESIDENT sustained the Point of Order.

**Amendment No. 4**

Senator SCOTT proposed the following amendment (NBD\3101C003.NBD.AC13), which was not adopted:

Amend the bill, as and if amended, Section 1-7-180, page 3, line 38 by deleting / three / and inserting / six /.

Renumber sections to conform.

Amend title to conform.

Senator SCOTT spoke in favor of the amendment.

Senator DAVIS spoke contra to the amendment.

**Motion Failed**

Senator SCOTT moved that the Senate stand adjourned.

The "ayes" and "nays" were demanded and taken, resulting as follows:

**Ayes 14; Nays 26**

**AYES**

Allen Hutto Jackson

Johnson Lourie Malloy

Matthews McElveen McGill

Reese Scott Setzler

Sheheen Williams

**Total--14**

**NAYS**

Alexander Bennett Bright

Bryant Campsen Cleary

Corbin Courson Cromer

Davis Fair Gregory

Grooms Hayes Hembree

Leatherman *Martin, Larry Martin, Shane*

Massey Peeler Rankin

Shealy Thurmond Turner

Verdin Young

**Total--26**

The Senate refused to stand adjourned.

Senator HUTTO spoke contra to the amendment.

The question then was the adoption of the amendment.

The "ayes" and "nays" were demanded and taken, resulting as follows:

**Ayes 14; Nays 25**

**AYES**

Allen Hutto Jackson

Johnson Lourie Malloy

Matthews McElveen McGill

Reese Scott Setzler

Sheheen Williams

**Total--14**

**NAYS**

Alexander Bennett Bright

Bryant Campsen Corbin

Courson Cromer Davis

Fair Gregory Grooms

Hayes Hembree Leatherman

*Martin, Larry Martin, Shane* Massey

Peeler Rankin Shealy

Thurmond Turner Verdin

Young

**Total--25**

The adoption of the amendment failed.

**Amendment No. 5**

Senator SCOTT proposed the following amendment (MS\3101C057.MS.AHB14), which was ruled out of order:

Amend the bill, as and if amended, SECTION 2, by adding a new section at the end to read:

/ Section 1-1-1920. (A) The South Carolina Department of Health and Human Services shall submit an annual report to the Governor, the President Pro Tempore of the Senate, and the Speaker of the House of Representatives by January 1 of each year which shall detail the number of:

(1) uninsured persons in the State by race and gender for each county and for the State as a whole;

(2) persons reported pursuant to item (1) who currently qualify for coverage under the Medicaid program but who are not enrolled in the Medicaid program;

(3) persons reported pursuant to item (1) who would qualify for Medicaid expansion as described in 42 U.S.C. Section 1396a(a)(10)(A)(VIII).

(B) The department also shall submit, as part of its annual budget request, a plan to provide access to health care and improve health outcomes for all state residents who would qualify for Medicaid expansion. The plan must include a method of funding this initiative.”/

Renumber sections to conform.

Amend title to conform.

Senator SCOTT spoke in favor of the amendment.

**Point of Order**

Senator DAVIS raised a Point of Order under Rule 24A that the amendment was out of order inasmuch as it was not germane to the Bill.

Senator SCOTT spoke on the Point of Order.

Senator McELVEEN spoke on the Point of Order.

The PRESIDENT sustained the Point of Order.

The amendment was ruled out of order.

**Amendment No. 6**

Senator JACKSON proposed the following amendment (BH\3101C001.BH.DG14), which was ruled out of order:

Amend the bill, as and if amended, by adding an appropriately numbered SECTION to read:

/ SECTION \_\_\_. Chapter 1, Title 1 of the 1976 Code is amended by adding:

“Article 30

Federal Disaster Relief Anti-Commandeering Act

Section 1‑1‑2110.(A) No agency of the State, officer or employee of this State, acting on behalf of the state, may engage in an activity that aids any agency in the acceptance of federal disaster relief funds or assistance.

(B) The General Assembly of the State of South Carolina is empowered to take all necessary actions to ensure that the provisions of subsection (A) are adhered to by all agencies, departments, and political subdivisions of the State.” /

Renumber sections to conform.

Amend title to conform.

**Point of Order**

Senator DAVIS raised a Point of Order under Rule 24A that the amendment was out of order inasmuch as it was not germane to the Bill.

Senator DAVIS spoke on the Point of Order.

Senator JACKSON spoke on the Point of Order.

The PRESIDENT sustained the Point of Order.

The amendment was ruled out of order.

