Advance Sheet No. 03 | July 29, 2024 | Pages 1705-1840 Acts 211-225

2024 REGULAR SESSION

# Acts and Joint Resolutions

of the

GENERAL ASSEMBLY
OF THE STATE OF SOUTH CAROLINA



Numbers in parenthesis to left of act numbers (numbers in bold face) refer as follows: number with R before it refers to ratification number, number with S before it refers to bill number in Senate, and number with H before it refers to bill number in House of Representatives.

Ashley Harwell-Beach, Code Commissioner, P.O. Box 11489,
Columbia, S.C. 29211

If the first portion of the act on the opposite page is incomplete, see the preceding Advance Sheet for the first portion.

**Time effective**

SECTION 6. This joint resolution takes effect upon approval by the Governor.

Ratified the 7th day of March, 2024

Approved the 11th day of March, 2024

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**No. 211**

(R212, H4248)

**AN ACT TO AMEND THE SOUTH CAROLINA CODE OF LAWS BY AMENDING SECTION 61-4-50, RELATING TO THE SALE OF BEER, ALE, PORTER, OR WINE TO UNDERAGED PERSONS, SO AS TO PROVIDE FOR A CONDITIONAL DISCHARGE; AND BY AMENDING SECTION 61-6-4080, RELATING TO THE SALE OF ALCOHOLIC LIQUORS TO AN UNDERAGED PERSON, SO AS TO PROVIDE FOR A CONDITIONAL DISCHARGE.**

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

**Conditional discharge**

SECTION 1. Section 61-4-50 of the S.C. Code is amended by adding:

(D)(1) Whenever any person who has not previously been convicted of any offense under this section, pleads guilty to or is found guilty of a sale in violation of this section, the court, without entering a judgment of guilt and with the consent of the accused, may defer further proceedings and place him on probation upon terms and conditions as it requires provided that one such condition must be that he complete the merchant education program described in subsection (C). Upon violation of a term or condition, the court may enter an adjudication of guilt and proceed as otherwise provided. Upon fulfillment of the terms and conditions, the court shall discharge the person and dismiss the

proceedings against him. Discharge and dismissal under this section must be without court adjudication of guilt and is not a conviction for purposes of this section or for purposes of disqualifications or disabilities imposed by law upon conviction of a crime, including the additional penalties imposed for second or subsequent convictions. However, a nonpublic record must be forwarded to and retained by the South Carolina Law Enforcement Division for the purpose of use by the courts in determining whether or not a person has committed a subsequent offense under this section. The South Carolina Law Enforcement Division must produce this record upon subpoena or court order. Discharge and dismissal under this section may occur only once with respect to any person.

(2) Upon the dismissal of the person and discharge of the proceedings against him pursuant to item (1), the person may apply to the court for an order to expunge from all official records, other than the nonpublic records to be retained as provided in item (1), all recordation relating to his arrest, indictment or information, trial, finding of guilt, and dismissal and discharge pursuant to this section. If the court determines, after the hearing, that the person was dismissed and the proceedings against him discharged, it shall enter the order. The effect of the order is to restore the person, in the contemplation of the law, to the status he occupied before the arrest or indictment or information. No person as to whom the order has been entered may be held pursuant to another provision of law to be guilty of perjury or otherwise giving a false statement by reason of his failure to recite or acknowledge the arrest, or indictment or information, or trial in response to an inquiry made of him for any purpose, except when the person is providing sworn statements or giving testimony under oath. A conditional discharge granted pursuant to this section does not preclude a person from availing themselves of subsequent pre-trial diversion options provided by law.

(3) Before a person may be discharged and the proceedings dismissed pursuant to this subsection, the person must pay a fee of three hundred fifty dollars if the person is in a general sessions court and one hundred fifty dollars if the person is in a summary court. No portion of the fee may be waived, reduced, or suspended, except in cases of indigency. If the court determines that a person is indigent, the court may partially or totally waive, reduce, or suspend the fee. The revenue collected pursuant to this item must be retained by the jurisdiction that heard or processed the case and paid to the State Treasurer within thirty days of receipt. The State Treasurer shall transmit these funds to the Prosecution Coordination Commission which shall then apportion these funds among the sixteen judicial circuits on a per capita basis equal to

the population in that circuit compared to the population of the State as a whole based on the most recent official United States census. The funds must be used for drug treatment court programs only. The amounts generated by this subsection are in addition to any amounts presently being provided for drug treatment court programs and may not be used to supplant funding already allocated for these services. The State Treasurer may request the State Auditor to examine the financial records of a jurisdiction which he believes is not timely transmitting the funds required to be paid to the State Treasurer pursuant to this subsection. The State Auditor is further authorized to conduct these examinations and the local jurisdiction is required to participate in and cooperate fully with the examination.

(4) Conditional discharge may only be granted by the court in accordance with the provisions of this section upon approval of the circuit solicitor or prosecuting officer.

**Conditional discharge**

SECTION 2. Section 61-6-4080 of the S.C. Code is amended by adding:

(D)(1) Whenever any person who has not previously been convicted of any offense under this section, pleads guilty to or is found guilty of a sale in violation of this section, the court, without entering a judgment of guilt and with the consent of the accused, may defer further proceedings and place him on probation upon terms and conditions as it requires provided that one such condition must be that he complete the merchant education program described in subsection (C). Upon violation of a term or condition, the court may enter an adjudication of guilt and proceed as otherwise provided. Upon fulfillment of the terms and conditions, the court shall discharge the person and dismiss the proceedings against him. Discharge and dismissal under this section must be without court adjudication of guilt and is not a conviction for purposes of this section or for purposes of disqualifications or disabilities imposed by law upon conviction of a crime, including the additional penalties imposed for second or subsequent convictions. However, a nonpublic record must be forwarded to and retained by the South Carolina Law Enforcement Division solely for the purpose of use by the courts in determining whether or not a person has committed a subsequent offense under this section. The South Carolina Law Enforcement Division must produce this record upon subpoena or court order. Discharge and dismissal under this section may occur only once

with respect to any person.

(2) Upon the dismissal of the person and discharge of the proceedings against him pursuant to item (1), the person may apply to the court for an order to expunge from all official records, other than the nonpublic records to be retained as provided in item (1), all recordation relating to his arrest, indictment or information, trial, finding of guilt, and dismissal and discharge pursuant to this section. If the court determines, after the hearing, that the person was dismissed and the proceedings against him discharged, it shall enter the order. The effect of the order is to restore the person, in the contemplation of the law, to the status he occupied before the arrest or indictment or information. No person as to whom the order has been entered may be held pursuant to another provision of law to be guilty of perjury or otherwise giving a false statement by reason of his failure to recite or acknowledge the arrest, or indictment or information, or trial in response to an inquiry made of him for any purpose, except when the person is providing sworn statements or giving testimony under oath. A conditional discharge granted pursuant to this section does not preclude a person from availing themselves of subsequent pre-trial diversion options provided by law.

(3) Before a person may be discharged and the proceedings dismissed pursuant to this subsection, the person must pay a fee of three hundred fifty dollars if the person is in a general sessions court and one hundred fifty dollars if the person is in a summary court. No portion of the fee may be waived, reduced, or suspended, except in cases of indigency. If the court determines that a person is indigent, the court may partially or totally waive, reduce, or suspend the fee. The revenue collected pursuant to this item must be retained by the jurisdiction that heard or processed the case and paid to the State Treasurer within thirty days of receipt. The State Treasurer shall transmit these funds to the Prosecution Coordination Commission which shall then apportion these funds among the sixteen judicial circuits on a per capita basis equal to the population in that circuit compared to the population of the State as a whole based on the most recent official United States census. The funds must be used for drug treatment court programs only. The amounts generated by this subsection are in addition to any amounts presently being provided for drug treatment court programs and may not be used to supplant funding already allocated for these services. The State Treasurer may request the State Auditor to examine the financial records of a jurisdiction which he believes is not timely transmitting the funds required to be paid to the State Treasurer pursuant to this subsection. The State Auditor is further authorized to conduct these examinations and the local jurisdiction is required to participate in and cooperate fully with the

examination.

(4) Conditional discharge may only be granted by the court in accordance with the provisions of this section upon approval of the circuit solicitor or prosecuting officer.

**Time effective**

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

Ratified the 15th day of May, 2024

Vetoed by the Governor -- 5/21/24.
Veto overridden by House -- 6/26/24.
Veto overridden by Senate -- 6/26/24.

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**No. 212**

(R249, H4386)

**AN ACT TO AMEND THE SOUTH CAROLINA CODE OF LAWS BY ADDING SECTION 50-5-400 SO AS TO ESTABLISH THE LIMITED COMMERCIAL BLUE CRAB LICENSE AND THE REQUIREMENTS FOR OBTAINING THE LICENSE; BY AMENDING SECTION 50-5-350, RELATING TO THE TRANSFERABILITY OF LICENSES, SO AS TO EXEMPT THE LIMITED COMMERCIAL BLUE CRAB LICENSE FROM THE GENERAL TRANSFER PROHIBITION; BY AMENDING SECTION 50-5-325, RELATING TO COMMERCIAL EQUIPMENT LICENSES AND FEES, SO AS TO REVISE THE FEE STRUCTURE FOR THE COMMERCIAL TRAP LICENSE; BY AMENDING SECTION 50-5-360, RELATING TO LICENSES TO ENGAGE IN SHEDDING PEELER CRABS, SO AS TO REQUIRE THAT AN APPLICANT'S OR LICENSEE'S BUSINESS PREMISES BE CAPABLE OF PEELER SHEDDING OPERATIONS; BY AMENDING SECTION 50-5-545, RELATING TO TRAPS FOR TAKING BLUE CRAB, SO AS TO PROVIDE FOR THE MATERIAL, DIMENSIONS, AND ESCAPE-VENT REQUIREMENTS OF THE TRAPS; BY ADDING SECTION**

**50-5-1345 SO AS TO REQUIRE THE DEPARTMENT OF NATURAL RESOURCES TO PROMULGATE CERTAIN REGULATIONS RELATING TO THE TAKING OF BLUE CRABS BY TRAP; BY ADDING SECTION 50-5-1302 SO AS TO ESTABLISH A RECREATIONAL LIMIT OF ONE BUSHEL OF BLUE CRABS PER PERSON PER DAY NOT TO EXCEED TWO BUSHELS PER BOAT; BY AMENDING SECTION 50-5-330, RELATING TO RECREATIONAL EQUIPMENT LIMITS, SO AS TO INCREASE THE NUMBER OF CRAB TRAPS THAT MAY BE USED FOR RECREATIONAL PURPOSES FROM TWO TO FIVE WITH A RECREATIONAL CRAB TRAP ENDORSEMENT; BY AMENDING SECTION 50-9-540, RELATING TO RECREATIONAL SALTWATER FISHING LICENSES, SO AS TO PROVIDE FOR THE COST OF THE RECREATIONAL CRAB TRAP ENDORSEMENT; BY AMENDING SECTION 50-5-555, RELATING TO TRAP PLACEMENT AND ATTENTION REQUIREMENTS, SO AS TO IMPOSE A CIVIL PENALTY FOR CERTAIN VIOLATIONS RELATING TO TRAP PLACEMENT; AND BY ADDING SECTION 50-13-647 SO AS TO PROHIBIT THE TAKING, HARMING, OR KILLING OF ROBUST REDHORSE.**

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

**Commercial blue crab license, cost, eligibility, limitations, renewal**

SECTION 1. Article 3, Chapter 5, Title 50 of the S.C. Code is amended by adding:

Section 50-5-400. (A) For the privilege of taking blue crabs by trap for a commercial purpose in the waters of this State, an individual must obtain a limited commercial blue crab license, a commercial saltwater fishing license, and a commercial equipment license for traps.

(B) The cost of a limited commercial blue crab license is one hundred dollars for residents and five hundred dollars for nonresidents.

(C) The following individuals are eligible to obtain a limited commercial blue crab license:

(1) an individual who possessed a valid commercial equipment license for traps during the 2023-2024 license year and who has verifiable documentation of at least five hundred pounds of commercial blue crab landings during the first six months of the 2023-2024 license year, the entirety of the 2022-2023 license year, or the entirety of the

2021-2022 license year;

(2) an individual who is selected via an applicant lottery pursuant to subsection (D); or

(3) an individual who receives a valid limited commercial blue crab license via transfer pursuant to subsection (E).

(D) If the total number of limited commercial blue crab licenses issued by the department in a license year is below one hundred, then the department may award additional licenses, not to exceed one hundred total limited commercial blue crab licenses, via an applicant lottery.

(E) A limited commercial blue crab license may be transferred by the licensee to another individual after providing information relating to the transfer as required by the department. An individual is limited to one commercial blue crab license and a licensee must not receive a transfer of another limited commercial blue crab license.

(F) The maximum number of traps used for taking blue crab, inclusive of peeler traps, that may be licensed to:

(1) an individual who obtains a limited commercial blue crab license under subsection (C)(1) is the greater of two hundred traps and the highest number of traps licensed by the individual in the three previous license years;

(2) an individual who receives a limited commercial blue crab license via transfer is the greater of two hundred traps and the average number of traps licensed by a holder of the transferred limited commercial blue crab license in the three previous license years; or

(3) an individual who is selected via lottery is two hundred traps.

(G) If the 2024-2025 license year or 2023-2024 license year is used to determine the highest number of traps that may be licensed under subsection (F), then only the first six months of the 2023-2024 license year must be used in the determination.

(H) A limited commercial blue crab license must be renewed annually. Prior to every fourth license year, a licensee must have verifiable documentation of at least four thousand pounds of commercial blue crab landings in at least one of the three previous license years. If a licensee does not meet the documented landings threshold, then the licensee's limited commercial blue crab license must not be renewed by the department.

**Transferability of license**

SECTION 2. Section 50-5-350(B) of the S.C. Code is amended to read:

(B) Licenses and permits, other than a limited commercial blue crab

license, are not transferable; however, any licensed commercial saltwater fisherman may operate any licensed commercial equipment with written permission of the owner except:

(1) channel nets; and

(2) any commercial equipment licensed at the resident fee when the nonresident fee is greater if the operator is a nonresident.

**Commercial equipment license and fees, blue crabs**

SECTION 3. Section 50-5-325(A) of the S.C. Code is amended to read:

(A) Commercial equipment, excluding vessels, used in the salt waters of this State and in fisheries for anadromous and catadromous species in any waters of this State must be licensed by the department. The owner and operator are responsible for obtaining a license:

(1) to use a trawl or trawls, and the cost is one hundred twenty-five dollars for residents and three hundred dollars for nonresidents;

(2) to use traps other than traps for taking blue crab, and the cost is twenty-five dollars for fifty traps and one dollar for each trap thereafter for residents, and one hundred twenty-five dollars for fifty traps and five dollars for each trap thereafter for nonresidents;

(3) to use traps for taking blue crab, and the cost is two dollars for each trap for residents and ten dollars for each trap for nonresidents;

(4) to use a channel net for taking shrimp, and the cost is two hundred fifty dollars for each net;

(5) to use a gill net for taking shad, herring, or sturgeon, and the cost is ten dollars per one hundred net yards or a fraction thereof for residents and fifty dollars per one hundred net yards or a fraction thereof for nonresidents, and to use any other gill net or haul seine the cost is ten dollars per one hundred net feet or a fraction thereof for residents and fifty dollars per one hundred net feet or a fraction thereof for nonresidents;

(6) to use hand-held equipment to take shellfish, including tongs, rakes, and forks, at no cost;

(7) to use a drag dredge, and the cost is seventy-five dollars for residents and three hundred seventy-five dollars for nonresidents;

(8) to use other mechanically operated or boat-assisted equipment, other than equipment used to set or retrieve licensed equipment, and the cost is one hundred twenty-five dollars for residents and six hundred twenty-five dollars for nonresidents;

(9) to use trotlines with baits or hooks, and the cost is ten dollars for residents and fifty dollars for nonresidents for each line having not more

than fifty baits or hooks per line;

(10) to use any other commercial equipment, and the cost is ten dollars for each type for residents and fifty dollars per type for nonresidents.

**Wholesale peeler crab license**

SECTION 4. Section 50-5-360(B) of the S.C. Code is amended to read:

(B) In order to engage in shedding peeler crabs, a person or entity must first be a licensed wholesale seafood dealer, must be licensed for peeler crabs, and the person's or entity's business premises must be capable of peeler shedding operations. The fee for a resident peeler crab license is an additional seventy-five dollars, and the fee for a nonresident license is an additional three hundred seventy-five dollars. Persons holding this license and engaged in shedding peeler crabs are authorized to receive, possess, and sell peeler crabs regardless of size. The department may inspect the business premises of a person or entity applying for a peeler crab license and of a peeler crab licensee to ensure the applicant's or licensee's business premises are capable of peeler shedding operations.

**Commercial blue crab trap requirements**

SECTION 5. Section 50-5-545 of the S.C. Code is amended to read:

Section 50-5-545. (A) Except as provided in this section, a trap used for taking blue crab for commercial purposes from June 1 through March 14, or for recreational purposes year round, must have at least two unobstructed, circular escape vents (rings) which must be two and three-eighths inches or greater in inside diameter and located on vertical surfaces. At least one vent (ring) must be in the upper chamber. All vents (rings) must be within two inches of the horizontal partition or the base of the trap.

(B) A trap used for taking blue crab constructed of a single chamber must have at least one two and three-eighths inch or larger inside diameter escape vent (ring) located on a vertical surface within two inches of the base of the trap. Peeler traps are exempt year round.

(C) A trap used for taking blue crab, other than peeler traps, must be constructed of wire with a minimum mesh size of one and one-half inches, have throats or entrances located only on a vertical surface, and have a maximum dimension of twenty-four inches by twenty-four inches by twenty-four inches or a volume of eight cubic feet.

**Season for taking blue crabs by trap**

SECTION 6. Article 13, Chapter 5, Title 50 of the S.C. Code is amended by adding:

Section 50-5-1345. (A) The department must promulgate regulations establishing criteria for the designation of closed seasons and closed or partially closed areas for the taking of blue crabs by trap. In accordance with the established criteria, the department may designate closed seasons and closed or partially closed areas for the taking of blue crabs by trap upon at least forty-five days' public notice.

(B) A trap that is in the waters of this State during a closed season or in a closed or partially closed area may be confiscated by the department or by an agent of the department.

(C) It is unlawful to take or attempt to take blue crabs by trap during a closed season or in a closed or partially closed area. A person who violates this subsection is guilty of a misdemeanor and, upon conviction, must be fined not less than two hundred dollars nor more than five hundred dollars.

(D) Nothing in this section limits the authority of the department under Section 50-5-32.

**Blue crab taking and possession limits**

SECTION 7. Article 13, Chapter 5, Title 50 of the S.C. Code is amended by adding:

Section 50-5-1302. (A) For the purposes of this section, "day" means sunrise on one day to sunrise on the following day.

(B) It is unlawful for a person to take or possess for recreational purposes more than one bushel of blue crabs in any one day, not to exceed two bushels in any one day on any boat.

(C) A person who violates this section is guilty of a misdemeanor and, upon conviction, must be fined not less than one hundred dollars and not more than five hundred dollars.

**Recreational fishing exceptions**

SECTION 8. Section 50-5-330(A) of the S.C. Code is amended to read:

(A) A person may fish or use the following in the salt waters of this State solely for recreational purposes without being commercially

licensed:

(1) shrimp seines;

(2) hand-operated tongs, rakes except bull rakes, and forks except seed forks, used to harvest shellfish;

(3) hook and line or rod and reel;

(4) minnow traps, drop nets, and dip nets;

(5) cast nets; however, the use must comply with all other provisions of law;

(6) no more than two crab traps without a recreational crab trap endorsement;

(7) no more than five crab traps with a recreational crab trap endorsement;

(8) no more than two trotlines with a cumulative total of not more than fifty hooks or baits;

(9) no more than ten bush or pole lines with single hooks or baits.

**Recreational crab trap license**

SECTION 9. Section 50-9-540 of the S.C. Code is amended by adding:

(E) For the privilege of fishing more than two and up to five crab traps recreationally, a recreational saltwater license holder must purchase an annual enhanced recreational crab trap endorsement at a cost of five dollars.

**Penalty for violation of trap placement**

SECTION 10. Section 50-5-555 of the S.C. Code is amended by adding:

(G) The department may impose a civil penalty of up to one hundred dollars for each trap in violation of this section for a first offense, up to three hundred dollars for a second offense, and up to five hundred dollars for a third or subsequent offense.

**Taking robust redhorse prohibition**

SECTION 11. Article 6, Chapter 13, Title 50 of the S.C. Code is amended by adding:

Section 50-13-647. It is unlawful to take, harm, or kill robust redhorse (moxostoma robustum) from public waters. Any robust

redhorse taken must be returned immediately to the water from which it was taken. A person who violates the provisions of this section is guilty of a misdemeanor and, upon conviction, must be fined not more than five hundred dollars for a first offense and not more than one thousand dollars for each subsequent offense.

**Moratorium**

SECTION 12. Upon approval of this act by the Governor, a moratorium on the issuance of new commercial equipment licenses to use traps for the taking of blue crab takes effect, at which time the department must not issue any new commercial equipment licenses to use traps for the taking of blue crab. This moratorium expires on June 15, 2025. Commercial equipment licenses to use traps for the taking of blue crab in effect for the 2023-2024 license year are extended and do not expire until June 30, 2025.

**Time effective**

SECTION 13. Sections 4, 6, 11, and 12 of this act take effect upon approval by the Governor. All other sections take effect on July 1, 2025.

