

 ORIGINAL
Volume II of II

STATE OF SOUTH CAROLINA

In The Supreme Court

APPEAL FROM GREENVILLE COUNTY

John C Few, Circuit Court Judge

RECEIVED

JUN 14 2011

SC Supreme Court

THE STATE,

RESPONDENT,

V

SAMUEL L WHITNER,

APPELLANT

RECORD ON APPEAL

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***** Compact discs containing the following exhibits transported to the South Carolina
Supreme Court*****
State's Exhibit #1 from November 2009 Trial (intercepted phone call)
State's Exhibit #2 from November 2009 Trial (other intercepted phone call)
State's Exhibit #11 from November 2009 Trial (forensic interview)

Other States

In addition to Texas, Iowa and Arizona, many other states have adopted the “vicarious consent” doctrine including North Carolina in Kroh v. Kroh, 152 N C App 347, 567 S E 2d 760 (2002), New Jersey in State v. Diaz, 308 N J Super 504, 706 A 2d 264 (1998), Cacciarelli v. Boniface, 325 N J Super 133, 737 A 2d 1170 (1999), and D’Onofrio II v. D’Onofrio, 344 N J Super 147, 780 A 2d 593 (2001), and Louisiana in Smith v. Smith, 923 So 2d 732, 2004-2168 (La App 1 Cir 2005)

C The Court should interpret 17-30-30(c) to include the doctrine of “vicarious consent” because the Legislature intended it to be the law, consistent with the Legislature’s long-standing intent to protect South Carolina’s children

While there is a large amount of federal and state case precedent supporting the Court adopting this important doctrine, the State recognizes this Honorable Court is not bound by the cases cited above in determining the matter. The sole issue for this Court is one of statutory interpretation. Did the legislature intend for “vicarious consent” to be included in the existing one party consent exception, codified as 17-30-30 (c), such that “the present consent exception is satisfied when the consent of a minor party to a conversation is given by that minor’s parent or guardian.” State v. Spencer, 737 N W 2d 124, 129 (Iowa 2007). To determine statutory intent, this Court must look to the general rules of statutory interpretation.

The cardinal rule of statutory interpretation is to determine and give effect to the intent of the legislature. State v. Brannon, 379 S C 487, 666 S E 2d 272 (Ct App 2008). The Legislature’s intent should be ascertained primarily from the plain language of the statute without resorting to subtle or forced construction. Id. In construing a statute, the court looks to the language as a whole and gives that language a practical, reasonable,

and fair interpretation consistent with the purpose, design and policy of the lawmakers Id at 497 In the end, Courts are to reject a statutory interpretation which would lead to a result so plainly absurd that it could not have been intended by the legislature or would defeat the plain legislative intention Unisun Ins Co v Schmidt, 339 S C 362, 368, 529 S E 2d 280, 283 (2000), Kiriakides v United Artists Commc'ns, Inc., 312 S C 271, 275, 440 S E 2d 364, 366 (1994)

Utilizing these well-established rules of statutory interpretation, the Honorable Court can only conclude that the one party consent exception already contained within the State Wiretap Act encompasses the doctrine of “vicarious consent” Thus, our Legislature intended to allow a parent or guardian, like the mother and step-father in this case, charged with the care and wellbeing of their minor victim, to be able to consent for her and record the phone call (as long as it is in the child’s best interest) without violating the State Wiretap law

1 If the Court finds the statute ambiguous, it should follow the reasoning of Iowa v Spencer and interpret the statute to recognize “Vicarious Consent”

Case law supports this Court recognizing the “vicarious consent” doctrine regardless of whether the Court finds the State Wiretap Statute is ambiguous or unambiguous with regards to the meaning of “consent” This Court may find the statute is ambiguous in its definition of consent as it relates to minors because sometimes they can consent (minors are bound by contracts unless disaffirmed) while many other times they cannot consent without parental consent *first* (as seen in the examples given by Petitioner related to abortion, tattooing and bungee jumping)

If this Court finds the State Wiretap Statute to be ambiguous as to whether the Legislature intended a parent to be able to vicariously consent for his or her child, the Court should attempt to ascertain the intent of the Legislature. The rules of statutory construction mandate “If the language of an act gives rise to doubt or uncertainty as to legislative intent, the construing court may search for that intent beyond the borders of the act itself. Any ambiguity in a statute should be resolved in *favor of a just, beneficial and equitable operation of the law*.” Thompson ex rel. Harvey v. Cisson Const. Co., 377 S.C. 137, 659 S.E.2d 171 (S.C. App. Feb. 01, 2008), rehearing denied (Apr. 18, 2008), certiorari granted (Jun. 24, 2009) (emphasis added). A “just” and “beneficial” operation of law does not protect the rights of a criminal defendant while ignoring the rights of the child victim.

At the core of this entire dispute is the recorded call containing evidence of a sexual assault on a child. Petitioner designates the call at issue in a very benign, sterile way: “the August 5th Intercepted Conversation.” But in reality, no matter how much Petitioner fights this call being heard in open court or attempts to minimize its true nature, the tape is a confession that should be heard by the jury and used by the jury in determining the truth about what happened to the minor victim. The truth is explained and documented exhaustively by Petitioner on this tape in his own words.¹⁷

¹⁷ Petitioner will most certainly say he is apologizing for some other “incident” with J.W. on the tape and the tape is not a confession to the sexual assault. The State believes a jury should get the chance to determine the context of the call. When arrested by Greenville City Detective Bobby Bradford, Petitioner immediately tried to figure out how much of what he said to J.W. was recorded on tape. He said the mother only let police hear what she wanted. He did not realize law enforcement had the entire phone call between Petitioner and J.W. The State is confident the 31 minute taped call, viewed in light of all the events that occurred between August 2 – August 5, 2007, will lead a reasonably jury to reach the “just” result.

He states “ I am responsible You hear me? I’m the one who’s gotta deal with everything I’m the one that’s gotta take what’s coming You hear me?”¹⁸ So based on the extremely probative nature of this call, the State asks this Court to recognize “vicarious consent” because it is legally viable to do so and socially imperative to do so

In the event this Court finds the statute ambiguous, the analysis and result found in State v. Spencer is illuminating. As discussed above, In State v. Spencer, the Iowa Supreme Court adopted the doctrine of “vicarious consent.” Id. at 135. In that case, the defendant took the exact same position Petitioner takes in this case, saying the Statute is clear and unambiguous and if the Legislature intended for there to be a “vicarious consent” exception, then it would have explicitly inserted language into the statute. The Supreme Court of Iowa found the definition of consent in the statute was ambiguous and went through a very thoughtful and thorough analysis of the “vicarious consent” doctrine. The Court analyzed the consent exception in Iowa’s statute, codified as Iowa Code section 808B 2(2)(2)(c), which mirrors federal consent exception as well as South Carolina’s consent exception.¹⁹

In the end, the Supreme Court of Iowa overruled the trial court, and adopted the doctrine of “vicarious consent” to allow admission of phone conversations between a 13

¹⁸ Transcript, page 9

¹⁹ Other state courts with one party consent provisions similar to the federal provision look to the federal courts for guidance. “Therefore, we can look at the federal act and the interpretations placed on the consent provision by federal courts and assume the Iowa legislature had the same objectives in mind and employed the statutory terms in the same sense as its federal counterparts.” State v. Spencer, 737 N.W.2d 124, 135 (Iowa 2007) citing City of Davenport v. Pub Employment Relations Bd., 264 N.W.2d 307, 313 (Iowa 1978).

year old girl and her school teacher, recorded by her father after he suspected the two had a sexual relationship. The court held

“After considering (1) the weight of authority behind the adoption of the vicarious consent doctrine, (2) the similarity between the Iowa statute, federal statute and the statutes of those states adopting vicarious consent, (3) the protections against parental abuse provided by this doctrine, (4) our conclusion a minor’s privacy is not violated when a parent or guardian vicariously consents for that minor consistent with the protections provided by the doctrine, and (5) the refusal of the Iowa legislature to allow a minor to consent to certain acts, especially with respect to those matters traditionally left to a parent or guardian to determine the best interests of the child, we interpret section 808b 2(2)(c) to include the vicarious consent doctrine as outlined in Pollock.” Id at 133-134

In the event this Court finds the statute ambiguous, the Court should follow Spencer. As this Court is divining the real purpose and intent of the Legislature, the State respectfully asks this Court to consider these two questions. First, would the Legislature have intended to keep this extremely probative piece of evidence from a jury’s consideration in determining whether a small child has been sexually assaulted? Second, would the Legislature consider it a “just” and “beneficial” operation of law to subject parents and guardians to criminal and civil penalties, when out of concern for that their child has been the victim of a sexual assault and in the best interest of their minor child, they record that child’s conversation? The answer to both questions is certainly no.

2 Even if the Court finds the statute unambiguous, it should follow the reasoning in Alameda v State and interpret the statute to recognize “Vicarious Consent”

If a statute’s meaning is clear and unambiguous on its face, the court interprets and applies the statute according to its literal meaning. State v Brannon, 379 S C 487, 666 S E 2d 272 (S C Ct App July, 18, 2008). But the court must also look to the language as a whole in light of its manifest purpose, giving it a practical, reasonable, and

fair interpretation consonant with the purpose, design, and policy of the lawmakers Id at 495-498 The Court can find the statute is clear and unambiguous and still find the Legislature intended to allow “vicarious consent” because it is nothing more than a *means of* or *type of* consent by a party when that party is a minor The Court should determine the consent exception includes the usual consent by a party when that party is an adult and also “vicarious consent” by the party’s parent when the party is a minor

As previously discussed, the Alameda court ruled in favor of adopting the “vicarious consent” doctrine in Texas The defense in that case argued, that since the Texas Family Code enumerated circumstances under which a parent has the right to consent on behalf of a child but the code did not mention the right of parents to consent to the recording of a child’s conversations, then the legislature must have intended that no such right exist 235 S W 3d 218, 222 (Tex Crim App 2007) Petitioner makes the same argument, saying the Legislature did not intend “vicarious consent” to be the law in South Carolina because the wiretap statute does not specifically include the *word* “vicarious” or have the exception itself written specifically in the statute

The Alameda Court rejected this narrow argument

“Appellant states that this case may illustrate why a vicarious-consent exception should be added to the statute, but he argues that it should be added by the legislature and not the courts However, by holding that a parent can give vicarious-consent for a child, we are not adding a new exception to the wiretap statute *Rather* we are saying that vicarious-consent, which is *a type of consent* recognized in many contexts in the law regarding the parent-child relationship, also applies to the existing consent exception to the wiretap statute Alameda v State 235 S W 3d 218, 223 (Tex Crim App ,2007)

As in Alameda, Petitioner points to other statutory provisions where parental consent is explicitly defined and required such as abortion, bungee jumping and tattooing,

and he argues since the Legislature explicitly defined those statutes, its silence must mean the Legislature did not intend for “vicarious consent” to exist. The examples of legislation cited by Petitioner were passed requiring parental consent for the best interest of the child. The case before this Court is distinguishable because the legislative intent is not *to require* parental consent to record the communication for the best interest of the child but *to allow* vicarious consent to record the communication for the best interest of the child. All the statutes cited by Petitioner do is further display the Legislature's clear desire to protect the safety and best interest of children in South Carolina, and therefore, the “vicarious consent” doctrine would be consistent with the Legislature's clearly demonstrated intent.

3 The Court should interpret Section 17-30-30 (c) to allow “vicarious consent” to avoid an absurd result

The Supreme Court is very clear that statutory interpretation should not lead to absurd results that subvert justice. “We will reject a statutory interpretation when to accept it would lead to a result so plainly absurd that it could not have been intended by the legislature or would defeat the plain legislative intention.” Sonoco Products Co v South Carolina Dept of Revenue, 378 S C 385, 662 S E 2d 599 (2008). When it drafted the State Wiretap Act, the Legislature certainly did not intend to protect the criminal acts of defendants in child sexual assault cases, while casting aside the rights of children who have been sexually abused by those defendants or their parents who have the responsibility and duty to protect them from future harm.

Under the Petitioner's theory of the wiretap statute, a completely absurd result, one affecting evidence admissibility, as well as the possibility of criminal charges and civil causes of action, would happen in this case. 1) the call of a defendant apologizing to his

daughter for a heinous crime would be suppressed, 2) technically, her mother and step father would have committed a criminal act for recording the call in the first place under state law but not federal law, and 3) Petitioner could, in theory, seek civil redress against the mother and step-father. This result, when carried out to its illogical conclusion, would mean that these two well meaning guardians *could* be charged with a felony and prosecuted for doing what any responsible parent would do in this situation: acting in the child's best interest and protecting her. The statute would protect the child abuser and criminalize the parent who acts in that child's defense. Would the Legislature have intended this result? Surely it would not.

D Courts rejecting “vicarious consent” are distinguishable from this case

The State finds only a handful of jurisdictions have rejected the “vicarious consent doctrine.”²⁰ Yet each case is distinguishable from Petitioner's case. In Williams v. Williams, Brenda Williams filed suit under the Federal and Michigan wiretap statutes against her former husband when she discovered he has secretly recorded conversations between Brenda and her son, without either's knowledge or consent. 581 N.W.2d 777 (Mich. Ct. App. 1998). In Williams, the Michigan Court of Appeals failed to apply the “vicarious consent” doctrine and reversed the trial court. *Id.* at 778-79.

Ultimately, the case was appealed to the Michigan Supreme Court which remanded the case back to the Court of Appeals for reconsideration in light of Pollock which was decided after the first appellate decision. 593 N.W.2d 559 (Mich. 1999). On remand, the Williams Court of Appeals acknowledged it was bound to follow Pollock and ruled the

²⁰ See Williams v. Williams, 229 Mich. App. 318, 581 N.W.2d 777 (Mich. Ct. App. 1998); Bishop v. State, 241 Ga. App. 517, 526 S.E.2d 917 (2000); State v. Christensen, 153 Wash.2d 186, 102 P.3d 789 (2004).

doctrine of “vicarious consent” did apply with regard to the federal wiretap statute 603 N W 2d 114, 115 (Mich Ct App 1999) But the Williams II court refused to adopt “vicarious consent” on the state claim Id This case is distinguishable because the Michigan wiretap statute requires *consent of all parties* to fit into exception Therefore, by adopting “vicarious consent,” the court would have been creating an exception rather than merely interpreting one Petitioner’s case is dissimilar to the stringent Williams requirement since the state and federal statutes contain only one party consent exceptions ²¹

Finally, Petitioner cites Bishop v State for the premise that if the South Carolina Legislature intended “vicarious consent” to exist, it could have codified a consent provision as was done by the Georgia legislature 241 Ga App 517, 522, 526 S E 2d 917, 921 (2000) But Petitioner gives a generalized holding that does not accurately explain what happened in Bishop The State is asking this Court to interpret one provision, 17-30-30(c) In Bishop, the court had to, not only interpret the existing one party consent provision, but also interpret an entirely different, specific Georgia statute, which is not part of S C law In Bishop, the parents of a 13 year old child recorded conversations between their child and the defendant Id

The Georgia statutory scheme at the time led to the Georgia Court of Appeal’s unfortunate result in Bishop of suppressing the calls Georgia’s additional statute

²¹ See also, State v Christensen, 153 Wash 2d 186, 102 P 3d 789 (2004) where the Washington Supreme Court recognized the vicarious consent doctrine with regard to the Federal statute and its one party consent exception, but found that “[t]he Washington act, with its all-party consent requirement, contains no such parental exception and no Washington court has even implied such an exception ” Id at 194, 792

presented a hurdle to the adoption of “vicarious consent” through judicial interpretation and required legislative reform. The statute read

1 First OCGA section 16-11-62 “prohibits the interception or recording of a telephone call by any person who is not a party to the conversation.” Id. at 519

2 Second, OCGA section 16-11-66(a) contained a “one party consent” statute mirroring our exception which read as follows: “Nothing in Code Section 16-11-62 shall prohibit a person from intercepting a wire, oral, or electronic communication where such person is a party to the communication or one of the parties to the communication has given prior consent to such interception.” Id.

3 The problem was OCGA section 16-11-66(b) which stated “that the telephone conversations of a child under 18 years of age may be recorded and divulged *if* upon written application by a private citizen, law enforcement agency, or prosecutor's office, *a judge* of a superior court and the child consent to such taping.” (Emphasis added) Id.

At the time of Bishop, the Georgia statutory scheme pursuant to OCGA 16-11-66(b) led to bad results and was flawed in many ways. First, as a matter of law, “the child victim alone could never have given consent to the recording of her phone call because a judge of a superior court had to consent to the recording.” Id. at 523. Likewise, even if a judge had consented to the recording, if the child did not consent, the recording was inadmissible.²² Id. In reaction to the bad result in Bishop, the Georgia State Legislature amended § 16-11-66 to fix this unintended result and created a parental “vicarious consent” exception to the state wiretap statute OCGA § 16-11-66.

²² The Bishop Court recognized the flaws in the Georgia Code: “This Court recognizes that OCGA § 16-11-66, as drafted, creates numerous evidentiary problems in cases such as this, when a child is under significant criminal influence by another and such criminal influence poses a genuine risk which is not recognized by a child of tender years. Clearly, even if the State or the parents in this case had petitioned a superior court judge, under OCGA § 16-11-66(b), for permission to tape the conversations between Bishop and the victim, the victim would have refused to consent and participate at that time, thereby precluding the issuance of such order.” 241 Ga. App. 517, 523.

West Virginia has not rejected the “vicarious consent” doctrine but has declined to apply to it to a very specific set of facts in ex rel Wright v David L, 192 W Va 663, 453 S E 2d 646 (1994) ²³ In Wright, a father got his mother (the children’s grandmother) to plant a voice recorder in the children’s bedrooms in the mother’s home *Id* The court acknowledged and agreed with reasoning in Thompson, but held that because the recording was done in mother’s home, the father had no right to record or vicariously consent for the children *Id* at 671, 654 There is every reason to believe that West Virginia would rule in favor of “vicarious consent” under the facts set forth in this case, since the mother and step-father did the recording in their home in an effort to protect the minor child from future harm

E The elements of “vicarious consent” are met under the Pollock test

Once this Court finds that South Carolina recognizes the “vicarious consent” doctrine, the recorded call would clearly be admissible under the Pollock test Here, these two parents were faced with any parent’s worst nightmare the reality that their child had been sexually assaulted and could possibly face future harm, especially if allowed to visit the offending parent The Pollock case centered on calls that occurred “during the context of a bitter and protracted custody dispute ” 154 F 3d 601(6th Cir 1998) The doctrine would most certainly apply in a case of suspected child sexual abuse, finding the mother and

²³ See also State v Hensley, 145 Idaho 852, 187 P 3d 1227 (2008) where the Idaho court did not reject “vicarious consent” but simply did not address the issue because the court found the father was not acting in the best interests of the child so there was no need for further inquiry *Id* at 857, 1232 The Hensley court implied “vicarious consent” could only apply when a parent is acting in a child’s best interest as in this case

step-father were acting in the minor child's best interest when they recorded the call at issue with Petitioner²⁴

Consider the position they were in as parents. First, the mother hears the terribly disturbing disclosure from her daughter, that 5 or 6 years ago, her own biological father forced her to give him oral sex and humped her body one night. A myriad of confusion sets in. Petitioner thinks it is significant the mother did not run down to the police station the very second she heard the news. The reality is that there is no "cookie cutter," appropriate response any parent should have to such upsetting news. The parents acted entirely appropriately and only allowed a few short days to pass before going seeking help. But during the interim, they were trying to get to the bottom of what happened to prevent possible future harm to the minor child.

After Petitioner denied the assault to both the minor child and the mother, the child was seen by the mother crying after telling her "bad" secret.²⁵ Any parent would want to search for the truth to help his or her child with counseling and recovery. Step-father would testify, while he knows minor child is a truthful, honest child, he hoped by some miracle, she was confused or it was a dream. As with many parents in this type of situation, step-father did not want to believe Petitioner could have done such a terrible thing to his own child. By finding out if something illegal happened in the past, the mother and step-father were trying to prevent *future* harm as well. If they did nothing to

²⁴ See State v. Morrison, 56 P 3d 63, 64 (Ariz Ct App 2002)(another case involving sexual assault on a child)

²⁵ In the recorded phone call on Sunday morning, August 5, 2007, the mother tells Petitioner that the minor victim is "crying a lot" and "will need help getting over this." Petitioner does not admit or deny the assault.

ferret out the truth of what happened to the minor victim those many years ago, their actions would equate to negligence and dereliction of their duties as a parent

Imagine what could have happened if they did nothing, sat quietly by and hoped it was all the confused memory of a little girl. Then at some later date, Petitioner, gets “high and out of my mind” again,²⁶ has a relapse, and assaults the minor victim again. Not only would the parents have failed their child, but some might believe they would have committed a crime themselves by doing nothing to stop possible future harm. Under the circumstances, both the mother and step-father had a good faith, objectively reasonable basis for believing that it was necessary to consent on behalf of the minor child to the taping of the call with Petitioner.

²⁶ Transcript page 4

II THE "VICARIOUS CONSENT" DOCTRINE DOES NOT INFRINGE ON PRIVACY RIGHTS IT PROMOTES SOUND PUBLIC POLICY

Petitioner contends the doctrine of "vicarious consent" infringes upon the privacy rights of the parties, and especially the child. The doctrine does not compromise privacy protections for South Carolina citizens as stated by Petitioner. Nor does it run counter to the overall purpose of the South Carolina Wiretap Act. Petitioner argues the "vicarious consent" doctrine permits a "third-party" to "unilaterally eavesdrop" on a private conversation. The State is not seeking that kind of broad, sweeping exception to the State Wiretap Act. The State is asking this Court to adopt the restrictive "vicarious consent" doctrine as set forth in Pollock. The doctrine does not allow just any "third party" to intercept a call. The requirements are the person must be 1) a parent or guardian, 2) who has a good faith objectively reasonable basis for believing that it is in the best interest of his or her minor child to record of telephone conversations. 154 F.3d at 610. Even with the adoption of this doctrine, there will be cases where intercepted calls will not be admissible because the court finds the parent did not have proper motives.