**Amendment No. 7**

Senators HUTTO, JACKSON, MATTHEWS, McGILL, REESE, PINCKNEY, SHEHEEN, LOURIE, WILLIAMS, COLEMAN, NICHOLSON, SCOTT, ALLEN, JOHNSON, McELVEEN and KIMPSON proposed the following amendment (3101MW.EXPANSION), which was ruled out of order:

Amend the bill, as and if amended, by striking all after the title and inserting the following:

/ SECTION 1.

(A) The Department of Health and Human Services must expand Medicaid coverage as authorized by federal law to individuals under sixty-five years of age with incomes at or below one hundred thirty-eight percent of the federal poverty level, based on modified adjusted gross income. The department must submit a State Medicaid Plan Amendment, reflecting the expanded coverage, to the Centers for Medicare and Medicaid Services.

(B) If South Carolina's federal medical assistance percentage (FMAP) is reduced below levels prescribed under the federal legislation for beneficiaries who became eligible under subsection (A), the beneficiaries shall be removed from receiving Medicaid no later than the end of the third month following the month in which the reduction in FMAP takes effect. The department shall inform Medicaid beneficiaries who become eligible for benefits under subsection (A) that benefits may be reduced or eliminated if federal participation decreases or is eliminated.

(C) The department is authorized to transfer funds among accounts or use excess operating revenue and reserves to offset administrative expenses associated with Medicaid expansion.

(D) The department shall engage stakeholders and providers to study the delivery of health care within the state's Medicaid program in an effort to improve health outcomes and increase cost savings and quality of care. The department shall report its findings and recommendations to the governor and the General Assembly by February 1, 2014.

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

Renumber sections to conform.

Amend title to conform.

Senator HUTTO asked unanimous consent to withdraw the amendment.

Senator DAVIS objected.

Senator HUTTO spoke in favor of the amendment.

Senator JACKSON spoke contra to the amendment.

**Point of Order**

Senator SETZLER raised a Point of Order under Rule 24A that the amendment was out of order inasmuch as it was not germane to the Bill.

Senator DAVIS spoke on the Point of Order.

Senator SCOTT spoke on the Point of Order.

The PRESIDENT sustained the Point of Order.

The amendment was ruled out of order.

**Amendment No. 8**

Senator JOHNSON proposed the following amendment (GGS\3101C021.GGS.VR13), which was not adopted:

Amend the bill, as and if amended, Section 1-1-1910(A), page 3, line 19, after / . / by inserting:

/ This subsection does not apply to the Department of Social Services. /

Renumber sections to conform.

Amend title to conform.

Senator JOHNSON spoke in favor of the amendment.

Senator HUTTO spoke contra to the amendment.

The question then was the adoption of the amendment.

The "ayes" and "nays" were demanded and taken, resulting as follows:

**Ayes 9; Nays 31**

**AYES**

Allen Johnson Lourie

Matthews McGill Nicholson

Reese Scott Williams

**Total--9**

**NAYS**

Alexander Bennett Bright

Bryant Campbell Campsen

Cleary Corbin Courson

Cromer Davis Fair

Gregory Grooms Hayes

Hembree Hutto Jackson

Leatherman Malloy *Martin, Larry*

*Martin, Shane* Massey Peeler

Rankin Setzler Shealy

Thurmond Turner Verdin

Young

**Total--31**

The amendment was not adopted.

**Amendment No. 9A**

Senator NICHOLSON proposed the following amendment (3101MW8), which was withdrawn:

Amend the bill, as and if amended, page 3, by striking Section 1-7-180 and inserting:

/ “Section 1‑7‑180. Whenever the Attorney General has reasonable cause to believe that a person or business is being harmed by the state's refusal of implementation of any portion or provisions of the Patient Protection and Affordable Care Act and that proceedings would be in the public interest, the Attorney General may bring an action in the name of the State against such person or entity causing the harm to restrain by temporary restraining order, temporary injunction, or permanent injunction the use of such method, act, or practice. Unless the Attorney General determines in writing that the purposes of this section will be substantially impaired by delay in instituting legal proceedings, the Attorney General shall, at least three days before instituting a legal proceeding as provided in this section, give notice to the person or entity against whom the proceeding is contemplated and give such person or entity an opportunity to present reasons to the Attorney General why a proceeding should not be instituted. The action may be brought in a court of competent jurisdiction. Whenever the court issues a permanent injunction in connection with an action, which has become final, the court shall award reasonable costs to the State.” /

Renumber sections to conform.

Amend title to conform.

Senator NICHOLSON spoke in favor of the amendment.

Senator NICHOLSON asked unanimous consent to withdraw the amendment.

The amendment was withdrawn.

**Amendment No. P1-91A**

Senator HUTTO proposed the following amendment (3101MW16):

Amend the amendment with the document path 3101R024.TD, (Amendment No. 91A), as and if amended, by inserting a appropriately numbered SECTION to read:

/ SECTION \_\_. 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 affect the constitutionality or validity of the remaining portions of this act. /

Renumber sections to conform.