Ratified the 27th day of June, 2024

Approved the 1st day of July, 2024

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**No. 213**

(R238, S142)

**AN ACT TO AMEND THE SOUTH CAROLINA CODE OF LAWS BY AMENDING SECTION 16-3-2010, RELATING TO THE DEFINITION OF "SEX TRAFFICKING", SO AS TO EXPAND THE DEFINITION TO INCLUDE SEXUAL EXPLOITATION OF A MINOR AND PROMOTING OR PARTICIPATING IN PROSTITUTION OF A MINOR; BY AMENDING SECTION 16-3-2020, RELATING TO TRAFFICKING IN PERSONS, PENALTIES, MINOR VICTIMS**

**AND DEFENSES, SO AS TO PROVIDE THAT A TRAFFICKING VICTIM MAY RAISE DURESS AND COERCION AS AN AFFIRMATIVE DEFENSE TO OFFENSES COMMITTED AS A DIRECT RESULT OR INTERRELATED TO TRAFFICKING, TO PROVIDE THAT A TRAFFICKING VICTIM MAY HAVE CERTAIN OFFENSES EXPUNGED IF THE OFFENSES WERE A DIRECT RESULT OR INTERRELATED TO BEING A VICTIM OF TRAFFICKING, AND TO PROVIDE SIMILAR PROVISIONS FOR MINOR TRAFFICKING VICTIMS AND TO REQUIRE THE MINOR TO BE REFERRED TO THE DEPARTMENT OF SOCIAL SERVICES; BY ADDING SECTION 16-25-130 SO AS TO ESTABLISH THE ADDRESS CONFIDENTIALITY PROGRAM WITHIN THE ATTORNEY GENERAL'S OFFICE TO PROTECT THE VICTIMS OF DOMESTIC VIOLENCE, HUMAN TRAFFICKING, STALKING, HARASSMENT, AND OTHER SEXUAL OFFENSES; BY AMENDING SECTION 16-3-910, RELATING TO KIDNAPPING, SO AS TO ALLOW SENTENCING FOR THE KIDNAPPING OFFENSES WHEN ALSO SENTENCED FOR MURDER; BY ADDING SECTION 16-15-340 SO AS TO CREATE THE OFFENSE OF LURING A CHILD AND PROVIDE A PENALTY AND DEFENSES TO PROSECUTION; AND TO PROVIDE THAT CERTAIN PROVISIONS IN THIS ACT ARE RETROACTIVE.**

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

**Definition**

SECTION 1. Section 16-3-2010(7) of the S.C. Code is amended to read:

(7) "Sex trafficking" means the recruitment, harboring, transportation, provision, or obtaining of a person for one of the following when it is induced by force, fraud, or coercion or the person performing the act is under the age of eighteen years and anything of value is given, promised to, or received, directly or indirectly, by any person:

(a) criminal sexual conduct pursuant to Section 16-3-651;

(b) criminal sexual conduct in the first degree pursuant to Section 16-3-652;

(c) criminal sexual conduct in the second degree pursuant to Section 16-3-653;

(d) criminal sexual conduct in the third degree pursuant to Section 16-3-654;

(e) criminal sexual conduct with a minor pursuant to Section 16-3-655;

(f) engaging a child for sexual performance pursuant to Section 16-3-810;

(g) producing, directing, or promoting sexual performance by a child pursuant to Section 16-3-820;

(h) sexual battery pursuant to Section 16-3-651;

(i) sexual conduct pursuant to Section 16-3-800;

(j) sexual performance pursuant to Section 16-3-800;

(k) sexual exploitation of a minor pursuant to Section 16-15-395, 16-15-405, or 16-15-410; or

(l) promoting or participating in prostitution of a minor pursuant to Section 16-15-415 or 16-15-425.

**Trafficking in persons, crimes committed by victims**

SECTION 2. Section 16-3-2020(F) and (G) of the S.C. Code is amended to read:

(F) In a prosecution or adjudication of a person who is a victim of trafficking in persons, it is an affirmative defense that he was under duress or coerced into committing the offenses for which he is subject to prosecution or adjudication, if the offenses were committed as a direct result of, or interrelated to trafficking. A victim of trafficking in persons convicted or adjudicated delinquent of a violation of this article, prostitution, or any other nonviolent misdemeanor or Class F felony offenses may motion the court to expunge the record of the conviction or adjudication for a nonviolent misdemeanor or Class F felony offense committed as a direct result of, or interrelated to trafficking. The court may grant the motion on a finding by a preponderance of evidence that the person's participation in the offense was a direct result of or interrelated to being a victim of trafficking. The court may consider any prior rulings made by a court on the petitioners use of the affirmative defense provided in this section. An alleged victim of trafficking who files a motion to expunge the record pursuant to this subsection must file reasonable notice of the motion with the original prosecuting agency for the underlying offense and reasonable notice must be given or attempted to be given to any victims pursuant to the Victim's Bill of Rights. For purposes of this subsection, nonviolent misdemeanor offense or Class F felony means all offenses listed in Section 16-1-20(A)(6), (7), (8), and

(9).

(G) If the victim was a minor under the age of eighteen at the time of the offense, the victim of trafficking in persons may not be prosecuted in court or adjudicated delinquent for a violation of this article, a prostitution offense, or for any other nonviolent misdemeanor or Class F felony offense if it is determined after investigation that the victim committed the offense as a direct result of, or interrelated to trafficking. For purposes of this subsection, nonviolent misdemeanor offense or Class F felony means all offenses listed in Section 16-1-20(A)(6), (7), (8), and (9). However, if the victim is still under the age of eighteen, the victim must be referred by law enforcement or the prosecuting agency to the Department of Social Services in accordance with Sections 63-7-20, 63-7-310, 63-7-630, 63-7-980 and 63-11-2400. The department must assess the referral and proceed according to the provisions in Title 63.

**Victim address confidentiality program**

SECTION 3. Article 1, Chapter 25, Title 16 of the S.C. Code is amended by adding:

Section 16-25-130. (A) For the purposes of this section:

(1) "Address" means the residential street address, school address, or work address of an individual, as specified on the application for a program participant under this section.

(2) "Address confidentiality program" or "program" means the address confidentiality program established by this section.

(3) "Application assistant" means an employee of an agency or nonprofit organization who provides counseling, referral, shelter, or other specialized services to victims of domestic violence, dating violence, human trafficking, sexual offenses, stalking, or harassment and who has been designated by the Attorney General to assist persons with applications to participate in the address confidentiality program.

(4) "Designated address" means the address assigned to a program participant by the Attorney General pursuant to this section.

(5) "Domestic violence" means any act that is described in Chapter 25, Title 16.

(6) "Human trafficking" has the same meaning as provided in Article 19, Chapter 3, Title 16.

(7) "Mailing address" means an address that is recognized for delivery by the United States Postal Service.

(8) "Program participant" means a person certified by the Attorney

General to participate in the program.

(9) "Sexual offense" means any act that is described in Articles 7 and 8, Chapter 3, Title 16.

(10) "Stalking" has the same meaning as provided in Article 17, Chapter 3, Title 16.

(11) "Harassment" has the same meaning as provided in Article 17, Chapter 3, Title 16.

(B) The address confidentiality program is established to protect victims of domestic violence, human trafficking, stalking, harassment, or sexual offenses by authorizing the use of designated addresses for such victims. The program is administered by the Attorney General under the following application and certification procedures:

(1) Upon the recommendation of an application assistant, the following persons may apply to the Attorney General for assignation of a designated address:

(a) an individual;

(b) a parent, guardian, custodian, legal counsel, or other appropriate adult acting on behalf of a minor; or

(c) a guardian acting on behalf of an incapacitated person.

(2) The Attorney General may approve an application only if it is filed with the Office of the Attorney General in the manner established and on a form prescribed by the Attorney General. A completed application must contain:

(a) the application's preparation date, the applicant's signature, and the signature and victim service provider number of the application assistant who assisted the applicant in applying to be a program participant;

(b) a designation of the Attorney General as agent for the purposes of service of process and for receipt of first-class, certified or registered mail;

(c) the mailing address where the applicant may be contacted by the Attorney General or his designee and the telephone number or numbers at which the applicant may be called by the Attorney General or his designee; and

(d) one or more addresses or mailing addresses that the applicant requests be concealed, if disclosure may jeopardize the applicant's safety or increase the risk of violence to the applicant or members of the applicant's household.

(3) Upon receipt of a properly completed application, the Attorney General may certify the applicant as a program participant. A program participant is certified for four years following the date of initial certification unless the certification is withdrawn or invalidated before

that date. The Attorney General shall send notification of lapsing certification and a reapplication form to a program participant at least four weeks prior to the expiration of the program participant's certification.

(4) The Attorney General shall forward first-class, certified or registered mail to the appropriate program participants.

(5)(a) An applicant may not file an application knowing that it:

(i) contains false or incorrect information; or

(ii) falsely claims that disclosure of the address or mailing address listed in the application threatens the safety of the applicant, the applicant's children, the minor, or incapacitated person on whose behalf the application is made.

(b) An application assistant may not assist or participate in the filing of an application that the application assistant knows:

(i) contains false or incorrect information; or

(ii) falsely claims that disclosure of the address or mailing address listed in the application threatens the safety of the applicant, the applicant's children, the minor, or incapacitated person on whose behalf the application is made.

(C) Certification for the program may be canceled if one or more of the following conditions apply:

(1) a program participant obtains a name change, unless the program participant provides the Attorney General with documentation of a legal name change within thirty business days of the name change;

(2) there is a change in a program participant's residential street address from the address listed on the application, unless the program participant provides the Attorney General with notice of the change in such manner as the Attorney General provides; or

(3) the applicant or program participant files an application knowing that it:

(a) contains false or incorrect information; or

(b) falsely claims that disclosure of the address or mailing address listed in the application threatens the safety of the applicant, the applicant's children, the minor, or incapacitated person on whose behalf the application is made.

(D) Notwithstanding the provisions of subsection (E), state and local government agencies and the courts shall accept and use only the designated address as the program participant's address upon demonstration of a program participant's certification in the program.

(E) As the Attorney General determines appropriate, he may make a program participant's address or mailing address available for use by granting an exemption to:

(1) a law enforcement agency, a commissioner or other chief administrator of a state or local government agency, or the commissioner's or administrator's designee, if:

(a) the agency has a bona fide statutory, administrative, or law enforcement need for the program participant's address or mailing address such that the agency is unable to fulfill its statutory duties and obligations without the address or mailing address; and

(b) the program participant's address or mailing address will be used only for those statutory, administrative, or law enforcement purposes and otherwise will be kept under seal and excluded from public inspection; or

(2) a person identified in a court order, if the Attorney General receives a court order that specifically orders the disclosure of a particular program participant's address and mailing address and the reasons stated for the disclosure.

(F) A program participant's application and supporting materials, and the program's state email account, are not public record pursuant to Chapter 4, Title 30, the Freedom of Information Act, and must be kept confidential by the Attorney General.

(G) The Attorney General, his employees, application assistance agencies designated under this section, and the employees or volunteers of such agencies shall not be liable for any injury, loss, or damage resulting from any act or omission under this section, except if the injury, loss, or damage is caused by an act or omission pursuant to this section that is criminal, grossly negligent, intentional, or wilful. The State asserts this immunity under Section 15-78-20.

(H) This section does not create, and shall not be construed to create, a new cause of action or substantive legal right against the State or an officer or employee thereof.

(I) A participant in the address confidentiality program may not be mailed an absentee ballot unless the participant has requested an absentee ballot pursuant to Section 7-15-330. The participant's absentee ballot must be the same ballot used in the precinct assigned to the participant's residential street address. The request for an absentee ballot submitted by the participant is not a public record pursuant to Chapter 4, Title 30, the Freedom of Information Act, and must be kept confidential by the county board of voter registration and elections to which the request was made.

**Kidnapping, when also sentenced for murder**

SECTION 4.A. Section 16-3-910 of the S.C. Code is amended to read:

Section 16-3-910. A person who unlawfully seizes, confines, inveigles, decoys, kidnaps, abducts, or carries away any other person by any means whatsoever without authority of law, except when a minor is seized or taken by his parent, is guilty of a felony and, upon conviction, must be imprisoned for a period not to exceed thirty years.

B. Nothing contained in this SECTION may be construed to repeal, replace, or preclude application of any other criminal statute.

**Luring a child, offense created**

SECTION 5. Article 3, Chapter 15, Title 16 of the S.C. Code is amended by adding:

Section 16-15-340. (A) As used in this section, "child" means a person under sixteen years of age.

(B) A person eighteen years of age or older who, with the intent to harm a child or for any other unlawful purpose, lures, entices, or attempts to lure or entice a child, is guilty of a felony and, upon conviction, must be fined not more than ten thousand dollars or imprisoned not more than ten years, or both.

(C) Mistake of age is not a defense to prosecution pursuant to the provisions of this section. However, it is an affirmative defense to prosecution pursuant to the provisions of this section if the:

(1) person lured, enticed, or attempted to lure or entice, the child for a lawful purpose; or

(2) person’s actions were otherwise reasonable under the circumstances, and the person did not have the intent to harm the child.

(D) The penalties provided in this section are in addition to other penalties as provided by law for kidnapping or any other offense, as warranted. The offense of luring a child is not intended to be a lesser included offense of kidnapping or any other offense.

**Retroactivity of SECTION 2 regarding crimes committed by victims of trafficking in persons**

SECTION 6. The rights delineated under SECTION 2 of this act shall apply retroactively.

**Severability clause**

SECTION 7. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this act, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

**Time effective**

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

Ratified the 27th day of June, 2024

Approved the 2nd day of July, 2024

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**No. 214**

(R239, S314)

**AN ACT TO AMEND THE SOUTH CAROLINA CODE OF LAWS BY AMENDING SECTION 2-47-40, RELATING TO INFORMATION PROVIDED TO THE JOINT BOND REVIEW COMMITTEE, SO AS TO DELETE THE REQUIREMENT THAT THE COMMISSION ON HIGHER EDUCATION FORWARD AND COMMENT ON THE SUBMISSION OF INSTITUTIONS OF HIGHER LEARNING; TO AMEND SECTION 2-47-50, RELATING TO PERMANENT IMPROVEMENT PROJECTS, SO AS TO REVISE THE DEFINITION OF PERMANENT IMPROVEMENT PROJECT; BY ADDING SECTION 2-47-52 SO AS TO EXEMPT CERTAIN PROJECTS FROM BEING CONSIDERED A PERMANENT IMPROVEMENT PROJECT; BY AMENDING SECTION 2-47-55, RELATING TO THE**

**COMPREHENSIVE PERMANENT IMPROVEMENT PLAN, SO AS TO DELETE A REPORTING PROVISION; BY AMENDING SECTION 2-47-56, RELATING TO GIFTS IN KIND FOR ARCHITECTURAL AND ENGINEERING SERVICES, SO AS TO DEFINE "SOURCE OF FUNDS"; BY AMENDING SECTION 59-119-940 AND ACT 518 OF 1980, BOTH RELATING TO BORROWING LIMITATIONS AT CERTAIN INSTITUTIONS, SO AS TO INCREASE THE LIMIT; BY AMENDING SECTION 1-11-55, RELATING TO LEASE AGREEMENTS, SO AS TO INCREASE THE LIMIT OF LEASE AGREEMENTS FOR CERTAIN INSTITUTIONS; AND BY REPEALING SECTION 59-103-110 RELATING TO THE APPROVAL OF NEW CONSTRUCTION AT CERTAIN INSTITUTIONS.**

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

**Direct reporting on permanent improvement project**

SECTION 1. Section 2-47-40 of the S.C. Code is amended to read:

Section 2-47-40. (A) To assist the authority and the Joint Bond Review Committee in carrying out their respective responsibilities, any agency or institution requesting or receiving funds from any source for use in the financing of any permanent improvement project, as a minimum, shall provide to the authority, in such form and at such times as the authority, after review by the committee, may prescribe:

(1) a complete description of the proposed project;

(2) a statement of justification for the proposed project;

(3) a statement of the purposes and intended uses of the proposed project;

(4) the estimated total cost of the proposed project;

(5) an estimate of the additional future annual operating costs associated with the proposed project;

(6) a statement of the expected impact of the proposed project on the five-year operating plan of the agency or institution proposing the project;

(7) a proposed plan of funding for the project, specifically identifying funds proposed from sources other than capital improvement bond authorizations; and

(8) the specification of the priority of each project among those proposed.

(B) The authority shall forward a copy of each project proposal and

justification statement and supporting documentation received together with the authority's recommendations on such projects to the committee for its review and action.

(C) No provision in this section or elsewhere in this chapter, shall be construed to limit in any manner the prerogatives of the committee and the General Assembly with regard to recommending or authorizing permanent improvement projects and the funding such projects may require.

**Permanent improvement project**

SECTION 2. Section 2-47-50 of the S.C. Code is amended to read:

Section 2-47-50. (A) The authority shall establish formally each permanent improvement project before actions of any sort which implement the project in any way may be undertaken and no expenditure of any funds for any services or for any other project purpose contracted for, delivered, or otherwise provided prior to the date of the formal action of the authority to establish the project shall be approved. State agencies and institutions may advertise and interview for project architectural and engineering services for a pending project so long as the architectural and engineering contract is not awarded until after a state project number is assigned. After the committee has reviewed the form to be used to request the establishment of permanent improvement projects and has reviewed the time schedule for considering such requests as proposed by the authority, requests to establish permanent improvement projects shall be made in such form and at such times as the authority may require.

(B) Any proposal to finance all or any part of any project using any funds not previously authorized specifically for the project by the General Assembly or using any funds not previously approved for the project by the authority and reviewed by the committee shall be referred to the committee for review prior to approval by the authority.

(C) Any proposed revision of the scope or of the budget of an established permanent improvement project deemed by the authority to be substantial shall be referred to the committee for its review prior to any final action by the authority. In making their determinations regarding changes in project scope, the authority, and the committee shall utilize the permanent improvement project proposal and justification statements, together with any supporting documentation, considered at the time the project was authorized or established originally. Any proposal to increase the budget of a previously approved

project using any funds not previously approved for the project by the authority and reviewed by the committee shall in all cases be deemed to be a substantial revision of a project budget which shall be referred to the committee for review. The committee shall be advised promptly of all actions taken by the authority which approve revisions in the scope of or the budget of any previously established permanent improvement project not deemed substantial by the authority.

(D) For purposes of this chapter, a permanent improvement or a permanent improvement project is any improvement meeting the definition of a capital improvement under generally accepted accounting principles including, without limitation:

(1) acquisition of land;

(2) acquisition, as opposed to the construction, of buildings or other structures;

(3) capital lease purchase of any facility acquisition or construction;

(4) new construction;

(5) work on existing facilities including their renovation, repair, maintenance, alteration, or demolition;

(6) architectural and engineering and other types of planning and design work that is intended to result in a permanent improvement project; excluding, however, master plans and feasibility studies;

(7) equipment that either becomes a permanent fixture of a facility or does not become permanent but is included in the construction contract; and

(8) any project authorized by the General Assembly including, without limitation, any project funded by appropriated capital improvement bond funds, capital reserve funds, state appropriated funds, or state infrastructure bond funds.

(E) Any capital improvement that meets the above definition must be established as a permanent improvement project in accordance with the provisions of this chapter, regardless of the source of funds.

**Permanent improvement project limits**

SECTION 3. Chapter 47, Title 2 of the S.C. Code is amended by adding:

Section 2-47-52. (A) For purposes of this chapter, except as provided in subsection (B), permanent improvement projects are subject to review by the committee and approval by the authority where the costs of the permanent improvements exceed two hundred fifty thousand dollars; provided, however, that acquisitions of land, buildings or other

structures, and capital lease purchases of facility acquisitions or construction as defined in items (1), (2), and (3) of Section 2-47-50(D) are subject to review by the committee regardless of cost.

(B) For purposes of this chapter, permanent improvement projects proposed by public institutions of higher learning as defined in Section 59-103-5, including their related public service activities, are exempt from the requirements of Section 2-47-50 where the costs of the permanent improvements do not exceed ten million dollars for research universities as identified in Section 11-51-30(5) or two million five hundred thousand dollars for all other public institutions of higher learning so long as the institution's governing board votes to approve the project in a public session; provided, however, that acquisitions of land, buildings or other structures, and capital lease purchases of facility acquisitions or construction as defined in items (1), (2), and (3) of Section 2-47-50(D) are subject to review by the committee regardless of cost. Institutions shall provide a report of projects approved by their governing boards pursuant to this subsection, and work on existing facilities including their renovation, repair, maintenance, alteration, or demolition, to the Joint Bond Review Committee and the State Fiscal Accountability Authority of the previous fiscal year's approved projects that meet the same criteria of this subsection by November fifteenth of each year.

(C) State agencies and institutions may advertise, interview, and engage the services of professional firms for architectural, engineering, planning, and design work as set forth in Section 2-47-50(D)(6) to inform the project estimate prior to the review of the committee; provided, however, that the costs of such engagements do not exceed ten million dollars for research universities as identified in Section 11-51-30(5), two million five hundred thousand dollars for all other public institutions of higher learning, or two hundred fifty thousand dollars for all other agencies subject to the provisions of this chapter.

(D) Notwithstanding any other provision of this section, the committee may establish reporting and other requirements.

(E) Where the funding for a proposed permanent improvement project includes proceeds from the issuance of bonds or other indebtedness, including any obligation for an agency or institution to make payments pursuant to a lease or other agreement securing indebtedness in connection with or on behalf of the permanent improvement project, approval of the permanent improvement project is the responsibility of the Department of Administration, and approval of the issuance of bonds, where required pursuant to the applicable bond enabling act, or other indebtedness in accordance with the provisions of this subsection,

is the responsibility of the State Fiscal Accountability Authority.

**Comprehensive permanent improvement project, definition**

SECTION 4. Section 2-47-55 and Section 2-47-56 are amended to read:

Section 2-47-55. All state agencies and institutions of higher learning responsible for providing and maintaining physical facilities are required to maintain a Comprehensive Permanent Improvement Plan (CPIP). The CPIP must include all of the agency's or institution's permanent improvement projects anticipated and proposed over the five succeeding years after submission. Agencies and institutions of higher learning must submit a CPIP to the Department of Administration by September first of each year. The department must compile the plans and submit a comprehensive statewide permanent improvement plan to the committee and the authority by January first of each year. The authority and the committee must approve the comprehensive statewide permanent improvement plan after submission and may develop policies and procedures to implement and accomplish the purposes of this section.

Section 2-47-56. For purposes of this chapter, the term "source of funds" includes, without limitation, gifts, gifts-in-kind, and donations; and when used as a financial resource to defray any cost of a permanent improvement project, the amount of the source of funds from such gifts, gifts-in-kind, and donations is the value of the gift, gift-in-kind, or donation. Each state agency and institution may accept gifts-in-kind for architectural and engineering services and construction following review by the committee or its designated staff in accordance with the provisions of Section 2-47-52. Such gifts are exempt from the provisions of Section 11-35-10.