The doctrine does not violate the privacy rights of S.C. citizens guaranteed in the South Carolina Constitution, Article I, § 10. It is important to remember South Carolina only requires one party to know that a call is recorded. The legislature could have adopted the more stringent "all party" consent exceptions seen in Michigan and Washington. The State Wiretap Act was intended to protect the privacy of individuals, to an extent, but not protect the criminal acts of defendants by allowing them to assert the rights of their victims. The bottom line here is that had J.W. been told by her mother and step-father that they were going to record the call, Petitioner would have no standing to complain his confession was caught on tape and recorded without his permission. As

such, Petitioner is trying to assert the rights of the victim. The end result would be terribly unfair for this child victim. She would be forced to go through a trial where the most critical piece of evidence against her sexual abuser was thrown out. It would basically be “her word versus his word,” making it much more difficult for a jury to reach the proper verdict.

The doctrine also does not unduly infringe on the privacy rights of children. In Bellotti v. Baird, the United States Supreme Court recognized although children are due many of the same rights as adults, “the constitutional rights of children cannot be equated with those of adults.” Bellotti v. Baird, 443 U.S. 622, 634 (1979). The Court provided three justifying reasons for this conclusion: 1) the peculiar vulnerability of children, 2) children’s inability to make critical decisions in an informed, mature manner, and 3) the importance of the parental role in child rearing. Id. The Court explained that “the parental role implies a substantial measure of authority over one’s children”, and that “legal restrictions on minors, especially those supportive of the parental role, may be important to the child’s chances for the full growth and maturity that make eventual participation in a free society meaningful and rewarding.” Id. at 638-639.

Finally, South Carolina should recognize “vicarious consent” because the doctrine provides a significant benefit to society and to the administration of justice. In the criminal context, the doctrine is extremely useful in helping parents protect their children from harmful, sexual offenders. The doctrine is particularly important in situations, such as in this case, where one parent (Petitioner) is the abuser but still has the love and affection of the child. It is very unlikely the child would be able to act in her best interest because she would be afraid to harm the parent she loves. Society and the State have an

interest in not requiring a child to be put into this sort of terrible dilemma. In this situation, the parents, Anna and Jeff Grady, are charged with the responsibility and duty to provide for the care and best interest of J W and should be allowed to step in and offer "vicarious consent" for her.

CONCLUSION

For the foregoing reasons, this Honorable Court should interpret section 17-30 30(c), the consent exception of South Carolina's wiretap statute, to recognize "vicarious consent" for children in South Carolina.

Respectfully submitted,



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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

GREENVILLE COUNTY
Court of General Sessions

Indictment No 2009-GS-23-01072

The State,

Respondent

v

Samuel L Whitner,

Petitioner

PETITIONER'S REPLY TO THE STATE'S RESPONSE

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I PETITIONER RESPECTFULLY SUGGESTS THAT THE COURT DETERMINE FIRST WHETHER, AS A MATTER OF LAW, PRIOR CONSENT WAS OBTAINED FROM AT LEAST ONE PARTY

The State is the party seeking admission of the August 5th Intercepted Conversation into evidence. Thus, the State has the burden of providing the Court with the proper foundation for admissibility. It is undisputed that neither party to the August 5th Intercepted Conversation gave prior consent to their private telephone conversation being intercepted. In light of this undisputed fact and the “prior consent” provision of the South Carolina Wiretap Statute, the State has argued that the Court should *adopt* a definition of the term “consent” to include the “vicarious consent” exception. That is not the law in South Carolina by the clear and unambiguous language of the statute.

As a consequence of both the State’s proposed adoption of a new definition of “consent” and the express provisions of the South Carolina Wiretap Statute, this Court is being asked to rewrite the South Carolina Wiretap Statute under the guise of statutory interpretation.

The interpretation of a statute is a matter of law to be determined by a court. Thompson ex rel Harvey v Cisson Const Co., 377 S C 137, 154, 659 S E 2d 171 (Ct App 2007). The undisputed fact here is that neither party to the conversation consented to it being intercepted. Petitioner respectfully recommends that the Court first determine the matter of law through legal argument by the parties on the statute. However, should this Court adopt the new provision the State is requesting this Court read into the statute, then an evidentiary hearing would be necessary for the State to provide the proper foundation for admissibility of its evidence.

II THE LEGAL ISSUE BEFORE THE COURT IS WHETHER CONSENT WAS OBTAINED BY AT LEAST ONE PARTY PRIOR TO THE PRIVATE TELEPHONE CONVERSATION BEING INTERCEPTED—NOT WHETHER SOUTH CAROLINA SHOULD “ADOPT” VICARIOUS CONSENT

The State asserts the issue for the Court’s review is “whether South Carolina should *adopt* the doctrine of ‘vicarious consent’ ” State’s Response at p. 1. That is not the issue before this Court. Pursuant to the South Carolina Wiretap Statute, this Court has subject matter jurisdiction as a “reviewing authority” to hear all pre-trial motions to suppress intercepted wire communications. S.C. Code Ann. §§ 17-30-15 (9) and -110 (A). In this matter, the Court sits not as an appellate court but as a trial court. Petitioner has moved this court as if it were the Circuit Judge in General Sessions, filing a pre-trial motion for an order suppressing an illegally intercepted wire communication. Petitioner has not moved the Court relative to a pending appeal. Rather he has moved this court relative to a pending trial. The contention that the issue is whether to adopt a doctrine is incorrect. The posture of this matter is a trial court review. A trial court cannot “adopt” law, it can only follow law. Hence, the correct issue for review is whether prior consent was obtained from at least one party to the intercepted telephone conversation.

This is not a distinction without a difference. The framing of the issue by the State underscores what is wrong with what the State is ultimately asking this court to do, *i.e.*, legislate policies. The Court is not conducting an appellate review of Judge C. Victor Pyle, Jr.’s pre-trial ruling. What was incorrect about Judge Pyle’s ruling was the lack of subject matter jurisdiction, it was correct on the underlying law that neither party consented. There is no South Carolina legal authority, statutory or otherwise, that permits a private telephone conversation to be intercepted without the prior consent of at least one party. By framing the issue as one of appellate review instead of a trial level review, the State is incorrectly positioning the matter to

permit the declaration of a new rule of law. A trial court does not create new law, it follows established law.

III THE STATE IS ASKING THE COURT TO “ADOPT” A LAW THAT DOES NOT EXIST IN SOUTH CAROLINA AND THUS IS ASKING THE COURT TO ACT AS A SUPER-LEGISLATURE

The State’s first argument in its response asserts that “South Carolina should *adopt* the doctrine of ‘vicarious consent’ ” State’s Response at p. 8 (emphasis added). The State’s framing of its own argument demonstrates that what it is asking the Court to do is legislate. A trial court does not “adopt” a policy. A trial court adheres to the law set forth in statutes and case precedent. The argument that this state “should adopt the ‘vicarious consent’ doctrine” is a policy argument to be made to the legislature, not this court.

Throughout the State’s response it asks this court to make legislative policy considerations. Here are some examples:

Policy Consideration: The “Vicarious Consent” Exception is a Social Imperative

The State argues that it is “socially imperative” to recognize the “vicarious consent” exception. State’s Response at p. 18. While a court may necessarily need to understand the legislature’s social policy considerations, it cannot create its own social policy or, on its own, “adopt” a policy on behalf of the legislature as the State is suggesting in its response. The social consequences or necessities of enacting a particular law are policy considerations for a legislature to make—not a court.

Policy Consideration Child Sex Abuse Prosecutions Require Loosening of Privacy Protections and Constitutional Rights

After asking the Court to “divine” the “real” purpose of the legislature—thus suggesting that the true purpose cannot be ascertained by the plain meaning of the term “prior consent”—the State proposes this court consider two additional policy concerns. First, whether the strict privacy protections of the South Carolina Wiretap Statute should be loosened in criminal prosecutions of child sexual assaults, and, second, whether the civil and criminal penalties resulting from violation of the express terms of the South Carolina Wiretap Statute should be excepted for parents or guardians of child victims in such criminal prosecutions. See State’s Response at p. 19. The State couches these policy concerns as being part of interpreting legislative intent. However, the State provides nothing to support its claim that the legislature specifically meant to address these issues over the many other circumstances (criminal, civil, and/or domestic) that would be raised by the addition of “vicarious consent” as an exception to the prior consent of at least one party requirement.

The State suggests the legislature “certainly did not intend to protect the criminal acts of defendants in child sexual assault cases, while casting aside the rights of [child victims of sexual assault]” State’s Response at p. 21. Wiretaps, in large part, involve the interception of communications involving illegal or wrongful conduct. There are legal wiretaps and illegal wiretaps. Merely positing the “protection of children” as an all encompassing rule of statutory construction—if the statute was, in fact, ambiguous—really does not advance the ball in the argument. To be blunt, you could drive a truck through the breadth of legal exceptions created by such an expansive legislative intent. Citing the concern for an alleged child victim, the State could argue that the legislature also intended exceptions to statutory protections (*e.g.*, physical and mental health records or financial records) and, most dangerously, to constitutional

protections (e.g., Fourth and Fifth Amendment rights). More importantly, though, the State is suggesting that, out of the universe of competing legislative interests, the legislature chose “vicarious consent” as the one it meant to imply but not expressly state. Can it be that the legislature considered the competing rights of potential criminal defendants and potential child sexual assault victims and then balanced those rights by using the single term “prior consent” to reflect all of its efforts and intent?

The State fails, also, to square this assertion with the legislature’s clear choice in many other circumstances to protect privacy rights over the collection and use of evidence in criminal prosecutions. The Fourth Amendment to the U.S. Constitution is a good example. Regardless of the substance of the evidence or its importance to proving guilt, suppression is required if evidence is obtained without adherence to the Fourth Amendment’s requirements. The South Carolina Constitution went a step further than the federal constitution and has provided for a right to privacy for all of its citizens, including Petitioner. See State v. Forrester, 343 S.C. 637, 541 S.E.2d 837 (2001).

The Fifth Amendment to the United States Constitution’s right to remain silent provides a similar example of the choice of protection of personal rights regardless of the significance of evidence to proving guilt of a crime.

The South Carolina Wiretap Statute itself provides an example of the legislature’s choice to protect the rights of the accused over the collection and use of evidence in criminal prosecutions. There are no exceptions in the South Carolina Wiretap Statute for criminal prosecutions. If a person is using a wire communication to further a criminal conspiracy, then failure to obtain prior consent or a court order to intercept will result in the suppression of that interception.

The State's argument creates a false dichotomy. It assumes that the legislature (and by implication this Court) has only one option: criminal defendants or child victims. The legislature and the courts both, within their respective spheres of authority, have protected the rights of potential criminal defendants while also protecting the rights of victims of all crimes.

IV SOUTH CAROLINA PROVIDES A GREATER DEGREE OF PRIVACY PROTECTION THAN DOES THE FEDERAL GOVERNMENT

The South Carolina Legislature has made a clear choice to provide a greater degree of privacy protection to its citizens than the federal government. The choice begins with the explicit language of S.C. Const. Art. 1 § 10, where the legislature took the language of the Fourth Amendment to the United States Constitution and added an express right to privacy.¹ As noted by our Supreme Court in State v. Forrester, South Carolina and the five other states who have added an express right to privacy into their search and seizure provisions have held that “such a provision creates a distinct privacy right that applies both within and outside the search and seizure context.” 343 S.C. at 645. Also noted in Forrester is the legislature's concern in drafting the additional privacy protection was “the emergence of new electronic technologies.” Id. at 647.

Out of the ten states that also provide greater protection of privacy rights than the federal government,² only two have judicially adopted the “vicarious consent” exception. Arizona and Louisiana have both adopted “vicarious consent” as an exception to the prior consent requirements of their respective wiretap statutes. See State of Arizona v. Morrison, 203 Ariz.

¹ “The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures *and unreasonable invasions of privacy* shall not be violated,
” S.C. Const. Art. 1 § 10 (emphasis added).

² As noted by the Forrester court, Alaska, Arizona, California, Florida, Hawaii, Louisiana, Montana, South Carolina, and Washington all provide a greater protection of privacy rights than does the federal government or the other states. 343 S.C. 637 Fn. 3.

489, 56 P 3d 63 (2002) and Smith v. Smith, 923 So 2d 732 (La Ct App 2005). Neither court addressed the inconsistency of their respective holdings with the greater protection of privacy rights their states provide over that of the federal government. Yet both courts cite to the interpretation by other courts (who do not provide greater privacy protection) of the federal wiretap statute as support for interpreting their state statutes. Morrison, at 490-91, Smith at 740. While it is not clear the exact arguments put before those two courts, the Court should not “adopt,” as the State urges, a doctrine of third-party consent that the legislature could have added—or may add in the future—after proper and full debate on the issue of permitting a third party consent to the interception of private telephone conversations.

The federal wiretap statute was intended as a baseline for the states. States are not permitted to provide less protection but are permitted to provide greater protection. See e.g. Forrester. The federal constitution does not provide the same increased protection of privacy rights as the South Carolina constitution. Consequently, relying on cases that interpret the federal wiretap statute is a risky analysis. Gauging legislative intent from the federal statute does not take into account that the South Carolina legislature’s intent would have an additional concern for “unreasonable invasions of privacy.” S.C. Const. Art. 1 § 10.

V. CONSENT IS NOT AN AMBIGUOUS TERM BECAUSE THE SOUTH CAROLINA WIRETAP STATUTE IS AIMED AT PROVIDING PROTECTION OF PRIVACY RIGHTS TO ALL CITIZENS

The aim of the South Carolina Wiretap Statute is to protect the rights of South Carolina citizens. Much like the Fourth and Fifth Amendments to the federal constitution and their state counterparts, the South Carolina Wiretap Statute seeks to provide privacy protection to all citizens. When it comes to protecting personal rights, the legislature is expansive in those it

protects. Citizens can waive important rights but the legislature rarely allows one person to waive important rights for another (*e.g.*, minors and adults can waive constitutional rights but cannot have them waived by a third party). Consent is not an ambiguous term in the South Carolina Wiretap Statute because the aim of the statute is to provide broad privacy protections for all citizens.

Some courts have held that consent as it relates to minors is an ambiguous term. For instance, in State of Iowa v. Spencer, 737 N.W.2d 124 (2007), the Supreme Court of Iowa held that the term consent in its wiretap statute was ambiguous. Id. at 129. The Spencer court relied on the different ways in which the Iowa legislature dealt with consent by and for minors to hold the term was ambiguous. At first glance, this is an attractive analysis. A close inspection, however, reveals an analysis not built by one premise logically leading to another but on an ends-oriented analysis.

The Spencer court was called upon to analyze “consent” in Iowa’s state wiretap statute. Id. at 128. Much like the law in South Carolina, the law in Iowa would not permit a court to go beyond the plain meaning of a statute absent the finding of an ambiguity. Id. at 129 (“Before engaging in statutory construction, we must first determine whether the statute is ambiguous”), see Thompson ex rel. Harvey, 377 S.C. at 158 (“If the language of an act gives rise to doubt or uncertainty as to legislative intent, the construing court may search for that intent beyond the borders of the act itself”). The Spencer court could not have looked to other case law without finding an ambiguity; it would have had no link to the doctrine it wanted to adopt.

An analysis built by one premise leading logically to the next would have included an inquiry into the legislative intent of the Iowa wiretap statute itself. Even with the finding of an ambiguity, the Spencer court was still required by its own law to look to the intent of its

legislature when it adopted the state's wiretap statute. See Spencer at 129-30 ("We determine legislative intent from the words chosen by the legislature, not what it should or might have said

Under the guise of construction, an interpreting body may not extend, enlarge or otherwise change the meaning of a statute ") (internal cites omitted). The Spencer court, however, made no effort to determine the Iowa legislature's intent in adopting the statute, nor did it analyze whether the "vicarious consent" exception was consistent or inconsistent with the overall purpose of Iowa's wiretap statute.

The Spencer court did state that there was no legislative history on the specific issue of "vicarious consent" in its wiretap statute. Id. at 130. However, no legislature has any history on this specific exception. Detailed discussion of "vicarious consent" is not even found in the legislative history of the federal wiretap statute, which the Spencer court and other courts have relied upon to interpret state statutes. Lack of such specific legislative history on "vicarious consent" should not have prevented the Spencer court from looking at its own legislature's overall intent, or offering an explanation for why that intent was not necessary. Neither should it have prevented the court from looking at the way in which the Iowa legislature designed statutes when it intended to provide parental consent and when it did not. In fact, even when its flawed logic leads to the issue of analyzing the privacy rights of children, and how the "vicarious consent" exception affects those rights, the Spencer court ignores its own state law. The Spencer court cites to authority for the general propositions that parents must protect their children, to look out for them, and account for their vulnerabilities (mainly by citing United States Supreme Court cases). However, rather than analyzing how the Iowa legislature enacted these general propositions, the Spencer court simply concludes that the "vicarious consent" exception does not conflict with the privacy rights of children. Id. at 132.

What the Spencer court wanted to get to was that the language of the federal wiretap statute is similar to the Iowa wiretap statute. If it got there, the court could then rely on the analysis of other jurisdictions—which could then get it to the “vicarious consent” doctrine. This is the pattern of several other courts: do not truly analyze the state statute, but get to the federal statute so that law from other jurisdictions interpreting their own state statutes using federal law can be used to interpret yet another state statute based on federal law. It is a circular analysis. The analysis never truly analyzes the legislative intent of the particular legislature that enacted the statute.

The result in several states rely on the analysis of one court: Thompson v. Dulaney, 838 F. Supp. 1535 (D. Utah 1993). The problem, of course, is that Thompson v. Dulaney is a federal lawsuit based on the federal wiretap statute. An analysis based solely on the federal wiretap statute and its legislative history, while relevant and perhaps instructive, cannot substitute for the analysis of a state statute that may have been adopted in a state, such as South Carolina, with a more expansive right to privacy than the federal government provides.

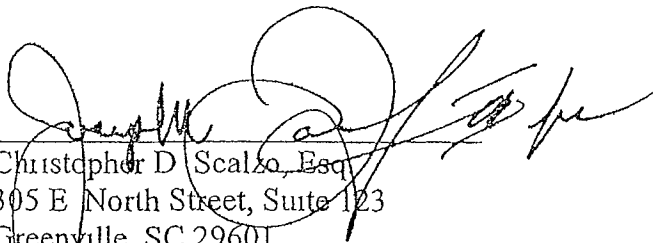
Regardless of these analyses, Iowa and the federal government do not have a right to privacy in their constitutions. This state does.

CONCLUSION

For the foregoing additional reasons, the Court should suppress the August 5th Intercepted Conversation and any evidence derived therefrom at trial. It is, respectfully, the province of the legislature, and not this Court, to “adopt” vicarious consent if, after full debate of the privacy considerations inherent in this policy decision, it so chooses.