Amend title to conform.

Senator DAVIS spoke on the perfecting amendment.

**Point of Order**

Senator HUTTO raised a Point of Order on Amendment No. 91A under Rule 24A that the amendment was out of order inasmuch as it was not germane to the Bill.

**Amendment No. 91A**

Senator DAVIS proposed the following amendment (3101R024.TD):

Amend the bill, as and if amended, by striking all after the bill and inserting:

/ A BILL

TO AMEND CHAPTER 1, TITLE 1, OF THE 1976 CODE, BY ADDING ARTICLE 30, THE “ACA ANTI‑COMMANDEERING ACT”, TO PROVIDE DEFINITIONS, TO MAKE CERTAIN FINDINGS REGARDING THE PRINCIPLE OF ANTI‑COMMANDEERING AND THE RIGHT OF THE STATES TO REFUSE TO USE STATE RESOURCES TO ENFORCE FEDERAL LAWS, TO PROVIDE THAT A PUBLIC OFFICIAL, OFFICER, OR EMPLOYEE OF A PUBLIC BODY MUST NOT PARTICIPATE IN THE ESTABLISHMENT OF A HEALTH INSURANCE EXCHANGE OR ENFORCE OR AID IN THE ENFORCEMENT OF THE INDIVIDUAL AND EMPLOYER HEALTH INSURANCE MANDATES OF THE AFFORDABLE CARE ACT, TO PROVIDE THAT THESE PROHIBITIONS DO NOT APPLY TO THE PROVISION OF MEDICAID AT CURRENT LEVELS OF ELIGIBILITY, AND TO REFUSE TO PARTICIPATE IN THE EXPANSION OF MEDICAID PURSUANT TO THE ACA; TO AMEND TITLE 38, BY ADDING ARTICLE 21 TO CHAPTER 71, TO ENACT THE “NAVIGATOR BACKGROUND CHECK ACT” , TO PROVIDE NECESSARY DEFINITIONS, TO PROVIDE CRITERIA FOR REGISTRATION AS A HEALTH CARE INSURANCE NAVIGATOR, TO REQUIRE REGISTRATION OF A PERSON ACTING AS A HEALTH CARE INSURANCE NAVIGATOR, TO PROVIDE RELATED DUTIES OF THE DEPARTMENT OF INSURANCE AND THE DEPARTMENT OF HEALTH AND HUMAN SERVICES, AND TO PROVIDE PENALTIES FOR A VIOLATION; TO AMEND SECTION 38‑3‑110 OF THE 1976 CODE, RELATING TO THE DUTIES OF THE CHIEF INSURANCE COMMISSIONER, TO REQUIRE THE COMMISSIONER TO TAKE ALL REASONABLE ACTION TO LIMIT FEDERAL INTRUSION INTO THE REGULATION OF INSURANCE IN THIS STATE; AND TO AUTHORIZE THE GOVERNOR TO COMMUNICATE THE CONTENTS OF THIS ACT TO OUR SISTER STATES AND REQUEST AN EXPRESSION OF THEIR SENTIMENTS REGARDING THE ACA.

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

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

“Article 30

ACA Anti‑Commandeering Act

Section 1‑1‑1900. This article may be cited as the ‘ACA Anti‑Commandeering Act.’

Section 1‑1‑1905. For purposes of this article:

(1) ‘ACA’ means the Patient Protection and Affordable Care Act, signed by President Barack Obama on March 23, 2010, and any amendments thereto.

(2) ‘health insurance’ means any policy of insurance that meets the definition provided by Section 38‑1‑20.

(3) ‘health insurance exchange’ means an American Health Benefit Exchange established by the federal government, any state, or political subdivision of a state, or any other entity that may otherwise qualify to establish an exchange pursuant to the ACA.

(4) ‘public body’ means any department of the State, any state board, commission, agency, and authority, any public or governmental body or political subdivision of the State, including counties, municipalities, townships, and school districts.