**Bonds for athletic facilities**

SECTION 5.A. Section 59-119-940 of the S.C. Code is amended to read:

Section 59-119-940. Upon receiving the approval of the State Fiscal Accountability Authority or the Department of Administration, as appropriate, and upon review by the Joint Bond Review Committee, the trustees may from time to time borrow such sums as necessary to

accomplish the purpose of this article and to evidence such borrowings by bonds issued pursuant to this article in the aggregate principal amount as they determine, except that other provisions of this article to the contrary notwithstanding, there must not be outstanding at any time bonds issued pursuant to this article in the aggregate principal amount as they determine, except that other provisions of this article to the contrary notwithstanding, there must not be outstanding at any time bonds issued pursuant to this article in excess of five hundred million dollars.

B. SECTION 9D. of Act 518 of 1980, as last amended by Act 17 of 2007, is further amended to read:

D. May Issue Bonds.
Subject to obtaining the approval of the state board expressed by resolution duly adopted, the trustees are authorized to issue from time to time not exceeding five hundred million dollars of bonds for the purpose of acquiring, constructing, reconstructing, renovating, or equipping athletic facilities and for the purpose of refunding any previous series of bonds authorized by this section. If the trustees, in authorizing the issuance of bonds pursuant to this section, prescribe by resolution that there must be on deposit in the Bond Reserve Fund certain sums at the time of the delivery of the bonds, the trustees are empowered to utilize a portion of the proceeds of any series of bonds issued pursuant to this section in order to meet the requirement.

**Lease agreement**

SECTION 6. Section 1-11-55(2) of the S.C. Code is amended to read:

(2) The Division of General Services of the Department of Administration is hereby designated as the single central broker for the leasing of real property for governmental bodies. No governmental body shall enter into any lease agreement or renew any existing lease except in accordance with the provisions of this section. However, a technical college, with the approval by the State Board for Technical and Comprehensive Education, and a public institution of higher learning, may enter into any lease agreement or renew any lease agreement up to two hundred thousand dollars annually for each property or facility.

**Repeal**

SECTION 7. Section 59-103-110 of the S.C. Code is repealed.

**Savings**

SECTION 8. The repeal or amendment by this act of any law, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

**Time effective**

SECTION 9. This act takes effect upon approval by the Governor.

Ratified the 27th day of June, 2024

Approved the 2nd day of July, 2024

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**No. 215**

(R240, S577)

**AN ACT TO AMEND THE SOUTH CAROLINA CODE OF LAWS BY AMENDING SECTION 12-8-530, SECTION 12-8-540, SECTION 12-8-570, SECTION 12-8-580, AND SECTION 12-8-595, ALL RELATING TO THE WITHHOLDING OF INCOME TAXES, SO AS TO UPDATE A REFERENCE TO THE TOP MARGINAL INCOME TAX RATE; AND BY AMENDING SECTION 12-2-140, RELATING TO ACCESS TO FEDERAL TAX INFORMATION, SO AS TO REQUIRE CERTAIN INDIVIDUALS WITH SUCH ACCESS TO HAVE RECEIVED A BACKGROUND CHECK.**

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

**Conforming tax rates for withholding**

SECTION 1. Section 12-8-530(A) of the S.C. Code is amended to read:

(A) A person distributing prizes or winnings to a resident or nonresident of five hundred dollars or more shall withhold a percentage equal to the maximum individual tax rate of each distribution made to an individual, partnership, trust, or estate and five percent of each distribution made to a corporation or other entity.

**Conforming tax rates for withholding**

SECTION 2. Section 12-8-540(A) of the S.C. Code is amended to read:

(A) A person making rent or royalty payments to a nonresident of twelve hundred dollars in any calendar year or more annually for the use or privilege of using property in this State shall withhold a percentage equal to the maximum individual tax rate of each payment to a nonresident individual, partnership, trust, or estate and five percent of each payment to a nonresident corporation or any other nonresident entity.

**Conforming tax rates for withholding**

SECTION 3. Section 12-8-570(A) of the S.C. Code is amended to read:

(A) A trust or estate making a distribution of South Carolina taxable income to a nonresident beneficiary must withhold a percentage equal to the maximum individual tax rate of the beneficiary's distribution which is attributable to South Carolina taxable income. The amounts withheld must be remitted to the department at the time estimated tax payments are due.

**Conforming tax rates for withholding**

SECTION 4. Section 12-8-580(A) of the S.C. Code is amended to read:

(A)(1) A person who purchases real property, or real property and associated tangible personal property, from a nonresident seller shall withhold:

(a) a percentage equal to the maximum individual tax rate of the gain recognized on the sale by a nonresident individual, partnership, trust, or estate and five percent for a nonresident corporation or other nonresident entity if the seller provides the buyer with an affidavit, described in subsection (E), stating the amount of gain;

(b) a percentage equal to the maximum individual tax rate of the amount realized on the sale for a nonresident individual, partnership, trust, or estate and five percent by a nonresident corporation or any other nonresident entity if the seller does not provide the buyer with an affidavit described in subsection (E); or

(c) the entire net proceeds payable to the nonresident seller, if the amount required to be withheld in subitem (1) or (2) exceeds the net proceeds payable to the seller.

(2) If a seller finances all or part of the transaction, in lieu of remitting the tax due on each installment payment, the seller may give the buyer an affidavit stating that, for state income tax purposes, he will elect out of installment sales treatment, as defined by Section 453 of the Internal Revenue Code, and remit the entire amount of tax to be due over the period of the installment agreement.

**Conforming tax rates for withholding**

SECTION 5. Section 12-8-595(A) of the S.C. Code is amended to read:

(A) A withholding agent, as defined in Section 12-8-10, shall withhold state income tax at the same rate as the maximum individual income tax rate of the amount of compensation paid to an individual, which compensation is reported on Form 1099 and with respect to which the individual has:

(1) failed to provide a taxpayer identification number or social security number;

(2) failed to provide a correct taxpayer identification number or social security number; or

(3) provided an Internal Revenue Service issued taxpayer identification number issued for nonresident aliens.

**Access to tax information**

SECTION 6. Section 12-2-140(A) and (B) of the S.C. Code is amended to read:

(A) Each state agency and each political subdivision of the State, is

authorized, as necessary to comply with Internal Revenue Service Publication 1075, including amendments thereto and publications replacing Publication 1075, to obtain state and national criminal history background checks and investigations performed by the State Law Enforcement Division and the Federal Bureau of Investigation on all applicants, prospective employees, employees, subcontractors, and contractors with access to federal tax information. The State Law Enforcement Division is authorized to conduct fingerprint-based state and national background checks for state agencies, state institutions, and political subdivisions of the State which have access to federal tax information in order to comply with Publication 1075.

(B) An applicant, prospective employee, employee, subcontractor, or contractor of a state agency or a political subdivision of the State with access to or that uses federal tax information must:

(1) agree to a national background check and the release of all investigative records to the applicable state agency or political subdivision for the purpose of verifying criminal history information for noncriminal justice purposes; and

(2) supply a fingerprint sample and submit to a state criminal history background check and investigation to be conducted by the State Law Enforcement Division, and then submit to a national criminal history background check to be conducted by the Federal Bureau of Investigation.

**Time effective**

SECTION 7. This act takes effect upon approval by the Governor.

Ratified the 27th day of June, 2024

Approved the 2nd day of July, 2024

**No. 216**

(R241, S862)

**AN ACT TO AMEND THE SOUTH CAROLINA CODE OF LAWS BY AMENDING SECTION 63-13-30, RELATING TO CAREGIVER REQUIREMENTS, SO AS TO PROVIDE FOR EDUCATIONAL AND PRESERVICE TRAINING REQUIREMENTS; AND BY AMENDING SECTION 63-13-20, RELATING TO CHILDCARE FACILITY DEFINITIONAL TERMS, SO AS TO CHANGE CERTAIN DEFINITIONS.**

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

**Childcare caregiver requirements**

SECTION 1. Section 63-13-30 of the S.C. Code is amended to read:

Section 63-13-30. (A) A caregiver who begins employment in a licensed or approved childcare center in South Carolina after June 30, 1994, must have at least a high school diploma, a high school equivalency credential recognized by the State Board of Education, Certificate of Completion, or a South Carolina High School Employability Credential. Within thirty days of being employed, a caregiver must complete fifteen hours of health and safety service provider training. The caregiver shall be directly supervised for a period of at least thirty days by a staff person with at least one year of experience as a caregiver in a licensed or approved childcare facility and until such time as the caregiver has completed the required health and safety service provider training, provided the caregiver is also in compliance with Section 63-13-40 relating to required background checks.

(B) A caregiver who has a high school diploma, a high school equivalency credential recognized by the State Board of Education, Certificate of Completion, or a South Carolina High School Employability Credential and at least six months' experience as a caregiver in a licensed or approved facility and is employed as of July 1, 1994, in a licensed or approved childcare center in South Carolina is exempt from the requirements of subsection (A).

**Definitions**

SECTION 2. Section 63-13-20(22), (23), and (26) of the S.C. Code is amended to read:

(22) "Regular approval" means a written notice issued by the department for a three-year period to a department, agency, or institution of the State, or a county, city, or other political subdivision, approving the operation of a public childcare center or group childcare home in accordance with the provisions of the notice, this chapter, and the regulations of the department. The department shall begin issuing the written notices for regular approval beginning with the Calendar Year 2025.

(23) "Regular license" means a license issued by the department for three years to an operator of a private childcare center or group childcare home or a family childcare home which elects to be licensed showing that the licensee is in compliance with the provisions of this chapter and the regulations of the department at the time of issuance and authorizing the licensee to operate in accordance with the license, this chapter, and the regulations of the department. The department shall begin issuing the written notices for regular approval beginning with the Calendar Year 2025.

(26) "Renewal" means in regard to childcare centers and group childcare homes, to grant an extension of a regular license or regular approval for another three-year period provided an investigation of such facilities verifies that they are in compliance with the applicable regulations, in regard to family childcare homes, to place the name of the operator on the registration list for another year provided procedures indicated in this chapter have been completed. The department shall begin issuing the written notices for regular approval beginning with the Calendar Year 2025.

**Time effective**

SECTION 3. This act takes effect five business days after approval by the Governor.

Ratified the 27th day of June, 2024

Approved the 2nd day of July, 2024

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**No. 217**

(R242, S969)

**AN ACT TO AMEND THE SOUTH CAROLINA CODE OF LAWS BY AMENDING SECTION 12-6-1140, RELATING TO DEDUCTIONS FROM INDIVIDUAL TAXABLE INCOME, SO AS TO INCREASE THE SUBSISTENCE DEDUCTION AMOUNT FOR CERTAIN PAID PUBLIC SERVANTS SUCH AS LAW ENFORCEMENT AND FIREFIGHTERS, AND TO INCREASE THE VOLUNTEER EXEMPTION AMOUNT FOR CERTAIN UNPAID PUBLIC SERVANTS SUCH AS LAW ENFORCEMENT AND FIREFIGHTERS; BY AMENDING SECTION 12-6-3800, RELATING TO THE TAX CREDIT FOR SERVING AS A PRECEPTOR, SO AS TO AMEND DEFINITIONS AND ELIGIBILITY REQUIREMENTS; BY AMENDING ACT 45 OF 2019, RELATING TO THE PRECEPTOR TAX CREDIT, SO AS TO EXTEND THE PRECEPTOR TAX CREDIT FOR FOUR ADDITIONAL YEARS; AND BY AMENDING SECTION 4-37-30, RELATING TO SALES AND USE TAXES OR TOLLS AS REVENUE FOR TRANSPORTATION FACILITIES, SO AS TO PROVIDE FOR CERTAIN EXEMPTIONS FOR UNPREPARED FOOD ITEMS.**

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

**Tax deduction**

SECTION 1. Section 12-6-1140(6) of the S.C. Code is amended to read:

(6) a subsistence allowance of sixteen dollars a day for federal, state, and local law enforcement officers paid by a political subdivision of this State, the government of this State, or the federal government, for each regular work day in a taxable year and full-time firefighters and emergency medical service personnel may deduct as a subsistence allowance sixteen dollars a day for each regular work day in a taxable year;

**Tax deduction**

SECTION 2. Section 12-6-1140(10)(b) of the S.C. Code is amended to read:

(b) An individual may receive only one deduction pursuant to this item. The Revenue and Fiscal Affairs Office annually shall estimate a maximum deduction that may be permitted under this section for a taxable year based on an individual income tax revenue loss of three million one hundred thousand dollars attributable to this deduction and shall certify that maximum deduction to the Department of Revenue and for the applicable taxable year, the maximum deduction amount must not exceed the lesser of the certified estimate or six thousand dollars.

**Preceptor tax credit**

SECTION 3.A. Section 12-6-3800(A), (B), and (C) of the S.C. Code is amended to read:

(A) For the purposes of this section:

(1) "Independent institution of higher learning" has the same meaning as provided in Section 59-113-50.

(2) "Medical school-required clinical rotation", "physician assistant program-required clinical rotation", or "advanced practice nursing program-required clinical rotation" means a clinical rotation for a public teaching institution or independent institution of higher learning that:

(a) is established for a student who is enrolled in a South Carolina public teaching institution or an independent institution of higher learning, including:

(i) medical school;

(ii) a physician assistant program;

(iii) an advanced practice nursing program; and

(b) includes a minimum of one hundred sixty hours of instruction in one of the following clinical settings:

(i) family medicine;

(ii) internal medicine;

(iii) pediatrics;

(iv) obstetrics and gynecology;

(v) emergency medicine;

(vi) psychiatry;

(vii) general surgery under the guidance of a physician, advanced practice registered nurse, or physician assistant; or

(viii) specialty care including, but not limited to, dermatology, hematology, neurology, and oncology.

(3) "Preceptor" means a physician, advanced practice nurse practitioner, or physician assistant who provides supervision and instruction during student clinical training experiences, is otherwise not compensated for doing so, and provides a minimum of two required clinical rotations within a calendar year.

(B) There is allowed an income tax credit for each clinical rotation a physician serves as the preceptor for a medical school-required clinical rotation, advanced practice nursing program-required clinical rotation, and physician assistant program-required clinical rotation. If the physician's practice includes Medicaid insured or Medicare insured then the credit is equal to one thousand dollars for each rotation served, not to exceed four thousand dollars a year. The provider must be a Medicaid-participating provider and have a minimum of at least one hundred Medicaid and Medicare patients combined or be a free clinic.

(C) There is allowed an income tax credit for each clinical rotation an advanced practice registered nurse or physician assistant serves as the preceptor for an advanced practice nursing or physician assistant-required clinical rotation. The credit is equal to one thousand dollars for each rotation served, not to exceed four thousand dollars a year. The provider must be a Medicaid-participating provider and have a minimum of at least one hundred Medicaid and Medicare patients combined or be a free clinic.

B. SECTION 4 of Act 45 of 2019 is amended to read:

SECTION 4. This act takes effect upon approval by the Governor and shall apply to Tax Years 2020 through 2029. Section 12-6-3800 and Section 12-6-1140(14) are repealed January 1, 2030.

C. This SECTION takes effect upon approval by the Governor and applies to Tax Years beginning after 2024.

**Taxable items**

SECTION 4.A. Section 4-37-30(A)(9) of the S.C. Code is amended to read:

(9) The tax authorized by this section is in addition to all other local sales and use taxes and applies to the gross proceeds of sales in the applicable jurisdiction which are subject to the tax imposed by Chapter

36, Title 12 and the enforcement provisions of Chapter 54, Title 12. The gross proceeds of the sale of items subject to a maximum tax in Chapter 36, Title 12 are exempt from the tax imposed by this section. The gross proceeds of the sale of food lawfully purchased with United States Department of Agriculture food stamps are exempt from the tax imposed by this section. For any tax authorized by this section pursuant to a referendum held on or after November 5, 2024, unprepared food items eligible for purchase with United States Department of Agriculture food coupons may be exempt from the tax imposed pursuant to this section at the election of the governing body of a county as may be provided in the authorizing ordinance required by item (1). The tax imposed by this section also applies to tangible personal property subject to the use tax in Article 13, Chapter 36, Title 12.

B. This SECTION takes effect upon approval by the Governor.

**Time effective**

SECTION 5. This act takes effect upon approval by the Governor and applies to tax years beginning after 2023.

Ratified the 27th day of June, 2024

Approved the 2nd day of July, 2024

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**No. 218**

(R243, S1031)

**AN ACT TO AMEND THE SOUTH CAROLINA CODE OF LAWS BY AMENDING CHAPTER 11 OF TITLE 35, RELATING TO ANTI-MONEY LAUNDERING, SO AS TO INCORPORATE THE UNIFORM MONEY SERVICES ACT, TO PROTECT THE PUBLIC FROM FINANCIAL CRIME, STANDARDIZE THE TYPES OF ACTIVITIES THAT ARE SUBJECT TO LICENSING, AND MODERNIZE SAFETY AND SOUNDNESS REQUIREMENTS TO ENSURE FUNDS ARE PROTECTED IN AN ENVIRONMENT THAT SUPPORTS INNOVATIVE AND**

**COMPETITIVE BUSINESS PRACTICES.**

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

**Uniform Money Services Act**

SECTION 1. Chapter 11, Title 35 of the S.C. Code is amended to read:

CHAPTER 11

South Carolina Uniform Money Services Act

Article 1

General Provisions

Section 35-11-100. This chapter may be cited as the "South Carolina Uniform Money Services Act".

Section 35-11-105. As used in this chapter:

(1) "Acting in concert" means persons knowingly acting together with a common goal of jointly acquiring control of a licensee whether or not pursuant to an express agreement.

(2) "Applicant" means a person that files an application for a license pursuant to this act.

(3) "Authorized delegate" means a person a licensee designates to provide money services on behalf of the licensee.

(4) "Average daily money transmission liability" means the amount of the licensee's outstanding money transmission obligations in this State at the end of each day in a given period of time, added together, and divided by the total number of days in the given period of time. For purposes of calculating average daily money transmission liability under this chapter for any licensee required to do so, the given period of time must be the quarters ending March thirty-first, June thirtieth, September thirtieth, and December thirty-first.

(5) "Bank Secrecy Act" means the Bank Secrecy Act, 31 U.S.C. Section 5311, et seq., and its implementing regulations, as amended and recodified from time to time.

(6) "Closed-loop stored value" means stored value that is redeemable by the issuer only for goods or services provided by the issuer or its affiliate or franchisee of the issuer or its affiliate, except to the extent required by applicable law to be redeemable in cash for its cash value.

(7) "Commissioner" means the South Carolina Attorney General.

(8)(a) "Control" means:

(i) the power to vote, directly or indirectly, at least twenty-five percent of the outstanding voting shares or voting interests of a licensee or person in control of a licensee;

(ii) the power to elect or appoint a majority of key individuals or executive officers, managers, directors, trustees, or other persons exercising managerial authority of a licensee or person in control of a licensee; or

(iii) the power to exercise, directly or indirectly, a controlling influence over the management or policies of a licensee or person in control of a licensee.

(b)(i) A person is presumed to exercise a controlling influence when the person holds the power to vote, directly or indirectly, at least ten percent of the outstanding voting shares or voting interests of a licensee or person in control of a licensee.

(ii) A person presumed to exercise a controlling influence as defined by this subitem can rebut the presumption of control if the person is a passive investor.

(c) For purposes of determining the percentage of a person controlled by any other person, the person's interest must be aggregated with the interest of any other immediate family member, including the person's spouse, parents, children, siblings, mothers- and fathers-in-law, sons- and daughters-in-law, brothers- and sisters-in-law, and any other person who shares such person's home.

(9) "Currency exchange" means receipt of revenues from the exchange of money of one government for money of another government.

(10) "Eligible rating" means a credit rating of any of the three highest rating categories provided by an eligible rating service, whereby each category may include rating modifiers such as "plus" or "minus" for S&P, or the equivalent for any other eligible rating service. Long-term credit ratings are considered to be eligible if the rating is equal to A- or higher by S&P, or the equivalent from any other eligible rating service. Short-term credit ratings are deemed eligible if the rating is equal to or higher than A-2 or SP-2 by S&P, or the equivalent from any other eligible rating service. In the event that ratings differ among eligible rating services, the highest rating shall apply when determining whether a security bears an eligible rating.

(11) "Eligible rating service" means any Nationally Recognized Statistical Rating Organization (NRSRO) as defined by the U.S. Securities and Exchange Commission, and any other organization

designated by the Commissioner by rule or order.

(12) "Executive officer" means a president, chairperson of the executive committee, chief financial officer, responsible individual, or other individual who performs similar functions.

(13) "Federally insured depository financial institution" means a bank, credit union, savings and loan association, trust company, savings association, savings bank, industrial bank, or industrial loan company organized under the laws of the United States or any state of the United States, when such bank, credit union, savings and loan association, trust company, savings association, savings bank, industrial bank, or industrial loan company has federally insured deposits.

(14) "In this State" means at a physical location within this State for a transaction requested in person. For a transaction requested electronically or by phone, the provider of the money transmission may determine if the person requesting the transaction is "in this State" by relying on other information provided by the person regarding the location of the individual's residential address or a business entity's principal place of business or other physical address location, and any records associated with the person that the provider of money transmission may have that indicate such location including, but not limited to, an address associated with an account.

(15) "Individual" means a natural person.

(16) "Key individual" means any individual ultimately responsible for establishing or directing policies and procedures of the licensee, such as an executive officer, manager, director, or trustee.

(17) "Licensee" means a person licensed pursuant to this act.

(18) "Material litigation" means litigation, that according to United States Generally Accepted Accounting Principles, is significant to a person's financial health and would be required to be disclosed in the person's annual audited financial statements, report to shareholders, or similar records.

(19) "Monetary value" means a medium of exchange, whether or not redeemable in money.

(20) "Money" means a medium of exchange that is authorized or adopted by the United States or a foreign government. The term includes a monetary unit of account established by an intergovernmental organization or by agreement between two or more governments.

(21) "Money services" means money transmission or currency exchange.

(22)(a) "Money transmission" means any of the following:

(i) selling or issuing payment instruments to a person located in this State;

(ii) selling or issuing stored value to a person located in this State; or

(iii) receiving money for transmission in this State.