Respectfully submitted,

GREENVILLE COUNTY PUBLIC DEFENDER

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July 20, 2009

THE STATE OF SOUTH CAROLINA
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Court of General Sessions

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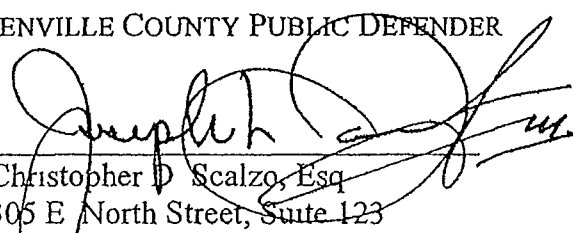
PROOF OF SERVICE

I certify that I have served Petitioner's Reply to the State's Response on the State by personally delivering a copy of the same to Christine Kednocker Sustakovitch at the Office of the Solicitor for the Thirteenth Judicial Circuit, at the Greenville County Courthouse Suite 325, Greenville, South Carolina 29601 on the date reflected below

Respectfully submitted,

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July 20, 2009
Greenville, South Carolina

The South Carolina Court of Appeals

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v

Samuel Lamont Whitner,

Petitioner

The Honorable C Victor Pyle, Jr
Greenville County
Trial Court Case No 2009-GS-23-01072

ORDER DENYING MOTION TO SUPPRESS

Pursuant to section 17-30-110 of the South Carolina Code (Supp 2008), Samuel Lamont Whitner filed a motion to suppress an audio-recording of an August 5, 2007 telephone conversation he had with his daughter, the alleged victim in the above-captioned case. Whitner argues the interception of his conversation violated South Carolina's Wiretap Statute because neither he nor his daughter consented to the interception. See S C Code Ann § 17-30-30(C)

The South Carolina Wiretap Statute was passed as part of the Homeland Security Act in 2002. See S C Code Ann §§ 17-30-10 et seq, South Carolina Homeland Security Act, 2002 Act No 339. In writing the statute, the South Carolina General Assembly included a "consent exception" to the general rule prohibiting third parties from intercepting conversations between other individuals. This consent exception parallels the Federal Wiretap Statute's consent exception in that they both proscribe third parties who are not acting under the color of law from intercepting a conversation unless one of the parties to the communication has given prior consent. Compare S C Code Ann § 17-30-30(C) with 18 U S C § 2511(2)(d). Prior to South Carolina's adoption of this language, the federal courts had interpreted the consent exception to allow a minor's guardian to vicariously consent to the interception of a communication to which the minor is a party "as long as the guardian has a good faith objectively reasonable basis for believing that it is necessary and in the best interest of the child to consent." Pollock v Pollock, 154 F 3d 601, 610 (6th Cir 1998), accord Wagner v Wagner, 64 F Supp 2d 895,

896 (D Minn 1999) Campbell v Price, 2 F Supp 2d 1186, 1191 (E D Ark 1998), Thompson v Dulaney, 838 F Supp 1535, 1544 (D Utah 1993) By adopting a consent exception which parallels the federal exception, we conclude the South Carolina Legislature intended to embrace the vicarious consent doctrine that federal courts interpreted was included in section 2511(2)(d) of Title 18 of the United States Code

Based on the testimony presented during the motion to suppress, we make the following findings of fact and conclusions of law

Findings of Fact

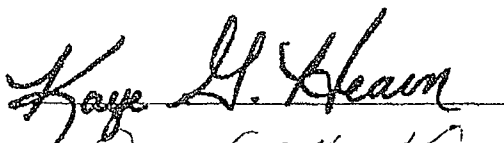
- 1 When the phone conversation took place, daughter was eleven years old and lived with her mother and step-father
- 2 Together, mother and step-father decided to record telephone conversations between daughter and Whitner after daughter disclosed to mother that Whitner had sexually abused her approximately five years earlier
- 3 Mother and step-father's motive for recording the conversation was to assist them in counseling daughter and to protect daughter from harm
- 4 The actual recording was made by step-father, with the knowledge and permission of mother, and was accomplished using a phone extension in mother and step-father's home
- 5 Mother and step-father had a good faith and objectively reasonable belief that intercepting daughter's conversation with Whitner was necessary and in daughter's best interest

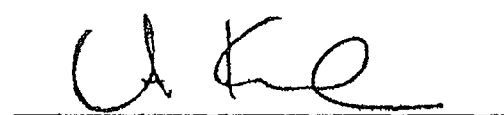
Conclusions of Law

- 1 Mother and step-father vicariously consented to intercept the conversation on behalf of daughter
- 2 The interception did not violate South Carolina's Wiretap Statute because section 17-30-30(C) of the South Carolina Code mirrors section 2511(2)(d) of Title 18 of the United States Code and embraces the vicarious consent doctrine

Based on the foregoing, Whitner's motion to suppress is denied

AND IT IS SO ORDERED





Columbia, South Carolina

July 27, 2009

cc Christopher Scalzo, Esquire
Deputy Chief Appellate Defender for Capital Appeals Robert M. Dudek
Assistant Attorney General William M. Blitch, Jr.
Christine Kednocker Sustakovitch, Esquire

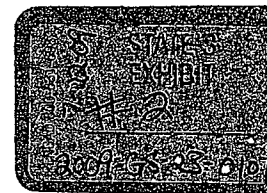
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South Carolina Legislative Update, 2002 Reg Sess 2/26/2002

South Carolina Legislative Update, 2002 Regular Session, February 26, 2002

February 26, 2002
South Carolina Legislature
114th Session, 2002

HOUSE WEEK IN REVIEW



The House of Representatives returned **S 297**, the **South Carolina Conservation Bank Act**, to the Senate with amendments. This bill establishes the South Carolina Conservation Bank as an ongoing funding source governed by a twelve member board and created to acquire interests in real property from willing sellers in order to protect wildlife habitats, forestlands, farmlands, open space, parks, historical sites, and healthy streams, rivers, bays, and estuaries, for recreational purposes, for scientific study, for aesthetic appreciation, for protection of critical water resources, to maintain the State's position as an attractive location for visitors and new industry, and to preserve the opportunities of future generations to benefit from the existence of the State's outstanding natural and historical sites. The Conservation Bank is established to encourage cooperation and innovative partnerships among landowners, state agencies, local governments, and nonprofit organizations to ensure the orderly development of the State.

The bill provides for the Board's appointed and *ex officio* membership, terms of service, and meetings. The Governor is authorized to appoint three board members from the state at large. Three members are appointed by the President Pro Tempore of the Senate, one each from the first, second, and fifth congressional districts. Three members are appointed by the Speaker of the House of Representatives, one each from the third, fourth, and sixth congressional districts. *Ex officio* members would be board chairs of the Department of Natural Resources and the South Carolina Forestry Commission, and the director of the South Carolina Department of Parks, Recreation, and Tourism. Board members serve four-year terms under a staggered schedule. Members shall serve without compensation, but may receive the mileage, subsistence, and per diem allowed by law for members of state boards, committees, and commissions. The board shall elect a chairman and other officers as necessary from its membership. The bill establishes conditions for when board members must recuse themselves from board decisions. In order to operate the Bank, the bill requires the Board to hire an executive director and authorizes the Board to hire staff, to contract for certain services, and to enter into cooperative agreements with other state agencies.

The bill creates the South Carolina Conservation Bank Trust Fund, separate from all other funds, to receive and hold revenues of the Bank. The trust fund is authorized to receive funding from any sources that the General Assembly may provide by law, and from governmental grants and private gifts and bequests. Effective July 1, 2003, twenty-five cents of the one dollar thirty cent state deed recording fee must be credited to the South Carolina Conservation Bank Trust Fund. The Department of Public Safety is authorized to issue "Conserve South Carolina" special motor vehicle license plates which may have an emblem, a seal, logo, or other symbol of the South Carolina Conservation Bank. The portion of the biennial fee remaining after production costs are met is to be deposited in the Trust Fund. However, in a fiscal year when the General Assembly in the annual general appropriations act provides less appropriations than what was provided for the previous year to at least one-half of the state agencies or departments or in any year when the Budget and Control Board orders across the board cuts to state agencies and departments, no further transfer of deed recording fees or other appropriated funds, state or local, may be credited to the trust fund for the fiscal year or balance of the fiscal year. Under such circumstances, existing balances in the trust fund may be used as provided.

The Bank is established and authorized to (1) award grants to eligible trust fund recipients for the purchase of interests in land, so long as the grants advance the purposes of the Bank and meet the specified criteria, (2) make loans to eligible trust fund recipients for the purchase of interests in land, at no interest or at an interest rate determined by the board, and under terms determined by the

board, so long as the loans advance the purposes of the Bank and meet the specified criteria, (3) apply for and receive additional funding for the trust fund from federal, private, and other sources, to be used as provided, (4) receive charitable contributions and donations to the trust fund, to be used as provided, and (5) receive contributions to the trust fund in satisfaction of any public or private obligation for environmental mitigation or habitat conservation, whether such obligation arises out of law, equity, contract, regulation, administrative proceeding, or judicial proceeding. Such contributions must be used as provided, (6) exercise its discretion in determining what portion of trust funds shall be expended, awarded, or loaned in any particular year, and what portion of trust funds shall remain in the trust fund from one fiscal year to the next. Funds within the trust fund shall be invested or deposited into interest-bearing instruments or accounts, with the interest accruing and credited to the fund.

An eligible trust fund recipient may apply for a grant or loan from the trust fund to acquire a specific interest in land identified in its application. An application must not be submitted to the board without the written consent of the owner of the interest in land identified in the application. Contiguous landowners and other interested parties may submit in writing to the board their views in support of or in opposition to the application. The board must hold a public hearing on the application at which the eligible trust fund recipient, contiguous landowners, and other interested parties shall be heard. Interested parties include representatives of the municipality, county, and public or private utilities in the area wherein the property is located. The board shall conduct a public hearing on an application before awarding a grant or loan pursuant to the application.

Before applying for trust funds for the purchase of an interest in land, the eligible trust fund recipient receiving the funds must notify the owner of the land that is the subject of the trust fund grant or loan of the following in writing: (1) that interests in land purchased with trust funds result in a permanent conveyance of such interests in land from the landowner to the eligible trust fund recipient or its assigns, and (2) that it may be in the landowner's interest to retain independent legal counsel, appraisals, and other professional advice.

The board shall evaluate each proposal according to conservation criteria listed in the bill, financial criteria listed in the bill, and the extent to which the proposal provides public access for hunting, fishing, outdoor recreational activities and other forms of public access. The board shall award grants or loans on the basis of how well proposals meet these three criteria.

The bill specifies the information that must be supplied by applicant for a grant or loan. Under the bill, an applicant is required to demonstrate that it is able to complete the project, indicate the total number of acres and describe the lands it has preserved in the State.

The board only may authorize grants or loans to purchase interests in lands at fair market value. In no cases may funds from the trust fund be used to acquire interests in lands at a price that exceeds the fair market value of the interest being acquired. However, trust funds may be used to acquire interests in land at below fair market value, but only if the owner of the interest consents and in writing to sell at below fair market value.

The Board is required, upon awarding a grant or loan, to set forth specified findings including but not limited to findings regarding the application/applicant which are relevant to the award and how the application/applicant satisfies the provisions and intentions of the bill.

The bill provides that land interest acquired by an eligible trust fund recipient may not be extinguished, sold, transferred, assigned, alienated, or converted to a purpose other than that set forth in the grant or loan award without following the procedures set forth in the legislation.

Interests in land acquired with trust funds must be managed and maintained in order to perpetuate the conservation, natural, historical, open space, and recreational uses or values for which they were originally acquired. Uses which are adverse to the original purposes for which the interests in land were acquired with trust funds are not permitted without securing a (1) two-thirds vote of the board, following a finding of fact that the land no longer exhibits the characteristics that qualified it for acquisition with funds from the fund, and (2) majority vote of the State Budget and Control Board.

the prisoner has served 85% of the actual term of imprisonment imposed. This bill phases out parole, and offenders who commit their crimes after the effective date of this bill will not be eligible for parole release. Act 83 of 1995 provided Truth in Sentencing for only those offenses with maximum possible penalties of twenty years or more. **H 3141** extends the provisions of Truth in Sentencing to most other offenses. The legislation makes other revisions pertaining to corrections. Senate amendments added racial profiling provisions to the legislation under which agencies that enforce traffic laws must compile information, including race, or motorists stopped by law enforcement officers. Senate amendments added provisions revising penalties involving ice, crank, or crack cocaine.

The House approved and sent to the Senate joint resolution **H 3790** which proposes an amendment to provisions of the South Carolina Constitution relating to **qualifications of candidates for elected offices**. Under the proposed constitutional amendment, a candidate seeking elective office or a candidate for the Senate or House of Representatives must be a qualified elector of the district from which he is to be elected at the time he files for the office. Currently, a candidate for the Senate or House of Representatives must be a legal resident.

The House amended, approved, and sent to the Senate **H 3678**, a bill pertaining to **temporary license plates**. Current law allows a forty-five day grace period for obtaining a permanent license plate. Because of this grace period, law enforcement officers have not been authorized to stop vehicles that do not have license plates. This legislation provides instead that a vehicle may not be operated without a permanent or temporary license plate. A person purchasing a vehicle or moving a foreign vehicle into the state must do one of the following: (1) Transfer a license plate from another vehicle, (2) Purchase a permanent license plate from the Division of Motor Vehicles, (3) Purchase a temporary license plate from the DMV (\$5), (4) Purchase a temporary license plate from the county auditor's office (\$5), or (5) Obtain a temporary license plate from a car dealer. The bill establishes conditions and specifications for the temporary license plates issued by the authorized entities. All special license plates must display the date of expiration which must not extend beyond forty-five days from the vehicle's date of purchase. A casual seller or a dealer of new or used vehicles who fraudulently issues a temporary license plate is guilty of a misdemeanor, and, upon conviction, must be fined \$100 for each occurrence. While operating with a temporary license plate, the bill of sale, title, rental contract, or a copy thereof, must be maintained in the vehicle at all times to verify the vehicle's date of purchase to a law enforcement officer. A person must replace a temporary license plate with a permanent license plate within forty-five days of purchasing the vehicle or moving a foreign vehicle into this State. A person who operates a vehicle in violation of this provision is guilty of a misdemeanor and, upon conviction, must be fined not more than one hundred dollars. A person who transfers a license plate from one vehicle to a newly acquired vehicle must register the new vehicle within forty-five days of the purchase date. The bill of sale and registration which corresponds to the license plate must be maintained in the newly acquired vehicle at all times to verify its date of purchase to a law enforcement officer. Nothing in these provisions displaces the responsibility of a person to obtain the proper insurance before operating a vehicle. The House also amended the bill to provide that only one temporary license plate shall be issued to a purchaser of a vehicle for the vehicle he has purchased before it is registered permanently. This provision limiting the number of temporary license plates issued to a purchaser takes effect on July 1, 2003. The rest of the act takes effect upon approval by the Governor.

The House amended, approved, and sent to the Senate **H 4494**, a bill pertaining to the **issuance of special Armed Forces license plates**. The bill eliminates the provision that limits issuance of the special U.S. Military Reserve license plate to one per person. The bill also provides that retired, as well as active members of the Military Reserve may purchase these plates, and the bill requires that these plates issued to retired Reserve members shall bear the word "Retired." The bill further provides that fees collected for the special plates will be used to defray the expenses for producing the plates.

The House amended, approved, and sent to the Senate Joint Resolution **H 4317** which establishes a twelve member **Motor Vehicle Services Privatization Feasibility Study Committee**, with six members appointed by the Speaker of the House and six appointed by the President *Pro Tempore* of the Senate. Members of the General Assembly appointed to serve shall serve *ex officio*. The Committee is charged to review the functions of the Division of Motor Vehicles (DMV) to determine if

The House approved and sent to the Senate **H 4455**, a bill pertaining to **falsifying or altering school transcripts**. The legislation provides that falsifying or altering, or fraudulently using, a high school diploma or transcript, including GED diplomas, is a misdemeanor punishable by fine and/or imprisonment. These provisions currently apply to college transcripts.

The House approved and sent to the Senate **H 4592**, a bill pertaining to the **allocation of certain higher education scholarship funds**. The bill provides that of the funds available for higher education scholarship grants under the South Carolina Children's Education Endowment, the Commission on Higher Education shall receive an annual allocation of which fifty percent must be allocated for Needs-Based Grants and fifty percent must be allocated for Palmetto Fellows Scholarships. The bill also provides that a specified percentage of the Need-Based Grants allocation must be allocated for students attending South Carolina independent and public colleges, and provides that of the allocation each year for Palmetto Fellows Scholarships, awards will be made to students based on academic criteria established by the Commission on Higher Education, which may be used to attend any eligible institution in South Carolina.

The House amended, approved, and sent to the Senate **H 4375**, a bill regarding **references to the word "vocational"**. Under the bill, certain statutory references to "vocational" are revised to "career and technology," including revising the name of the South Carolina State Board of Vocational Training to the 'South Carolina State Board of Career and Technology Training'. The bill also revises references to "job preparatory" to "workforce preparation". The bill amends references to State Department of Education review of certain local agricultural programs to reflect review instead by Clemson University. The bill eliminates the provision that makes it a misdemeanor to injure, destroy, tamper with, or impair the facilities of a vocational board.

The House amended, approved, and sent to the Senate **H 4682**, a bill revising the scope of the **Uniform Commercial Code provisions governing secured transactions**, so as to make provisions inapplicable to a transfer by a governmental unit, and to eliminate the preemption of these provisions governing secured transactions by a statute of this state or another state or foreign country.

The House approved and sent to the Senate **H 4758**, a bill that requires the State Law Enforcement Division to submit **fingerprint cards, received in connection with security, investigation, and weapon license and permit applications**, respectively, to the Federal Bureau of Investigation to facilitate a national criminal records check of the applicant. The bill makes this and other related revisions so as to avoid an impending loss of federal funding.

HOUSE COMMITTEE ACTION

AGRICULTURE, NATURAL RESOURCES, AND ENVIRONMENTAL AFFAIRS

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

EDUCATION AND PUBLIC WORKS

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

JUDICIARY

The full Judiciary Committee met on Tuesday, February 19, and gave a favorable report on **H 4416**, the **South Carolina Omnibus Counter-Terrorism and Homeland Defense Act of 2002**.

The legislation affords state law enforcement authorities with new means of **investigating potential terrorist threats**.

Interception of Wire, Oral and Electronic Communications

sickness, disease or death or to cause damage or destruction to a building or other property by means of a destructive device

- 1) The bill provides that it is unlawful for a person to knowingly harm or destroy a plot, land, a stream, pond, lake or body of water, a crop, plant or livestock, wildlife or fish by means of the direct or indirect use of a biological, chemical or nuclear weapon of mass destruction with the intent to cause economic or physical harm to a person or damage to property

The bill provides that it is unlawful for a person to commit an offense using a biological attack, destructive device, weapon of mass destruction, biological or bacteriological weapon if committed incident to or to facilitate an act of terrorism or international terrorism

The bill specifies those individuals who are exempt from certain restrictions including military and law enforcement officers engaged in lawful activity and persons engaged in lawful research, accepted agricultural, pest and weed control practices

The bill requires notification by law enforcement of encounters of weapons of mass destruction to public health officials

The bill provides that restitution be ordered for certain violations

Freedom of Information Act Provisions

The legislation clarifies that a public agency may prohibit disclosure of law enforcement records that are also not subject to disclosure under federal law

The legislation authorizes a public agency to prohibit disclosure of information relating to security plans and devices of public bodies except for amounts expended for the adoption, implementation, or installation of such security plans and devices

- 1) The legislation authorizes DHEC to regulate the disclosure of certain chemical and industrial storage information subject to federal law and federal regulations to prevent the release of certain information which would increase the risk of acts of terrorism. The director of DHEC must notify the Attorney General and identify such information and promulgate regulations to regulate access to such information

The legislation contains numerous provisions related to a **declared state of emergency**

Price Gouging and Misleading Solicitations Prohibitions

The legislation establishes provisions prohibiting price gouging and willfully misleading solicitation of money for charitable purposes during a state of emergency declared by the Governor or a state of disaster declared by the President

SLED Criminal Background Checks of Emergency Workers

The legislation authorizes SLED, during a declared state of emergency by the Governor, to conduct state and FBI criminal background checks of persons engaged in volunteer, paid, public or commercial employment related to the emergency

Leaves of Absence for State Workers Trained in Disaster Response

The legislation provides officers or employees of this State who are trained for disaster response by the American Red Cross or whose training is utilized by the American Red Cross a leave of absence not to exceed fifteen days in any one year to engage in training or any other duties requested by the Governor, the American Red Cross, or other state or federal agency without being penalized, but only upon obtaining their supervisor's approval

imposed in addition to, or as an alternative to the suspension of benefits. The legislation revises the recovery of benefit overpayments including provisions that increase the statute of limitations period from three to five years, authorize the Commission to waive repayments under certain conditions, and authorize the Commission to enter into reciprocal repayment agreements with other states.

The committee gave a report of favorable with amendments on **H 4014**, a bill **revising administrative provisions of the Employment Security Commission**. The bill authorizes the Commission to require certain reports from employers that are necessary for the Commission's cooperative agreements with the United States Bureau of Labor Statistics. The bill provides clarification on the disclosure of certain information collected by the Commission. The bill makes various other revisions including those necessary to bring the statutes in conformity with the South Carolina Administrative Procedures Act.

The committee gave a favorable report on **H 4633**, a bill pertaining to **captive insurance companies** which are authorized to insure only the risks of their parent, affiliated companies, or controlled unaffiliated companies. This legislation establishes a new category, the special purpose captive insurance company which may only insure the risks of its parent and could provide other insurance and/or reinsurance for other risks as approved by the Director of the Department of Insurance. Requirements are established for the licensure and operation of a special purpose captive insurance company. The legislation establishes the Captive Insurance Regulatory and Supervision Fund for the purpose of providing the financial means for the Director of the South Carolina Department of Insurance to administer captive insurance laws and for reasonable expenses incurred in promoting the captive insurance industry in the State. The fund is composed of ten percent of the captive insurance premiums tax, all fees and assessments received by the department pursuant to the administration of captive insurance provisions, and all fees received by the department from reinsurers who assume risk solely from captive insurance companies. The legislation revises provisions relating to the aggregate taxes paid by a captive insurance company, so as to allow a captive insurance company in its first operating year to pay the minimum premium tax on a prorated schedule.

MEDICAL, MILITARY, PUBLIC AND MUNICIPAL AFFAIRS

The full Medical, Military, Public and Municipal Affairs Committee gave a favorable recommendation to **H 4402**. This bill **authorizes a county legislative delegation to terminate its respective county board of social services** by a majority vote, including the senators, of the county legislative delegation.

The committee reported favorable with amendment on **H 3957**. As reported by the committee, this bill **repeals the State Council on Maternal, Infant and Child Health (MICH) Act**, effective on approval of the Governor. MICH was created by legislation in 1986 to improve the health status of pregnant women, infants, and children in South Carolina. There are currently no employees working for the MICH Council.

The committee reported favorable on **H 4545**. This bill **allows cosmetologists, estheticians, and manicurists to practice in barbershops**.

The committee reported favorable with amendment on **H 4571**. As reported by the committee, this bill **allows the Board of Cosmetology to issue a license to an applicant whose license has lapsed** for any length of time, to have the license reinstated without taking the state licensure examination if the person is over sixty years old and has practiced under a valid license for more than thirty years.