Section 1‑1‑1910. The General Assembly finds:

(1) that significant portions of the ACA constitute an unprecedented overreach by the U.S. Congress and the federal government into areas of law and regulation that involve the exercise of powers and duties that are patently reserved to the States and the people themselves under the United States Constitution;

(2) that those portions of the ACA that require employers to provide and individuals to obtain health insurance are particularly offensive to the rights and freedoms of the residents of this State;

(3) that pursuant to and in furtherance of the fundamental principle of state sovereignty, the federal government may not command our State’s officers, agents, or employees to participate in the enforcement or facilitation of any federal program the General Assembly determines to be offensive to fundamental freedoms guaranteed to our State’s residents;

(4) that this right to be free from the commandeering hand of the federal government has been most notably recognized by the United States Supreme Court in *Printz v. United States* when the Court held: ‘The Federal Government may neither issue directives requiring the States to address particular problems, nor command the States’ officers, or those of their political subdivisions, to administer or enforce a federal regulatory program;’

(5) that the State has the duty and obligation to refuse to participate in the facilitation and enforcement of those provisions of the ACA that are patently offensive to the principle of state sovereignty and so significantly infringe upon the rights and freedom of all South Carolinians; and

(6) that the anti‑commandeering principles recognized by the U.S. Supreme Court in *Printz v. United States* are predicated upon the constitutional proposition that the State has the absolute and sovereign right to interpose and refuse to assist in the enforcement of any federal program, and the prohibitions contained in this article are a full and fair exercise of the sovereign power of this State in support of and in compliance with the anti‑commandeering principles recognized by the U.S. Supreme Court in *Printz v. United States*;

(7) that expanding Medicaid as described in 42 U.S.C. § 1396a(a)(10)(A)(i)(VIII) would cost between $600 million and $1.9 billion of state funds between 2014 and 2020, and South Carolina should not expand under this ACA section, but should work to meet current commitments to current populations whom are the most vulnerable; and

(8) that expanding Medicaid as described in 42 U.S.C. § 1396a(a)(10)(A)(i)(VIII) does not address root causes of health issues and does not reform the health system.

Section 1‑1‑1915. (A) Notwithstanding any provision of law, regulation, rule, or order to the contrary, a public official, officer, or employee of a public body, or any other person or entity during the provision of services on behalf of a public body, shall not:

(1) implement or participate in the establishment of a health insurance exchange by the State or a political subdivision of the State, or assist in the enrollment of any person in any health insurance exchange, or provide any other material support, participation, or assistance, with or to a federal agency or employee, or any other person acting on behalf of, in conjunction with, or in support of, any health insurance exchange offering health insurance to employers or residents of this State in order to facilitate any portion of Section 1501 and 1513 of the ACA, commonly known as the ACA’s individual mandate to purchase insurance coverage and the ACA’s employer mandate to provide health insurance coverage, respectively. This subsection does not prohibit a public official, officer, or employee of a public body from engaging in incidental communication with a person in response to a request or question concerning how the person may obtain health insurance, including but not limited to, referring the person to a federal agency or federal agency’s website that provides information on or allows a person to enroll in a health insurance exchange;

(2) enforce or aid in the enforcement of Section 1501 of the ACA requiring an individual to maintain minimum essential coverage, commonly known as the ACA’s individual mandate to purchase insurance coverage;

(3) enforce or aid in the enforcement of Section 1513 of the ACA imposing a shared responsibility on employers who do not provide health insurance to full‑time employees, commonly known as the employer’s mandate to provide health insurance coverage;

(4) utilize any assets, state funds or funds authorized or allocated by the State to any public body, in whole or in part, to engage in any activity that aids in the enforcement of any federal act, law, order, rule, or regulation intended to give effect to or facilitate the enforcement of Sections 1501 or 1513 of the ACA;

(5) apply for, seek, or receive any public or private grant, allocation, donation, or funds of any kind to be used to support the enrollment of any person in any health insurance exchange offering health insurance to employers or residents of this State in order to facilitate any portion of Section 1501 and 1513 of the ACA. However, this article does not prohibit the application, authorization, receipt, or expenditure of funds from a federal grant, federal grant program, or other source of federal funds that existed prior to March 23, 2010, that was initially applied for, authorized, or received by or for a public body prior to the effective date of this article. This article does not prohibit the application, authorization, receipt, or expenditure of funds from a grant or grant program authorized or provided for by the ACA, if the grant application or program requirements are posted on the public body’s website for a period of at least ten days and the public is provided a reasonable opportunity to comment, and the authorized person acting on behalf of the public body applying for the grant or grant program affirms in writing and under oath, that the funds received from the grant or grant program will not be used to facilitate the enrollment of a person in a health insurance exchange, the grant or grant program does not obligate the State to take any action or obligate any state funds in order to receive the grant or grant program funds, and the grant or grant program does not require any change in state law or regulation; and

(6) apply for or utilize any assets, state funds, or funds authorized or allocated by the State to any public body, in whole or in part, to engage in any activity that aids in the enforcement of any federal act, law, order, rule, or regulation intended to give effect to or facilitate the enforcement of any other portion of the ACA.