(b) The term does not include the provision solely of delivery, online or telecommunications services, or network access.

(23) "MSB-accredited state" means a state agency that is accredited by the Conference of State Bank Supervisors and Money Transmitter Regulators Association for money transmission licensing and supervision.

(24) "Multistate licensing process" means any agreement entered into by and among state regulators relating to coordinated processing of applications for money transmission licenses, applications for the acquisition of control of a licensee, control determinations, or notice and information requirements for a change of key individuals.

(25) "NMLS" means the Nationwide Multistate Licensing System and Registry developed by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators and owned and operated by the State Regulatory Registry, LLC, or any successor or affiliated entity, for the licensing and registration of persons in financial services industries.

(26) "Outstanding money transmission obligation" is established and extinguished in accordance with applicable state law and means:

(a) any payment instrument or stored value issued or sold by the licensee to a person located in the United States or reported as sold by an authorized delegate of the licensee to a person that is located in the United States that has not yet been paid or refunded by or for the licensee, or escheated in accordance with applicable abandoned property laws; or

(b) any money received for transmission by the licensee or an authorized delegate in the United States from a person located in the United States that has not been received by the payee or refunded to the sender or escheated in accordance with applicable abandoned property laws.

(c) For purposes of this subsection, "in the United States" includes, to the extent applicable, a person in any state, territory, or possession of the United States; the District of Columbia; the Commonwealth of Puerto Rico; or a U.S. military installation that is located in a foreign country.

(27) "Passive investor" means a person that:

(a) does not have the power to elect a majority of key individuals or executive officers, managers, directors, trustees, or other persons exercising managerial authority of a person in control of a licensee;

(b) is not employed by and does not have any managerial duties of the licensee or person in control of a licensee;

(c) does not have the power to exercise, directly or indirectly, a controlling influence over the management or policies of a licensee or person in control of a licensee; and

(d) either:

(i) attests to subitems (a), (b), and (c), in a form and in a medium prescribed by the Commissioner; or

(ii) commits to the passivity characteristics of subitems (a), (b), and (c), in a written document.

(28) "Payment instrument" means a written or electronic check, draft, money order, traveler's check, or other written or electronic instrument for the transmission or payment of money or monetary value, whether or not negotiable. The term does not include stored value or any instrument that (A) is redeemable by the issuer only for goods or services provided by the issuer or its affiliate or franchisee of the issuer or its affiliate, except to the extent required by applicable law to be redeemable in cash for its cash value; or (B) not sold to the public but issued and distributed as part of a loyalty, rewards, or promotional program.

(29) "Payroll processing services" means delivering wages or salaries on behalf of employers to employees or facilitating the payment of payroll taxes to state and federal agencies, making payments relating to employee benefit plans, making distributions of other authorized deductions from wages or salaries, transmitting other funds on behalf of an employer in connection with transactions related to employees, an employer performing payroll processing services on its own behalf or on behalf of its affiliate, or a professional employment organization subject to regulation under other applicable state law.

(30) "Person" means an individual, corporation, trust, general partnership, limited partnership, limited-liability company, association, joint stock corporation, or other corporate entity identified by the Commissioner.

(31) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(32) "Receiving money for transmission" or "money received for transmission" means receiving money or monetary value in the United States for transmission within or outside the United States by electronic or other means.

(33) "State" means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

(34) "Stored value" means monetary value representing a claim

against the issuer evidenced by an electronic or digital record, and that is intended and accepted for use as a means of redemption for money or monetary value, or payment for goods or services. The term includes, but is not limited to, "prepaid access" as defined by 31 C.F.R. Section 1010.100, as amended or recodified from time to time. Notwithstanding the foregoing, the term "stored value" does not include a payment instrument or closed-loop stored value, or stored value not sold to the public but issued and distributed as part of a loyalty, rewards, or promotional program.

(35) "Tangible net worth" means the aggregate assets of a licensee excluding all intangible assets, less liabilities, as determined in accordance with United States Generally Accepted Accounting Principles.

(36) "Unsafe or unsound practice" means a practice or conduct by a person licensed to engage in money transmission or an authorized delegate of such a person, which creates the likelihood of material loss, insolvency, or dissipation of the licensee's assets, or otherwise materially prejudices the interests of its customers.

Section 35-11-110. (A) This chapter does not apply to:

(1) the United States or a department, agency, or instrumentality thereof, or its agent;

(2) money transmission by the United States Postal Service or by an agent of the United States Postal Service;

(3) a state, county, city, or any other governmental agency or governmental subdivision or instrumentality of a state, or its agent;

(4) a federally insured depository financial institution, bank holding company, office of an international banking corporation, foreign bank that establishes a federal branch pursuant to the International Bank Act, 12 U.S.C. Section 3102, as amended or recodified from time to time, corporation organized pursuant to the Bank Service Corporation Act, 12 U.S.C. Sections 1861-1867, as amended or recodified from time to time, or corporation organized under the Edge Act, 12 U.S.C. Sections 611-633, as amended or recodified from time to time;

(5) electronic funds transfer of governmental benefits for a federal, state, county, or governmental agency by a contractor on behalf of the United States or a department, agency, or instrumentality thereof, or on behalf of a state or governmental subdivision, agency, or instrumentality thereof;

(6) a board of trade designated as a contract market under the federal Commodity Exchange Act, 7 U.S.C. Section 1-25 as amended or recodified from time to time, or a person that, in the ordinary course

of business, provides clearance and settlement services for a board of trade to the extent of its operation as or for a board of trade;

(7) a registered futures commission merchant under the federal commodities laws to the extent of its operation as a futures commission merchant;

(8) an operator of a payment system to the extent that it provides processing, clearing, or settlement services, between or among persons exempted by this section, in connection with wire transfers, credit card transactions, debit card transactions, stored-value transactions, automated clearing house transfers, or similar funds transfers;

(9) a person registered as a securities broker-dealer under federal or state securities laws to the extent of his operation as a securities broker-dealer;

(10) an individual employed by a licensee, authorized delegate, or any person exempted from the licensing requirements of this chapter when acting within the scope of employment and under the supervision of the licensee, authorized delegate, or exempted person as an employee and not as an independent contractor;

(11) a person expressly appointed as a third-party service provider to, or agent of, an entity exempt under Section 35-11-110(A)(4), solely to the extent that:

(a) such service provider or agent is engaging in money transmission on behalf of and pursuant to a written agreement with the exempt entity that sets forth the specific functions that the service provider or agent is to perform; and

(b) the exempt entity assumes all risk of loss and all legal responsibility for satisfying the outstanding money transmission obligations owed to purchasers and holders of the outstanding money transmission obligations upon receipt of the purchaser's or holder's money or monetary value by the service provider or agent;

(12) a person appointed as an agent of a payee to collect and process a payment from a payor to the payee for goods or services, other than money transmission itself, provided to the payor by the payee, provided that:

(a) there exists a written agreement between the payee and the agent directing the agent to collect and process payments from payors on the payee's behalf;

(b) the payee holds the agent out to the public as accepting payments for goods or services on the payee's behalf; and

(c) payment for the goods and services is treated as received by the payee upon receipt by the agent so that the payor's obligation is extinguished and there is no risk of loss to the payor if the agent fails to

remit the funds to the payee;

(13) a person that acts as an intermediary by processing payments between an entity that has directly incurred an outstanding money transmission obligation to a sender, and the sender's designated recipient, provided that the entity:

(a) is properly licensed or exempt from licensing requirements under this chapter;

(b) provides a receipt, electronic record, or other written confirmation to the sender identifying the entity as the provider of money transmission in the transaction; and

(c) bears sole responsibility to satisfy the outstanding money transmission obligation to the sender, including the obligation to make the sender whole in connection with any failure to transmit the funds to the sender's designated recipient;

(14) a person exempt by regulation or order if the Commissioner finds such exemption to be in the public interest and that the regulation of such person is not necessary for the purposes of this chapter; or

(15) payroll processing services.

(B) The Commissioner may require that a person claiming to be exempt from licensing pursuant to this section provide information and documentation to the Commissioner demonstrating that it qualifies for any claimed exemption.

Article 2

Money Transmission Licenses

Section 35-11-200. (A) A person may not engage in the business of money transmission or advertise, solicit, or hold himself out as providing money transmission unless the person is:

(1) licensed under this article;

(2) an authorized delegate of a person licensed pursuant to this article; or

(3) exempted under Section 35-11-110.

(B) A license issued pursuant to this chapter is not transferable or assignable.

Section 35-11-205. (A) A person applying for a license pursuant to this article shall do so in a form and in a medium prescribed by the Commissioner. Each form must contain content as set forth by regulation, order, instruction, or procedure of the Commissioner and may be changed or updated by the Commissioner in accordance with

applicable law in order to carry out the purposes of this chapter and maintain consistency with NMLS licensing standards and practices. The application must state or contain:

(1) the legal name, residential and business addresses of the applicant, and any fictitious or trade name used by the applicant in conducting its business;

(2) a list of any criminal convictions of the applicant and any material litigation in which the applicant has been involved in the ten-year period next preceding the submission of the application;

(3) a description of any money services previously provided by the applicant and the money services that the applicant seeks to provide in this State;

(4) a list of the applicant's proposed authorized delegates and the locations in this State where the applicant and the applicant's authorized delegates propose to engage in money transmission or provide other money services;

(5) a list of other states in which the applicant is licensed to engage in money transmission or provide other money services and any license revocations, suspensions, or other disciplinary action taken against the applicant in another state;

(6) information concerning a bankruptcy or receivership proceeding affecting the licensee or a person in control of a licensee;

(7) a sample form of contract for authorized delegates, if applicable;

(8) a sample form of payment instrument, if applicable;

(9) the name and address of any federally insured depository financial institution through which the applicant plans to conduct money transmission; and

(10) other information the commissioner reasonably requires with respect to the applicant.

(B) If an applicant is a corporation, limited liability company, partnership, or other legal entity, the applicant also shall provide:

(1) the date of the applicant's incorporation or formation and state or country of incorporation or formation;

(2) if applicable, a certificate of good standing from this State and the state or country in which the applicant is incorporated or formed;

(3) a brief description of the structure or organization of the applicant, including a parent entity or subsidiary of the applicant, and whether a parent entity or subsidiary is publicly traded;

(4) the legal name, a fictitious or trade name, all business and residential addresses, and the employment, in the ten-year period next preceding the submission of the application of each executive officer, manager, director, or person who has control of the applicant;

(5) a list of criminal convictions and material litigation in which an executive officer, a manager, director, or person in control of, the applicant has been involved in the ten-year period next preceding the submission of the application;

(6) a copy of the applicant's audited financial statements for the most recent fiscal year and, if available, for the two-year period next preceding the submission of the application or, if determined to be acceptable to the Commissioner, certified unaudited financial statements for the most recent fiscal year or other period acceptable to the Commissioner;

(7) a certified copy of unaudited financial statements of the applicant for the most recent fiscal quarter;

(8) if the applicant is publicly traded, a copy of the most recent report filed with the United States Securities and Exchange Commission pursuant to Section 13 of the federal Securities Exchange Act of 1934, 15 U.S.C. Section 78m, as amended or recodified from time to time;

(9) if the applicant is a wholly owned subsidiary of a:

(a) corporation publicly traded in the United States, a copy of audited financial statements for the parent corporation for the most recent fiscal year or a copy of the parent corporation's most recent report filed pursuant to Section 13 of the federal Securities Exchange Act of 1934, 15 U.S.C. Section 78m, as amended or recodified from time to time; or

(b) corporation publicly traded outside the United States, a copy of similar documentation filed with the regulator of the parent corporation's domicile outside the United States;

(10) the name and address of the applicant's registered agent in this State; and

(11) other information the Commissioner reasonably requires with respect to the applicant.

(C) A nonrefundable application fee of one thousand five hundred dollars and a license fee of one thousand six hundred dollars must accompany an application for a license pursuant to this article. The license fee must be refunded if the application is denied.

(D) The Commissioner may waive one or more requirements of subsections (A) and (B) or permit an applicant to submit other information in lieu of the required information.

Section 35-11-210. (A) Any individual in control of a licensee or applicant, any individual that seeks to acquire control of a licensee, and each key individual shall furnish to the Commissioner through NMLS the following items:

(1) the individual's fingerprints for submission to the Federal Bureau of Investigation and the Commissioner for purposes of a national criminal history background check unless the person currently resides outside of the United States and has resided outside of the United States for the last ten years; and

(2) personal history and experience in a form and in a medium prescribed by the Commissioner, to obtain the following:

(a) an independent credit report from a consumer reporting agency unless the individual does not have a Social Security number, in which case, this requirement must be waived;

(b) information related to any criminal convictions or pending charges; and

(c) information related to any regulatory or administrative action and any civil litigation involving claims of fraud, misrepresentation, conversion, mismanagement of funds, breach of fiduciary duty, or breach of contract.

(B) If the individual has resided outside of the United States at any time in the last ten years, the individual also shall provide an investigative background report prepared by an independent search firm that meets the following requirements:

(1) at a minimum, the search firm shall:

(a) demonstrate that it has sufficient knowledge, resources, and employs accepted and reasonable methodologies to conduct the research of the background report; and

(b) not be affiliated with or have an interest with the individual it is researching;

(2) at a minimum, the investigative background report must be written in the English language and must contain the following:

(a) if available in the individual's current jurisdiction of residency, a comprehensive credit report, or any equivalent information obtained or generated by the independent search firm to accomplish such report, including a search of the court data in the countries, provinces, states, cities, towns, and contiguous areas where the individual resided and worked;

(b) criminal records information for the past ten years including, but not limited to, felonies, misdemeanors, or similar convictions for violations of law in the countries, provinces, states, cities, towns, and contiguous areas where the individual resided and worked;

(c) employment history;

(d) media history, including an electronic search of national and local publications, wire services, and business applications; and

(e) financial services-related regulatory history including, but not

limited to, money transmission, securities, banking, insurance, and mortgage-related industries.

Section 35-11-215. (A) An applicant for a money transmission license must provide, and a licensee at all times must maintain, security consisting of a surety bond, letter of credit, or other similar security in a form acceptable to the Commissioner.

(B) The amount of the required security must be:

(1) the greater of one hundred thousand dollars or an amount equal to one hundred percent of the licensee's average daily money transmission liability in this State calculated for the most recently completed three-month period, up to a maximum of five hundred thousand dollars; or

(2) in the event that the licensee's tangible net worth exceeds ten percent of total assets, the licensee shall maintain a surety bond of one hundred thousand dollars.

(C) A licensee that maintains a bond in the maximum amount provided for in Section 35-11-215(B)(1) or (2) may not be required to calculate its average daily money transmission liability for purposes of this section.

(D) A licensee may exceed the maximum required bond amount pursuant to Section 35-11-605(A)(5).

Section 35-11-220. (A) When an application for an original license is filed and considered complete pursuant to this article, the Commissioner shall investigate the applicant's financial condition and responsibility, financial and business experience, character, and general fitness. The Commissioner may conduct an on-site investigation of the applicant, the reasonable cost of which the applicant must pay. The Commissioner shall issue a license to an applicant pursuant to this article if the Commissioner finds that all of the following conditions have been fulfilled:

(1) the applicant has complied with Sections 35-11-205, 35-11-215, and 35-11-230; and

(2) the financial condition and responsibility, financial and business experience, competence, character, and general fitness of the applicant; and the competence, experience, character, and general fitness of the executive officers, managers, directors, and persons in control of the applicant indicate that it is in the interest of the public to permit the applicant to engage in money transmission.

(B) When an application for an original license pursuant to this article is complete, the Commissioner promptly shall notify the applicant in a

record of the date on which the application was determined to be complete and:

(1) the Commissioner shall approve or deny the application within one hundred twenty days after that date; or

(2) if the application is not approved or denied within one hundred twenty days after that date the:

(a) application is considered approved; and

(b) Commissioner shall issue the license pursuant to this article, to take effect as of the first business day after expiration of the one hundred twenty-day period.

(C) The Commissioner may for good cause extend the application period.

(D) A determination by the Commissioner that an application is complete and is accepted for processing means only that the application, on its face, appears to include all of the items, including the Criminal Background Check response from the FBI, and addresses all of the matters that are required, and is not an assessment of the substance of the application or of the sufficiency of the information provided.

(E) The Commissioner shall issue a formal written notice of the denial of a license application. The Commissioner shall set forth in the notice of denial the specific reasons for the denial of the application. An applicant whose application is denied by the Commissioner pursuant to this section may request a hearing, within thirty days after receipt of the written notice of the denial pursuant to Section 35-11-710.

(F) The initial license term begins on the day the application is approved. The license expires on December thirty-first of the year in which the license term began, unless the initial license date is between November first and December thirty-first, in which instance the initial license term runs through December thirty-first of the following year.

Section 35-11-225. (A) A license issued under this chapter must be renewed annually.

(1) An annual renewal fee of one thousand six hundred dollars must be paid no more than sixty days before the license expiration.

(2) The renewal term must be for a period of one year and begins on January first of each year after the initial license term and expires on December thirty-first of the year the renewal term begins.

(B) A licensee under this article shall submit a renewal report with the renewal fee, in a form and in a medium prescribed by the Commissioner. The renewal report must state or contain a description of each material change in information submitted by the licensee in its original license application which has not been reported to the Commissioner on a

required report.

(C) The Commissioner for good cause may grant an extension of the renewal date.

(D) The Commissioner is authorized and encouraged to utilize NMLS to process license renewals provided that such functionality is consistent with this section.

Section 35-11-230. (A) A licensee under this chapter shall maintain at all times a tangible net worth of the greater of one hundred thousand dollars or three percent of total assets for the first one hundred million dollars, two percent of additional assets for one hundred million dollars to one billion dollars, and one-half of one percent of additional assets for over one billion dollars.

(B) Tangible net worth must be demonstrated at initial application by the applicant's most recent audited or unaudited financial statements pursuant to Section 35-11-205(B)(6).

(C) Notwithstanding the foregoing provisions of this section, the Commissioner shall have the authority, for good cause shown, to exempt, in whole or in part, from the requirements of this section any applicant or licensee.

Section 35-11-235. (A) If a licensee does not continue to meet the qualifications or satisfy the requirements that apply to an applicant for a new money transmission license, the Commissioner may suspend or revoke the licensee's license pursuant to Section 35-11-700 or 35-11-710 or other applicable state law for such suspension or revocation.

(B) An applicant for a money transmission license must demonstrate that it meets or will meet, and a money transmission licensee must at all times meet, the requirements in Sections 35-11-215, 35-11-230, and 35-11-600 of this chapter.

## Article 3

## Currency Exchange Licenses

Section 35-11-300. (A) A person may not engage in currency exchange or advertise, solicit, or hold himself out as providing currency exchange for which the person receives revenues equal or greater than five percent of total revenues unless the person is:

(1) licensed pursuant to this article;

(2) licensed for money transmission pursuant to Article 2; or

(3) an authorized delegate of a person licensed pursuant to Article

2.

(B) A license issued pursuant to this chapter is not transferable or assignable.

Section 35-11-305. (A) A person applying for a license pursuant to this article shall do so in a form and in a medium prescribed by the Commissioner. The application shall state or contain:

(1) the legal name and residential and business addresses of the applicant, if the applicant is an individual or, if the applicant is not an individual, the name of each partner, executive officer, manager, and director;

(2) the location of the principal office of the applicant;

(3) complete addresses of other locations in this State where the applicant proposes to engage in currency exchange, including all limited stations and mobile locations; and

(4) other information the Commissioner reasonably requires with respect to the applicant, but not more than the Commissioner may require pursuant to Article 2.

(B) A nonrefundable application fee of one thousand five hundred dollars and a license fee of one thousand six hundred dollars must accompany an application for a license pursuant to this article. The license fee must be refunded if the application is denied.

(C) The Commissioner may waive one or more requirements of subsection (A) or permit an applicant to submit other information in lieu of the required information.

Section 35-11-310. (A) When a person applies for a license pursuant to this article, the Commissioner shall investigate the applicant's financial condition and responsibility, financial and business experience, character, and general fitness. The Commissioner may conduct an on-site investigation of the applicant, the reasonable cost of which the applicant must pay. The Commissioner shall issue a license to an applicant pursuant to this article if the Commissioner finds that all of the following conditions have been fulfilled:

(1) the applicant has complied with Section 35-11-305; and

(2) the financial condition and responsibility, financial and business experience, competence, character, and general fitness of the applicant; and the competence, experience, character, and general fitness of the executive officers, managers, directors, and persons in control of the applicant indicate that it is in the interest of the public to permit the applicant to engage in currency exchange.

(B) When an application for an original license pursuant to this article

is complete, the Commissioner promptly shall notify the applicant in a record of the date on which the application was determined to be complete and:

(1) the Commissioner shall approve or deny the application within one hundred twenty days after that date; or

(2) if the application is not approved or denied within one hundred twenty days after that date the:

(a) application is considered approved; and

(b) Commissioner shall issue the license pursuant to this article, to take effect as of the first business day after expiration of the period.

(C) The Commissioner may for good cause extend the application period.

(D) The Commissioner shall issue a formal written notice of the denial of a license. The Commissioner shall set forth in the notice of denial the specific reasons for the denial of the application. An applicant whose application is denied a license by the Commissioner pursuant to this article may request a hearing, within thirty days after receipt of the written notice of the denial pursuant to Section 35-11-710.

Section 35-11-315. (A) All licenses issued pursuant to this article expire on December thirty-first of each year. A person licensed pursuant to this article shall pay a renewal fee of one thousand six hundred dollars on or before December first of each year.

(B) A person licensed pursuant to this article shall submit a renewal report with the renewal fee, in a form and in a medium prescribed by the Commissioner. The renewal report must state or contain a:

(1) description of each material change in information submitted by the licensee in its original license application which has not been reported to the Commissioner on a required report; and

(2) list of the locations in this State where the licensee or an authorized delegate of the licensee engages in currency exchange, including limited stations and mobile locations.

(C) The Commissioner for good cause may grant an extension of the renewal date.

## Article 4

## Authorized Delegates

Section 35-11-400. (A) In this section, “remit” means to make direct payments of money to a licensee or its representative authorized to receive money or to deposit money in a bank in an account specified

by the licensee.