The committee gave a report of favorable with amendment to **H 3145**. As reported by the committee, this bill provides that **no direct care entity (defined in the bill) may employ or contract with a direct caregiver (defined in the bill) until after the direct caregiver has undergone a state criminal history check**. Pending the results of the criminal history check, a person temporarily may be employed or contract as a direct caregiver with a direct care entity. Also,

S 894 HUNTING WILD TURKEY Sen Gregory

This bill revises statutes regulating the hunting of wild turkeys in South Carolina

S 987 LAKE WARDENS IN CITY OF SPARTANBURG Sen Reese

This bill authorizes the Commission of Public Works for the City of Spartanburg to establish a Safety and Security Department and to employ lake wardens. The bill provides for the powers, duties, and jurisdiction of lake wardens, who would be commissioned as constables, and requires that they must complete Criminal Justice Academy training requirements

H 4767 LAWN SPRINKLER/IRRIGATION SYSTEMS Rep Gilham

This bill provides that certain provisions prohibiting unprotected cross-connections between public water systems and other water systems, sewers, or waste lines, do not apply to a residential lawn sprinkler system or lawn irrigation system that is professionally installed and connected to a public water system

H 4768 WET TEST RESULTS Rep White

This bill provides that a whole effluent toxicity (WET) test result that deviates from water quality standards required by the Department of Health and Environmental Control does not in and of itself constitute a violation without evidence of other water quality standard deviations

EDUCATION AND PUBLIC WORKS**S 892 WINTHROP BOARD OF TRUSTEES Sen Hayes**

This bill revises the manner in which Winthrop University Board members are elected or appointed. Revisions include, but are not limited to: a provision that of the seven members elected by the General Assembly, one member must be elected from each of the six congressional districts and one member must be elected by the General Assembly from the State at large. The bill also provides that these members, who must reside in the Congressional district which they represent, shall have their seat designated as the seat number corresponding to their Congressional District, with the at-large member designated as Seat Seven. The bill also revises the terms of the trustees

H 4773 POSSESSION OF A DRIVER'S LICENSE Rep Gilham

This bill provides that a person from another country, or his dependents, who is not a resident of South Carolina but is present in the State on a visitor visa and who owns property in South Carolina, may be issued a driver's license

JUDICIARY**S 902 VOTING PRECINCTS IN BEAUFORT COUNTY Sen Richardson**

This bill revises voting precincts in Beaufort County, so as to redesignate certain precincts and map number on which lines of these precincts are delineated

H 4757 HOUSING FEDERAL PRISONERS IN COUNTY DETENTION FACILITIES Rep Harrison

This bill provides that a contract for the housing of federal prisoners must be made between the entity that operates the county jail or detention facility and the appropriate federal authority. The bill replaces the one dollar per day fee that a sheriff or jailer is currently authorized to charge for the housing of a federal prisoner, with an amount per day as provided by contractual agreement with the

weekly wage for certain categories of employees, so as to include provisions for volunteer state constables who serve without compensation

H 4761 TITLE INSURERS AND TITLE INSURANCE AGENTS Rep Simrill

This bill provides that a title insurer or title insurance agent licensed in this State may not pay, directly or indirectly, any portion of a premium or commission or other valuable consideration on account of any policy of title insurance to any person not licensed by this State as a title insurer or title insurance agent

H 4771 LICENSURE AND REGULATION OF ARCHITECTS Rep Keegan

This bill revises definitions used concerning the licensure and regulation of architects, so as to add the definition of "emeritus architect " The legislation exempts emeritus architects from continuing education requirements unless returning to active practice The bill includes the Canadian Architectural Certification Board as an accrediting body of schools or programs for architects The bill authorizes the Board Of Architectural Examiners to establish the South Carolina Architecture Education And Research Fund The legislation allocates revenue from renewal fees to the fund, and provides for the purposes of the fund

S 668 EMPLOYMENT SECURITY LAW REVISIONS Sen J Verne Smith

This bill provides for various revisions relating to South Carolina Employment Security Law

S 965 CAPTIVE INSURANCE COMPANIES Sen Thomas

This bill provides for various revisions relating to captive insurance companies This legislation establishes a new category, the special purpose captive insurance company Requirements are established for the licensure and operation of a special purpose captive insurance company The legislation establishes the Captive Insurance Regulatory and Supervision Fund for the purpose of providing the financial means for the Director of the South Carolina Department of Insurance to administer captive insurance laws and for reasonable expenses incurred in promoting the captive insurance industry in the State The legislation revises provisions relating to the aggregate taxes paid by a captive insurance company

S 982 INSURANCE REVISIONS Sen Thomas

This bill provides for various revisions relating to the insurance industry

H 4786 MERCHANT PLANTS Rep Meacham-Richardson

This bill provides that no person shall give, sell, lease, assign, transfer, mortgage, pledge, hypothecate, or otherwise dispose of a certificate of environmental compatibility and public convenience and necessity or rights under the certificate issued by the Public Service Commission with respect to the operation of a major utility facility known as a "merchant plant"

WAYS AND MEANS

S 852 FEE IN LIEU OF TAXES SIMPLIFICATION ACT Sen Leatherman

This bill increases from two years to five years the extension allowed for completion of a project in the investment period regarding fee in lieu of taxes The bill also revises the filing requirements under the Fee in Lieu of Taxes Simplification Act by allowing the Department of Revenue, for good cause and under certain circumstances, to grant an extension of up to sixty days for filing returns

H 4750 SCHOLARSHIP/TUITION TAX CREDIT ELIGIBILITY Rep R Brown

South Carolina Legislative Update, 2002 Reg Sess 6/20/2002

South Carolina Legislative Update, 2002 Regular Session, June 20, 2002

June 20, 2002
South Carolina Legislature
114th Session, 2002

OVERVIEW OF THE 2002 LEGISLATIVE YEAR

2002 presented many challenges for the South Carolina General Assembly as legislators confronted security concerns arising from the devastating events of September 11, 2001, and worked to develop a State spending plan in the midst of an economic slowdown

In response to the numerous security concerns that emerged in the final months of 2001, the General Assembly passed the **South Carolina Homeland Security Act**, a comprehensive bill that enhances the State's ability to gather intelligence and respond to emergencies. Notably, the legislation equips the State Law Enforcement Division with wiretapping authority for the investigation of terrorist activities and certain other serious crimes. Safeguards are provided to prevent misuse of this authority to intercept communications. The Governor's authority to declare a state of emergency is expanded to include a public health emergency. The legislation also establishes the Emergency Health Powers Act which equips the Department of Health and Human Services with broad authority to respond to a public health emergency through vaccination and quarantine.

Despite the severe shortage of available revenue, the **2002-2003 State Budget** protects education and protects health care for the poor, the elderly, and the disabled. Public education received a \$61 million increase and Medicaid is funded at a level where programs will not be reduced. Agency reductions were decided on an individual basis and were generally kept to under ten percent.

The General Assembly approved a plan for distribution of \$259 million of **lottery** revenue. The majority of these funds are directed to scholarships and tuition assistance, higher education technology, school buses, Education Accountability Act programs, K-5 reading, math, science and social studies programs, and ETV digitalization. Legislators also created the **South Carolina Research Centers of Economic Excellence** and the Centers of Excellence Matching Endowment, using lottery funds to provide incentives for the State's senior research universities to raise private capital to fund endowments for professorships in research areas targeted to create well-paying jobs for South Carolinians.

The General Assembly addressed the issue of proposed Charleston **port expansion** by approving legislation requiring the State Ports Authority to begin environmental impact studies and other required actions in regard to the permitting process to locate new terminal facilities on the west bank of the Cooper River.

Conservation of the State's natural and historical resources emerged as a major concern in 2002. The General Assembly created the **South Carolina Conservation Bank** as an ongoing funding source for acquiring interests from willing sellers in real property that is worthy of conservation for environmental, aesthetic, or historical reasons. Lawmakers also passed the **South Carolina Historic Rehabilitation Incentives Act** which provides State income tax credits for certain expenditures associated with the rehabilitation of certified historic structures located in this State.

Legislators supported initiatives designed to shield some of the most vulnerable South Carolinians from the threat of abuse. The General Assembly passed **Stephanie's Law**, named in memory of four-year-old Stephanie Carter who died in October of 2000 from injuries sustained through repeated acts of physical abuse. The legislation establishes more rigorous reporting and record keeping guidelines for child abuse and neglect cases in South Carolina. Lawmakers also passed a bill requiring **criminal background checks for direct caregivers** at nursing homes, home health agencies, adult

The House approved the **Diabetes Mellitus School Care Act**, which among other things, required school districts to provide training to at least two school employees who must be designated as a diabetes care provider at each public school that does not employ a full-time nurse. The bill was sent to the Senate, but was not taken up before the session ended.

This year the House approved the **Domestic Violence Prevention Act** and sent the bill to the Senate where it was reported out of the Judiciary Committee, favorable with amendment. No further action was taken on the bill during the session, but the issue is likely to resurface in the coming General Assembly. The legislation enhances various penalties for domestic violence offenses and emphasizes offender participation in programs designed to treat batterers.

Two measures proposing to **shorten the legislative session** were approved by the House in the beginning of 2001, but did not receive attention this year. Shortening the General Assembly's session will most likely reemerge as a legislative initiative in the coming year.

MAJOR LEGISLATION THAT PASSED IN 2002

APPROPRIATIONS

THE 2002-03 GENERAL APPROPRIATIONS BILL (H 4878)

Facing another very difficult budget year, the General Assembly adopted a 2002- 2003 spending plan under which agency reductions were decided on an individual agency basis and were in general kept to under ten percent. The General Assembly agreed on sources of additional revenue which prevented imposing deeper cuts on agencies' budgets. These sources of revenue include interest from numerous restricted funds, the Barnwell atomic waste fund, insurance reserve fund premium redirection, unrestricted taxable proceeds of the Tobacco Settlement Healthcare Trust Fund, and funds anticipated from a tax amnesty program and greater enforcement from additional revenue agents. The annualization problem has now been reduced from \$584 million (where it was when the House began working on the budget for Fiscal Year 2001-02) to \$269 million for the 2003-04 Fiscal Year.

Public education received a \$61 million increase. There was no change in the minimum salary schedule for teachers. A temporary proviso requires the State Board of Education to establish a task force to study a suggested uniform beginning date for the annual school term. The task force is to report to the State Board by January 1, 2003. (Also see "School Start Date" under the Budget Proviso Codification Act, H 4879, summarized in this document.) New provisos exempt LIFE Scholarships, Need-based grants, Palmetto Fellows Scholarships, and Tuition Grants from any mid-year budget reductions for 2002-03.

Medicaid is funded at a level where Medicaid programs will not be reduced. \$23.2 million is appropriated for SilverCard Plus, the senior prescription drug program. A temporary proviso directs the Commission for the Blind and the Vocational Rehabilitation Department to identify opportunities to better coordinate and refer eligible clients for services available from either agency. The two agencies are to report to the Chairs of the House Ways and Means Committee and the Senate Finance Committee by December 2002 on their progress towards improving client access to all services for which they are eligible. State employees received no pay increase.

STATUS: H 4878 (Act #289) was approved by the General Assembly and sent to the Governor. On May 29, the Governor returned his vetoes on the bill. Items which the Governor vetoed include, but were not limited to:

\$2,556,675 funding for House Operating Expenses (vetoed because it included \$150,000 in funding for the Joint Committee on Medicaid--the proviso creating this committee was also vetoed by the Governor), this veto was overridden by the General Assembly,

\$1,920,848 funding for Senate Operating Expenses (vetoed because it included \$150,000 in funding

Account (in an aggregate amount not to exceed \$200 million by 2010) and managed by the State Treasurer, subject to awards from the Endowment,
 South Carolina's senior research universities may apply for awards from the Endowment as provided in the bill,
 The Board is responsible for recommending annually to the Budget and Control Board for approval a schedule by which applications for funding are received and awarded on a competitive basis, for awarding of matching funds as provided in the bill, and for oversight and operation of the Endowment

UNIFORM SCHOOL START DATE

(See also under H 4878, this section of this document)

Provides a General Assembly declaration that it is in the best interests of South Carolina students for a uniform beginning date for the annual school term to be developed and adopted by the State Board of Education (the Board) to be implemented in all State public schools,
 Directs the Board to establish a task force to make recommendations including the desirability of and if agreed upon a suggested uniform beginning date for the annual school term The task force is directed to report its findings to the Board by October 15, 2002

HOPE SCHOLARSHIPS

These scholarships are authorized in an amount of up to \$2500, plus a \$150 book allowance, to cover the cost of attendance during the first year of attendance only, to an eligible student attending a four-year institution who does not also qualify for a LIFE Scholarship or a Palmetto Fellows Scholarship,

MULTI-STATE LOTTERY GAMES

Authorizes the South Carolina Lottery Commission to enter into a multi-state agreement for the sale of instant game tickets, online game tickets, and related multi-state lottery products including game shows and promotional products

STATUS H 4879 was approved by the House and the Senate and ratified on May 28 (R 388) On June 3, the Governor issued a veto message Items which were vetoed included a section of the bill which granted the General Assembly an exemption from any provision which requires the approval of the State Budget and Control Board or any other executive branch agency for the expenditure, management, or transfer of any legislative branch appropriations This veto was overridden by the General Assembly

BUSINESS

FEE-IN-LIEU-OF-TAX SIMPLIFICATION ACT REVISIONS (S 852)

S 852 is a comprehensive bill, which among other things amends the Fee-in-Lieu-of-Tax Simplification Act (the Act) The bill was approved by the General Assembly on the last day of the legislative session Revisions to the Act include, but are not limited to, increasing from two years to five years the maximum extension to fee-in-lieu-of-property tax agreements that a county may grant for completion of a project The bill also includes a provision allowing the Department of Revenue, for good cause and under certain circumstances, to allow up to sixty days additional time for filing of returns required under the Act

STATUS S 852 was approved by the General Assembly and has been ratified (R 445)

JOINT COMMITTEE ON TAXATION (S 852)

See summary under "Taxation" category of this document

PORT EXPANSION (S 926)

This joint resolution, approved by both the House and the Senate, requires the State Ports Authority

for the fiscal year next preceding (with specified exclusions), the limitation on general obligation debt imposed by the State Constitution. The additional debt service capacity available at any time as a consequence of the increase is available only for the repayment of general obligation bonds issued to provide infrastructure for economic development within the State.

STATUS S 1200 was approved by the House and Senate and has been signed by the Governor (Act 254)

CONSERVATION/HISTORIC PRESERVATION

CONSERVATION BANK ACT (S 297)

The General Assembly passed S 297, the South Carolina Conservation Bank Act, and the Governor signed the bill into law on April 10. The legislation establishes the South Carolina Conservation Bank as an ongoing funding source governed by a twelve-member board and created to acquire interests in real property from willing sellers in order to protect wildlife habitats, forestlands, farmlands, open space, parks, historical sites, and healthy streams, rivers, bays, and estuaries. Areas are to be conserved for recreational purposes, scientific study, aesthetic appreciation, the protection of critical water resources, the maintenance of the State's position as an attractive location for visitors and new industry, and the preservation of the State's outstanding natural and historical sites for the benefit of future generations. The Conservation Bank is established to encourage cooperation and innovative partnerships among landowners, state agencies, local governments, and nonprofit organizations to ensure the orderly development of the State.

The bill provides for the Board's appointed and *ex officio* membership, terms of service, and meetings. The Governor is authorized to appoint three board members from the state at large. Three members are appointed by the President Pro Tempore of the Senate, one each from the first, second, and fifth congressional districts. Three members are appointed by the Speaker of the House of Representatives, one each from the third, fourth, and sixth congressional districts. The *ex officio* members are the board chairs of the Department of Natural Resources and the South Carolina Forestry Commission, and the director of the South Carolina Department of Parks, Recreation, and Tourism. Board members serve four-year terms under a staggered schedule. Members shall serve without compensation, but may receive the mileage, subsistence, and per diem allowed by law for members of state boards, committees, and commissions. The board shall elect a chairman and other officers as necessary from its membership. The bill establishes conditions for when board members must recuse themselves from board decisions. In order to operate the Bank, the bill requires the Board to hire an executive director and authorizes the Board to hire staff, to contract for certain services, and to enter into cooperative agreements with other state agencies.

The bill creates the South Carolina Conservation Bank Trust Fund, separate from all other funds, to receive and hold revenues of the Bank. The trust fund is authorized to receive funding from any sources that the General Assembly may provide by law, and from governmental grants and private gifts and bequests. Effective July 1, 2004, twenty-five cents of the one dollar thirty cent state deed-recording fee must be credited to the South Carolina Conservation Bank Trust Fund. The Department of Public Safety is authorized to issue "Conserve South Carolina" special motor vehicle license plates which may have an emblem, a seal, logo, or other symbol of the South Carolina Conservation Bank. The portion of the biennial fee remaining after production costs are met is to be deposited in the Trust Fund. However, in a fiscal year when the General Assembly in the annual general appropriations act provides less appropriations than what was provided for the previous year to at least one-half of the state agencies or departments or in any year when the Budget and Control Board orders across the board cuts to state agencies and departments, no further transfer of deed recording fees or other appropriated funds, state or local, may be credited to the trust fund for the fiscal year or balance of the fiscal year. Under such circumstances, existing balances in the trust fund may be used as provided.

The Bank is established and authorized to (1) award grants to eligible trust fund recipients for the purchase of interests in land, so long as the grants advance the purposes of the Bank and meet the

following a finding of fact that the land no longer exhibits the characteristics that qualified it for acquisition with funds from the fund, and (2) majority vote of the State Budget and Control Board

Funds from the trust fund may not be used to acquire interests in lands or other interests in real property through the exercise of any power of eminent domain or condemnation proceeding. This provision may not be repealed, amended, or otherwise modified except by an affirmative two-thirds vote of the total membership of both the House of Representatives and the Senate

The provisions of this legislation must not be construed to eliminate or unreasonably restrict hunting, fishing, farming, forestry, timber management, or wildlife habitat management, as regulated by the laws of this State, upon lands for which interests in lands are obtained pursuant to this chapter. These and other traditional and compatible activities may be conducted, where appropriate, upon lands preserved with trust funds

The bill requires the Bank submit an annual report containing specified data, to the Governor, Lieutenant Governor, and General Assembly. The Board must also perform a bi-annual review of the plight of land loss by small landowners and holders of heirs property. The results of this review must be submitted to the General Assembly

The South Carolina Conservation Bank Act provisions are repealed effective July 1, 2013, unless reenacted or otherwise extended by the General Assembly. However, the South Carolina Conservation Bank established by this act may continue to operate as if it were not repealed until the South Carolina Conservation Bank Trust Fund is exhausted or July 1, 2016, whichever first occurs. Any balance in that trust fund on July 1, 2016, reverts to the general fund of the State

STATUS S 297 passed the General Assembly and was signed into law by the Governor on April 10, 2002 (Act 200)

HISTORIC REHABILITATION INCENTIVES ACT (H 3163)

The General Assembly passed H 3163, the South Carolina Historic Rehabilitation Incentives Act, and the legislation was signed into law by the Governor on May 1. The legislation provides state income tax credits for certain expenditures incurred in the rehabilitation of certified historic structures located in this State. The legislation provides a state income tax credit equal to ten percent of rehabilitation expenses incurred for a taxpayer who is eligible for the federal income tax credit allowed for the rehabilitation of historic structures for profit-making ventures. For taxpayers who do not qualify for the federal income tax credit and who are rehabilitating a certified historic residential structure, the legislation provides a state income tax credit equal to twenty-five percent of rehabilitation expenses incurred

STATUS The General Assembly passed H 3163 and the Governor signed the bill into law on May 1, 2002 (Act 229)

THE COURTS

LEGAL NAME CHANGES (H 3906)

The General Assembly passed H 3906 and ratified the bill on June 4. This bill sets out new procedures for obtaining a legal name change in the family court. The purpose of this bill is to ensure that the court is aware of the criminal history of a petitioner before a name change is granted, and that if a petition for a name change is granted and the petitioner does have a criminal background, that the proper agencies are notified of the name change. The requirements of the legislation do not apply when an individual is seeking a name change as a result of a marriage or divorce, or when a parent is seeking a name change for a minor child

This bill includes the following new requirements for petitioners and the clerks of court for obtaining a legal name change: (1) requires that a petitioner include the results of a fingerprint check in addition

ad litem may submit briefs, memoranda, affidavits or other documents on behalf of the child and may submit affidavits at the temporary hearing. The GAL must not mediate, attempt to mediate, or act as a mediator in a case to which he has been appointed. However, this does not prohibit a GAL from participating in a mediation or a settlement conference with the consent of the parties.

The legislation provides that the family court judge will set the method and rate of compensation for the guardian ad litem including an initial authorization of a fee. If the GAL determines it is necessary to exceed the fee initially authorized, the guardian must provide notice to both parties and obtain the judge's written authorization or the consent of both parties to charge more. In determining the reasonableness of fees and costs, the court must take into account the complexity of the issues, the contentiousness of the litigation, the time expended, the expenses reasonably incurred, the financial ability of the parties to pay fees and costs, and any other factors the court considers necessary. This section also requires the guardian ad litem to submit itemized bills, as fees and costs accrue, to the parties and their attorneys pursuant to a schedule as directed by the court. A party may petition to have the Court review all fees at any time during the action.

The legislation provides that a guardian ad litem must provide written disclosure to each party of the following: (1) the nature, duration and extent of any relationship the GAL or any member of the GAL's immediate family residing in the guardian's household has with any party, (2) any interest adverse to any party or attorney which might cause the impartiality of the GAL to be challenged, and (3) any membership or participation in any organization related to child abuse, domestic violence, or drug and alcohol abuse.

A guardian may be removed from a case at the discretion of the court.

STATUS: The General Assembly passed S 322 and ratified the bill (R 442) on June 6, 2002.

CRIME AND PUNISHMENT

COMPUTER ABUSE ACT (H 3539)

The General Assembly passed H 3539, the Computer Abuse Act, and the Governor signed the bill into law on February 8, 2002. This legislation makes revisions to the Computer Crimes Act, including adding a definition for the term "computer contaminant." The term "computer contaminant" means a computer program designed to modify, damage, destroy, disable, functionally impair, record, or transmit information within a computer, computer system, or computer network without the consent or implied consent of the owner. The term computer contaminant includes, but is not limited to, a group of computer programs commonly known as 'viruses' and 'worms' that are self-replicating or self-propagating, and that are designed to contaminate other computer programs, consume computer resources, modify, destroy, record, or transmit data, or in some fashion usurp the normal operation of the computer, computer system, or computer network. The legislation makes it an offense under the Computer Crimes Act to introduce a computer contaminant into a computer, computer system, computer program, or computer network. The legislation revises the definition for "computer hacking" so as to explicitly state that it does not include the introduction of a computer contaminant into a computer, computer system, computer program, or computer network. The definition for "computer hacking" is also revised to include malicious intent to commit another crime after computer contact is established.