(B) The provisions of subsection (A) shall not apply to:

(1) those portions of the ACA that set forth standards, regulations or other requirements that must be discharged by the South Carolina Department of Health and Human Services in connection with providing Medicaid services to those who qualify for these services under the state standards that are currently in place, which do not and must not include those who would qualify under the Medicaid population expansion authorized by the ACA as set forth in 42 U.S.C. § 1396a(a)(10)(A)(i)(VIII);

(2) those portions of the ACA which provide the South Carolina Department of Health and Human Services with flexibility in administering the Medicaid program;

(3) those portions of the ACA that set forth standards, regulations or other requirements that must be discharged by providers of Medicare and Medicaid services in order to secure Medicare and Medicaid reimbursements;

(4) those portions of the ACA that relate to or affect the discharge by the South Carolina Department of Revenue of its obligations pursuant to any shared or reciprocal programs between the State and the federal government, to include, but not limited to, the State Income Tax Levy Program;

(5) those portions of the ACA and any enacting or subsequent standards, regulations, or other requirements that must be discharged by or have a material impact on the duties of the South Carolina Department of Insurance in connection with the regulation of the business of insurance in this State or that impact, or have the potential to impact, the regulation of the business of insurance in this State and the overall health of the health insurance marketplace, including the affordability and availability of coverage. This includes, but is not limited to, any activity resulting from the duties of the Director of Insurance, as amended by this act and promulgated under S.C. Code of Laws Section 38‑3‑110 and Article 21, Chapter 71 of Title 38 as it relates to the registration of navigators. This further includes activities related to consumer education and assistance on health insurance issues as long as the department does not enroll consumers in coverage offered through the health insurance exchange as prohibited under this section; and

(6) those portions of the ACA or any regulations or policies implemented pursuant to the ACA that relate to or affect the South Carolina Department of Social Services’ obligations pursuant to shared or reciprocal programs, and grants such as Temporary Assistance for Needy Families (TANF), between the State and federal government, and activities undertaken in cooperation with other state or local public bodies that are permitted pursuant to this section.

(C) A violation of this section is considered sufficient cause to remove or terminate, as provided by law, a state officer, official, or employee.

Section 1‑1‑1920. Notwithstanding the prohibitions in Section 1‑1‑1915, a public official, officer, or employee of a public body is not prohibited by this article from complying with federal laws and relevant statutes governing their respective obligations and responsibilities, including their responsibility to administer the Medicaid program and the insurance plans and benefits offered pursuant to Article 5, Chapter 11 of Title 1 in compliance with federal statutes, regulations, and policies, nor does this act limit the South Carolina Department of Health and Human Services’ ability to apply for, request, or otherwise develop innovation waivers as set forth in Section 1332 of the ACA. Further, the provisions contained in this article do not preclude a state agency that is authorized to adjust provisions contained in health and dental insurance plans offered or administered by the agency from adjusting the insurance plans it offers or administers to include provisions that are similar to, or the same as, provisions that are contained in the ACA if the agency offering or administering the insurance plan makes a determination independent of the purported directives of the ACA, that the included provisions are in the best interests of those insured and do not threaten the insurance provider’s fiscal stability.

Section 1‑1‑1925. Notwithstanding any other provision of law, the state shall not establish, facilitate, implement, or participate in expanding Medicaid as described in 42 U.S.C. § 1396a(a)(10)(A)(VIII), which is commonly known as the expansion of the Medicaid program pursuant to the ACA.”

SECTION 2. Chapter 71, Title 38 of the 1976 Code is amended by adding:

“Article 21

Navigator Registration Act

Section 38‑71‑3010. This act may be cited as the ‘Navigator Registration Act.’

Section 38‑71‑3020. The General Assembly finds:

(1) that the provisions of the federal Patient Protection and Affordable Care Act have caused the formation of a federal health insurance exchange, which will operate in South Carolina under federal law and employ individuals or entities whose role will be to direct individuals and companies to health insurance policies on the health insurance exchange;

(2) that state registration of these individuals and entities, to ensure that they are trained and knowledgeable in the subject matter of individual and group health insurance coverage, is necessary to avoid substantial risk to the health, safety, and welfare of the residents of this State;

(3) that the U.S. Congress, in the McCarran‑Ferguson Act of 1945, the Gramm‑Leach‑Bliley Act of 1999, and in other enactments, has declared that states should regulate the business of insurance and affirmed that the continued regulation of the insurance industry by the states was in the public’s best interest;

(4) that the federal Centers for Medicare and Medicaid Services are charged with the legal duty of implementing certain aspects of the federal Patient Protection and Affordable Care Act and has recognized, through regulations including, but not limited to, the General Guidance on Federally‑facilitated Exchanges, p. 4, CMS 2012, and 77 Fed. Reg. 18309, 18448, published March 27, 2012, the responsibility of the states’ departments of insurance in the licensure and regulation of a person, commonly referred to as a ‘health care navigator,’ who receives grant monies from the United States Department of Health and Human Services, a state or a health insurance exchange, or private money to perform an activity or duty identified in 42 U.S.C. Section 18031(i);

(5) that the federal government providing navigators a role in the facilitation and implementation of the Patient Protection and Affordable Care Act is not absolute and does not prohibit complementary regulation of these individuals and their activities by states, and that the provisions of this article fairly balances the interests of the federal government in providing for the implementation of its program with the interests of the states in protecting their residents from fraudulent and unscrupulous acts by persons of questionable moral character.