(B) Before a licensee is authorized to conduct business through an authorized delegate or allows a person to act as the licensee's authorized delegate, the licensee must:

(1) adopt, and update as necessary, written policies and procedures reasonably designed to ensure that the licensee's authorized delegates comply with applicable state and federal law;

(2) enter into a written contract that complies with Section 35-11-400(D); and

(3) conduct a reasonable risk-based background investigation sufficient for the licensee to determine whether the authorized delegate has complied and will likely comply with applicable state and federal law.

(C) An authorized delegate must operate in full compliance with this chapter.

(D) The written contract required by Section 35-11-400(B) must be signed by the licensee and the authorized delegate and, at a minimum, must:

(1) appoint the person signing the contract as the licensee's authorized delegate with the authority to conduct money transmission on behalf of the licensee;

(2) set forth the nature and scope of the relationship between the licensee and the authorized delegate and the respective rights and responsibilities of the parties;

(3) require the authorized delegate to agree to fully comply with all applicable state and federal laws, rules, and regulations pertaining to money transmission, including this chapter and regulations implementing this chapter, relevant provisions of the Bank Secrecy Act and the USA Patriot Act;

(4) require the authorized delegate to remit and handle money and monetary value in accordance with the terms of the contract between the licensee and the authorized delegate;

(5) impose a trust on money and monetary value net of fees received for money transmission for the benefit of the licensee;

(6) require the authorized delegate to prepare and maintain records as required by this chapter or regulations implementing this chapter, or as reasonably requested by the Commissioner;

(7) acknowledge that the authorized delegate consents to examination or investigation by the Commissioner;

(8) state that the licensee is subject to regulation by the Commissioner and that, as part of that regulation, the Commissioner may suspend or revoke an authorized delegate designation or require the

licensee to terminate an authorized delegate designation; and

(9) acknowledge receipt of the written policies and procedures required under Section 35-11-400(B)(1).

(E) If the licensee's license is suspended, revoked, surrendered, or expired, the licensee must, within five business days, provide documentation to the Commissioner that the licensee has notified all applicable authorized delegates of the licensee whose names are in a record filed with the Commissioner of the suspension, revocation, surrender, or expiration of a license. Upon suspension, revocation, surrender, or expiration of a license, applicable authorized delegates shall immediately cease to provide money transmission as an authorized delegate of the licensee.

(F) An authorized delegate of a licensee holds in trust for the benefit of the licensee all money net of fees received from money transmission. If any authorized delegate commingles any funds received from money transmission with any other funds or property owned or controlled by the authorized delegate, all commingled funds and other property shall be considered held in trust in favor of the licensee in an amount equal to the amount of money net of fees received from money transmission.

(G) An authorized delegate may not use a subdelegate to conduct money services on behalf of a licensee.

Section 35-11-405. A person may not provide money services on behalf of a person not licensed pursuant to this chapter or not exempt pursuant to Section 35-11-110. A person that engages in that activity provides money services to the same extent as if the person were a licensee and is jointly and severally liable with the unlicensed or nonexempt person.

## Article 5

## Examinations, Reports, and Records

Section 35-11-500. (A) The Commissioner may conduct an examination or investigation of a licensee or of any of the licensee's authorized delegates or otherwise take independent action authorized by this chapter or by a rule or order issued under this chapter as reasonably necessary or appropriate to administer and enforce this chapter, regulations implementing this chapter, and other applicable law, including the Bank Secrecy Act and the USA Patriot Act. The Commissioner may:

(1) conduct an examination either on-site or off-site as the

Commissioner may reasonably require;

(2) conduct an examination in conjunction with an examination conducted by representatives of other state agencies or agencies of another state or of the federal government;

(3) accept the examination report of another state agency or an agency of another state or of the federal government, or a report prepared by an independent accounting firm, which on being accepted is considered for all purposes as an official report of the Commissioner; and

(4) summon and examine under oath a key individual or employee of a licensee or authorized delegate and require the person to produce records regarding any matter related to the condition and business of the licensee or authorized delegate.

(B) A licensee or authorized delegate shall provide, and the Commissioner shall have full and complete access to, all records the Commissioner may reasonably require to conduct a complete examination. The records must be provided at the location and in the format specified by the Commissioner, provided, the Commissioner may utilize multistate record production standards and examination procedures when such standards will reasonably achieve the requirements of this section.

(C) If the Commissioner concludes that an examination is necessary pursuant to subsection (A), the licensee shall pay the reasonable cost of the examination.

(D) Information obtained during an examination pursuant to this chapter may be disclosed only as provided in Section 35-11-530.

Section 35-11-505. (A) To efficiently and effectively administer and enforce this chapter and to minimize regulatory burden, the Commissioner is authorized and encouraged to participate in multistate supervisory processes established between states and coordinated through the Conference of State Bank Supervisors, Money Transmitter Regulators Association, and affiliates and successors thereof for all licensees that hold licenses in this State and other states. As a participant in multistate supervision, the Commissioner shall:

(1) cooperate, coordinate, and share information with other state and federal regulators in accordance with Section 35-11-530;

(2) enter into written cooperation, coordination, or information-sharing contracts or agreements with organizations the membership of which is made up of state or federal governmental agencies; and

(3) cooperate, coordinate, and share information with organizations

the membership of which is made up of state or federal governmental agencies, provided that the organizations agree in writing to maintain the confidentiality and security of the shared information in accordance with Section 35-11-530.

(B) The Commissioner may not waive, and nothing in this section constitutes a waiver of, the Commissioner's authority to conduct an examination or investigation or otherwise take independent action authorized by this chapter, or a rule adopted or order issued under this chapter, to enforce compliance with applicable state or federal law.

(C) A joint examination or investigation, or acceptance of an examination or investigation report, does not waive an examination assessment provided for in this chapter.

Section 35-11-510. (A) A licensee shall file with the Commissioner within fifteen business days any material changes in information provided in a licensee's application as prescribed by the Commissioner.

(B) Each licensee shall submit a report of authorized delegates within forty-five days of the end of the calendar quarter. The Commissioner is authorized and encouraged to utilize NMLS for the submission of the report required by this subsection provided that such functionality is consistent with the requirements of this subsection. The authorized delegate report must include, at a minimum, each authorized delegate's:

(1) company legal name;

(2) taxpayer employer identification number;

(3) principal provider identifier;

(4) physical address;

(5) mailing address;

(6) any business conducted in other states;

(7) any fictitious or trade name;

(8) contact person's name, phone number, and email;

(9) start date as licensee's authorized delegate;

(10) end date acting as licensee's authorized delegate, if applicable; and

(11) any other information the Commissioner reasonably requires with respect to the authorized delegate.

(C) A licensee shall file a report with the Commissioner within one business day after the licensee has reason to know of the occurrence of any of the following events:

(1) the filing of a petition by or against the licensee under the United States Bankruptcy Code, 11 U.S.C. Section 101-110, as amended or recodified from time to time, for bankruptcy or reorganization;

(2) the filing of a petition by or against the licensee for receivership,

the commencement of another judicial or administrative proceeding for its dissolution or reorganization, or the making of a general assignment for the benefit of its creditors; or

(3) the commencement of a proceeding to revoke or suspend its license in a state or country in which the licensee engages in business or is licensed.

(D) A licensee shall file a report with the Commissioner within three business days after the licensee has reason to know of the occurrence of any of the following events:

(1) a charge or conviction of the licensee or of a key individual or person in control of the licensee for a felony; or

(2) a charge or conviction of an authorized delegate for a felony.

(E) Each licensee shall submit a report of condition within forty-five days of the end of the calendar quarter, or within any extended time as the Commissioner may prescribe. The report of condition must include:

(1) financial information at the licensee level;

(2) nationwide and state-specific money transmission transaction information in every jurisdiction in the United States where the licensee is licensed to engage in money transmission;

(3) permissible investments report;

(4) transaction destination country reporting for money received for transmission, if applicable, which shall only be included in a report of condition submitted within forty-five days of the end of the fourth calendar quarter; and

(5) any other information the Commissioner reasonably requires with respect to the licensee. The Commissioner is authorized and encouraged to utilize NMLS for the submission of the report required by this subsection and is authorized to change or update as necessary the requirements of this subsection to carry out the purposes of this chapter and maintain consistency with NMLS reporting.

(F) Each licensee, within ninety days after the end of each fiscal year, or within any extended time as the Commissioner may prescribe, shall file with the Commissioner:

(1) an audited financial statement of the licensee for the fiscal year prepared in accordance with United States Generally Accepted Accounting Principles, prepared by an independent certified public accountant or independent public accountant who is satisfactory to the Commissioner, which must include or be accompanied by a certificate of opinion of the independent certified public accountant or independent public accountant that is satisfactory in form and content to the Commissioner. If the certificate or opinion is qualified, the Commissioner may order the licensee to take any action as the

Commissioner may find necessary to enable the independent or certified public accountant or independent public accountant to remove the qualification; and

(2) any other information as the Commissioner may reasonably require.

Section 35-11-515. (A) Any person, or group of persons acting in concert, seeking to acquire control of a licensee shall obtain the written approval of the Commissioner prior to acquiring control. An individual is not deemed to acquire control of a licensee and is not subject to these acquisition of control provisions when that individual becomes a key individual in the ordinary course of business.

(B) A person, or group of persons acting in concert, seeking to acquire control of a licensee, in cooperation with the licensee, shall:

(1) submit an application in a form and in a medium prescribed by the Commissioner; and

(2) submit a nonrefundable fee of one thousand dollars with the request for approval.

(C) Upon request, the Commissioner may permit a licensee or the person, or group of persons acting in concert, to submit some or all information required by the Commissioner pursuant to Section 35-11-515(B)(1) without using NMLS.

(D) The application required by Section 35-11-515(B)(1) must include information required by Section 35-11-210 for any new key individuals that have not previously completed the requirements of Section 35-11-210 for a licensee.

(E) When an application for acquisition of control under this section appears to include all the items and addresses all of the matters that are required, the application must be considered complete and the Commissioner shall promptly notify the applicant in a record of the date on which the application was determined to be complete and:

(1) the Commissioner shall approve or deny the application within sixty days after the completion date; or

(2) if the application is not approved or denied within sixty days after the completion date:

(a) the application is approved;

(b) the person, or group of persons acting in concert, are not prohibited from acquiring control; and

(c) the Commissioner may for good cause extend the application period.

(F) A determination by the Commissioner that an application is complete and is accepted for processing means only that the application,

on its face, appears to include all of the items and address all of the matters that are required, and is not an assessment of the substance of the application or of the sufficiency of the information provided.

(G) When an application is filed and considered complete under subsection (E), the Commissioner shall investigate the financial condition and responsibility, financial and business experience, character, and general fitness of the person, or group of persons acting in concert, seeking to acquire control. The Commissioner shall approve an acquisition of control pursuant to this section if the Commissioner finds that all of the following conditions have been fulfilled:

(1) the requirements of subsections (B) and (D) have been met, as applicable; and

(2) the financial condition and responsibility, financial and business experience, competence, character, and general fitness of the person, or group of persons acting in concert, seeking to acquire control; and the competence, experience, character, and general fitness of the key individuals and persons that would be in control of the licensee after the acquisition of control indicate that it is in the interest of the public to permit the person, or group of persons acting in concert, to control the licensee.

(H) The Commissioner shall issue a formal written notice of the denial of an application to acquire control within thirty days of the decision to deny the application. The Commissioner shall set forth in the notice of denial the specific reasons for the denial of the application. An applicant whose application is denied by the Commissioner under this section may request a hearing within thirty days after receipt of the written notice of the denial pursuant to Section 35-11-710.

(I) The requirements of subsections (A) and (B) do not apply to any of the following:

(1) a person that acts as a proxy for the sole purpose of voting at a designated meeting of the shareholders or holders of voting shares or voting interests of a licensee or a person in control of a licensee;

(2) a person that acquires control of a licensee by devise or descent;

(3) a person that acquires control of a licensee as a personal representative, custodian, guardian, conservator, or trustee, or as an officer appointed by a court of competent jurisdiction or by operation of law;

(4) a person that is exempt under Section 35-11-110(A)(4);

(5) a person that the Commissioner determines is not subject to subsection (A) based on the public interest;

(6) a public offering of securities of a licensee or a person in control of a licensee; or

(7) an internal reorganization of a person in control of the licensee where the ultimate person in control of the licensee remains the same.

(J) Persons in subsection (I)(2), (3), (4), (6), and (7), in cooperation with the licensee, shall notify the Commissioner within fifteen days after the acquisition of control.

(K)(1) The requirements of subsections (A) and (B) do not apply to a person that has complied with and received approval to engage in money transmission under this chapter or was identified as a person in control in a prior application filed with and approved by the Commissioner or by an MSB-accredited state pursuant to a multistate licensing process, provided that:

(a) the person has not had a license revoked or suspended or controlled a licensee that has had a license revoked or suspended while the person was in control of the licensee in the previous five years;

(b) if the person is a licensee, the person is well managed and has received at least a satisfactory rating for compliance at its most recent examination by an MSB-accredited state if such rating was given;

(c) the licensee to be acquired is projected to meet the requirements of Sections 35-11-215, 35-11-230, and 35-11-600 after the acquisition of control is completed, and if the person acquiring control is a licensee, that licensee is also projected to meet the requirements of Sections 35-11-215, 35-11-230, and 35-11-600 after the acquisition of control is completed;

(d) the licensee to be acquired will not implement any material changes to its business plan as a result of the acquisition of control, and if the person acquiring control is a licensee, that licensee also will not implement any material changes to its business plan as a result of the acquisition of control; and

(e) the person provides notice of the acquisition in cooperation with the licensee and attests to subsection (K)(1)(a), (b), (c), and (d) in a form and in a medium prescribed by the Commissioner.

(2) If the notice is not disapproved within thirty days after the date on which the notice was determined to be complete, the notice is deemed approved.

(L) Before filing an application for approval to acquire control of a licensee a person may request in writing a determination from the Commissioner as to whether the person would be considered a person in control of a licensee upon consummation of a proposed transaction. If the Commissioner determines that the person would not be a person in control of a licensee, the proposed person and transaction is not subject to the requirements of subsections (A) and (B).

(M)(1) A licensee adding or replacing any key individual shall:

(a) provide notice in a manner prescribed by the Commissioner within fifteen days after the effective date of the key individual's appointment; and

(b) provide information as required by Section 35-11-210 within forty-five days of the effective date.

(2) Within ninety days of the date on which the notice provided pursuant to item (1) was determined to be complete, the Commissioner may issue a notice of disapproval of a key individual if the competence, experience, character, or integrity of the individual would not be in the best interest of the public or the customers of the licensee to permit the individual to be a key individual of such licensee.

(3) A notice of disapproval must contain a statement of the basis for disapproval and must be sent to the licensee and the disapproved individual. A licensee may request a hearing regarding a notice of disapproval, within thirty days after receipt of such notice of disapproval pursuant to Section 35-11-710.

(4) If the notice provided pursuant to item (1) is not disapproved within ninety days after the date on which the notice was determined to be complete, the key individual is deemed approved.

Section 35-11-520. (A) A licensee shall maintain the following records for determining its compliance with this chapter for at least three years:

(1) a record of each outstanding money transmission obligation sold;

(2) a general ledger posted at least monthly containing all asset, liability, capital, income, and expense accounts;

(3) bank statements and bank reconciliation records;

(4) records of outstanding money transmission obligations;

(5) records of each money transmission obligation paid within the three-year period;

(6) a list of the last known names and addresses of all of the licensee's authorized delegates; and

(7) other records the Commissioner reasonably requires by rule.

(B) The items specified in subsection (A) may be maintained in any form of record.

(C) Records may be maintained outside this State if they are made accessible to the Commissioner on a seven business-day notice that is sent in a record.

(D) All records maintained by the licensee as required in subsections (A) through (C) are open to inspection by the Commissioner pursuant to Section 35-11-500.

Section 35-11-525. (A) A licensee and an authorized delegate shall file with the Commissioner all reports required by federal currency reporting, recordkeeping, and suspicious transaction reporting requirements as set forth in the Bank Secrecy Act and other federal and state laws pertaining to money laundering.

(B) The timely filing of a complete and accurate report required pursuant to subsection (A) with the appropriate federal agency is in compliance with the requirements of subsection (A), unless the Commissioner notifies the licensee that reports of this type are not being regularly and comprehensively transmitted by the federal agency to the Commissioner.

Section 35-11-530. (A) Except as otherwise provided in subsection (B), all information or reports obtained by the Commissioner from an applicant, licensee, or authorized delegate, and all information contained in or related to an examination, investigation, operating report, or condition report prepared by, on behalf of, or for the use of the Commissioner, or financial statements, balance sheets, or authorized delegate information, are confidential and are not subject to disclosure under Section 30-4-10, et seq.

(B) The Commissioner may disclose information not otherwise subject to disclosure under subsection (A) to representatives of state or federal agencies who promise in a record that they will maintain the confidentiality of the information or where the Commissioner finds that the release is reasonably necessary for the protection and interest of the public in accordance with Section 30-4-10, et seq.

(C) This section does not prohibit the commissioner from disclosing to the public a list of persons licensed under this chapter or the aggregated financial data concerning those licensees.

(D) Information contained in the records of the Commissioner that is not confidential and may be made available to the public either on the Commissioner's website, upon receipt by the Commissioner of a written request, or in NMLS must include:

(1) the name, business address, telephone number, and unique identifier of a licensee;

(2) the business address of a licensee's registered agent for service;

(3) the name, business address, and telephone number of all authorized delegates;

(4) the terms of or a copy of any bond filed by a licensee, provided that confidential information including, but not limited to, prices and fees for such bond is redacted;

(5) copies of any nonconfidential final orders of the Commissioner

relating to any violation of this chapter or regulations implementing this chapter; and

(6) imposition of an administrative fine or penalty under this chapter.

Section 35-11-535. (A) Every licensee shall forward all money received for transmission in accordance with the terms of the agreement between the licensee and the sender unless the licensee has a reasonable belief or a reasonable basis to believe that the sender may be a victim of fraud or that a crime or violation of law, rule, or regulation has occurred, is occurring, or may occur.

(B) If a licensee fails to forward money received for transmission in accordance with this section, the licensee must respond to inquiries by the sender with the reason for the failure unless providing a response would violate a state or federal law, rule, or regulation.

Section 35-11-540. (A) This section does not apply to:

(1) money received for transmission subject to the federal Remittance Rule, 12 C.F.R. Part 1005, Subpart B, as amended or recodified from time to time; or

(2) money received for transmission pursuant to a written agreement between the licensee and payee to process payments for goods or services provided by the payee.

(B) Every licensee shall refund to the sender within ten days of receipt of the sender's written request for a refund of any and all money received for transmission unless any of the following occurs:

(1) the money has been forwarded within ten days of the date on which the money was received for transmission;

(2) instructions have been given committing an equivalent amount of money to the person designated by the sender within ten days of the date on which the money was received for transmission;

(3) the agreement between the licensee and the sender instructs the licensee to forward the money at a time that is beyond ten days of the date on which the money was received for transmission. If funds have not yet been forwarded in accordance with the terms of the agreement between the licensee and the sender, the licensee shall issue a refund in accordance with the other provisions of this section;

(4) the refund is requested for a transaction that the licensee has not completed based on a reasonable belief or a reasonable basis to believe that a crime or violation of law, rule, or regulation has occurred, is occurring, or may occur; or

(5) the refund request does not enable the licensee to:

(a) identify the sender's name and address or telephone number; or

(b) identify the particular transaction to be refunded in the event the sender has multiple transactions outstanding.

Section 35-11-545. (A) This section does not apply to:

(1) money received for transmission subject to the federal Remittance Rule, 12 C.F.R. Part 1005, Subpart B, as amended or recodified from time to time;

(2) money received for transmission that is not primarily for personal, family, or household purposes;

(3) money received for transmission pursuant to a written agreement between the licensee and payee to process payments for goods or services provided by the payee; or

(4) payroll processing services.

(B) For purposes of this article, "receipt" means a paper receipt, electronic record, or other written confirmation. For a transaction conducted in person, the receipt may be provided electronically if the sender requests or agrees to receive an electronic receipt. For a transaction conducted electronically or by phone, a receipt may be provided electronically. All electronic receipts shall be provided in a retainable form.

(C) Every licensee or its authorized delegate shall provide the sender a receipt for money received for transmission.

(1) The receipt must contain the following information, as applicable:

(a) the name of the sender;

(b) the name of the designated recipient;

(c) the date of the transaction;

(d) the unique transaction or identification number;

(e) the name of the licensee, NMLS Unique ID, the licensee's business address, and the licensee's customer service telephone number;

(f) the amount of the transaction in United States dollars;

(g) any fee charged by the licensee to the sender for the transaction; and

(h) any taxes collected by the licensee from the sender for the transaction.

(2) The receipt required by this section shall be in English and in the language principally used by the licensee or authorized delegate to advertise, solicit, or negotiate, either orally or in writing, for a transaction conducted in person, electronically or by phone, if other than English.

Section 35-11-550. Every licensee or authorized delegate shall include on a receipt or disclose on the licensee's website or mobile application the name and phone number of the South Carolina Office of Attorney General and a statement that the licensee's customers can contact the Commissioner with complaints about the licensee's money transmission services.

Article 6

Permissible Investments

Section 35-11-600. (A) A licensee shall maintain at all times permissible investments that have a market value computed in accordance with generally accepted accounting principles of not less than the aggregate amount of all of its outstanding money transmission obligation.

(B) Except for permissible investments enumerated in Section 35-11-605(A), the Commissioner, with respect to any licensee, may, by rule or order, limit the extent to which a specific investment maintained by a licensee within a class of permissible investments may be considered a permissible investment, if the specific investment represents undue risk to customers, not reflected in the market value of the investments.

(C) Permissible investments, even if commingled with other assets of the licensee, are held in trust for the benefit of the purchasers and holders of the licensee's money transmission obligations in the event of insolvency, the filing of a petition by or against the licensee under the United States Bankruptcy Code, 11 U.S.C. Section 101-110, as amended or recodified from time to time, for bankruptcy or reorganization, the filing of a petition by or against the licensee for receivership, the commencement of any other judicial or administrative proceeding for its dissolution or reorganization, or in the event of an action by a creditor against the licensee who is not a beneficiary of this statutory trust. No permissible investments impressed with a trust pursuant to this section may be subject to attachment, levy of execution, or sequestration by order of any court, except for a beneficiary of this statutory trust.