The legislation provides that, in addition to other civil remedies available, the owner or lessee of a computer, computer system, computer network, computer program, or data may bring a civil action against a person convicted under the Computer Crimes Act for compensatory damages and restitution. Compensatory damages and restitution may include: (1) expenditures reasonably and necessarily incurred by the owner or lessee to verify whether a computer system, computer network, computer program, or data was altered, damaged, or deleted by the access, (2) costs of repairing or, if necessary, replacing the affected computer, computer system, computer network, computer software, computer program, or database, (3) lost profits for the period that the computer, computer system, computer network, computer software, computer program, or database was unusable, and

defendant without the possibility of parole. In cases where the defendant is eligible for parole, the judge must charge the applicable statute that sets out parole eligibility.

STATUS The General Assembly passed H 3819 and the Governor signed the bill into law on May 28, 2002

EDUCATION

CHARTER SCHOOLS (S 12)

The General Assembly approved S 12, a bill which amends the law regarding the organization, operation, and governance of charter schools in South Carolina. Major highlights of the bill include the following:

- Provides that it is the intent of the General Assembly that creation of this chapter encourages cultural diversity, educational improvement, and academic excellence. Provides further that it is not the intent of the General Assembly to create a segregated school system but to continue to promote educational improvement and excellence in South Carolina.
- Requires a racial quota of 20% of the school district or of the targeted student population, but allows for a variance if it is found that the charter committee is not operating in a discriminatory manner.
- Clarifies that the charter school applicant is not required to provide a list of prospective or tentatively enrolled students or prospective employees with the application.
- Establishes a Charter School Advisory Committee to review charter applications for compliance with established standards that reflect the requirements and intent of the chapter.
- Advisory committee made up of eleven members:
 - <<circle>> 2 from SC Association of Public Charter Schools
 - <<circle>> 1 from SC Association of School Administrators
 - <<circle>> 2 from SC Chamber of Commerce
 - <<circle>> 1 from SC Education Oversight Committee
 - <<circle>> 1 from SC Commission on Higher Education
 - <<circle>> 1 from SC School Boards Association
 - <<circle>> 1 from SC Alliance of Black Educators
 - <<circle>> 1 teacher appointed by State Superintendent of Education
 - <<circle>> 1 parent appointed by State Superintendent of Education
- Advisory committee will have two ex-officio nonvoting members to represent the local school board of trustees and the charter committee of the affected school district.
- Advisory committee will:
 - <<circle>> give consideration to the appointment of minorities and women as representatives on the committee,
 - <<circle>> convene on or before July 1, 2002, at the call of the State Superintendent of Education,
 - <<circle>> elect a chair and other officers it deems necessary,
 - <<circle>> establish by-laws to include terms of office, and
 - <<circle>> have 60 days to rule on application compliance.
- Gives the local board of trustees thirty days to rule on an application once a letter of compliance is received from the advisory committee.
- Requires the State Board of Education to define "adverse affects" in regulation.
- Clarifies that in a school seeking conversion, parents or guardians of students in the school shall have one vote for each student enrolled.
- Calls for the establishment of a state reserve fund beginning 2003-04 to provide to the local school district the first year of a charter school's operation the base student cost times a 1.0 weighted pupil unit for each student enrolled in the charter school who was enrolled in another noncharter public school in the district the previous school year.
- Requires an impact study conducted by the State Board of Education two years after the implementation of the Charter School Advisory Committee review process to determine the effectiveness of the application process.
- Requires the State Board of Education to develop:
 - <<circle>> standards that the Charter School Advisory Committee will use to determine compliance,

improvements subject to a nonresponsible party voluntary cleanup contract for which a certificate of completion has been issued by DHEC pursuant to the Brownfields Voluntary Cleanup Program, is exempt from *ad valorem* taxation as specified in the bill

STATUS H 4548 was approved by the General Assembly and has been signed by the Governor (Act #280)

INNOVATIVE ENVIRONMENTAL APPROACHES (H 4258)

The House approved and sent to the Senate H 4258, a bill pertaining to a pilot program on innovative environmental approaches. This bill authorizes the Department of Health and Environmental Control (DHEC) to administer a pilot program under which it may enter into up to ten cooperative agreements (for up to five years with a possible five year renewal) with eligible participants to implement and evaluate the use of innovative environmental approaches not otherwise authorized under existing law. The bill requires that participants be members of the South Carolina Environmental Excellence Program. The bill provides for pilot program procedures and delineates items that must be included in the cooperative agreements with participants. The bill also authorizes DHEC to grant a participant a variance from a requirement in South Carolina environmental law that would otherwise apply to a facility covered by a cooperative agreement if the variance meets certain criteria. The bill requires participants to comply with certain reporting and enforcement procedures.

STATUS H 4258 was approved by the General Assembly and became law without the Governor's signature

HEALTH & SOCIAL SERVICES

CHILD ABUSE AND NEGLECT REPORTS, STEPHANIE'S LAW (S 1208)

-) The General Assembly passed S 1208, titled Stephanie's Law in memory of four-year-old Stephanie Carter who died in October of 2000 from injuries sustained through repeated acts of physical abuse. On June 6, 2002, the Governor signed the bill into law. The legislation establishes more rigorous reporting and record keeping guidelines for child abuse and neglect cases in South Carolina. This legislation provides that when the Department of Social Services receives a report of suspected child abuse or neglect, DSS must determine whether previous reports have been made regarding the same child or the same subject of the report. The bill further provides that if DSS does not conduct an investigation as a result of information received, DSS must make a record of the report and allow that information to be used by the department and law enforcement for purposes of assessing risk and safety if additional contacts are made concerning the child, the family, or the subject of the report.

This bill also requires that DSS retain records of all reports and place each report in a specified category (suspected, indicated, or unfounded) based on the department investigation. The bill provides that reports classified as unfounded must be retained by DSS for up to five years. Once these records are classified as unfounded, the bill limits access to them and specifically exempts them from Freedom of Information Act inquiry. The bill also ends the practice of purging certain records from the central registry, allowing Department access to all reports at all times.

The bill precludes the registry from containing any report that the Department classifies as unfounded.

STATUS The Senate and House passed S 1208 and the Governor signed the bill into law on June 6, 2002

CRIMINAL RECORD CHECKS OF DIRECT CARE STAFF (H 3145)

-) The General Assembly approved H 3145, which prohibits "direct care entities" (defined as nursing homes, home health agencies, adult daycare facilities, and community residential facilities) from employing or contracting with a direct caregiver until after the direct caregiver has undergone a

designated by the Chief Judge of the Court of Appeals

The bill requires that the motion to suppress be done before the reviewing authority and that the reviewing authority unanimously uphold the issuance of the order before the contents are admissible
The legislation also provides that any civil action against the State and its employee acting in an official capacity must be brought under the South Carolina Tort Claims Act

The legislation revises current law on Bombs, Destructive Devices, and Weapons of Mass Destruction so as to update existing law and expand the definition of weapon of mass destruction to parallel federal provisions

The bill provides that a person who, without lawful authority, possesses, uses, threatens, or attempts or conspires to possess or use a weapon of mass destruction in furtherance of an act of terrorism is guilty of a felony and upon conviction (1) in cases resulting in the death of another person, must be punished by death or by imprisonment for life, or (2) in cases which do not result in the death of another person, must be punished by imprisonment for not less than twenty-five years nor more than life

The bill updates existing law on computer crimes and gives the State Grand Jury jurisdiction over computer crimes and terrorist acts

The legislation affords the Governor the authority to declare a state of emergency for a public health emergency

The legislation establishes the Emergency Health Powers Act which extends broad authority to the Department of Health and Human Services in the event of a public health emergency to respond to such emergency through procedures for vaccinations and quarantines of those people who refuse vaccination

The legislation establishes provisions for the reporting of unusual illnesses by coroners, health care providers, and pharmacists. Similar provisions are applied to veterinarians and farmers to track any effects of biological terrorism on animal populations or crops

In instances of looting during a state of emergency declared by the Governor, the legislation requires restitution for victims

The legislation establishes penalties for charging unconscionable prices (price-gouging) during a declared state of emergency or disaster. Penalties are established for knowingly and willfully using a misleading practice or device to solicit the contribution or sale of goods or services for charitable purposes in connection with a declared state of emergency or disaster

The legislation exempts security plans from Freedom of Information Act requirements although the costs expended to implement those plans would be subject to the provisions of FOIA. An FOIA exemption is provided for information relating to structural bridge plans

The legislation creates the First Responders Advisory Committee. The authority and responsibilities of the committee are to research, study, analyze, determine, and report to the General Assembly by January 1, 2003, and thereafter to the President Pro Tempore of the Senate and the Speaker of the House concerning the needs of the first responders, including personnel involved with fire, law enforcement, emergency medical, emergency planning and coordinating, and 911 and other emergency communications. The issues to be studied with regard to first responders include, but are not limited to (1) performance of their duties, rendering of their services to the public in general, and to the individuals involved in an emergency, including the other first responders involved, (2) preparing for the performance of those duties, including equipping, training, planning, and coordinating, (3) funding their operations, (4) preserving and enhancing their personal fitness, well-being, morale, and welfare, (5) the appropriate role the State should play in continuing to assess and address the identified needs, including whether, and in what form, a new or existing state agency could and should be authorized and funded to assist in that role, and (6) the consideration of legislation to address the identified needs and providing the General Assembly with draft legislation

the negligent, improper, or illegal operation of an agricultural facility or operation, Clemson University, in conjunction with the Department of Health and Environmental Control, shall create a training and certification program for owners or operators of certain animal facilities (as defined in a specified Regulation) which must include, but is not limited to, understanding relevant regulations, issues, standards, principles, and practices regarding siting and management of an animal facility and land application of animal waste, controlling vectors, testing for toxic metals, organic materials, and other elements, and implementing emergency procedures and spill prevention protocols,

An operator of an animal facility and waste utilization area must be trained and certified according to DHEC Regulations on the operation of animal waste management under the above-described program,

The bill does not affect the right of a person to recover damages for injuries sustained because of pollution of, or change in condition of, the waters of a stream or because of an overflow on his lands

STATUS H 4944 was approved by the General Assembly and has been ratified (R 432)

INSURANCE

HEALTH INSURANCE MANDATES (H 4583)

The General Assembly approved H 4583, a bill pertaining to state and federal health insurance mandates. The legislation creates the Task Force to Review State and Federal Health Insurance Mandates in South Carolina. The legislation provides for the membership, authority, and staff support of the task force. The task force is charged with reviewing (1) each and every State and Federally mandated health benefit placed upon health insurance issuers in South Carolina since 1990, (2) the impact of each such mandated health benefit on the premiums for health insurance coverage in South Carolina. The task force shall make a final report with recommendations to the General Assembly no later than January 1, 2005, at which time the task force is dissolved.

Until such time as the task force makes its final report, mandated health benefits beyond those required as of January 1, 2002 may be imposed on a health insurer doing business in this State only after review by the task force. Under no circumstances, however, is a mandate to be imposed prior to the first day of the second year after the effective date of the Act. Nothing in this provision shall be construed to prohibit any health insurance issuer from voluntarily expanding coverage or to prohibit any individual or employer from electing to expand coverage on any health maintenance organization contract or individual or group health insurance policy or contract covering the individual, the employer, or employees of the employer as applicable. Nothing in this provision shall be construed to prohibit amendments to comport with federal law.

STATUS The General Assembly passed H 4583 and ratified the bill on June 4, 2002 (R 430)

MOTORIST INSURANCE DATABASE PROGRAM ACT (H 5105)

H 5105 creates the Motorist Insurance Database Program for the purpose of establishing a database to use when verifying compliance with the State's requirements for automobile insurance or other motor vehicle financial security. The legislation provides that the Department of Public Safety shall convene a working group with a membership as specified in the bill for the purpose of facilitating the implementation of the program, assisting in development of regulations, and coordinating a testing phase, and necessary changes identified in this testing phase, as prescribed by the working group. The Motor Vehicles Division in the Department of Public Safety shall develop, in a manner prescribed by the department, a system to allow the transmission of data from insurance companies to the division. The department, with input from the Department of Insurance, shall promulgate regulations for administering and enforcing this provision. The regulations shall specify the requirements that are necessary and appropriate for commercial lines of insurance which shall be developed with input by the Department of Insurance. The division, for a fee prescribed and promulgated by regulation, shall make available to insurers by subscription a monthly electronic list of newly-licensed drivers. This list must not be used for marketing, solicitation, or another purpose not specifically enumerated. It may

DRIVER'S LICENSE AND CHILD TRANSPORTATION REVISIONS (H 3933)

-) The General Assembly approved H 3933, a bill revising beginner's permits, provisional licenses, special restricted driver's licenses, and driver's training and restricting the transportation of children in the open bed or open cargo area of a pickup truck or trailer

The bill provides revisions for the beginner's permit that may be issued to individuals at least fifteen years of age. The legislation provides that a beginner's permit is valid in the operation of vehicles between six a.m. and midnight, rather than 'during the daylight hours,' as is currently provided. A permittee may not drive between midnight and six o'clock a.m. unless accompanied by the permittee's licensed parent or guardian. The bill provides that a beginner's permit is valid in the operation of certain scooters and cycles between six a.m. and six p.m., except that beginning on the day that daylight savings time goes into effect through the day that daylight saving time ends, the permittee may operate these certain scooters and cycles between six a.m. and eight p.m. The bill provides that a permittee may not operate a motorcycle, motor scooter, or light motor-driven cycle at any other time unless supervised by the permittee's motorcycle licensed parent or guardian. The bill also increases from ninety days to one hundred eighty days the period which a person must hold a beginner's permit before being eligible for full licensure.

- The legislation provides for revisions to the conditional (currently known as "provisional") driver's license issued to eligible individuals that are at least fifteen years of age and less than sixteen years of age and the special restricted driver's license issued to eligible individuals that are at least sixteen years of age and less than seventeen years of age. The bill provides that in addition to current requirements, a driver must complete at least forty hours of driving practice, including at least ten hours of licensed parental-or guardian-supervised driving practice during darkness, in order to be issued a conditional (currently known as "provisional") driver's license or a special restricted driver's license. The holder of conditional driver's license or a special restricted license may not transport more than two passengers who are under twenty-one years of age unless accompanied by a licensed adult who is twenty-one years of age or older. This restriction does not apply when transporting family members, or students to or from school. In addition to current requirements, the bill also provides that a person must pass a specified driver's education course in order to be issued a special restricted driver's license. The bill also provides that for purposes of issuing a special restricted driver's license, the Department of Public Safety must accept a certificate of completion for a student who attends or is attending an out-of-state high school and passed a qualified driver's training course or program equivalent to an approved course or program in this State. In addition to current requirements, the bill also specifies that a person must satisfy the school attendance requirements imposed for the conditional license in order to be issued a special restricted driver's license. The bill also provides that a person while operating a motor vehicle under a conditional license or special restricted driver's license (currently this provision relates only to special restricted driver's license holders) who is convicted of a traffic offense (currently this provision applies only to point assessable offenses) or involved in an accident in which he was at fault shall have the removal of the restrictions postponed for twelve months and is not eligible to be issued a regular driver's license until one year from the date of the last traffic offense or accident in which he was at fault or until he is seventeen years of age. Currently, removal of the license holder's restrictions is postponed for six months during which period the licensee must be "free of any traffic convictions."
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- H 3933 also provides that it is unlawful to transport a person under fifteen years of age in the open bed or open cargo area of a pickup truck or trailer. This provision does not apply when (1) an adult is present in the bed or cargo area of the vehicle and is supervising the child, (2) the child is secured or restrained by a seat belt that meets specified standards, (3) an emergency situation exists, (4) the vehicle is being operated in an organized hayride or parade pursuant to a valid permit, (5) the vehicle is being operated while hunting or in an agricultural enterprise, (6) the vehicle is being operated in a county which has no incorporated area with a population greater than three thousand five hundred, or (7) the vehicle has a closed metal tailgate and is being operated less than thirty-six miles an hour. A person violating this provision is guilty of a misdemeanor and, upon conviction, must be fined twenty-five dollars. No driver's license points or insurance surcharge may be assessed for a violation.
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receives less than three hundred biennial applications and renewals for this special plate, it shall not produce additional special license plates in that series. The fee for this special plate is the regular motor vehicle license fee and a special license fee of sixteen dollars. These funds would be distributed to the Department to defray the DMV's expenses of producing and administering the plates, and remaining funds must be designated for use by the South Carolina National Guard for homeland security.

STATUS H 4652 (Act 236) and H 4432 (Act 218) were both approved by the House and the Senate and both bills have been signed by the Governor

TEMPORARY LICENSE PLATES (H 3678)

Current law allows a forty-five day grace period for obtaining a permanent license plate. Because of this grace period, law enforcement officers have not been authorized to stop vehicles that do not have license plates. Instead of the forty-five day grace period, H 3678 provides that a vehicle may not be operated without a permanent or temporary license plate.

A person newly acquiring a vehicle or an owner of a foreign vehicle being moved into this State, before operating the vehicle on South Carolina's highways during the forty-five day period, must do one of the following:

- transfer a license plate from another vehicle,
- purchase a new license plate and registration,
- purchase a temporary license plate from the Division of Motor Vehicles (DMV),
- purchase a temporary license plate from the county auditor's office in the county in which the person resides,
- obtain a temporary license plate from a dealer of new or used vehicles, OR
- obtain a temporary license plate from the casual seller of the vehicle.

The bill includes provisions for implementation of the above requirement by the DMV, the county auditor's office, and the applicant (casual buyer or casual seller), including authorization for charging a five dollar fee for the temporary plate to defray expenses of the production and issuance of the plate. The bill also includes provisions and requirements for issuance of temporary plates by dealers of new or used vehicles, provisions for transferring a license plate from one vehicle to another, and replacement of a temporary plate with a permanent plate and registration card. The bill also includes penalties for violation of the requirements included in the bill.

STATUS H 3678 was approved by the House and Senate and has been signed by the Governor (Act 251)

STATE/LOCAL GOVERNMENT

FAMILY PRIVACY PROTECTION ACT (S 204)

The General Assembly passed S 204, the Family Privacy Protection Act, and the Governor signed the bill into law on May 1, 2002. This legislation provides that all counties or state agencies, boards, commissions, institutions, departments, or other state entities must develop privacy policies and procedures to ensure that the collection, use and dissemination of personal information pertaining to citizens of the State is limited to such personal information as is required under the law and necessary to fulfill a legitimate public purpose. Under the legislation, the term 'personal information' means information that identifies or describes an individual, including, but not limited to, an individual's photograph or digitized image, social security number, date of birth, driver's identification number, name, home address, home telephone number, medical or disability information, education level, financial status, bank account(s) number(s), account or identification number issued by and/or used by any federal or state governmental agency or private financial institution, employment history, height, weight, race, other physical details, signature, biometric identifiers, and any credit record(s) or report(s). 'Personal information' does not mean information about boating accidents, vehicular accidents, driving violations, boating violations, or driver status. In collecting personal information as

account for the revenues, expenses, property, and source of investment dollars associated with the provision of telecommunications service. A government-owned telecommunications provider must prepare and publish an independent annual audit in accordance that reflects the full cost of providing the service. The legislation establishes requirements under which a government-owned telecommunications service provider shall pay or collect taxes each year in a manner equivalent to taxes paid by nongovernment-owned telecommunications service providers. The legislation also establishes a procedure under which government-owned and nongovernment-owned telecommunications service providers in the same competitive position, to the extent possible, are to pay a rate for liability insurance equal to or greater than the average market rate for private sector liability insurance in South Carolina as determined by the Department of Insurance.

STATUS The General Assembly passed S 290 and ratified the bill on June 6, 2002 (R 441)

POLITICAL SUBDIVISION'S AUTHORITY TO ESTABLISH A MINIMUM WAGE (H 3289)

The General Assembly passed H 3289, a bill providing conditions for minimum wages that may be established by political subdivisions such as a municipalities, counties, school districts, special purpose districts, or public service districts. The legislation provides that a political subdivision of this State may not establish, mandate, or otherwise require a minimum wage rate that exceeds the federal minimum wage rate set forth in the Fair Labor Standards Act. Also, a political subdivision of this State may not establish, mandate, or otherwise require a minimum wage rate related to employee wages that are exempt under the Fair Labor Standards Act. This provision does not limit the authority of political subdivisions to establish wage rates in contracts to which they are a party.

STATUS Having passed the General Assembly, H 3289 became law without the signature of the Governor on May 15, 2002 (Act 243)

STATE GENERAL OBLIGATION ECONOMIC DEVELOPMENT BOND ACT (S 1200)

(See summary under Business section of this document)

TAXATION

HISTORIC REHABILITATION INCENTIVES ACT (S 297)

(See summary under Conservation/Historic Preservation section of this document)

JOINT COMMITTEE ON TAXATION (S 852)

S 852, among other things, establishes a nine member Joint Committee on Taxation (the Committee), appointed as follows: three Senators appointed by the Chair of the Senate Finance Committee, who serve *ex-officio*, three House members appointed by the Chair of the Ways and Means Committee, who serve *ex-officio*, and three members of the business community, appointed by the Governor. One of the business representatives must be a certified public accountant. The Committee is charged to study all revenue-related State laws and to recommend changes in the State's basic tax structure and in the rates of taxation, together with predicted revenue effects of the changes together with proposed alternate sources of revenue. The goal stated in the bill is that our State revenue system be stable, equitable, and fair when compared with the tax structures of other states, and that business enterprises and persons be encouraged by the economic impact of our State revenue laws to move themselves and their business enterprises to South Carolina. The bill also charges the Committee to report on the economic impact of the South Carolina tax structure upon the business enterprises of various types of industry, as compared with other southeastern states, and make recommendations for long-range revenue planning and for future amendments to our State revenue laws. The Committee is to report to the General Assembly and the Governor by June 30, 2006, at which time the Committee will be dissolved.