Section 38‑71‑3030. For the purposes of this article:

(1) ‘Department’ means the South Carolina Department of Insurance.

(2) ‘Navigator’ means a person who is selected to perform the activities and duties identified in 42 U.S.C. Section 18031(i) and includes a person who receives grant monies from the United States Department of Health and Human Services, a state or a health insurance exchange, or private funds to perform an activity or duty identified in 42 U.S.C. Section 18031(i).

(3) ‘Exchange’ means an American Health Benefit Exchange established by the federal government, any state, or political subdivision of a state, as provided for in the ACA.

Section 38‑71‑3040. Except as otherwise provided in this title, this chapter applies to any individual or entity registered as a navigator in South Carolina. It does not apply to licensed life, accident and health insurance producers or licensed life and health insurance companies. This chapter does not apply to any individual or entity that provides assistance to consumers under, and in compliance with state or federal authority other than Section 42 U.S.C. Section 18031 to the extent the individual or entity is providing assistance consistent with that state or federal authority.

Section 38‑71‑3050. An individual or entity shall not act as or purport to be a navigator in this State or provide the services of a navigator unless the individual or entity registers with the department by submitting an application and paying the following registration and registration renewal fee of twenty‑five dollars, if the applicant is an individual, or one hundred dollars, if the applicant is some other entity.

Section 38‑71‑3055. The registration fee and registration renewal fee is nonrefundable and fully earned upon payment. All fees collected from navigators are to be used by the department to implement and enforce the requirements of this article and the provisions of Title 38.

Section 38‑71‑3060. (A) To register as a navigator in South Carolina, an entity shall:

(1) provide proof the entity is domiciled in the United States;

(2) establish procedures for the handling of personally identifiable and nonpublic information;

(3) provide the department with a copy of the entity’s authority to operate in South Carolina;

(4) designate an officer to act as the responsible party on behalf of the entity and to submit to a background check;

(5) provide a list of individuals performing navigator services on behalf of, or under the supervision of, the entity on a form prescribed by the department;

(6) provide proof that the individual has complied with the applicable federal education and registration requirements of the ACA and of this article;

(7) provide and maintain on file with the department a current business address for notices and other regulatory information; and

(8) complete and provide to the department a registration application which must be renewed biennially.

(B) To register as a navigator, an individual must:

(1) be at least eighteen years of age;

(2) provide proof that the individual is a citizen of the United States and has complied with all state and federal laws pertaining to employment in South Carolina and the United States;

(3) provide evidence that the individual 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;

(4) provide proof that the individual has complied with the applicable federal education and registration requirements of the ACA and of this article;

(5) provide and maintain on file with the department a current business address for notices and other regulatory information;

(6) identify the navigator entity that the individual represents or is employed or associated with; and

(7) complete and provide the department with a navigator registration application which must be renewed biennially.

(C) The department may deny, suspend or revoke the registration of a navigator registered individual or entity if:

(1) the navigator is convicted of a felony offense;

(2) the navigator is convicted of a misdemeanor offense involving fraud or dishonesty;

(3) the department, after investigation, concludes that the navigator has provided false or fraudulent information to consumers or otherwise deceived or dealt unjustly with the residents of the State of South Carolina as defined in Section 38‑43‑130; or

(4) the navigator has engaged in intentional or negligent conduct that has resulted in the release of a consumer’s personally identifiable information.

(D) An entity registered as a navigator shall report to the department all unauthorized releases of a consumer’s personally identifiable information. The entity shall report this unauthorized release of personally identifiable information to the affected individual whose personal information was released within twenty‑four hours after discovering, investigating and verifying the breach.

(E) Notwithstanding another provision of law, a navigator shall not sell, solicit, or negotiate insurance in this State for any class or classes of insurance when assisting an individual with enrollment or performing any other insurance navigator activities or duties through a health insurance exchange established or operating in this State, including an exchange established or operated by the United States Department of Health and Human Services without first being licensed as a producer in accordance with applicable South Carolina law.