(D) Upon the establishment of a statutory trust in accordance with subsection (C) or when any funds are drawn on a letter of credit pursuant to Section 35-11-605(A)(4), the Commissioner shall notify the applicable regulator of each state in which the licensee is licensed to engage in money transmission, if any, of the establishment of the trust or the funds drawn on the letter of credit, as applicable. Notice is deemed

satisfied if performed pursuant to a multistate agreement or through NMLS. Funds drawn on a letter of credit, and any other permissible investments held in trust for the benefit of the purchasers and holders of the licensee's outstanding money transmission obligations, are deemed held in trust for the benefit of such purchasers and holders on a pro rata and equitable basis in accordance with statutes pursuant to which permissible investments are required to be held in this State, and other states, as applicable. Any statutory trust established hereunder must be terminated upon extinguishment of all of the licensee's outstanding money transmission obligations.

(E) The Commissioner, by regulation or by order, may allow other types of investments that the Commissioner determines are of sufficient liquidity and quality to be a permissible investment. The Commissioner is authorized to participate in efforts with other state regulators to determine that other types of investments are of sufficient liquidity and quality to be a permissible investment.

Section 35-11-605. (A) The following investments are permissible pursuant to Section 35-11-600:

(1) cash, including demand deposits, savings deposits, and funds in such accounts held for the benefit of the licensee's customers in a federally insured depository financial institution, and cash equivalents including ACH items in transit to the licensee and ACH items or international wires in transit to a payee, cash in transit via armored car, cash in smart safes, cash in licensee-owned locations, debit card or credit card-funded transmission receivables owed by any bank, or money market mutual funds rated "AAA" by S&P, or the equivalent from any eligible rating service;

(2) certificates of deposit or senior debt obligations of an insured depository institution, as defined in Section 3 of the Federal Deposit Insurance Act, 12 U.S.C. Section 1813, as amended or recodified from time to time, or as defined under the federal Credit Union Act, 12 U.S.C. Section 1781, as amended or recodified from time to time;

(3) an obligation of the United States or a commission, agency, or instrumentality thereof; an obligation that is guaranteed fully as to principal and interest by the United States; or an obligation of a state or a governmental subdivision, agency, or instrumentality thereof;

(4) the full drawable amount of an irrevocable standby letter of credit for which the stated beneficiary is the Commissioner that stipulates that the beneficiary need only draw a sight draft under the letter of credit and present it to obtain funds up to the letter of credit amount within seven days of presentation of the items required by

subsection (A)(4)(c).

(a) The letter of credit must:

(i) be issued by a federally insured depository financial institution, a foreign bank that is authorized under federal law to maintain a federal agency or federal branch office in a state or states, or a foreign bank that is authorized under state law to maintain a branch in a state that bears an eligible rating or whose parent company bears an eligible rating and is regulated, supervised, and examined by United States federal or state authorities having regulatory authority over banks, credit unions, and trust companies;

(ii) be irrevocable, unconditional, and indicate that it is not subject to any condition or qualifications outside of the letter of credit;

(iii) not contain reference to any other agreements, documents, or entities, or otherwise provide for any security interest in the licensee; and

(iv) contain an issue date and expiration date, and expressly provide for automatic extension, without a written amendment, for an additional period of one year from the present or each future expiration date, unless the issuer of the letter of credit notifies the Commissioner in writing by certified or registered mail or courier mail or other receipted means, at least sixty days prior to any expiration date, that the irrevocable letter of credit will not be extended.

(b) In the event of any notice of expiration or nonextension of a letter of credit issued under subsection (A)(4)(a)(iv), the licensee is required to demonstrate to the satisfaction of the Commissioner, fifteen days prior to expiration, that the licensee maintains and will maintain permissible investments in accordance with Section 35-11-600(A) upon the expiration of the letter of credit. If the licensee is not able to do so, the Commissioner may draw on the letter of credit in an amount up to the amount necessary to meet the licensee's requirements to maintain permissible investments in accordance with Section 35-11-600(A). Any such draw must be offset against the licensee's outstanding money transmission obligations. The drawn funds must be held in trust by the Commissioner or the Commissioner's designated agent, to the extent authorized by law, as agent for the benefit of the purchasers and holders of the licensee's outstanding money transmission obligations.

(c) The letter of credit must provide that the issuer of the letter of credit will honor, at sight, a presentation made by the beneficiary to the issuer of the following documents on or prior to the expiration date of the letter of credit:

(i) the original letter of credit, including any amendments; and

(ii) a written statement from the beneficiary stating that any of

the following events have occurred:

(A) the filing of a petition by or against the licensee under the United States Bankruptcy Code, 11 U.S.C. Sections 101-110, as amended or recodified from time to time, for bankruptcy or reorganization;

(B) the filing of a petition by or against the licensee for receivership, or the commencement of any other judicial or administrative proceeding for its dissolution or reorganization;

(C) the seizure of assets of a licensee by a commissioner pursuant to an emergency order issued in accordance with applicable law, on the basis of an action, violation, or condition that has caused or is likely to cause the insolvency of the licensee; or

(D) the beneficiary has received notice of expiration or nonextension of a letter of credit and the licensee failed to demonstrate to the satisfaction of the beneficiary that the licensee will maintain permissible investments in accordance with Section 35-11-600(A) upon the expiration or nonextension of the letter of credit.

(d) The Commissioner may designate an agent to serve on the Commissioner's behalf as beneficiary to a letter of credit so long as the agent and letter of credit meet requirements established by the Commissioner. The Commissioner's agent may serve as agent for multiple licensing authorities for a single irrevocable letter of credit if the proceeds of the drawable amount for the purposes of this section are assigned to the Commissioner.

(e) The Commissioner is authorized and encouraged to participate in multistate processes designed to facilitate the issuance and administration of letters of credit including, but not limited to, services provided by the NMLS and State Regulatory Registry, LLC; and

(5) one hundred percent of the surety bond or deposit provided for under Section 35-11-215 that exceeds the average daily money transmission liability in this State.

(B) Unless permitted by the Commissioner by regulation or order to exceed the limit as set forth herein, the following investments are permissible pursuant to Section 35-11-600, but only to the extent specified:

(1) receivables that are payable to a licensee from its authorized delegates in the ordinary course of business that are less than seven days old, up to fifty percent of the aggregate value of the licensee's total permissible investments;

(2) of the receivables permissible under item (1), receivables that are payable to a licensee from a single authorized delegate in the ordinary course of business may not exceed ten percent of the aggregate

value of the licensee's total permissible investments;

(3) the following investments are permissible up to twenty percent for each category and combined up to fifty percent of the aggregate value of the licensee's total permissible investments:

(a) a short-term, up to six months, investment bearing an eligible rating;

(b) commercial paper bearing an eligible rating;

(c) a bill, note, bond, or debenture bearing an eligible rating;

(d) U.S. tri-party repurchase agreements collateralized at one hundred percent or more with U.S. government or agency securities, municipal bonds, or other securities bearing an eligible rating;

(e) money market mutual funds rated less than "AAA" and equal to or higher than "A-" by S&P, or the equivalent from any other eligible rating service; and

(f) a mutual fund or other investment fund composed solely and exclusively of one or more permissible investments listed in subsection (A)(1) through (3); and

(4) cash, including demand deposits, savings deposits, and funds in such accounts held for the benefit of the licensee's customers, at foreign depository institutions are permissible up to ten percent of the aggregate value of the licensee's total permissible investments if the licensee has received a satisfactory rating in its most recent examination and the foreign depository institution:

(a) has an eligible rating;

(b) is registered under the Foreign Account Tax Compliance Act;

(c) is not located in any country subject to sanctions from the Office of Foreign Asset Control; and

(d) is not located in a high-risk or noncooperative jurisdiction as designated by the Financial Action Task Force.

## Article 7

## Enforcement

Section 35-11-700. (A) The Commissioner may suspend or revoke a license or order a licensee to revoke the designation of an authorized delegate if:

(1) the licensee violates this chapter or a regulation or an order issued pursuant to this chapter;

(2) the licensee does not cooperate with an examination or investigation by the Commissioner;

(3) the licensee engages in fraud, intentional misrepresentation, or

gross negligence;

(4) an authorized delegate is convicted of a violation of a state or federal anti-money laundering statute, or violates a regulation or an order issued pursuant to this chapter, as a result of the licensee's wilful misconduct or wilful blindness;

(5) the competence, experience, character, or general fitness of the licensee, authorized delegate, person in control of a licensee, or key individual of the licensee or authorized delegate indicates that it is not in the public interest to permit the person to provide money services;

(6) the licensee engages in an unsafe or unsound practice;

(7) the licensee is insolvent, suspends payment of its obligations, or makes a general assignment for the benefit of its creditors;

(8) the licensee does not remove an authorized delegate after the Commissioner issues and serves upon the licensee a final order including a finding that the authorized delegate has violated this chapter; or

(9) the licensee is the subject of a final order, including a denial, suspension, or revocation, by this or any other state or federal financial services regulator, including a state or federal money services regulator, that was entered against the licensee within the past five years.

(B) In determining whether a licensee is engaging in an unsafe or unsound practice, the Commissioner may consider the size and condition of the licensee's money transmission, the magnitude of the loss, the gravity of the violation of this chapter or a regulation or order issued pursuant to this chapter, and the previous conduct of the person involved.

(C) In determining whether to suspend or revoke a license under subsection (A)(9), the Commissioner may consider if the licensee subject to the final order is currently licensed to conduct business in the jurisdiction where the order was entered.

(D) The Commissioner shall issue a formal written notice of the suspension or revocation. The Commissioner shall set forth in the order the specific reasons for the suspension or revocation. A licensee may request a hearing within thirty days after receipt of the written notice of suspension or revocation pursuant to Section 35-11-710.

Section 35-11-705. (A) The Commissioner may issue an order suspending or revoking the designation of an authorized delegate, if the Commissioner finds that the:

(1) authorized delegate violated this chapter or a regulation or an order issued pursuant to this chapter;

(2) authorized delegate did not cooperate with an examination or investigation by the Commissioner;

(3) authorized delegate engaged in fraud, intentional

misrepresentation, or gross negligence;

(4) authorized delegate is convicted of a violation of a state or federal anti-money laundering statute;

(5) competence, experience, character, or general fitness of the authorized delegate or a person in control of the authorized delegate indicates that it is not in the public interest to permit the authorized delegate to provide money services; or

(6) authorized delegate is engaging in an unsafe or unsound practice.

(B) In determining whether an authorized delegate is engaging in an unsafe or unsound practice, the Commissioner may consider the size and condition of the authorized delegate's provision of money services, the magnitude of the loss, the gravity of the violation of this chapter or a regulation or order issued pursuant to this chapter, and the previous conduct of the authorized delegate.

(C) The Commissioner shall issue a formal written notice of the suspension or revocation. The Commissioner shall set forth in the order the specific reasons for the suspension or revocation. An authorized delegate may request a hearing within thirty days after receipt of the written notice of suspension or revocation pursuant to Section 35-11-710.

Section 35-11-710. (A) If the Commissioner determines that a person has engaged, is engaging, or is about to engage in an act, practice, or course of business constituting a violation of this chapter or a regulation or order issued under this chapter, the Commissioner may:

(1) issue an order directing the person to cease and desist from engaging in the act, practice, or course of business or to take other action necessary or appropriate to comply with this chapter;

(2) issue an order against a licensee to cease and desist from providing money services through an authorized delegate that is the subject of a separate order by the Commissioner; or

(3) issue an order under Sections 35-11-220(E), 35-11-235(A), 35-11-310(D), 35-11-515(H), 35-11-515(M), 35-11-700, and 35-11-705.

(B) An order under subsection (A) is effective on the date of issuance. Upon issuance of the order, the Commissioner shall promptly serve each person subject to the order with a copy of the order and a notice that the order has been entered. The order must include a statement of any civil penalty or costs of investigation the Commissioner will seek, a statement of the reasons for the order, and notice that, within fifteen days after receipt of a request in a record from the person, the matter will be

scheduled for a hearing. If a person subject to the order does not request a hearing and none is ordered by the Commissioner within thirty days after the date of service of the order, the order, which may include a civil penalty or costs of the investigation if a civil penalty or costs were sought, becomes final as to that person by operation of law. If a hearing is requested or ordered, the Commissioner, after notice of and opportunity for hearing to each person subject to the order, may modify or vacate the order or extend it until final determination.

(C) If a hearing is requested or ordered pursuant to subsection (B), a hearing must be held. A final order may not be issued unless the Commissioner makes findings of fact and conclusions of law in a record. The final order may make final, vacate, or modify the order issued under subsection (A).

(D) In a final order under subsection (C), the Commissioner may impose a civil penalty against a person that violates this chapter or a regulation or order issued pursuant to this chapter in an amount not to exceed one thousand dollars per day for each day the violation is outstanding, plus this state's costs and expenses for the investigation and prosecution of the matter, including reasonable attorney's fees.

(E) If a petition for judicial review of a final order is not filed in accordance with Section 35-11-830, the Commissioner may file a certified copy of the final order with the clerk of court of competent jurisdiction. The order so filed has the same effect as a judgment of the court and may be recorded, enforced, or satisfied in the same manner as a judgment of the court.

(F) If a person does not comply with an order under this section, the Commissioner may petition a court of competent jurisdiction to enforce the order. The court may not require the Commissioner to post a bond in an action or proceeding under this section. If the court finds, after service and opportunity for hearing, that the person was not in compliance with the order, the court may adjudge the person in civil contempt of the order. The court may impose a further civil penalty against the person for contempt in an amount not less than five hundred dollars but not greater than five thousand dollars for each violation and may grant any other relief the court determines is just and proper in the circumstances.

(G) A hearing in an administrative proceeding under this chapter must be conducted in public unless the Commissioner, for good cause consistent with this chapter, determines that the hearing will not be so conducted.

Section 35-11-715. The Commissioner may enter into a consent order at any time with a person to resolve a matter arising pursuant to

this chapter or a regulation or order issued pursuant to this chapter. A consent order must be signed by the person to whom it is issued or by the person's authorized representative, and must indicate agreement with the terms contained in the order. A consent order may provide that it does not constitute an admission by a person that this chapter or a regulation or an order issued pursuant to this chapter has been violated.

Section 35-11-720. Reserved.

Section 35-11-725. (A) A person who intentionally makes a false statement, misrepresentation, or false certification in a record filed or required to be maintained pursuant to this chapter, who intentionally makes a false entry or omits a material entry in that record, or violates a rule promulgated or order issued pursuant to this chapter is guilty of a Class B felony.

(B) A person who knowingly engages in an activity for which a license is required pursuant to this chapter without being licensed pursuant to this chapter and who receives more than five hundred dollars in compensation within a thirty-day period from this activity is guilty of a Class B felony.

(C) A person who knowingly engages in an activity for which a license is required pursuant to this chapter without being licensed pursuant to this chapter and who receives no more than five hundred dollars in compensation within a thirty-day period from this activity is guilty of a Class A misdemeanor.

Section 35-11-730. (A) If the Commissioner has reason to believe that a person engaged or is about to engage in an act or practice constituting a violation of this chapter or a regulation or order issued pursuant to this chapter, the Commissioner may summarily issue an order to cease and desist pursuant to Section 35-11-710.

(B) The Commissioner may apply to the Richland County Court of Common Pleas to:

(1) temporarily or permanently enjoin an act or practice that violates this chapter or a regulation or order issued pursuant to this chapter; or

(2) enforce compliance with this chapter or a regulation or order issued or pursuant to this chapter.

(C) A person that is served with an order to cease and desist for violating Section 35-11-200 or 35-11-300 may petition the Richland County Court of Common Pleas for a judicial order setting aside, limiting, or suspending the enforcement, operation, or effectiveness of the order pending the completion of an administrative proceeding

pursuant to Section 35-11-710.

Section 35-11-735. (A) Whenever a licensee has refused or is unable to pay its obligations generally as they become due or whenever it appears to the Commissioner that a licensee is in an unsafe or unsound condition, the Commissioner may apply to the Richland County Court of Common Pleas or to the circuit court of any county in which the licensee is located for the appointment of a receiver for the licensee. The court may require the receiver to post a bond in an amount that appears necessary to protect claimants of the licensee.

(B) The receiver, subject to the approval of the court, shall take possession of the books, records, and assets of the licensee and shall take an action with respect to employees, agents, or representatives of the licensee or other action that may be necessary to conserve the assets of the licensee or ensure payment of instruments issued by the licensee pending further disposition of its business as provided by law. The receiver shall sue and defend, compromise, and settle all claims involving the licensee and exercise the powers and duties that are necessary and consistent with the laws of this State applicable to the appointment of receivers.

(C) The receiver, from time to time, but in no event less frequently than once each calendar quarter, shall report to the court with respect to all acts and proceedings in connection with the receivership.

Section 35-11-740. (A)(1) A person who, knowing that the property involved in a financial transaction represents the proceeds of, or is derived directly or indirectly from the proceeds of unlawful activity, conducts or attempts to conduct such a financial transaction that in fact involves the proceeds:

(a) with the intent to promote the carrying on of unlawful activity; or

(b) knowing that the transaction is designed in whole or in part to conceal or disguise the nature, location, sources, ownership, or control of the proceeds of unlawful activity is guilty of a felony and, upon conviction, must be punished as follows:

(i) for a Class F felony if the transactions exceed three hundred dollars but are less than twenty thousand dollars in a twelve-month period;

(ii) for a Class E felony for transactions that total or exceed twenty thousand dollars but are less than one hundred thousand dollars in a twelve-month period; or

(iii) for a Class C felony for transactions that total or exceed

one hundred thousand dollars in a twelve-month period.

In addition to penalties, a person who is found guilty of or who pleads guilty or nolo contendere to having violated this section may be sentenced to pay a fine not to exceed two hundred fifty thousand dollars, or twice the value of the financial transactions, whichever is greater; however, for a second or subsequent violation of this section, the fine may be up to five hundred thousand dollars, or quintuple the value of the financial transactions, whichever is greater.

(2) A person who transports, transmits, or transfers, or attempts to transport, transmit, or transfer a monetary instrument or funds from a place in South Carolina to or through a place outside the United States or to a place in South Carolina from or through a place outside the United States:

(a) with the intent to promote the carrying on of unlawful activity; or

(b) knowing that the monetary instrument or funds involved in the transportation represent the proceeds of unlawful activity and knowing that the transportation is designed in whole or in part to conceal or disguise the nature, location, source, ownership, or control of the proceeds of unlawful activity is guilty of a felony and, upon conviction, must be punished as follows:

(i) for a Class F felony if the transactions exceed three hundred dollars but are less than twenty thousand dollars in a twelve-month period;

(ii) for a Class E felony for transactions that total or exceed twenty thousand dollars but are less than one hundred thousand dollars in a twelve-month period; or

(iii) for a Class C felony for transactions that total or exceed one hundred thousand dollars in a twelve-month period.

In addition to penalties, a person who is found guilty of or who pleads guilty or nolo contendere to having violated this section may be sentenced to pay a fine not to exceed two hundred fifty thousand dollars or twice the value of the financial transactions, whichever is greater; however, for a second or subsequent violation of this section, the fine may be up to five hundred thousand dollars, or quintuple the value of the financial transactions, whichever is greater.

(3) A person with the intent:

(a) to promote the carrying on of unlawful activity; or

(b) to conceal or disguise the nature, location, source, ownership, or control of property believed to be the proceeds of unlawful activity, conducts or attempts to conduct a financial transaction involving property represented by a law enforcement officer to be the proceeds of

unlawful activity, or property used to conduct or facilitate unlawful activity is guilty of a felony and, upon conviction, must be punished as follows:

(i) for a Class F felony if the transactions exceed three hundred dollars but are less than twenty thousand dollars in a twelve-month period;

(ii) for a Class E felony for transactions that total or exceed twenty thousand dollars but are less than one hundred thousand dollars in a twelve-month period; or

(iii) for a Class C felony for transactions that total or exceed one hundred thousand dollars in a twelve-month period.

In addition to penalties, a person who is found guilty of or who pleads guilty or nolo contendere to having violated this section may be sentenced to pay a fine not to exceed two hundred fifty thousand dollars or twice the value of the financial transactions, whichever is greater; however, for a second or subsequent violation of this section, the fine may be up to five hundred thousand dollars or quintuple the value of the financial transactions, whichever is greater.

For purposes of this subitem, the term "represented" means a representation made by a law enforcement officer or by another person at the direction of, or with the approval of, a state official authorized to investigate or prosecute violations of this section.

(B) A person who conducts or attempts to conduct a transaction described in subsection (A)(1), or transportation described in subsection (A)(2), is liable to the State for a civil penalty of not more than the greater of:

(1) the value of the property, funds, or monetary instruments involved in the transaction; or

(2) ten thousand dollars.

A court may issue a pretrial restraining order or take another action necessary to ensure that a bank account or other property held by the defendant in the United States is available to satisfy a civil penalty under this section.

(C) As used in this section:

(1) the term "conducts" includes initiating, concluding, or participating in initiating or concluding a transaction;

(2) the term "transaction" includes a purchase, sale, loan, pledge, gift, transfer, delivery, or other disposition and, with respect to a financial institution, includes a deposit, withdrawal, transfer between accounts, exchange of currency, loan, extension of credit, purchase or sale of a stock, bond, certificate of deposit, or other monetary instrument, or another payment, transfer, or delivery by, through, or to a financial

institution, by whatever means effected;

(3) the term "financial transaction" means a transaction involving the movement of funds by wire or other means or involving one or more monetary instruments;

(4) the term "monetary instruments" means coin or currency of the United States or of another country, travelers' checks, personal checks, bank checks, money orders, investment securities in bearer form or otherwise in that form that title to it passes upon delivery, and negotiable instruments in bearer form or otherwise in that form that title to it passes upon delivery;

(5) the term "financial institution" has the definition given that term in Section 5312(a)(2), Title 31, United States Code, and the regulations promulgated thereunder.