STATUS S 852 was approved by the General Assembly and has been ratified (R 445)

penalties for failure to file disclosure reports. Currently, a person who violates this provision must pay a mandatory \$100 penalty if the report is not filed within 5 days of due date plus \$10 per day after notice is sent to the delinquent filer but only up to a \$500 cap. Both the House and Senate versions create a new penalty for campaign practice violations and certain reporting violations. The legislation adds a fine of up to 500% of the amount of contributions and anything of value that should have been reported to the current law which provides for a penalty of not less than \$5,000, or imprisonment for not more than 1 year, or both.

State Ethics Commission Requests Both House and Senate versions provide for several technical changes to the Ethics Act, most of which have been requested by the State Ethics Commission. The Senate version adds provisions relative to the State Ethics Commission and the House and Senate Ethics Committees relating to the moratorium on filing a complaint during the fifty-day period before an election. The amendment allows a person to petition the court of common pleas during this period alleging the violations complained of and praying for appropriate relief by way of a mandamus or injunction. Sanctions are provided for those who file frivolous lawsuits.

Contribution Limits Current law provides contribution limits of \$3,500 for statewide office and \$1,000 for any other office. The Senate version provides that within an election cycle, a statewide candidate or committee may not accept contributions over five thousand dollars and non-statewide candidates may not accept contributions of two thousand five hundred dollars (\$2,500). Current law provides a candidate may not accept contributions from political parties in excess of \$50,000 for statewide office and \$5,000 for any other office. The Senate version provides that a candidate may not accept contributions from political parties in excess of \$100,000 for statewide office or \$50,000 for non-statewide office. The House version does not revise either contribution limit.

Reporting Campaign Contributions Current law requires candidates or committees to maintain a list during the period before an election commencing at the beginning of the calendar quarter of the election of all contributions of more than \$100. The Senate version revises this requirement to provide the list must include all contributions and expenditures, including those less than \$100. The House version does not revise the requirement.

Multi-candidate Expenditures Current law provides party expenditures for multi-candidate promotions for four or more candidates where each candidate receives substantially equal treatment are not included in the contribution limits section of the Ethics Act. These expenditures are limited to the operation of phone banks, preparation, mailing and distribution of campaign materials, and voter registration or ballot information. The Senate version eliminates this exemption entirely, thus making multi-candidate expenditures subject to contribution limitations. The House version does not revise the current provisions.

Personal Use of Campaign Funds The Senate version provides that ballot measure committees, like candidates, committees, public officials, and political parties, may not use campaign funds to defray personal expenses which are unrelated to the campaign or office. The House version does not revise current provisions.

Use of Campaign Funds by Ballot Measure Committees The House version includes a new section to the Ethics Act which provides that a ballot measure committee may not use contributions for any purpose other than the purpose for which the committee was originally created, unless the person giving the contribution gives written authorization. Within sixty days after the relevant election or referendum, the remaining funds must be contributed to the State's general fund, contributed to a 501(c)(3) organization, or returned to all contributors pro rata. If a committee violates this provision, the State Ethics Committee may seize the funds and distribute the funds as provided. The Senate version does not include these provisions.

Lobbyists Current law provides members of the immediate family of the Governor, Lieutenant Governor, other statewide constitutional officers, members of the General Assembly, or director of state departments may not serve as lobbyists during the time the official holds office and for one year after such public service ends. The Senate version eliminates this restriction against family members serving as lobbyists. Instead, the Senate version requires lobbyists who are members of the

person or persons charged with the crime, including their age, race, sex, and ethnic background. The court administrator must use data provided by the solicitors to maintain records and statistics regarding the basic information. The Office of Court Administration must compile, collate, index, and maintain a file of the required information and make the file available to the general public during the normal business hours of the offices of Court Administration. The legislation provides a procedure for challenging and correcting information in the file. The lack of notice given to the court administrator will never serve as a defense for the defendant of a capital case.

STATUS H 4989 passed the House on April 26, 2002, and was sent to the Senate where it received a favorable report from the Judiciary Committee on May 22. No further action was taken on the bill.

DIABETES MELLITUS SCHOOL CARE ACT (included in S 977)

S 977, a bill relating to attendant care services and in-home care, was amended by the House to include the Diabetes Mellitus School Care Act, which requires each public school district to provide or contract for specified training to at least two school employees who must be designated as a diabetes care provider by the principal at each public school that does not employ a full-time nurse. Failure of a school employee to agree to be a diabetes care provider does not constitute insubordination. The bill also requires each public school to develop a written protocol with procedures to be followed if a student diabetes emergency arises when neither a registered nurse nor a diabetes care provider is available. The bill delineates functions which diabetes care providers are authorized to perform if the school has obtained the consent of a parent for the child to receive these services. The bill provides to a trained diabetes care provider an exemption from provisions that restrict activities that may be delegated to a person who is not a licensed medical professional and provides that the State Attorney General shall provide legal defense in any lawsuit brought under these provisions against a school district, school, or school employee.

The bill requires that upon written request of the parent or guardian and authorization by the student's physician, a student with diabetes must be permitted to perform specified functions to monitor and treat his or her diabetes in any area of the school or school grounds and at any school-related activity and the bill provides that the student may possess all necessary supplies and equipment to perform such functions. The bill prohibits restriction of a student's school choice due to the student having diabetes and prohibits a student being denied access or participation in school activities and programs unless, based upon the student's physician's statement, the student's diabetic condition is such that the activity or program may endanger the welfare of the student or of other students.

The bill requires that each school district develop implementation policies for these provisions and requires the Department of Health and Environmental Control to provide the State's private schools with a copy of these provisions and make the training available to private schools. The bill provides immunity from civil and criminal liability a trained private school diabetes care provider, anyone training a private school diabetes care provider, a private school employing a trained diabetes care provider, or any other private school official acting within the scope of authority as prescribed in the bill. The bill provides that the training for school employees required in the bill is not required to be implemented until the 2003-2004 school year. Costs associated with training must be borne by the State Department of Education.

STATUS S 977 was approved by the Senate, amended by the House to include the Diabetes Mellitus School Care Act, and returned to the Senate. The Senate did not act on the House amendments to the bill before the session ended, and the bill died.

DOMESTIC VIOLENCE PREVENTION ACT (H 3056)

The House approved H 3056, the Domestic Violence Prevention Act, and sent the bill to the Senate where it was reported out of the Judiciary Committee, favorable with amendment, on May 22. No further action was taken on the bill during the session. Legislators may revisit domestic violence issues in the coming General Assembly.

reported out of the Judiciary Committee, favorable with amendment, on May 22 No further action was taken on the bill

GAMBLING CRUISE PROHIBITION ACT (H 4387)

The House approved and sent to the Senate H 4387, the Gambling Cruise Prohibition Act. The legislation prohibits gambling activities on so-called "cruises to nowhere." The legislation provides that it is unlawful for a person to use any gambling device or engage in gambling aboard a vessel within the jurisdiction of this State. The legislation provides that it is unlawful for a person to use any gambling device or engage in gambling aboard a vessel that is on a voyage if (a) the voyage begins and ends in this State, and (b) during the voyage the vessel does not make an intervening stop. The legislation provides that it is unlawful for a person to own, keep, operate, manage, or maintain any gambling device on a vessel within the jurisdiction of this State unless (a) the vessel is engaged in a voyage that begins and ends in this State and makes an intervening stop, and (b) any gambling that occurs aboard the vessel occurs only outside the jurisdictional waters of this State. The legislation also provides that it is unlawful for a person to for a person to own, keep, operate, manage, or maintain a vessel that transports persons to another vessel for the purpose of engaging in a "cruise to nowhere" style gambling cruise. Under the bill, an 'intervening stop' occurs when a vessel departs the jurisdictional waters of this State and sails into United States or international waters, and between the time the vessel departs the jurisdictional waters of this State and the time it returns to the jurisdictional waters of this State, the vessel docks at a port of call in another state or possession of the United States or foreign country and remains in that port for a period of time sufficient to allow passengers the opportunity to disembark the vessel for sightseeing, shopping, or other tourism-related activities at that port. A person who engages in gambling that is unlawful under this act must be assessed a civil penalty of not more than one hundred dollars for each violation, with an aggregate total not to exceed one thousand dollars for a twenty-four hour period. An individual who violates provisions pertaining to the operation or facilitation of a "cruise to nowhere" must be assessed a civil penalty of not more than one thousand dollars for each violation, with an aggregate total not to exceed ten thousand dollars for a twenty-four period. The legislation provides that county and municipal governing bodies may adopt ordinances to exempt their local areas from prohibitions imposed under this legislation.

STATUS The House passed H 4387 on April 19, 2002. The legislation was referred to the Senate Judiciary Committee where it remained until adjournment this year.

GAMBLING OFFENSE REVISIONS (H 4476)

The House approved and sent to the Senate H 4476, a bill revising the State's gambling offenses so as to modernize the language and make the provisions more comprehensive. The bill provides that it is unlawful for a person in this State or at any location within the jurisdiction of this State to gamble, wager, bet, stake, or risk money, property, or anything of value upon the outcome of a contest, game of chance, sports event, or any other current or future contingent event not under the person's control or influence, upon an agreement or understanding that he or another person will receive something of value in the event of a certain outcome. A person who violates this provision is guilty of a misdemeanor and, upon conviction, must be fined not more than one hundred dollars or imprisoned for not more than thirty days. The bill provides that it is unlawful for a person in this State or at any location within the jurisdiction of this State knowingly to own, keep, operate, manage, or maintain a device or location of any kind that is used for gambling. The legislation provides an exemption for cruises where any gambling that occurs aboard the vessel occurs only outside the jurisdictional waters of this State and the vessel makes an intervening stop. A person who violates this provision is guilty of a misdemeanor and, upon conviction, must be fined not more than two thousand dollars or imprisoned for not more than one year. The legislation does not apply to State Lottery activities.

STATUS H 4476 passed the House on February 28, 2002. The legislation was referred to the Senate Judiciary Committee where it remained until adjournment this year.

PUBLIC SERVICE COMMISSION REVISIONS

shorten the legislative session H 3138 and H 3139 were referred to the Senate Judiciary Committee on January 1, 2001 where they remained as of adjournment this year. The House approved H 3138, a joint resolution proposing an amendment to the South Carolina Constitution that would revise the time the General Assembly is required to convene at the beginning of each year. Under the joint resolution's proposal, the General Assembly would continue to convene in the State Capitol on the second Tuesday in January in even-numbered years (in the middle of a General Assembly's two-year session), but would convene a month later, the second Tuesday in February, in odd-numbered years (at the beginning of a General Assembly's two-year session). The House also approved H 3139, a bill that would shorten the legislative session by changing the date for *sine die* adjournment of the General Assembly from the first Thursday in June to the second Thursday in May.

STATUS The House passed H 3138 and H 3139 on January 24, 2001. The measures were referred to the Senate Judiciary Committee where they remained as of adjournment this year.

TRUTH IN SENTENCING (H 3141)

In 1996, Truth in Sentencing for those convicted of offenses with maximum penalties of 20 years or more went into effect. This legislation eliminated parole for these offenders and required them to serve at least 85% of their sentences.

Most of these offenses are classified as violent crimes. However, some crimes classified as violent do not fall under Truth in Sentencing. They include Second Degree Burglary, First Offense Trafficking in Marijuana, 10-100 lbs, First Offense Trafficking in Cocaine, 10-28 grams, First Offense Trafficking in Methaqualone, 15-150 grams, First Offense Trafficking in LSD, 100-499 dose units, First Offense Trafficking in Fluintrazepam (Date Rape Drug), 1-100 grams, and First Offense Trafficking in Ice, Crank, or Crack Cocaine. Other serious offenses that do not fall under Truth in Sentencing include Lewd Act upon a Minor, which is a Class D, 15-year Felony and Embezzlement of Public Funds over \$5,000, which is a Class E, 10-year Felony.

The House version of this bill extends Truth in Sentencing provisions to all crimes in South Carolina. All offenders would be required to serve at least 85% of their sentences and would serve 100% if they do not earn work, education, or good time credits. Parole would be abolished for all offenders who commit crimes after the effective date of the act. The Senate version of this bill would apply the provisions of Truth in Sentencing to one more class of felonies to include Class D felonies and those offenses exempt from classification with maximum penalties of fifteen years or more. The Senate version would also apply the provisions of Truth in Sentencing to the offenses of Assault and Battery of a High and Aggravated Nature, Criminal Domestic Violence of a High and Aggravated Nature, and Criminal Sexual Conduct in the third degree.

Both versions of this bill amend current law to correct an unusual provision relating to the operation of the Community Supervision Program. Under current law, when an offender who is subject to Truth in Sentencing is sentenced and eventually released from prison, the offender is released under the Community Supervision Program. If the offender violates one of the program's conditions and is sent back to prison, he can be sent to prison on the violation for up to one year. The current law then provides that the offender will be re-released back into the Community Supervision Program and if he violates again he can be returned back to prison for up to another year. The offender can cycle through this process for up to twice his original sentence. This bill was modified to provide that the court may *not* impose a period of incarceration for a violation of the Community Supervision Program that exceeds the length of time remaining on the original sentence.

The Senate version of the bill added a provision regarding racial profiling which would expire July 1, 2006. Additionally, the Senate version of the bill would equalize the penalties for crack cocaine and powder cocaine by lowering the penalties for crack cocaine to mirror the penalties of powder cocaine.

STATUS A conference committee was appointed (February 27, 2002) to address the differences of the House and Senate on H 3141, but no compromise legislation was adopted as of adjournment this year.

SC Leg Upd , 2002 Reg Sess 6/20/2002

SOUTH CAROLINA 2002 SESSION LAWS REGULAR SESSION
Act 339
Approved the 2nd day of July, 2002 (Approx 50 pages)

2002 South Carolina Laws Act 339 (H B 4416)

SOUTH CAROLINA 2002 SESSION LAWS
REGULAR SESSION

Additions and deletions are not identified in this document
Vetoed provisions within tabular material are not displayed

Act 339
H B No 4416
GOVERNMENT ADMINISTRATION

AN ACT TO ENACT THE ' SOUTH CAROLINA HOMELAND SECURITY ACT" INCLUDING PROVISIONS TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY AMENDING SECTION 1-3-420, RELATING TO PROCLAMATION OF EMERGENCY BY THE GOVERNOR, SO AS TO INCLUDE A PUBLIC HEALTH EMERGENCY, TO AMEND CHAPTER 11, TITLE 1, RELATING TO THE STATE BUDGET AND CONTROL BOARD, BY ADDING SECTION 1-11-435 SO AS TO PROVIDE FOR PROTECTION OF THE STATE'S CRITICAL INFORMATION AND BY ADDING SECTION 1-11-770 SO AS TO PROVIDE FOR THE SOUTH CAROLINA 211 NETWORK TO COORDINATE INFORMATION AND REFERRALS FOR HEALTH AND HUMAN SERVICES STATEWIDE, TO AMEND ARTICLE 1, CHAPTER 11, TITLE 6, RELATING TO SPECIAL PURPOSE DISTRICTS, BY ADDING SECTION 6-11-340 SO AS TO PROVIDE FOR PROTECTION AND POLICING OF FACILITIES OWNED BY SPECIAL PURPOSE DISTRICTS, TO AMEND SECTION 14-7-1630, AS AMENDED, RELATING TO JURISDICTION OF THE STATE GRAND JURY, SO AS TO PROVIDE FOR JURISDICTION OVER COMPUTER CRIMES AND TERRORISM AND TO DEFINE "TERRORISM", TO AMEND SECTION 16-7-10, RELATING TO ILLEGAL ACTS DURING A STATE OF EMERGENCY, SO AS TO INCLUDE THE MISLEADING USE OF THE EMERGENCY TO RAISE CONTRIBUTIONS OF MONEY OR SERVICES, TO AMEND SECTION 16- 16-10, AS AMENDED, RELATING TO DEFINITIONS FOR COMPUTER CRIME OFFENSES, SO AS TO FURTHER DEFINE 'COMPUTER', 'COMPUTER HACKING', AND 'COMPUTER CONTAMINANT", TO AMEND SECTION 16-16-20,AS AMENDED, RELATING TO PENALTIES FOR COMPUTER CRIME OFFENSES, SO AS TO REDUCE THE FIRST DEGREE PENALTY TO FIFTY THOUSAND DOLLARS OR FIVE YEARS, OR BOTH, TO REQUIRE THE VICTIM'S LOSS TO EXCEED TEN THOUSAND DOLLARS INSTEAD OF FIVE THOUSAND,AND TO PROVIDE FOR SEPARATE OFFENSES, TO AMEND SECTION 16-16-25, AS AMENDED, RELATING TO CIVIL REMEDIES FOR COMPUTER CRIME OFFENSES, SO AS TO PROVIDE FOR ATTORNEY'S FEES, TO AMEND SECTION 16-16-30, AS AMENDED, RELATING TO VENUE FOR COMPUTER CRIME OFFENSES, SO AS TO MAKE TECHNICAL CHANGES, TO AMEND ARTICLE 7, CHAPTER 23, TITLE 16, RELATING TO BOMBS, DESTRUCTIVE DEVICES, AND WEAPONS OF MASS DESTRUCTION, SO AS TO, AMONG OTHER THINGS, DEFINE "TERRORISM", TO FURTHER DEFINE "WEAPON OF MASS DESTRUCTION", TO MAKE IT A FELONY TO USE A WEAPON OF MASS DESTRUCTION IN AN ACT OF TERRORISM AND TO PROVIDE PENALTIES, INCLUDING DEATH, TO MAKE IT A FELONY TO THREATEN THE USE OF A DESTRUCTIVE DEVICE OR TO HARBOR A PERSON WHO USES OR THREATENS THE USE OF A DESTRUCTIVE DEVICE AND TO PROVIDE PENALTIES, AND TO REQUIRE REPORTING BY LOCAL LAW ENFORCEMENT TO THE SOUTH CAROLINA LAW ENFORCEMENT DIVISION (SLED) OF WEAPONS OF MASS DESTRUCTION, TO AMEND TITLE 17, RELATING TO CRIMINAL PROCEDURES, BY ADDING CHAPTER 30 SO AS TO PROVIDE, AMONG OTHER THINGS, THE PROTOCOL FOR INTERCEPTION OF WIRE, ELECTRONIC, OR ORAL COMMUNICATIONS, TO SPECIFY UNLAWFUL ACTS OF COMMUNICATION INTERCEPTION, TO REQUIRE A COURT ORDER INITIATED BY SLED OR

CONNECTION WITH INFECTIOUS WASTE, SO AS TO PROVIDE FOR EXTRAORDINARY POWERS OF DISPOSAL DURING A PUBLIC HEALTH EMERGENCY, TO AMEND CHAPTER 7, TITLE 46, RELATING TO CLEMSON UNIVERSITY, BY ADDING SECTION 46-7-100 SO AS TO REQUIRE REPORTING OF ANIMAL DISEASE, INFECTION, AND TERRORISM BY A PERSON HAVING THE CARE OF ANIMALS, TO AMEND CHAPTER 9, TITLE 46, RELATING TO THE STATE CROP PEST COMMISSION, BY ADDING SECTION 46-9-120 SO AS TO REQUIRE REPORTING OF CROP DISEASE, PEST, AND TERRORISM BY A PERSON RESPONSIBLE FOR CROP PRODUCTION OR PROCESSING, TO AMEND SECTION 30-4-40, RELATING TO EXEMPTIONS FROM DISCLOSURE UNDER THE FOI ACT, SO AS TO INCLUDE INFORMATION REGARDING PROTECTIONS OF SAFEGUARDS AND OFF-SITE CONSEQUENCE ANALYSIS, TO AMEND CHAPTER 4, TITLE 30, RELATING TO THE FOI ACT, SO AS TO PROVIDE FOR REGULATION BY APPROPRIATE AGENCY DIRECTORS OF ACCESS TO INFORMATION REGARDING PROTECTIONS OF SAFEGUARDS AND OFF-SITE CONSEQUENCE ANALYSIS SUBJECT TO FEDERAL LAW, TO AMEND SECTION 40-18-30, RELATING TO POWERS AND DUTIES OF SLED AS TO SECURITY BUSINESSES, SO AS TO PROVIDE THAT SLED FORWARD AN APPLICANT'S FINGERPRINT CARD TO THE FEDERAL BUREAU OF INVESTIGATION FOR A NATIONWIDE CRIMINAL CHECK, TO AMEND SECTION 40-18-15, RELATING TO A SECURITY BUSINESS LICENSE, SO AS TO DELETE A PRIVATE RIGHT OF ACTION AGAINST THE LICENSEE'S SURETY BOND, TO AMEND SECTION 40-18-70, RELATING TO A PRIVATE INVESTIGATION LICENSE, SO AS TO DELETE A PRIVATE CAUSE OF ACTION AGAINST THE LICENSEE'S SURETY BOND, TO PROVIDE FOR A LICENSEE WHO HAS MAINTAINED HIS LICENSE CONTINUALLY SINCE ITS INITIAL AWARD, AND TO MAKE A TECHNICAL CHANGE, TO AMEND SECTION 40-18-100, RELATING TO A SECURITY WEAPONS PERMIT, SO AS TO REQUIRE THE SUBMISSION OF A FINGERPRINT CARD BY THE APPLICANT FOR A NATIONAL CRIMINAL RECORDS CHECK, TO AMEND SECTION 42-1-130, RELATING TO THE DEFINITION OF 'EMPLOYEE' FOR PURPOSES OF WORKERS' COMPENSATION, SO AS TO INCLUDE A VOLUNTEER STATE CONSTABLE AS A STATE EMPLOYEE, TO AMEND SECTION 42-7-65, RELATING TO THE AVERAGE WEEKLY WAGE FOR PURPOSES OF WORKERS COMPENSATION, SO AS TO PROVIDE FOR APPROVED VOLUNTEER STATE CONSTABLES, TO AMEND SECTION 16-8-10, AS AMENDED, RELATING TO TEACHING THE USE OF OR THE CONSTRUCTION OF A DESTRUCTIVE DEVICE, SO AS TO CONFORM THE DEFINITION TO INCLUDE A WEAPON OF MASS DESTRUCTION, TO AMEND SECTION 56-5-5015, AS AMENDED, RELATING TO THE REGULATION OF SUNSCREEN DEVICES ON A MOTOR VEHICLE, SO AS TO CREATE AN EXCEPTION FOR A LAW ENFORCEMENT VEHICLE REGULARLY USED TO TRANSPORT A TRAINED DOG, TO AMEND CHAPTER 1, TITLE 23, RELATING TO LAW ENFORCEMENT AND PUBLIC SAFETY, BY ADDING SECTION 23-1-230 SO AS TO CREATE THE FIRST RESPONDERS ADVISORY COMMITTEE TO STUDY AND REPORT ON THE NEEDS OF FIRST RESPONDERS TO EMERGENCIES, AND TO REPEAL SECTION 56-1-150 RELATING TO EXEMPTIONS FROM THE REQUIREMENT OF A PHOTOGRAPH ON A DRIVER'S LICENSE

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

South Carolina Homeland Security Act

SECTION 1 This act may be cited as the "South Carolina Homeland Security Act"

Legislative findings

SECTION 2 The General Assembly finds that

- (1) because of the tragic events of September 11, 2001, involving acts of terrorism against the people of the United States and because of continued threats against the peace and safety of our nation, appropriate measures must be taken to ensure the safety of the citizens of South Carolina,
- (2) legislative enhancements must be enacted to provide law enforcement, public health officials, and other emergency workers with the proper means and tools to enable them to protect and defend South Carolina and her citizens while preserving individual constitutional rights and liberties and also to maintain order, preserve the peace,

- (6) provide a management and administrative structure to support the South Carolina 211 Network and establish technical assistance, training, and support programs for information and referral-service programs,
- (7) test methods for integrating information and referral services with local and state health and human services programs and for consolidating and streamlining eligibility and case-management processes,
- (8) provide access to standardized, comprehensive data to assist in identifying gaps and needs in health and human services programs, and
- (9) provide a unified systems plan with a developed platform, taxonomy, and standards for data management and access

(B) In order to participate in the South Carolina 211 Network, a 211 provider must be certified by the board. The board must develop criteria for certification and must adopt the criteria as regulations.