(F) A navigator and his administrative staff shall keep all personally identifiable information secure pursuant to Title 45, Part 155 of the Code of Federal Regulations. The department shall revoke the registration of a navigator who fails to comply with the requirements of this article.

(G) The department shall maintain a website for the purpose of providing the public with a complete list of all currently registered navigators in this State.

Section 38‑71‑3070. A person acting as a navigator pursuant to 42 U.S.C. Section 18031(i) on the effective date of this act shall register within ninety days after the effective date of this act with the department as provided in this article in order to continue performing the duties and activities of a navigator in this State after the effective date of this act. An entity that receives grant monies from the United States Department of Health and Human Services, a health insurance exchange, or private money to perform an activity or duty identified in 42 U.S.C. Section 18031(i) shall register within ninety days of receiving the grant monies with the department as provided in this article in order to begin performing the duties and activities of a navigator in this State.

Section 38‑71‑3080. An entity employing an individual as a navigator shall require that individual to register with the department within thirty days after successfully completing the federal education and registration requirements for navigators.

Section 38‑71‑3090. An entity employing an individual registered as a navigator shall notify the department, in writing, of any change in the status of a navigator, including but not limited to, suspension, termination, or resignation, within thirty days of the status change.

Section 38‑71‑4000. A person who violates the provisions of this article shall be subject to the penalties and disciplinary action set forth in Section 38‑2‑10.

Section 38‑71‑4010. Unless registered with the department as a navigator under this article, an entity or individual may not:

(1) use the term ‘navigator’ as part of an entity’s name or website address or in an individual’s title; or

(2) imply or represent that the entity or individual is a navigator in advertising or outreach material.

Section 38‑71‑4020. The department may promulgate regulations necessary to carry out the provisions of this article.

Section 38‑71‑4030. The director or his designee is authorized to impose additional requirements on registrants or applicants for registration under this article through administrative action so long as those requirements are consistent with the requirements applicable to individual licensees of the department as set forth in statute or regulation.

Section 38‑71‑4040. If a court of competent jurisdiction holds that any provision of this article or its application to any person or circumstance is invalid for any reason, the invalidity does not affect other provisions or applications of this article that can be given effect without the invalid provision or application.”

SECTION 3. Section 38‑3‑110 is amended by adding an appropriately numbered new subsection to read:

“( ) The director must take reasonable steps and all appropriate action to limit federal intrusion into the regulation of the business of insurance in this State. This includes, but is not limited to, regulation of the insurance products offered through any exchange or other insurance marketplace operating in the State pursuant to any federal act, regulation, or action, including the Patient Protection and Affordable Care Act of 2010 and its enacting regulations.”

SECTION 4. (A) The Governor is hereby authorized and requested to communicate this act to the legislatures of the several states, to assure them that this State considers the Union was established for specified purposes, and particularly for those specified in the United States Constitution to be friendly to the peace, happiness, and prosperity of all the states; that faithful to that Constitution, according to the plain intent and meaning in which it was understood and accorded to by the several states, the State of South Carolina is sincerely anxious for its preservation; that it does also believe that to take from the states all of the powers of self‑government, and transfer them to a general and consolidated government, without regard to the special delegations and reservations solemnly agreed to by the States in that Constitution, is not for the peace, happiness or prosperity of the States; and that therefore, the State of South Carolina is determined, as it doubts not most of its sister states are, never to submit to un‑delegated, and consequently unlimited, powers claimed to be possessed by any man or body of men.

(B) The Governor is hereby authorized and requested to call on our sister states for an expression of their sentiments on the Patient Protection and Affordable Care Act of 2010, plainly declaring whether these acts are or are not authorized by the United States Constitution; that it is the position of the State of South Carolina that the Patient Protection and Affordable Care Act of 2010 amounts to an undisguised declaration that the Constitution is not meant to be the measure of the powers of the federal government, but that it will proceed in the exercise over the State of South Carolina and its sister states of all powers whatsoever. That our sister states view this action as seizing the rights of the States and consolidating them in the hands of the federal government with a power assumed to bind the states, but in all cases whatsoever, by laws made, not with their consent, but by others against their consent. That this would be to surrender the form of government we have chosen, and to live under one deriving its powers from its own will, and not from our authority; and that the sister states recurring to their natural right, will concur with the State of South Carolina in declaring the Patient Protection and Affordable Care Act of 2010 void, and of no force, and will each unite with the State of South Carolina in requesting its immediate repeal, and also pass legislation similar to this act within their own state legislatures.

SECTION 5. This act takes effect upon approval by the Governor. /

Renumber sections to conform.

Amend title to conform.

Senator DAVIS spoke on the Point of Order.

Senator SETZLER spoke on the Point of Order.