(D) Nothing in this section supersedes a provision of law imposing criminal penalties or affording civil remedies in addition to those provided for in this section, and nothing in this section precludes reliance in the appropriate case upon the provisions set forth in Section 44-53-475.

Section 35-11-745. (A) The Commissioner may:

(1) conduct public or private investigations within or outside of this State which the Commissioner considers necessary or appropriate to determine whether a person has violated, is violating, or is about to violate this chapter or a regulation or order issued pursuant to this chapter, or to aid in the enforcement of this chapter or in the adoption of rules and forms under this chapter;

(2) require or permit a person to testify, file a statement, or produce a record, under oath or otherwise as the Commissioner determines, as to all the facts and circumstances concerning a matter to be investigated or about which an action or proceeding is to be instituted; and

(3) publish a record concerning an action, proceeding, or an investigation under, or a violation of, this chapter or a regulation or order issued pursuant to this chapter if the Commissioner determines it is necessary or appropriate in the public interest.

(B) For the purpose of an investigation under this chapter, the Commissioner or its designated officer may administer oaths and affirmations, subpoena witnesses, seek compulsion of attendance, take evidence, require the filing of statements, and require the production of any records that the Commissioner considers relevant or material to the investigation.

(C) If a person does not appear or refuses to testify, file a statement, produce records, or otherwise does not obey a subpoena as required by

the Commissioner under this chapter, the Commissioner may apply to the Richland County Court of Common Pleas or a court of another state to enforce compliance. The court may:

(1) hold the person in contempt;

(2) order the person to appear before the Commissioner;

(3) order the person to testify about the matter under investigation or in question;

(4) order the production of records;

(5) grant injunctive relief;

(6) impose a civil penalty of not less than five hundred dollars and not greater than five thousand dollars for each violation; and

(7) grant any other necessary or appropriate relief.

(D) This section does not preclude a person from applying to the Richland County Court of Common Pleas for relief from a request to appear, testify, file a statement, produce records, or obey a subpoena.

## Article 8

## Administrative Procedures

Section 35-11-800. In order to carry out the purposes of this chapter, the Commissioner may, subject to the provisions of Section 35-11-530:

(1) enter into agreements or relationships with other governmental officials or federal and state regulatory agencies and regulatory associations in order to improve efficiencies and reduce regulatory burden by standardizing methods or procedures, and sharing resources, records, or related information obtained under this chapter;

(2) use, hire, contract, or employ analytical systems, methods, or software to examine or investigate any person subject to this chapter;

(3) accept, from other state or federal governmental agencies or officials, licensing, examination, or investigation reports made by such other state or federal governmental agencies or officials; and

(4) accept audit reports made by an independent certified public accountant or other qualified third-party auditor for an applicant or licensee and incorporate the audit report in any report of examination or investigation.

Section 35-11-805. The Commissioner may not suspend or revoke a license, issue an order to cease and desist, suspend or revoke the designation of an authorized delegate, or assess a civil penalty without notice and an opportunity to be heard pursuant to Section 35-11-710.

The Commissioner also shall hold a hearing when requested to do so by an applicant whose application for a license is denied.

Section 35-11-810. This chapter is administered by the Commissioner who may employ such additional assistants as he deems necessary. The Commissioner may delegate any or all of his duties pursuant to this chapter to members of his staff, as he deems necessary or appropriate.

Section 35-11-815. The Commissioner may promulgate and amend regulations or issue orders necessary to carry out the purposes of this chapter in order to provide for the protection of the public and to assist licensees in interpreting and complying with this chapter.

Section 35-11-820. The Commissioner may establish reasonable fees for filings required or permitted by regulation or order adopted pursuant to this chapter, and other miscellaneous filings for which no fees are otherwise specified by law.

Section 35-11-825. The Commissioner may retain all fees, assessments, and fines received under this chapter for the administration of this chapter.

Section 35-11-830. A person aggrieved by a final order of the Commissioner may obtain a review of the order in the Richland County Court of Common Pleas by filing in the court, within thirty days after entry of the order, a written petition praying that the order may be modified or set aside in whole or in part. The aggrieved person, upon filing a petition, may move before the court in which the petition is filed to stay the effectiveness of the Commissioner's final order until such time as the court has reviewed the order. If the court orders a stay, the aggrieved person must post any bond set by the court in which a petition is filed. A copy of the petition must be served upon the Commissioner, and the Commissioner shall certify and file in court a copy of the filing and evidence upon which the order was entered. When these have been filed, the court has exclusive jurisdiction to affirm, modify, enforce, or set aside the order, in whole or in part. The findings of the Commissioner as to the facts, if supported by competent, material, and substantial evidence, are conclusive.

Article 9

Miscellaneous Provisions

Section 35-11-900. In applying and construing this Uniform Act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

Section 35-11-905. (A) A person licensed in this State to engage in the business of money transmission may not be subject to the amended provisions of this chapter, to the extent that they conflict with the prior law or establish new requirements not imposed under the prior law, until the first January first after the effective date of this chapter.

(B) Notwithstanding subsection (A), a licensee only must be required to amend its authorized delegate contracts for contracts entered into or amended after the effective date of the amendments to this chapter or the completion of any transition period contemplated under subsection (A). Nothing herein may be construed as limiting an authorized delegate's obligations to operate in full compliance with this chapter as required by Section 35-11-400(C).

**Savings**

SECTION 2. The repeal or amendment by this act of any law, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

**Severability**

SECTION 3. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the

General Assembly hereby declaring that it would have passed this act, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

**Time effective**

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

Ratified the 27th day of June, 2024

Approved the 2nd day of July, 2024

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**No. 219**

(R244, S1046)

**AN ACT TO AMEND THE SOUTH CAROLINA CODE OF LAWS BY AMENDING CHAPTER 19 OF TITLE 2, RELATING TO THE JUDICIAL MERIT SELECTION COMMISSION, SO AS TO PROVIDE FOR THE APPOINTMENT OF SOUTH CAROLINA JUDICIAL MERIT SELECTION COMMISSION MEMBERS, INITIAL TERMS, AND SUBSEQUENT TERMS; TO AMEND THE MEMBERSHIP OF THE COMMISSION TO INCREASE THE MEMBERSHIP TO TWELVE MEMBERS, INCLUDING FOUR MEMBERS APPOINTED BY THE GOVERNOR; TO PROVIDE A QUORUM IS SEVEN MEMBERS, AND TO MAKE CONFORMING CHANGES; TO PROVIDE FOR TWO-YEAR TERMS AND TERM LIMITS OF MEMBERS; TO REQUIRE ALL PUBLIC HEARINGS BE LIVE STREAMED EXCEPT WHEN THE COMMISSION IS IN EXECUTIVE SESSION; TO ESTABLISH SET TIMES FOR THE RELEASE OF REPORTS AND THE SEEKING OF PLEDGES AND TO PROVIDE THAT THE FORMAL RELEASE OF THE REPORT OF QUALIFICATIONS SHALL OCCUR NO EARLIER THAN TWELVE DAYS AFTER NOMINEES HAVE BEEN RELEASED**

**TO MEMBERS OF THE GENERAL ASSEMBLY; TO INCREASE THE NUMBER OF NOMINEES RELEASED TO THE GENERAL ASSEMBLY FROM THREE TO SIX; TO REQUIRE MIDTERM REVIEWS OF JUSTICES AND JUDGES AND PROVIDE A PROCEDURE FOR THE COMMISSION AND THE SOUTH CAROLINA BAR TO CONDUCT THE REVIEW; TO REQUIRE THE RETENTION OF INVESTIGATIVE MATERIALS; TO PROHIBIT VOTE COUNTING BEFORE THE FORMAL RELEASE OF THE REPORT; TO REQUIRE THE REPORT TO INCLUDE THE PARTICULAR REASONS WHEN CANDIDATES WERE FOUND NOT QUALIFIED; TO PROVIDE TWENTY-TWO DAYS MUST ELAPSE BETWEEN THE DATE OF THE COMMISSION'S NOMINATIONS AND THE ELECTIONS FOR THESE JUDGESHIPS; AND TO PROVIDE THAT NOTHING SHALL PREVENT A LEGISLATIVE DELEGATION FROM REJECTING A CANDIDATE FOR THE OFFICE OF MASTER-IN-EQUITY AND DIRECTING THE COMMISSION TO REOPEN THE SCREENING PROCESS.**

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

**South Carolina Judicial Merit Selection Commission, reform**

SECTION 1. Chapter 19, Title 2 of the S.C. Code is amended to read:

CHAPTER 19

South Carolina Judicial Merit Selection Commission
Screening and Election of Justices and Judges

Section 2-19-5. (A) There is created the South Carolina Judicial Merit Selection Commission composed of twelve members who must be appointed as follows:

(1) four members appointed by the Speaker of the House of Representatives and of these appointments:

(a) three members must be members of the House of Representatives; and

(b) one member must be selected from the South Carolina Bar who must be a member of the Bar in good standing with ten years' experience in the practice of law;

(2) four members appointed by the Senate and of these appointments:

(a) two members must be appointed by the President of the Senate one of whom must be a member of the Senate and one of whom must be selected from the South Carolina Bar and must be a member in good standing with ten years' experience in the practice of law; and

(b) two members must be appointed by the Chairman of the Senate Judiciary Committee both of whom must be members of the Senate; and

(3) four members appointed by the Governor all of which must be members in good standing of the South Carolina Bar with at least ten years' experience in the practice of law.

(B) No person is eligible for appointment if he individually contributed to a campaign of one of the appointing authorities in the most recent election. Nonlegislative members may not be a public employee or serve in another elected office.

(C) Members of the commission shall serve for a term of two years and may serve no more than two consecutive terms. However, a member of the House of Representatives or Senate who ceases to serve as a member of the General Assembly will have his service on the commission terminated upon the end of his service in the General Assembly. Additionally, a member appointed to fill a vacancy in an unexpired term may serve two full terms thereafter. The initial appointments must be made as follows:

(1) one member each appointed by the Speaker of the House of Representatives pursuant to subsection (A)(1)(a) and (b) shall serve an initial term of one year and may be reappointed to a following two-year term;

(2) one member each appointed by the President of the Senate and the Chairman of the Senate Judiciary Committee pursuant to subsection (A)(2)(a) and (b) shall serve an initial term of one year and may be reappointed to a following two-year term; and

(3) two members appointed by the Governor pursuant to subsection (A)(3) shall serve an initial term of one year and may be reappointed to a following two-year term.

(D) In making appointments to the commission, race, gender, national origin, and other demographic factors shall be considered to ensure nondiscrimination to the greatest extent possible as to all segments of the population of the State.

(E) A vacancy on the commission must be filled for the remainder of the unexpired term in the same manner as provided for the original selection.

(F) Members of the Judicial Merit Selection Commission serving on the effective date of this act who have served more than four years on

the commission are not eligible for appointment to the commission pursuant to the provisions of this act except for the current chairman and vice chairman who can serve a two-year term but then may not serve a successive term.

(G) No member of the commission shall receive any compensation for commission services, except those set by law for travel, board, and lodging expenses incurred in the performance of commission duties.

(H) No member of the commission is eligible for nomination and appointment as a judge or justice of the state court system or administrative law court while serving on the commission and for a period of one year thereafter. If a candidate is a family member of a member of the commission, the member must resign. For the purposes of this subsection, "family member" means a spouse, parent, brother, sister, child, step-child, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, grandparent, or grandchild.

Section 2-19-10. When an election is to be held by the General Assembly in Joint Session, for members of the judiciary, the South Carolina Judicial Merit Selection Commission, composed of twelve members, shall consider the qualifications of the candidates. The commission shall meet at least once annually and at other times as may be designated by the chairman. The commission, at its first meeting and then annually, shall elect a chairman and a vice chairman who shall serve for a term of one year and until their successors are elected and qualified, and adopt rules necessary to the purposes of the commission. These rules shall address, among other things:

(1) the confidentiality of records and other information received concerning candidates for judicial office;

(2) the conduct of proceedings before the commission;

(3) receipt of public statements in support of or in opposition to any of the candidates;

(4) procedures to review the qualifications of retired judges for continued judicial service;

(5) contacting incumbent judges regarding their desire to seek reelection;

(6) prohibition against candidates communicating with individual members of the commission concerning the qualifications of candidates unless specifically authorized by the commission; and

(7) format and use of anonymous surveys by the commission.

Seven members of the commission constitute a quorum at all meetings.

Section 2-19-20. (A) It is the responsibility of the South Carolina Judicial Merit Selection Commission to determine when judicial vacancies are to occur in the Administrative Law Court and on the family court, circuit court, court of appeals, or Supreme Court and to expeditiously investigate in advance the qualifications of those who seek the position. For purposes of this chapter, a vacancy is created in the Administrative Law Court or on the family court, circuit court, court of appeals, or Supreme Court when any of the following occurs: a term expires; a new judicial position is created; or a judge can no longer serve due to resignation, retirement, disciplinary action, disability, or death.

(B) The commission, upon receiving notice of a judicial vacancy, ascertaining that a judicial vacancy shall occur, or receiving the decision of an incumbent judge regarding his seeking reelection, shall notify the Supreme Court of the vacancy for publication in the advance sheets provided by the Clerk of the Supreme Court at least thirty days prior to closing applications for the vacancy. The commission shall, if practicable, also notify the South Carolina Bar, other professional legal organizations it considers appropriate, and each newspaper of this State with daily circulation of the vacancy at least thirty days prior to closing applications for the vacancy. This notice must include, but not be limited to, the judicial office in which the vacancy occurs, the address to which, and the date by which interested candidates may apply.

(C) The commission shall announce and publicize vacancies and forthcoming vacancies in the Administrative Law Court, on the family court, circuit court, court of appeals, and Supreme Court. A person who desires to be considered for a position as justice or judge may make application to the commission. The commission shall announce the names of those persons who have applied.

(D) Any person wishing to seek a judicial office, which is elected by the General Assembly, shall file a notice of intention to seek the office with the commission. Upon receipt of the notice of intention, the commission shall begin to conduct the investigation of the candidate as it considers appropriate and may in the investigation utilize the services of any agency of state government. This agency shall, upon request, cooperate fully with the commission.

Section 2-19-25. (A) The South Carolina Judicial Merit Selection Commission is authorized to investigate and obtain information relative to any candidate for an Administrative Law Court judgeship or a family court, circuit court, court of appeals, or Supreme Court judgeship from any state agency or other group including, but not limited to, court administration and any law enforcement agency, to the extent permitted

by law. And, as part of the investigation, candidates for election to judicial office or reelection to judicial office must disclose any sanctions, including private reprimands, to the commission.

(B) The chairman of the commission shall notify the President of the South Carolina Bar of the judgeships to be filled and of the candidates for those judgeships no later than four weeks before the scheduled date for the public hearing. The chairman of the commission shall also request the South Carolina Bar to offer the commission an assessment of each candidate's qualifications for the judgeship sought, and the date by which the assessment must be returned to the commission. This assessment must specify the bar's finding as to whether each candidate is qualified or unqualified for the judgeship sought and the reasons for that finding. The commission may receive the bar's assessment in that form and at that time it desires but shall attach the assessments to its findings of fact in such form as the commission considers appropriate. Failure of the bar to return the assessment by the date requested is not a ground for delaying the applicable hearings or election.

(C) The commission shall forward the names of justices and judges who are at the midpoint in their terms to the committee in order for the committee to conduct midterm reviews utilizing the electronic ballot box survey polling or other forms of electronic surveys as it deems appropriate. The results of the midterm reviews must be forwarded to the Chief Justice of the Supreme Court. Midterm reviews also must be provided to the commission at the next public screening of each judicial candidate.

Section 2-19-30. (A) Upon completion of the investigation, the Chairman of the South Carolina Judicial Merit Selection Commission shall schedule a public hearing concerning the qualifications of the candidates. Any person who desires to testify at the hearing, including candidates, shall furnish a written statement of his proposed testimony to the commission no later than two weeks prior to the date and time set for the hearing unless sufficient cause is determined by the commission for allowing the submitting individual's testimony after the deadline. The commission shall determine the persons who shall testify at the hearing. All testimony, including documents furnished to the commission, must be submitted under oath and persons knowingly furnishing false information either orally or in writing are subject to the penalties provided by law for perjury and false swearing.

(B) During the course of the investigation, the commission may schedule an executive session at which each candidate, and other persons whom the commission wishes to interview, may be interviewed by the

commission on matters pertinent to the candidate's qualification for the office to be filled.

(C) At a reasonable time thereafter the commission shall render its tentative findings as to whether the candidate is qualified for the office to be filled and its reasons therefor as to each candidate.

(D) As soon as possible after the completion of the hearing, a verbatim copy of the testimony, documents submitted at the hearing, and findings of fact must be transcribed and published or otherwise made available in a reasonable number of copies to the members of both houses prior to the date of the scheduled election, and a copy shall be furnished to each candidate and anyone else upon request. A charge for these copies may be made as authorized in the Freedom of Information Act.

(E) A candidate may withdraw at any time prior to the public hearing or after the draft report is issued to members of the General Assembly. The information concerning a withdrawn candidate also shall be exempt from disclosure pursuant to Chapter 4 of Title 30. However, all materials concerning the candidate must be retained and may not be destroyed by the commission.

(F) All of the commission's public hearings shall be live streamed except for the portions of the hearings conducted in executive session.

Section 2-19-35. (A) The responsibility of the South Carolina Judicial Merit Selection Commission is to investigate and consider the qualifications of the candidates for judicial office in Administrative Law Court or on the family court, circuit court, court of appeals, or Supreme Court. Investigations and consideration of the commission should include, but are not limited to, the following areas:

(1) constitutional qualifications;
(2) ethical fitness;
(3) professional and academic ability;
(4) character;
(5) reputation;
(6) physical health;
(7) mental stability;
(8) experience; and
(9) judicial temperament.

(B) Race, gender, national origin, and other demographic factors shall be considered by the commission to ensure nondiscrimination to the greatest extent possible as to all segments of the population of the State.

Section 2-19-40. Reserved.

Section 2-19-50. All records, information, and other material that the South Carolina Judicial Merit Selection Commission has obtained or used to make its findings of fact, except materials, records, and information presented under oath at the public hearing, must be kept strictly confidential. The information required to be kept confidential also shall be exempt from disclosure pursuant to Chapter 4, Title 30.

Section 2-19-60. (A) The South Carolina Judicial Merit Selection Commission in the discharge of its duties may administer oaths and affirmations, take depositions, and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records considered necessary in connection with the investigation of the candidate.

(B) No person shall be excused from attending and testifying or from producing books, papers, correspondence, memoranda, or other records before the commission on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture. But no individual shall be prosecuted or subjected to any criminal penalty based upon testimony or evidence submitted or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that the individual so testifying shall not be exempt from prosecution and punishment for perjury and false swearing committed in so testifying.

(C) In case of contumacy by any person or refusal to obey a subpoena issued to any person, any circuit court of this State or circuit judge within the jurisdiction of which the person guilty of contumacy or refusal to obey is found, resides, or transacts business, upon application by the commission may issue to this person an order requiring him to appear before the commission to produce evidence if so ordered or to give testimony touching the matter under investigation. Any failure to obey an order of the court may be punished as a contempt. Subpoenas shall be issued in the name of the South Carolina Judicial Merit Selection Commission and shall be signed by the commission chairman. Subpoenas shall be issued to those persons as the commission may designate.

Section 2-19-70. (A) No member of the General Assembly may be elected to a judicial office while he is serving in the General Assembly nor shall that person be elected to a judicial office for a period of one year after he either:

(1) ceases to be a member of the General Assembly; or

(2) fails to file for election to the General Assembly in accordance with Section 7-11-15.

(B) The privilege of the floor in either house of the General Assembly may not be granted to any candidate or any immediate family member of a candidate unless the family member is serving in the General Assembly, during the time the candidate's application is pending before the commission and during the time his nomination by the commission for election to a particular judicial office is pending in the General Assembly.

(C) No person may seek, directly or indirectly, the pledge of a member of the General Assembly's vote or, directly or indirectly, contact a member of the General Assembly regarding screening for the judicial office until the qualifications of all candidates for that office have been determined by the Judicial Merit Selection Commission and the commission has formally released its report as to the qualifications of all candidates for the vacancy to the General Assembly. No member of the General Assembly may offer his pledge to any person until the qualifications of all candidates for that office have been determined by the Judicial Merit Selection Commission and until the commission has formally released its report as to the qualifications of its nominees to the General Assembly. The formal release of the report of qualifications shall occur no earlier than twelve days after the nominees have been initially released to members of the General Assembly. For purposes of this section, indirectly seeking a pledge means the candidate, or someone acting on behalf of and at the request of the candidate, requesting a person to contact a member of the General Assembly on behalf of the candidate before nominations for that office are formally made by the commission. Prior to the formal release of the report as to the qualifications of judicial candidates, a person may not request that a member of the General Assembly, nor may a member of the General Assembly offer to, act on behalf of a candidate in furtherance of the candidate's candidacy in any capacity including, but not limited to, acting as a vote counter for a candidate. The prohibitions of this section do not extend to an announcement of candidacy by a person and statements by the candidate detailing the candidate's qualifications.

(D) No member of the General Assembly may trade anything of value, including pledges to vote for legislation or for other candidates now or in the future, in exchange for another member's pledge to vote for a candidate for judicial office or as an inducement for a candidate to withdraw.

(E) Violations of this section may be considered by the merit selection

commission when it considers the candidate's qualifications and until the time set for election of candidates. Violations of this section by members of the General Assembly shall be reported by the commission to the House or Senate Ethics Committee, as may be applicable. Violations of this section by nonlegislative commission members shall be reported by the commission to the State Ethics Commission. A violation of this section is a misdemeanor and, upon conviction, the violator must be fined not more than one thousand dollars or imprisoned not more than ninety days. Cases tried under this section may not be transferred from general sessions court pursuant to Section 22-3-545.

Section 2-19-80. (A) The commission shall make nominations to the General Assembly of candidates and their qualifications for election to the Supreme Court, court of appeals, circuit court, family court, and the Administrative Law Court. It shall review the qualifications of all applicants for a judicial office and select therefrom and submit to the General Assembly the names and qualifications of not more than six candidates whom it considers best qualified for the judicial office under consideration. If fewer than six persons apply to fill a vacancy or if the commission concludes there are fewer than six candidates qualified for a vacancy, it shall submit to the General Assembly only the names and qualifications of those who are considered to be qualified, with a written explanation for submitting fewer than six names.