(1) If any provider of information and referral services or other entity leases a 211 number from a local exchange company and is not certified by the agency, the agency shall, after consultation with the local exchange company and the Public Service Commission, request that the Federal Communications Commission direct the local exchange company to revoke the use of the 211 number.

(2) The agency shall seek the assistance and guidance of the Public Service Commission and the Federal Communications Commission in resolving any disputes arising over jurisdiction related to 211 numbers.

Protection of special purpose district facilities

SECTION 6 Article 1, Chapter 11, Title 6 of the 1976 Code is amended by adding

<< SC ST § 6-11-340 >>

Section 6-11-340 (A) The General Assembly finds that the public interest requires the safeguarding and protection of facilities owned by special purpose districts, such as water treatment plants, water storage tanks, wastewater treatment plants, pumping stations, and natural gas storage facilities. The health, safety, and protection of human life is dependent, in part, upon these facilities being properly protected from attack by terrorists or others seeking to disrupt the proper operation of facilities.

(B) For purposes of this section, 'special purpose district' means a special purpose district charged with the operation and maintenance of natural gas distribution facilities, wastewater plants or treatment facilities, or water treatment facilities, or with the operation and management of any water distribution system.

(C) Each special purpose district is authorized to establish a public safety department to protect and police the facilities owned by the district under such reasonable rules and regulations as the district may from time to time promulgate. The district may appoint and commission as many public safety officers as necessary for the proper security, general welfare, and convenience of the facilities. The public safety officers must be vested with all powers and duties conferred by law upon constables in addition to duties imposed upon them by the governing body of the district. The jurisdiction of these public safety officers is limited to the property of the special purpose district and the streets and roads through and contiguous to the property, except that these officers may not make an incidental arrest of a person for, or issue a ticket for, a traffic violation.

(D) The public safety officers appointed and commissioned by a special purpose district must be law enforcement officers trained and certified pursuant to Article 9, Chapter 6, Title 23, in accordance with the training and certification standards established for officers performing similar duties. The expense of the training must be paid by the special purpose district by which that person is employed and the Criminal Justice Academy Division of the Department of Public Safety is authorized to establish and collect a fee for this training.

Jurisdiction of state grand jury

SECTION 7 Section 14-7-1630(A) of the 1976 Code, as last amended by Act 335 of 1992, is further amended to read

conviction, must be fined or imprisoned, or both, in the discretion of the court. The court must order restitution pursuant to Section 17-25-322,

(3) charge unconscionable prices during a declared state of emergency or disaster, as described in Section 39-5-145, or knowingly and wilfully use a misleading practice or device to solicit the contribution or sale of goods or services for charitable purposes in connection with a declared state of emergency or disaster, as described in Section 39-5-147

(B) Penalties provided in this article are cumulative of and in addition to those provided in Sections 39-5-145 and 39-5-147

Definitions for computer crime offenses

SECTION 9 Section 16-16-10 of the 1976 Code, as last amended by Act 169 of 2002, is further amended to read

<< SC ST § 16-16-10 >>

Section 16-16-10 For purposes of this chapter

(a) "Computer" means a device that performs logical, arithmetic, and memory functions by manipulating impulses including, but not limited to, all input, output, processing, storage, computer software, and communication facilities that are connected or related to a computer in a computer system or computer network. For the purposes of this section, "computer" includes, but is not limited to, mainframes, servers, workstations, desktops, and notebooks, industrial controls such as programmable logic controllers and supervisory control and data acquisition systems, portable hand-held computing devices such as personal digital assistants and digital cellular telephones, data communications network devices such as routers and switches, and all other devices that are computer-based or communicate with or are under the control of a computer such as appropriate telephone switches, medical devices, and cable and satellite television interface systems. "Computer" does not include automated typewriters or typesetters.

(b) "Computer network" means the interconnection of two or more computers, and those devices and facilities through which an interconnection occurs.

(c) "Computer program" means a series of instructions or statements executable on a computer, which direct the computer system in a manner to process data or perform other specified functions.

(d) "Computer software" means a set of computer programs, data, procedures, or associated documentation concerned with the operation of a computer system.

(e) "Computer system" means a set of related, whether connected or unconnected, computer equipment, devices, or software.

(f) "Property" includes, but is not limited to, financial instruments, data, documents associated with computer systems, and computer software, or copies thereof, whether tangible or intangible, including both human and computer system readable data, and data while in transit.

(g) "Services" include, but are not limited to, the use of the computer system, computer network, computer programs, or data prepared for computer use, or data obtained within a computer system, or data contained within a computer network.

(h) "Data" means a representation of information, knowledge, facts, concepts, or instructions that has been prepared or is being prepared in a formalized manner and has been processed, is being processed, or is intended to be processed in a computer, computer system, or computer network. Data may be in any form including, but not limited to, computer printouts, magnetic storage media, optical storage media, network data packets, flash memory cards, smart card memory, punched cards, or as stored in the memory of the computer or in transit or displayed on a video device.

(i) "Access" means to gain entry to, attempt to gain entry to, instruct, communicate with, attempt to communicate with, store or alter data in, retrieve or remove data from, or otherwise make use of or attempt to make use of the logical, arithmetic, control, memory, storage, output, or communication functions of a computer, computer system, or computer network.

(2) a group of computer programs commonly known as 'Trojans' or 'Trojan horses' that are not self-replicating or self-propagating, and that are designed to compromise computer security, consume computer resources, modify, destroy, record, or transmit data, or disrupt the normal operation of the computer, computer system, or computer network,

(3) a group of computer programs commonly known as zombies that are designed to use a computer without the knowledge and consent of the appropriate principal, and that are designed to send large quantities of data to a targeted computer network for the purpose of degrading the targeted computer's or network's performance, or denying access through the network to the targeted computer or network, resulting in what is commonly known as 'Denial of Service' or 'Distributed Denial of Service' attacks, or

(4) a group of computer programs commonly known as 'trap doors', 'back doors', or 'root kits' that are designed to bypass standard authentication software, and that are designed to allow access to or use of a computer without the knowledge or consent of the appropriate principal

(l) 'Unauthorized access' means access of a computer, computer system, or computer network not explicitly or implicitly authorized by the appropriate principal of the computer, computer system, or computer network

(m) 'Unauthorized use' means the

(i) use of a computer, computer system, or computer network not explicitly or implicitly authorized by the appropriate principal of the computer, computer system, or computer network,

(ii) the use of computer software not explicitly or implicitly authorized by the appropriate principal or licensee of the computer software, or

(iii) the unauthorized use of a computer, computer system, computer network, or computer software in a manner not explicitly or implicitly authorized by the appropriate principal or licensee

Penalties for computer crime offenses

SECTION 10 Section 16-16-20 of the 1976 Code, as amended by Act 169 of 2002, is further amended to read

<< SC ST § 16-16-20 >>

Section 16-16-20 (1) It is unlawful for a person to wilfully, knowingly, maliciously, and without authorization or for an unauthorized purpose to

(a) directly or indirectly access or cause to be accessed a computer, computer system, or computer network for the purpose of

(i) devising or executing a scheme or artifice to defraud,

(ii) obtaining money, property, or services by means of false or fraudulent pretenses, representations, promises, or

(iii) committing any other crime

(b) alter, damage, destroy, or modify a computer, computer system, computer network, computer software, computer program, or data contained in that computer, computer system, computer program, or computer network or introduce a computer contaminant into that computer, computer system, computer program, or computer network

(2) A person is guilty of computer crime in the first degree if the amount of gain directly or indirectly derived from the offense made unlawful by subsection (1) or the loss directly or indirectly suffered by the victim exceeds ten thousand dollars. Computer crime in the first degree is a felony and, upon conviction, a person must be fined not more than fifty thousand dollars or imprisoned not more than five years, or both

(3)(a) A person is guilty of computer crime in the second degree if the amount of gain directly or indirectly derived from the offense made unlawful by subsection (1) or the loss directly or indirectly suffered by the victim is greater than one thousand dollars but not more than ten thousand dollars

(b) A person is also guilty of computer crime in the second degree where

(i) he interferes with, causes to be interfered with, denies or causes to be denied any

(1) a county in which an act was performed in furtherance of a transaction which violated this chapter,
(2) the county of the principal place of business in this State of the owner or lessee of a computer, computer system, computer network, or any part of it, which has been subject to the violation, or
(3) a county in which a violator had control or possession of proceeds of the violation or of books, records, documents, property, financial instruments, computer software, computer programs, or other materials or objects which were used in the furtherance of the violation
Bombs, destructive devices, and weapons of mass destruction
SECTION 13 Article 7, Chapter 23, Title 16 of the 1976 Code, as added by Act 237 of 2000, is amended to read

Article 7
Bombs, Destructive Devices, and Weapons of Mass Destruction

<< SC ST § 16-23-710 >>

Section 16-23-710 For purposes of this article
(1) "Bacteriological weapon" and "biological weapon" mean devices which are designed in a manner as to permit the intentional release into the population or environment of microbiological or other biological materials, toxins, or agents, whatever their origin or method of production, in a manner not authorized by law, or any device, the development, production, or stockpiling of which is prohibited pursuant to the 'Convention of the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and their Destruction', 26 U S T 583, TIAS 8063
(2) 'Bomb' includes a destructive device capable of being detonated, triggered, or set off to release any substance or material that is destructive, irritating, odoriferous, or otherwise harmful to one or more organisms including, but not limited to, human beings, livestock, animals, crops or vegetation, or to earth, air, water, or any other material or substance necessary or required to sustain human or any other individual form of life, or to real or personal property
(3) 'Bomb technician', "explosive ordnance technician", or "EOD technician" means either
(a) a law enforcement officer, fire official, emergency management official, or an employee of the State, its political subdivisions, or an authority of the State or a political subdivision, whose job title includes the designation of bomb technician, explosive ordnance disposal technician, or EOD technician and whose assigned duties include the rendering-safe of improvised explosive devices, destructive devices, old or abandoned explosives, war relics, or souvenirs while acting in the performance of his official duties, or
(b) an official or employee of the United States including, but not limited to, a member of the Armed Forces of the United States, who is qualified as an explosive ordnance disposal technician under the federal, state, or local laws or regulations while acting in the performance of his duty
(4) "Building" means any structure, vehicle, watercraft, or aircraft
(a) where any person lodges or lives, or
(b) where people assemble for purposes of business, government, education, religion, entertainment, public transportation, or public use or where goods are stored Where a building consists of two or more units separately occupied or secured, each unit is considered both a separate building in itself and a part of the main building
(5) 'Device' means an object, contrivance, instrument, technique, or any thing that is designed, manufactured, assembled, or capable of serving any purpose in a bomb, destructive device, explosive, incendiary, or weapon of mass destruction
(6) 'Detonate' means to explode or cause to explode

(c) pesticides, as used in agriculture and household products

(17) Property means real or personal property of any kind including money, choses in action, and other similar interest in property

(18) Terrorism' includes activities that

(a) involve acts dangerous to human life that are a violation of the criminal laws of this State,

(b) appear to be intended to

(i) intimidate or coerce a civilian population,

(ii) influence the policy of a government by intimidation or coercion, or

(iii) affect the conduct of a government by mass destruction, assassination, or kidnapping, and

(c) occur primarily within the territorial jurisdiction of this State

(19) 'Weapon of mass destruction' means

(a) any destructive device as defined in item (7),

(b) any weapon that is designed or intended to cause death or serious bodily injury through the release, dissemination, or impact of toxic or poisonous chemicals, or their precursors,

(c) any weapon involving a disease organism, or

(d) any weapon that is designed to release radiation or radioactivity at a level dangerous to human life

<< SC ST § 16-23-715 >>

Section 16-23-715 A person who, without lawful authority, possesses, uses, threatens, or attempts or conspires to possess or use a weapon of mass destruction in furtherance of an act of terrorism is guilty of a felony and upon conviction

(1) in cases resulting in the death of another person, must be punished by death or by imprisonment for life, or

(2) in cases which do not result in the death of another person, must be punished by imprisonment for not less than twenty-five years nor more than life

<< SC ST § 16-23-720 >>

Section 16-23-720 (A) It is unlawful for a person intentionally to use a destructive device or cause an explosion, or intentionally to aid, counsel, solicit another, or procure the use of a destructive device A person who violates this subsection is guilty of a felony and, upon conviction

(1) in cases resulting in the death of another person where there was malice

forethought, must be punished by death, by imprisonment for life, or by a mandatory minimum term of imprisonment for thirty years,

(2) in cases resulting in the death of another person where there was not malice

forethought, must be imprisoned not less than ten years nor more than thirty years, and

(3) in cases resulting in injury to a person, must be imprisoned for not less than ten years nor more than twenty-five years

(B) A person who intentionally causes an explosion by means of a destructive device or aids, counsels, solicits another, or procures an explosion by means of a destructive device, which results in damage to a building or other real or personal property, or a person who attempts to injure another or damage or destroy a building or other real or personal property by means of a destructive device, is guilty of a felony and, upon conviction, must be imprisoned for not less than ten years nor more than twenty-five years

(C) A person who knowingly possesses, manufactures, transports, distributes, or possesses with the intent to distribute a destructive device or any explosive, incendiary device, or over-pressure device or toxic substance or material which has been configured to cause damage, injury, or death, or a person who possesses parts, components, or

destructive device, explosive, incendiary, poisonous gas, toxic substance, whether chemical, biological, or nuclear material, or detonator identified by a qualified bomb technician or person qualified as a forensic expert in the field of destructive devices is admissible in any civil or criminal trial in lieu of production of the actual destructive device or detonator. Evidence transferred to the clerk of court by a qualified bomb technician for safekeeping must not be destroyed except pursuant to a court order issued by a court of competent jurisdiction.

(B) If a destructive device, explosive, incendiary, poisonous gas, toxic substance, whether chemical, biological, or nuclear material, or detonator that has been rendered inert and safe is introduced into evidence in any criminal or civil trial, the clerk of court may retain custody or transfer custody of the destructive device or detonator to a qualified bomb technician for safekeeping only after the destructive device has been preserved as evidence by photograph, videotape, or other suitable means of identification.

<< SC ST § 16-23-770 >>

Section 16-23-770 (A) All property used or intended for use in violation of this article and all proceeds derived from, realized from, or traced back to property used or intended for use in violation of this article is contraband and subject to forfeiture. Property subject to forfeiture must be seized by a law enforcement agency and forfeited to the State, a political subdivision of the State, or the seizing law enforcement agency.

(B) On application of a seizing law enforcement agency, the circuit court may order the agency to destroy or transfer the seized device to any agency of this State or of the United States that can safely store or render harmless a destructive device, explosive, poisonous gas, or detonator if the court finds that it is impractical or unsafe for the seizing law enforcement agency to store the destructive device, explosive, poisonous gas, or detonator. Notwithstanding Section 16-23-760, the application for destruction of a destructive device may be made at anytime after seizure. Any destruction ordered pursuant to this subsection must be done in the presence of at least one credible witness or recorded on film, videotape, or other electronic imaging method. The court also may order the seizing agency or the agency to which the device, explosive, poisonous gas, or detonator is transferred to make a report of the destruction, take samples before the destruction, or both.

(C) Nothing in subsection (A) or (B) prohibits a bomb technician, law enforcement officer, or fire official from taking action that will render an explosive, destructive device, poisonous gas, or detonator, or other object which is suspected of being an explosive, destructive device, poisonous gas, or detonator safe without prior approval of a court when the action is in the performance of his duties and is intended to protect lives or property which are in imminent danger.

(D) The provisions of this article do not apply to the lawful use of

- (1) fertilizers, propellant activated devices, or propellant activated industrial tools manufactured, imported, distributed, or used for their intended purposes,
- (2) pesticides which are manufactured, stored, transported, distributed, possessed, or used in accordance with Chapter 7, Title 2, the federal Insecticide, Fungicide, and Rodenticide Act and the Environmental Pesticide Control Act of 1972,
- (3) explosives, blasting agents, detonators, and other objects regulated and controlled by the South Carolina Explosives Control Act,
- (4) ammunition for small arms and firearms,
- (5) components of ammunition for small arms and firearms,
- (6) ammunition reloading equipment,
- (7) the use of small arms propellant when used in war reenactments,
- (8) firearms, as defined in Section 16-8-10, or
- (9) fireworks and explosives which are permitted to be sold, possessed, or used under Chapter 35 of Title 23.