Senator HUTTO spoke on the Point of Order.

The PRESIDENT sustained the Point of Order.

**Appeal of the Ruling by the PRESIDENT Failed**

Senator DAVIS appealed the Ruling by the PRESIDENT.

**PRESIDENT *PRO TEMPORE* PRESIDES**

At 8:41 P.M., Senator COURSON, PRESIDENT *Pro Tempore*, assumed the Chair.

The question then was, “Shall the Ruling by the PRESIDENT be overridden?”

The PRESIDENT *Pro Tempore* stated that Rule 7 provided for debate of fifteen minutes each for proponents and opponents.

Senator DAVIS spoke in favor of overriding the Ruling by the PRESIDENT.

Senator SETZLER argued contra to overriding the Ruling by the PRESIDENT.

Senator SHANE MARTIN spoke in favor of overriding the Ruling by the PRESIDENT.

The "ayes" and "nays" were demanded and taken, resulting as follows:

**Ayes 14; Nays 28**

**AYES**

Bright Bryant Campsen

Corbin Cromer Davis

Fair Grooms *Martin, Shane*

Shealy Thurmond Turner

Verdin Young

**Total--14**

**NAYS**

Alexander Allen Bennett

Campbell Cleary Courson

Gregory Hayes Hembree

Hutto Jackson Johnson

Leatherman Lourie Malloy

*Martin, Larry* Massey Matthews

McElveen McGill Nicholson

Peeler Rankin Reese

Scott Setzler Sheheen

Williams

**Total--28**

The Senate refused to override the Ruling by the PRESIDENT.

The amendment was ruled out of order.

**PRESIDENT PRESIDES**

At 8:54 P.M., the PRESIDENT assumed the Chair.

The Senate proceeded to a consideration of the Bill, the question being the second reading of the Bill.

The "ayes" and "nays" were demanded and taken, resulting as follows:

**Ayes 9; Nays 33**

**AYES**

Bright Bryant Corbin

Davis Fair Grooms

*Martin, Shane* Shealy Verdin

**Total--9**

**NAYS**

Alexander Allen Bennett

Campbell Campsen Cleary

Courson Cromer Gregory

Hayes Hembree Hutto

Jackson Johnson Leatherman

Lourie Malloy *Martin, Larry*

Massey Matthews McElveen

McGill Nicholson Peeler

Rankin Reese Scott

Setzler Sheheen Thurmond

Turner Williams Young

**Total--33**

Having failed to receive the necessary vote, the Bill was not read the second time.

**Statement by Senators CAMPSEN, MASSEY, CLEARY ALEXANDER, CAMPBELL, HAYES, CROMER and GREGORY**

We supported Senator DAVIS’ Amendment No. 2 to H. 3101 and worked hard to assist him in its adoption. The DAVIS amendment focused upon anti-commandeering as an exercise of federalism and State sovereignty in accordance with the ninth and tenth amendments, and the holding of the U.S. Supreme Court in Printz v. US. It also carefully eliminated potential unintended negative consequences of the House Bill. However, I could not support H. 3101 as it passed the House because it did not mitigate unintended consequences as the DAVIS amendment did. It also used taxpayer dollars to pay for private fines and subjected private businesses to suits from the Attorney General.

**Motion Adopted**

On motion of Senator COURSON, the Senate stood adjourned.

**MOTION ADOPTED**

On motion of Senator MATTHEWS, with unanimous consent, the Senate stood adjourned out of respect to the memory of Rev. Dr. Samuel B. Marshall of Holly Hill, S.C. Rev. Marshall pastored both Second Providence Baptist Church and Good Hope Baptist Church for over 50 years. He was a dedicated public school administrator and the founder and owner of Shuler-Marshall Funeral Home. Rev. Marshall was a great man who served his community well and will be dearly missed.

and

**MOTION ADOPTED**

On motion of Senator LOURIE, with unanimous consent, the Senate stood adjourned out of respect to the memory of Ms. Laurie Anne Hutchinson of Raleigh, N.C. Laurie was the daughter of Dr. and Mrs. Bert Hutchinson of Columbia, S.C. She was a graduate of Spring Valley High School and the College of Charleston. Laurie was a highly decorated rider who was ranked in the top ten in the country at the National Horse Grand Prix. She was a head trainer and manager at Whispering Hope Stables. She was a loving daughter and devoted mother who will be dearly missed.

**ADJOURNMENT**

At 8:59 P.M., on motion of Senator COURSON, the Senate adjourned to meet tomorrow at 11:00 A.M.

**Recorded Vote**

Senators BRIGHT, BRYANT and SHANE MARTIN desired to be recorded as voting against the motion to adjourn.

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