(E) The provisions of this article do not apply to the military or naval forces of the United

subdivision of the State, of the United States, or of any other state or political subdivision of the State, and any individual, partnership, association, joint stock company, trust, or corporation

(6) 'Investigative or law enforcement officer' means an officer of the State of South Carolina or political subdivision of the State, of the United States, or of any other state or political subdivision of the State, who is empowered by law to conduct on behalf of the government investigations of or to make arrests for offenses enumerated in this chapter or similar federal offenses

(7) 'Contents', when used with respect to any wire, oral, or electronic communication, include any information concerning the substance, purport, or meaning of that communication

(8) "Judge of competent jurisdiction" means a circuit court judge designated by the Chief Justice of the Supreme Court of the State of South Carolina

(9) 'Reviewing authority' means a panel of three judges of the South Carolina Court of Appeals designated by the Chief Judge of the South Carolina Court of Appeals

(10) "Aggrieved person" means a person who was a party to any intercepted wire, oral, or electronic communication or a person against whom the interception was directed

(11) "Law enforcement agency" means the South Carolina Law Enforcement Division (SLED) or an agency of the United States if the primary responsibility of the agency is the prevention and detection of crime and if its agents and officers are empowered by law to conduct criminal investigations and to make arrests

(12) "Communication common carrier" has the same meaning which is given the term "common carrier" in 47 U.S.C. Section 153(h)

(13) "Electronic communication" means any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic, photooptical system, or any other device that affects intrastate, interstate, or foreign commerce, but does not include

(a) any wire or oral communication,

(b) any communication made through a tone-only paging device,

(c) any communication from an electronic or mechanical device which permits the tracking of the movement of a person or an object, or

(d) electronic funds transfer information stored by a financial institution in a communications system used for the electronic storage and transfer of funds

(14) "User" means any person or entity who

(a) uses an electronic communication service, and

(b) is duly authorized by the provider of the service to engage in its use

(15) "Electronic communications system" means any wire, radio, electromagnetic, photooptical, or photoelectronic facilities for the transmission of wire or electronic communications, and any computer facilities or related electronic equipment for the electronic storage of these communications

(16) "Electronic communication service" means any service which provides to users of the service the ability to send or receive wire or electronic communications

(17) "Readily accessible to the general public" means, with respect to a radio communication, that the communication is not

(a) scrambled or encrypted,

(b) transmitted using modulation techniques whose essential parameters have been withheld from the public with the intention of preserving the privacy of the communication,

(c) carried on a subcarrier or other signal subsidiary to a radio transmission,

(d) transmitted over a communications system provided by a common carrier, unless the communication is a tone-only paging system communication, or

(e) transmitted on frequencies allocated under Part 25, Subpart D, Subpart E, or Subpart F of Part 74, or Part 94 of the Rules of the Federal Communications Commission, unless, in the case of a communication transmitted on a frequency allocated under Part 74 that is not exclusively allocated to broadcast auxiliary services, the communication is a two-way voice communication by radio

) intercept, disclose, or use that communication in the normal course of his employment while engaged in any activity which is a necessary incident to the rendition of his service or to the protection of the rights or property of the provider of that service, except that a provider of wire communication service to the public must not utilize service observing or random monitoring except for mechanical or service quality control checks

(B) Notwithstanding any other provision of law, a provider of wire, oral, or electronic communication service, or an officer, employee, or agent thereof, or landlord, custodian, or other person may provide information, facilities, or technical assistance to a person authorized by law to intercept wire, oral, or electronic communications if the provider, or an officer, employee, or agent thereof, or landlord, custodian, or other person, has been provided with

(1) a court order directing such assistance signed by the authorizing judge, or

(2) a certification in writing by a person specified in Section 17-30-95 that no warrant or court order is required by law, that all statutory requirements have been met, and that the specified assistance is required, setting forth the period of time during which the provision of the information, facilities, or technical assistance is authorized and specifying the information, facilities, or technical assistance required

(C) A provider of wire, oral, or electronic communication service, or an officer, employee, or agent thereof, or landlord, custodian, or other person must not disclose the existence of any interception or the device used to accomplish the interception with respect to which the person has been furnished an order under this chapter, except as may otherwise be required by legal process and then only after prior notice to the Attorney General or his Assistant Attorney General. Any such disclosure renders the person liable for the civil damages provided under Section 17-30-135, and the person may be prosecuted. An action shall not be brought against a provider of wire, oral, or electronic communication service, or an officer, employee, or agent thereof, or landlord, custodian, or other person for providing information, facilities, or assistance in accordance with the terms of a court order under this chapter

)

<< SC ST § 17-30-30 >>

Section 17-30-30 (A) It is lawful under this chapter for an officer, employee, or agent of the Federal Communications Commission, in the normal course of his employment and in discharge of the monitoring responsibilities exercised by the commission in the enforcement of 47 U S C Chapter 5, to intercept a wire, oral, or electronic communication transmitted by radio or to disclose or use the information thereby obtained

(B) It is lawful under this chapter for a person acting under color of law to intercept a wire, oral, or electronic communication, where the person is a party to the communication or one of the parties to the communication has given prior consent to the interception

(C) It is lawful under this chapter for a person not acting under color of law to intercept a wire, oral, or electronic communication where the person is a party to the communication or where one of the parties to the communication has given prior consent to the interception

<< SC ST § 17-30-35 >>

Section 17-30-35 (A) It is lawful under this chapter for a person to

(1) intercept or access an electronic communication made through an electronic communication system that is configured so that the electronic communication is readily accessible to the general public,

(2) intercept any radio communication which is transmitted by

(a) any station for the use of the general public, or that relates to ships, aircraft, vehicles, or persons in distress,

(b) any governmental, law enforcement, civil defense, private land mobile, or public

)

(C) Persons subject to isolation or quarantine must comply with DHEC's rules and orders, and must not go beyond the isolation or quarantine premises. Failure to comply with these provisions constitutes a misdemeanor.

(D)(1) DHEC may authorize physicians, health care workers, or others access to individuals in isolation or quarantine as necessary to meet the needs of isolated or quarantined individuals.

(2) No person, other than a person authorized by DHEC, shall enter isolation or quarantine premises. Failure to comply with this provision constitutes a misdemeanor.

(3) Any person entering an isolation or quarantine premises with or without authorization of DHEC may be isolated or quarantined as provided for in this act.

<< SC ST § 44-4-540 >>

Section 44-4-540 (A) During a public health emergency, the isolation and quarantine of an individual or groups of individuals must be undertaken in accordance with the procedures provided in this section.

(B)(1) DHEC may temporarily isolate or quarantine an individual or groups of individuals through an emergency order signed by the commissioner or his designee, if delay in imposing the isolation or quarantine would significantly jeopardize DHEC's ability to prevent or limit the transmission of a contagious or possibly contagious disease to others.

(2) The emergency order must specify the following: (i) the identity of the individual or groups of individuals subject to isolation or quarantine, (ii) the premises subject to isolation or quarantine, (iii) the date and time at which isolation or quarantine commences, (iv) the suspected contagious disease, if known, and (v) a copy of Article V of this act and relevant definitions of this act.

(3) A copy of the emergency order must be given to the individual(s) or groups of individuals to be isolated or quarantined, or if impractical to be given to a group of individuals, it may be posted in a conspicuous place in the isolation or quarantine premises.

(4) Within ten days after issuing the emergency order, DHEC must file a petition pursuant to subsection (C) of this section for a court order authorizing the continued isolation or quarantine of the isolated or quarantined individual or groups of individuals.

(C)(1) DHEC may make a written petition to the trial court for an order authorizing the isolation or quarantine of an individual or groups of individuals.

(2) A petition under subsection (C)(1) must specify the following: (i) the identity of the individual or groups of individuals subject to isolation or quarantine, (ii) the premises subject to isolation or quarantine, (iii) the date and time at which isolation or quarantine commences, (iv) the suspected contagious disease, if known, and (v) a statement of compliance with the conditions and principles for isolation or quarantine of Section 44-4-530(B), and (vi) a statement of the basis upon which isolation or quarantine is justified in compliance with this article. The petition must be accompanied by a sworn affidavit of DHEC attesting to the facts asserted in the petition, together with any further information that may be relevant and material to the court's consideration.

(3) Notice to individuals or groups of individuals identified in the petition must be accomplished within twenty-four hours in accordance with the South Carolina Rules of Civil Procedure. If notice by mail or fax is not possible, notice must be made by personal service.

(4) A hearing must be held on any petition filed pursuant to this subsection within five days of filing of the petition. In extraordinary circumstances and for good cause shown, DHEC may apply to continue the hearing date on a petition filed pursuant to this section for up to ten days, which continuance the court may grant in its discretion giving due regard to the rights of the affected individuals, the protection of the public's health, the severity of the emergency, and the availability of necessary witnesses and evidence.

(5)(a) The court must grant the petition if, by a preponderance of the evidence, isolation or quarantine is shown to be reasonably necessary to prevent or limit the transmission of a contagious or possibly contagious disease.

- (2) there are questions of law or fact common to the individual claims or rights to be determined,
- (3) the group claims or rights to be determined are typical of the affected individuals' claims or rights, and
- (4) the entire group will be adequately represented in the consolidation

<< SC ST § 44-4-550 >>

Section 44-4-550 (A)(1) DHEC may, for such period as the state of public health emergency exists, collect or cause to be collected specimens and perform tests on any person or animal, living or deceased, and acquire any previously collected specimens or test results that are reasonable and necessary to respond to the public health emergency

- (2) Specimens shall be collected only from those individuals who agree to have specimens collected or who agree to have tests performed
- (3) All specimens must be clearly marked
- (4) Specimen collection, handling, storage, and transport to the testing site must be performed in a manner that will reasonably preclude specimen contamination or adulteration and provide for the safe collection, storage, handling, and transport of the specimen
- (5) Any person authorized to collect specimens or perform tests must use chain of custody procedures to ensure proper recordkeeping, handling, labeling, and identification of specimens to be tested. This requirement applies to all specimens, including specimens collected using on-site testing kits
- (B) Any business, facility, or agency authorized to collect specimens or perform tests must provide such support as is reasonable and necessary to aid in a relevant criminal investigation

<< SC ST § 44-4-560 >>

Section 44-4-560 (A) Access to protected health information of persons who have participated in medical testing, treatment, vaccination, isolation, or quarantine programs or efforts by DHEC during a public health emergency is limited to those persons having a legitimate need to

- (1) provide treatment to the individual who is the subject of the health information,
- (2) conduct epidemiological research, or
- (3) investigate the causes of transmission
- (B) Protected health information held by DHEC must not be disclosed to others without individual specific informed authorization except for disclosures made
 - (1) directly to the individual,
 - (2) to the individual's immediate family members or life partners,
 - (3) to appropriate state or federal agencies or authorities when necessary to protect public health,
 - (4) to health care personnel where needed to protect the health or life of the individual who is the subject of the information,
 - (5) pursuant to a court order or executive order of the Governor to avert a clear danger to an individual or the public health, or
 - (6) to coroners, medical examiners, or funeral directors or others dealing with human remains to identify a deceased individual or determine the manner or cause of death

<< SC ST § 44-4-570 >>

Section 44-4-570 (A) The appropriate licensing authority, in coordination with DHEC and the Department of Labor, Licensing and Regulation, may exercise, for such period as the state of public health emergency exists, in addition to existing emergency powers, the following emergency powers regarding licensing of health personnel

fatalities or incidents of permanent or long-term disability. The Department of Health and Environmental Control must designate reportable illnesses and health conditions as set forth in subsection (A).

(C) A pharmacist must report any unusual or increased prescription rates, unusual types of prescriptions, or unusual trends in pharmacy visits that may be caused by chemical terrorism, bioterrorism, radiological terrorism, epidemic or pandemic disease, or novel and highly fatal infectious agents and might pose a substantial risk of a significant number of human fatalities or incidents of permanent or long-term disability.

Prescription-related events that require a report include, but are not limited to:

(1) an unusual increase in the number of prescriptions to treat fever, respiratory, or gastrointestinal complaints,

(2) an unusual increase in the number of prescriptions for antibiotics,

(3) an unusual increase in the number of requests for information on over-the-counter pharmaceuticals to treat fever, respiratory, or gastrointestinal complaints, and

(4) any prescription that treats a disease that is relatively uncommon and has bioterrorism potential.

(D) The reports of conditions must be made in the form and manner as prescribed by DHEC in regulations concerning infectious diseases. The reports must be made to the Bureau of Disease Control in the manner required in the regulations. When available, clinical information supporting the diagnoses, including results of specific diagnostic tests, must be included.

(E) For purposes of this section, the terms chemical terrorism, bioterrorism, and radiological terrorism have the same meanings as provided in Section 44-4-130.

DHEC powers in infectious waste management

SECTION 26. Section 44-93-40 of the 1976 Code is amended to read

<< SC ST § 44-93-40 >>

Section 44-93-40. (A) To carry out the provisions and purposes of this chapter, the department may establish and collect registration and permit fees in connection with the provisions of this chapter, conduct inspections, investigations, obtain samples, and conduct research with respect to the operation and maintenance of a site or facility in which infectious waste is generated or managed, and issue, deny, revoke, suspend, or modify registration, permits, or orders under such conditions as it may prescribe for the operation of infectious waste treatment facilities or sites. No permit or registration may be revoked without first providing an opportunity for a hearing as provided pursuant to Article 3, Chapter 23 of Title 1, the Administrative Procedures Act.

(B) After the declaration of a public health emergency, as defined in Section 44-4-130, the department may exercise, for such period as the state of public health emergency exists, the following powers, in addition to any existing powers it has, for the safe disposal of infectious waste:

(1) to adopt and enforce measures to provide for the safe disposal of infectious waste as may be reasonable and necessary for emergency response. These measures may include, but are not limited to, the collection, storage, handling, destruction, treatment, transportation, and disposal of infectious waste,

(2) to require any business or facility authorized to collect, store, handle, destroy, treat, transport, and dispose of infectious waste under the laws of this State, and any landfill business or other such property, to accept infectious waste or provide services or the use of the business, facility, or emergency. When necessary during the state of the public health emergency, the business or facility must coordinate with the department on the management or supervision of the business or facility, and

(3) to procure, by order or otherwise, any business or facility authorized to collect, store, handle, destroy, treat, transport, and dispose of infectious waste under the laws of this State and any landfill business or other such property as may be reasonable and necessary for emergency response, with the right to take immediate possession thereof.

<< SC ST § 30-4-45 >>

Section 30-4-45 (A) The director of each agency that is the custodian of information subject to the provisions of 42 U S C 7412(r)(7)(H), 40 CFR 1400 Distribution of Off-site Consequence Analysis Information , or 10 CFR 73.21 Requirements for the protection of safeguards information', must establish procedures to ensure that the information is released only in accordance with the applicable federal provisions

(B) The director of each agency that is the custodian of information, the unrestricted release of which could increase the risk of acts of terrorism, may identify the information or compilations of information by notifying the Attorney General in writing, and shall promulgate regulations in accordance with the Administrative Procedures Act, Sections 1-23-110 through 1-23-120(a) and Section 1-23-130, to regulate access to the information in accordance with the provisions of this section

(C) Regulations to govern access to information subject to subsections (A) and (B) must at a minimum provide for

(1) disclosure of information to state, federal, and local authorities as required to carry out governmental functions, and

(2) disclosure of information to persons who live or work within a vulnerable zone For purposes of this section, "vulnerable zone" is defined as a circle, the center of which is within the boundaries of a facility possessing hazardous, toxic, flammable, radioactive, or infectious materials subject to this section, and the radius of which is that distance a hazardous, toxic, flammable, radioactive, or infectious cloud, overpressure, radiation, or radiant heat would travel before dissipating to the point it no longer threatens serious short-term harm to people or the environment

Disclosure of information pursuant to this subsection must be by means that will prevent its removal or mechanical reproduction Disclosure of information pursuant to this subsection must be made only after the custodian has ascertained the person's identity by viewing photo identification issued by a federal, state, or local government agency to the person and after the person has signed a register kept for the purpose

Powers and duties of SLED as to security businesses

SECTION 31 Section 40-18-30 of the 1976 Code, as added by Act 372 of 2000, is amended by adding at the end

<< SC ST § 40-18-30 >>

(D) Fingerprint cards submitted to SLED pursuant to Sections 40-18-50, 40-18-60, 40-18-70, and 40-18-100 must be submitted by SLED to the Federal Bureau of Investigation to facilitate a national criminal records check of the applicant

Security business license

SECTION 32 Section 40-18-50(B) of the 1976 Code, as added by Act 372 of 2000, is amended to read

<< SC ST § 40-18-50 >>

(B) The applicant must post a ten thousand dollar bond with SLED in a form approved by the Attorney General in favor of the State The bond must be issued by a surety insurer licensed to transact surety insurance in this State The surety on the bond may cancel the bond upon giving thirty days notice to SLED, and the surety is relieved of liability for a breach of condition after the effective date of the cancellation

Private investigation license

SECTION 33 Section 40-18-70(B) of the 1976 Code, as added by Act 372 of 2000, is amended to read

<< SC ST § 40-18-70 >>

(B) The applicant must post a ten thousand dollar bond with SLED in a form approved by

employees of municipal corporations and political subdivisions, except those elected by the people or elected by the council or other governing body of any municipal corporation or political subdivision, who act in purely administrative capacities and are to serve for a definite term of office. Any reference to an employee who has been injured or when the employee is dead, includes also his legal representative, dependents, and other persons to whom compensation may be payable.

Any sole proprietor or partner of a business whose employees are eligible for benefits under this title may elect to be included as employees under the workers' compensation coverage of the business if they are actively engaged in the operation of the business and if the insurer is notified of their election to be included. Any sole proprietor or partner, upon this election, is entitled to employee benefits and is subject to employee responsibilities prescribed in this title.

Designation of wages for workers' compensation

SECTION 38 Section 42-7-65 of the 1976 Code is amended to read

<< SC ST § 42-7-65 >>

Section 42-7-65 Notwithstanding the provisions of Section 42-1-40, for the purpose of this title and while serving in this capacity, the total average weekly wage of the following categories of employees is the following:

(1) for all members of the State and National Guard, regardless of rank, seventy-five percent of the average weekly wage in the State for the preceding fiscal year, or the average weekly wage the service member would be entitled to, if any, if injured while performing his civilian employment, if the average weekly wage in his civilian employment is greater,

(2) for all voluntary firemen of organized voluntary rural fire units and voluntary municipal firemen, thirty-seven and one-half percent of the average weekly wage in the State for the preceding fiscal year,

(3) for all members of organized volunteer rescue squads, thirty-seven and one-half percent of the average weekly wage in the State for the preceding fiscal year,

(4) for all volunteer deputy sheriffs, thirty-seven and one-half percent of the average weekly wage in the State for the preceding fiscal year, and

(5) for all volunteer state constables appointed pursuant to Section 23-1-60, while performing duties in connection with their appointments and authorized by the State Law Enforcement Division, thirty-seven and one-half percent of the average weekly wage in the State for the preceding fiscal year.

The wages provided in items (2), (3), (4), and (5) of this section may not be increased as a basis for any computation of benefits because of employment other than as a volunteer. Persons in the categories provided by items (2), (3), (4), and (5) must be notified of the limitation on average weekly wages prescribed in this section by the authority responsible for obtaining coverage under this title.

Volunteer firemen and rescue squad members are construed to mean members of organized units whose membership is certified to the municipal clerk or chairman of the council of the municipality or county in which their unit is based by the chief officer of the unit concerned. A volunteer deputy sheriff is a volunteer whose membership is certified by the sheriff to the governing body of the county. No volunteer deputy sheriff may be included under the provisions of this title unless approved by the governing body of the county or municipality. A voluntary constable appointed pursuant to Section 23-1-60 shall be included under the provisions of this title only while performing duties in connection with his appointment and as authorized by the State Law Enforcement Division and only if approved and funded by the governing body of the entity using his services as a voluntary state constable. Notwithstanding any other provision of law, voluntary firemen of organized volunteer fire units and members of organized volunteer rescue squads are covered under this title by the county governing body unless the governing body of the county opts out of the coverage.

The average weekly wage for inmates of the State Department of Corrections as defined

- (b) the Director of the State Law Enforcement Division,
- (c) the Director of the Department of Public Safety,
- (d) the Adjutant General,
- (e) the Director of the Emergency Management Division,
- (f) the Director of the Emergency Medical Services Division of the Department of Health and Environmental Control,
- (g) the State Fire Marshal,
- (h) the President Pro Tempore of the Senate,
- (i) the Speaker of the House of Representatives,
- (j) the State Chief Information Officer, and
- (k) the Chairman of the Commercial Mobile Radio Services Emergency Telephone Services Advisory Committee, and
- (2) the following nine members who represent the following associations
 - (a) the South Carolina Sheriffs' Association,
 - (b) the South Carolina Police Chiefs Association,
 - (c) the South Carolina Chapter of the National Emergency Number Association,
 - (d) the Association of Public Communications Officials,
 - (e) the South Carolina Emergency Medical Services Association,
 - (f) the Emergency Management Association,
 - (g) the South Carolina Fireman's Association,
 - (h) the South Carolina Fire Chiefs Association, and
 - (i) the Palmetto 800 Advisory Committee
- (B) Expense reimbursement or per diem payment shall not be paid to members of the committee or its staff
- (C) All committee members shall serve until the end of the 2003 session of the South Carolina General Assembly
- (D) The Governor shall fill any vacancy on the Advisory Committee. An association to which a vacating member belonged may make recommendations to the Governor to fill the vacancy
- (E) A committee member who terminates his holding of the office or employment that qualified him for appointment shall cease immediately to be a member of the committee
- (F) The committee shall establish rules and procedures with respect to
 - (1) the selection of its officers,
 - (2) the selection of meeting sites, and
 - (3) conducting its meetings
- (G) The authority and responsibilities of the committee are to research, study, analyze, determine, and report to the General Assembly by January 1, 2003, and thereafter to the President Pro Tempore of the Senate and the Speaker of the House concerning the needs of the first responders, including personnel involved with fire, law enforcement, emergency medical, emergency planning and coordinating, and 911 and other emergency communications. The issues to be studied with regard to first responders include, but are not limited to
 - (1) performance of their duties, rendering of their services to the public in general, and to the individuals involved in an emergency, including the other first responders involved,
 - (2) preparing for the performance of those duties, including equipping, training, planning, and coordinating,
 - (3) funding their operations,
 - (4) preserving and enhancing their personal fitness, well-being, morale, and welfare,
 - (5) the appropriate role the State should play in continuing to assess and address the identified needs, including whether, and in what form, a new or existing state agency could and should be authorized and funded to assist in that role, and
 - (6) the consideration of legislation to address the identified needs and providing the General Assembly with draft legislation with regard to these issues
- (H) The First Responders Advisory Committee shall receive clerical and related assistance from the staff of the South Carolina Law Enforcement Division, the Department of Public

7/3/07
WITNESSES

R Bradford

Greenville Police Department

9/19/2007

ARREST WARRANT NUMBER

J483581

ACTION OF GRAND JURY

TRUE BILL

Nicki Cummins
FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Grand Jury
COPY

Date

DOCKET NO 2009 GS-23-

CLK

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

February

TERM 2009

THE STATE

vs

SAMUEL LAMONT WHITNER

Indictment for

0385

CRIMINAL SEXUAL CONDUCT WITH A MINOR
FIRST DEGREE

VIOLATION § 16-655(A)(1) [formerly 16-655(1)]

INDICIMENT FOR
CRIMINAL SEXUAL CONDUCT WITH A MINOR FIRST DEGREE

That SAMUEL LAMONT WHITNER did in Greenville County between the 28th day of December 2000 and the 28th day December 2002 commit a sexual battery on [REDACTED], who was less than eleven years of age. This is in violation of §16-655(A)(1)[formerly 16-655(1)] of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State and contrary to the statute in such case made and provided.

ary to the statute in such case made and provided.

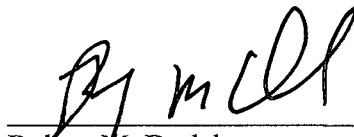
Ernest Susantat
SOLICITOR

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CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings "

June 14th, 2011

A handwritten signature in black ink, appearing to read "R M Dudek", is written over a horizontal line.

Robert M. Dudek
Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
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ATTORNEY FOR APPELLANT