(B) The nominations of the commission for any judgeship are binding on the General Assembly, and it shall not elect a person not nominated by the commission. Nothing shall prevent the General Assembly from rejecting all persons nominated. In this event, the commission shall submit another group of names and qualifications for that position. Further procedures in the manner required by this chapter must be made until the office is filled.

(C)(1) If the commission does not find the incumbent justice or judge qualified for the judicial office held and sought, his name shall not be submitted to the General Assembly for reelection and upon expiration of his then current term of office, he shall cease serving in that judicial position.

(2) If the commission finds an incumbent judge not qualified for the office sought, or if an incumbent judge dies, withdraws, or becomes otherwise disqualified for the office sought between the time he makes application for the office and the date of the election, the election for the office may not be held at that scheduled time, and the commission shall proceed in accordance with the provisions of this chapter to make other nominations for the office as though a new vacancy without an

incumbent exists in that office, including reopening the application process with all required notices. Nothing prevents the commission from including in its new nominations the names and qualifications of persons other than the incumbent judge it included in its previous nominations.

(D) The commission shall accompany its nominations to the General Assembly with reports as to the qualifications of particular candidates and the particular reasons a candidate or candidates were not found qualified.

(E) A period of at least twenty-two days must elapse between the date of the commission's nominations to the General Assembly and the date the General Assembly conducts the election for these judgeships.

Section 2-19-90. The General Assembly shall meet in joint session for the election of judges. The date and time for the joint session shall be set by concurrent resolution upon the recommendation of the South Carolina Judicial Merit Selection Commission. The Chairman of the Judicial Merit Selection Commission shall announce the commission's nominees for each judicial race, and no further nominating or seconding speeches shall be allowed by members of the General Assembly. In order to be elected, a candidate must receive a majority of the vote of the members of the General Assembly voting in joint session.

Section 2-19-100. In order to be eligible for appointment by the Chief Justice to serve, any retired justice or judge of this State must have been reviewed by the South Carolina Judicial Merit Selection Commission under procedures it shall establish to review retired judges' qualifications for continued judicial service and be found by the commission to be qualified to serve in these situations within four years of the date of his appointment to serve, except that if a justice or judge retired before the expiration of his then current term, no further review of that justice or judge is required until that term would have expired.

Section 2-19-110. Upon a vacancy in the office of master-in-equity, candidates shall submit an application to the South Carolina Judicial Merit Selection Commission. Upon completion of reports and recommendations, the commission shall submit such reports and recommendations on all qualified master-in-equity candidates to the appropriate county legislative delegations. The county legislative delegations may then submit the name of a candidate to the Governor for consideration for appointment. Nothing shall prevent the delegation from rejecting a candidate and directing the commission to reopen the process. And, nothing shall prevent the Governor from rejecting the

person nominated by the delegation. In this event, the delegation shall submit another name for consideration. No person found not qualified by the commission may be appointed to the office of master-in-equity. For purposes of this section, a vacancy is created in the office of the master-in-equity when any of the following occurs: a term expires, a new judicial position is created, or a judge no longer can serve due to resignation, retirement, disciplinary action, disability, or death. The commission may begin screening prior to the actual date of the vacancy in the case of an expiration of term, resignation, or retirement pursuant to written notice.

Section 2-19-120. (A) The Chairman of the Judicial Merit Selection Commission, upon the advice of the commission, shall select members to serve on Citizens Committees on Judicial Qualifications for each geographic district set by the commission. These committees shall, under the rules adopted by the commission, advise the commission concerning judicial candidates. The committees shall report their findings to the commission in such form as prescribed by the commission.

(B) The members appointed to the Citizens Committees on Judicial Qualifications shall be compensated with an emolument of one hundred dollars per round of screening.

**Time effective**

SECTION 2. This act takes effect on July 1, 2025.

Ratified the 27th day of June, 2024

Approved the 2nd day of July, 2024

**No. 220**

(R245, H3865)

**AN ACT TO DELAY THE EFFECTIVE DATE OF ACT 56 OF 2023, REGARDING THE LAW ENFORCEMENT PERSONAL PRIVACY PROTECTION ACT AND THE JUDICIAL PERSONAL PRIVACY PROTECTION ACT FROM JULY 1, 2024, UNTIL JULY 1, 2025.**

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

**Act 56 of 2023 delayed effective date**

SECTION 1. The effective date of Act No. 56 of 2023, which enacted the "Law Enforcement and Personal Privacy Protection Act" and the "Judicial Privacy Protection Act", is delayed from July 1, 2024, until July 1, 2025.

**Time effective**

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

Ratified the 27th day of June, 2024

Approved the 2nd day of July, 2024

**No. 221**

(R246, H3988)

**AN ACT TO AMEND THE SOUTH CAROLINA CODE OF LAWS BY AMENDING SECTION 40-43-30, RELATING TO DEFINITIONS IN THE PHARMACY PRACTICE ACT, SO AS TO PROVIDE ADDITIONAL ACTIONS THAT CONSTITUTE THE PRACTICE OF PHARMACY AND TO DEFINE THE TERM "DIRECT SUPERVISION"; BY AMENDING SECTION 40-43-40, RELATING TO THE BOARD OF PHARMACY, SO AS TO REVISE THE COMPOSITION OF THE BOARD; BY AMENDING SECTION 40-43-84, RELATING TO PHARMACY INTERNS AND EXTERNS, SO AS TO REVISE SUPERVISION REQUIREMENTS; BY AMENDING SECTION 40-43-190, RELATING TO PROTOCOL FOR PHARMACISTS TO ADMINISTER VACCINES WITHOUT PRACTITIONER ORDERS OR PRESCRIPTIONS, SO AS TO LOWER THE AUTHORIZED VACCINATION RECIPIENT AGE TO SIXTEEN YEARS, TO PROVIDE INFORMED CONSENT REQUIREMENTS, TO PROVIDE PHARMACY TECHNICIANS MAY ADMINISTER VACCINATIONS UNDER PHARMACIST SUPERVISION, TO REVISE REQUIREMENTS FOR PHARMACY INTERNS TO MAKE VACCINATIONS, AND TO MAKE CONFORMING CHANGES TO RECORDKEEPING REQUIREMENTS; AND BY AMENDING SECTION 40-43-200, RELATING TO THE JOINT PHARMACIST ADMINISTERED VACCINES COMMITTEE, SO AS TO REVISE QUALIFICATION REQUIREMENTS FOR COMMITTEE MEMBERS.**

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

**Definition**

SECTION 1. Section 40-43-30(49) of the S.C. Code is amended to read:

(49) "Practice of pharmacy" means the:

(a) interpretation, evaluation, and dispensing of prescription drug orders in the patient's best interest;

(b) participation in drug and device selection, drug

administration, prospective drug reviews, and drug or drug-related research;

(c) provision of patient counseling and the provision of those acts or services necessary to provide pharmacy care and drug therapy management;

(d) responsibility for compounding and labeling of drugs and devices, (except labeling by a manufacturer, repackager, or distributor or nonprescription drugs and commercially packaged legend drugs and devices) proper and safe storage of drugs and devices and maintenance of proper records for them;

(e) initiation, ordering, and administration of flu and COVID tests. Pharmacists may delegate the task of administering tests provided for in this subsection to a trained pharmacy technician or pharmacy intern, but the pharmacist must perform any interpretation of the results;

(f) reporting of a person's flu or COVID test results and the referral of that patient for follow-up care to the health care provider identified by the patient or if none is identified, to an appropriate health care provider; or

(g) the offering or performing of those acts, services, operations, or transactions necessary in the conduct, operation, education, management, and control of pharmacy.

**Definition**

SECTION 2. Section 40-43-30 of the S.C. Code is amended by adding:

(60) "Direct supervision" means a pharmacist is readily and immediately available to the person who they are supervising during all professional activities.

**Board of Pharmacy, composition revised**

SECTION 3. Section 40-43-40(A) and (B) of the S.C. Code is amended to read:

(A) There is created the State Board of Pharmacy to be composed of ten members, appointed by the Governor with advice and consent of the Senate, one of whom must be a lay member from the State at large, one of whom must be a state-certified pharmacy technician from the State at large, one of whom must be a pharmacist from the State at large, and seven of whom must be pharmacists representing each of the seven congressional districts. However, if no hospital pharmacist is selected to

represent any of the seven congressional districts, the Governor shall appoint a hospital pharmacist as the pharmacist at large.

(B) The pharmacist at large, the state-certified pharmacy technician, and the lay member shall serve coterminously with the appointing Governor and until their successors are appointed and qualify. The certified pharmacy technician must be actively engaged as a certified pharmacy technician. The board shall conduct an election to nominate three pharmacists from each congressional district to be submitted to the Governor for consideration for appointment. The Governor shall appoint one pharmacist to represent each congressional district from among the nominees submitted for that district. The election shall provide for participation by all pharmacists currently licensed and residing in the congressional district for which the nomination is being made. The pharmacists must be residents of the congressional district they represent, licensed, in good standing to practice pharmacy in this State, and actively engaged in the practice of pharmacy in this State. The members of the board representing the seven congressional districts shall serve terms of six years and until their successors are appointed and qualify. No member may serve more than two successive terms of office except that a member serving an unexpired term may be reelected and reappointed for two successive terms.

**Supervision of interns/externs**

SECTION 4. Section 40-43-84(C) of the S.C. Code is amended to read:

(C) An intern/extern may engage in the practice of pharmacy if such activities are under the direct supervision of a licensed pharmacist. The pharmacist shall physically review the prescription drug order and the dispensed product before the product is delivered to the patient or the patient's agent. The pharmacist is responsible for the work of the intern/extern. A pharmacist may not supervise more than one intern at any one time.

Pharmacy interns/externs shall not be left in sole charge of a prescription department or other approved site at any time. Violation of this may result in cancellation of any and all internship/externship hours toward licensure that may have been accrued by the intern/extern, and may, in the discretion of the board, cause the board after sufficient notice to the pharmacy intern/extern, to revoke or suspend the internship certificate as provided above. The supervising pharmacist or designated pharmacist may also be subject to disciplinary action by the board.

An applicant for licensure, who is guilty of compounding or

dispensing a prescription of a practitioner or selling legend drugs or medicines while not under the supervision of a licensed pharmacist may be refused licensure.

**Administration of vaccines, informed consent, administrators, recordkeeping**

SECTION 5. Section 40-43-190 of the S.C. Code is amended to read:

Section 40-43-190. (A)(1) Upon recommendation of the Joint Pharmacist Administered Vaccines Committee, the Board of Medical Examiners shall determine whether a specific vaccine is appropriate for administration by a pharmacist without a written order or prescription of a practitioner pursuant to this section. If a vaccine is approved, the Board of Medical Examiners shall issue a written protocol for the administration of vaccines by pharmacists without an order or prescription of a practitioner.

(2) The administration of vaccines as authorized in this section must not be to a person under the age of sixteen years; provided, however, that:

(a) the influenza vaccine may be administered to a person twelve years of age or older pursuant to protocol issued by the Board of Medical Examiners;

(b) the influenza vaccine may be administered to a person under the age of twelve pursuant to protocol issued by the Board of Medical Examiners upon recommendation of the Joint Pharmacist Administered Vaccines Committee;

(c) a pharmacist who has completed the training described in subsection (B)(1) may administer other vaccines approved by the Centers for Disease Control to a person of any age pursuant to a written order or prescription of a practitioner for a specific patient of that practitioner; and

(d) if the person receiving a vaccine is under the age of eighteen years, a pharmacist must inform the patient and their caregiver of the importance of mental health and routine well care visits with a pediatrician or other licensed primary care provider and refer patients as appropriate.

(e) a pharmacist shall only administer a vaccine to a person less than sixteen years of age if that person’s caretaker (with written parental consent), parent, or legal guardian is present at the time the vaccine is administered.

(3) The written protocol must further authorize pharmacists to

administer without an order or prescription of a practitioner those medications necessary in the treatment of adverse events. These medications must be used only in the treatment of adverse events and must be limited to those delineated within the written protocol.

(4) The Board of Medical Examiners must issue the written protocol upon its approval of the vaccine for administration pursuant to this section.

(5) A pharmacist who has completed the training described in subsection (B)(1) may administer a vaccine approved by the Centers for Disease Control pursuant to written order or prescription of a practitioner for a specific patient of that practitioner.

(B) The written protocol must provide that:

(1) A pharmacist seeking authorization to administer a vaccine approved pursuant to this section shall successfully complete a course of training accredited by the Accreditation Council for Pharmacy Education or a similar health authority or professional body approved by the Board of Pharmacy and the Board of Medical Examiners. Training must comply with current Centers for Disease Control guidelines and must include study materials, hands-on training, and techniques for administering vaccines and must provide instruction and experiential training in the following content areas:

(a) mechanisms of action for vaccines, contraindications, drug interactions, and monitoring after vaccine administration;

(b) standards for adult vaccination practices;

(c) basic immunology and vaccine protection;

(d) vaccine-preventable diseases;

(e) recommended vaccination schedules;

(f) vaccine storage management;

(g) biohazard waste disposal and sterile techniques;

(h) informed consent;

(i) physiology and techniques for vaccine administration;

(j) prevaccine and postvaccine assessment and counseling;

(k) vaccination record management;

(l) management of adverse events, including identification, appropriate response, emergency procedures, documentation, and reporting;

(m) understanding of vaccine coverage by federal, state, and local entities;

(n) needle-stick management.

(2) A pharmacist administering vaccinations without an order or prescription of a practitioner pursuant to this section shall:

(a) obtain the informed consent of the person being vaccinated or

that person's guardian;

(b) maintain a copy of the vaccine administration in that person's record and provide a copy to the person or the person's guardian;

(c) notify that person's designated physician or primary care provider of a vaccine administered;

(d) report administration of all vaccinations to the South Carolina Immunization Registry in compliance with regulations established by the Department of Health and Environmental Control as the department may require; provided, however, that the phase-in schedule provided in Regulation 61-120 for reporting vaccinations does not apply to vaccinations administered pursuant to this section;

(e) maintain a current copy of the written protocol at each location at which a vaccination is administered pursuant to this section.

(3) For purposes of this section, "informed consent" means a written document that is signed and dated by an individual; or if the individual is a minor, by a parent or legal guardian; or if the individual is incapacitated or without sufficient mental capacity, by a designated health care agent pursuant to a health care power of attorney, that at a minimum includes:

(a) an explanation of the vaccine or treatment that is written in language that is understandable to the average lay person;

(b) language that clearly indicates that the individual agrees to the administration of the vaccine or treatment, that the individual has had time to thoughtfully and voluntarily accept or decline the vaccine or treatment free from coercion; and

(c) if the vaccine or treatment is an investigational medical product or is made available through an Emergency Use Authorization by the federal Food and Drug Administration, a statement acknowledging its investigational nature and the civil liability protections afforded it by law.

(4) A pharmacy intern or pharmacy technician may administer vaccinations under the direct supervision of a pharmacist who has completed vaccination training as required by item (1) if the pharmacy intern or pharmacy technician:

(a) is certified through a basic life support or CPR provider-level course that is approved by the Board of Medical Examiners and the Board of Pharmacy and completes a practical training program that is approved by the Accreditation Council for Pharmacy Education (ACPE) which includes, at a minimum, hands-on injection technique and the recognition and treatment of emergency reactions to vaccines; and

(b) if a pharmacy technician, the pharmacy technician must be:

(i) state-certified; or

(ii) nonstate-certified but administered vaccinations and received training pursuant to the federal Public Readiness and Emergency Preparedness (PREP) Act prior to the effective date of this section and registers with the Board of Pharmacy as an authorized vaccination provider.

(5) A pharmacist or pharmacy technician administering vaccinations shall, as part of the current continuing education requirements, complete no less than one hour of continuing education each license year regarding administration of vaccinations.

(C) Informed consent must be documented in accordance with the written protocol issued pursuant to this section.

(D) All records required by this section must be maintained in the pharmacy for a period of at least ten years from the date of the last vaccination or dispensing for adults and at least thirteen years from the date of the last vaccination or dispensing for minors.

(E) All documentation, records, and copies required by this section may be stored electronically.

**Joint Pharmacist Administered Vaccines Committee, qualifications, recommendations**

SECTION 6. Section 40-43-200 of the S.C. Code is amended to read:

Section 40-43-200. (A) There is created a Joint Pharmacist Administered Vaccines Committee as a committee to the Board of Medical Examiners which consists of seven members. The committee is comprised of two physicians selected by the Board of Medical Examiners, two pharmacists selected by the Board of Pharmacy, and two advanced practice nurse practitioners selected by the Board of Nursing. One member of the Department of Health and Environmental Control designated by the director of the department also shall serve on the committee. Members of the committee may not be compensated for their service on the board and may not receive mileage, per diem, and subsistence as otherwise authorized by law for members of state boards, committees, and commissions.

(B) The committee shall meet at least once annually and at other times as may be necessary. Five members constitute a quorum for all meetings. At its initial meeting, and at the beginning of each year thereafter, the committee shall elect from its membership a chairperson to serve for a one-year term.

(C) The committee shall assist and advise the Board of Medical Examiners in determining whether a specific vaccine is appropriate for

administration by a pharmacist without a written order or prescription of a practitioner pursuant to Section 40-43-190. For a specific vaccine recommended by the committee to the Board of Medical Examiners, the committee also must submit a proposed written protocol for the purpose of authorizing pharmacists to administer the vaccine.

**Joint Pharmacist Administered Vaccines Committee, initial recommendation submission**

SECTION 7. The Joint Pharmacist Administered Vaccines Committee must submit its initial recommendations to the board no later than four months after the passage of this act, and periodically thereafter as determined by the committee.

**Time effective**

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

Ratified the 27th day of June, 2024

Approved the 2nd day of July, 2024

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**No. 222**

(R247, H4087)

**AN ACT TO AMEND THE SOUTH CAROLINA CODE OF LAWS BY AMENDING SECTION 12-6-3410, RELATING TO CORPORATE INCOME TAX CREDIT FOR CORPORATE HEADQUARTERS, SO AS TO PROVIDE CHANGES TO STAFFING REQUIREMENTS AND CERTAIN TIMING; BY AMENDING SECTION 12-6-3460, RELATING TO THE RECYCLING FACILITY TAX CREDIT DEFINITIONS, SO AS TO LOWER THE MINIMUM LEVEL OF INVESTMENT FOR A QUALIFIED RECYCLING FACILITY AND TO INCLUDE CERTAIN PRODUCTS TO THE DEFINITION OF "POSTCONSUMER WASTE MATERIAL"; BY AMENDING SECTIONS 12-10-20, 12-10-30, 12-10-40, 12-10-45, 12-10-50,**

**12-10-60, AND 12-10-80, ALL RELATING TO THE ENTERPRISE ZONE ACT OF 1995, SO AS TO ALLOW REMOTE EMPLOYEES WORKING IN SOUTH CAROLINA TO BE INCLUDED IN CERTAIN JOB CREATION REQUIREMENTS AND TO CREATE A NEW PROVISION TO INCENTIVIZE CERTAIN COMPANIES; BY AMENDING SECTION 12-10-95, RELATING TO THE ENTERPRISE ZONE ACT CREDIT AGAINST WITHHOLDING FOR RETRAINING, SO AS TO ADD WAREHOUSING AND DISTRIBUTION AND TO PROVIDE FOR APPROVAL REQUIREMENTS; AND BY AMENDING SECTION 12-6-1120, RELATING TO GROSS INCOME, SO AS TO PROVIDE FOR CERTAIN DEDUCTIONS TO TAXABLE INCOME.**

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

**Headquarters credit**

SECTION 1. Section 12-6-3410 of the S.C. Code is amended to read:

Section 12-6-3410. (A) A taxpayer or a business unit of a taxpayer establishing a headquarters facility in this State, or expanding or adding to an existing headquarters facility, is allowed a credit against any tax due pursuant to Section 12-6-510, Section 12-6-530, Section 12-11-20, or Section 12-20-50 or any combination thereof.

(B) In order to qualify for this credit, each of the following criteria must be satisfied:

(1) The qualifying real property costs of the headquarters facility or expansion must be at least fifty thousand dollars. Qualifying real property costs are:

(a) costs incurred in the design, preparation, and development of establishing or expanding a headquarters facility; and

(b)(i) direct construction costs; or

(ii) with respect to leased facilities, direct-lease costs during the first five years of operations for the headquarters facility.

(2) The headquarters establishment or expansion must result in the creation of
at least forty new full-time jobs that are:

(a) performing headquarters-related functions and services;

(b) have gross wages equal to or greater than twice the per capita income of this State based on the most recent per capita income data available as of the end of the taxpayer's taxable year in which the jobs

are filled and are subject to withholding pursuant to Chapter 8 of this title; and

(c) are provided a benefits package, including health care.

(C) The amount of the credit is equal to the sum of:

(1) twenty percent of the qualifying real property costs listed in subsection (B)(1); and

(2) twenty percent of the cost for tangible personal property if:

(a) the personal property is:

(i) capitalized as personal property for income tax purposes under the Internal Revenue Code; and

(ii) purchased for the establishment or expansion of the taxpayer's or business unit's headquarters facility; and

(iii) used for headquarters-related functions and services in South Carolina.

(D) Reserved.

(E)(1)(a) For headquarters facilities which are constructed, the credit can only be claimed for the taxable year when the facility is placed in service for federal income tax purposes. For facilities completed in phases and placed in service for federal income tax purposes in more than one taxable year, the credit can be claimed for the taxable year in which that phase of the headquarters facility is placed in service for federal income tax purposes. Credits cannot be obtained for costs incurred more than three taxable years after the taxable year in which the first property for which the credit is claimed is placed in service. Notwithstanding any other provisions of this subsection, if the entire project is not completed by the end of the three taxable years, the credit may be claimed for all property placed in service within the time limitation set forth in the preceding sentence. The credit may not be claimed for personal property which is replacing personal property for which the credit can be claimed. The department may for good cause extend the time for incurring additional costs and for claiming the credit if the project is not completed within the time period allowed by this subsection. For purposes of this subsection the term "property" includes qualifying real property and qualifying personal property.

(b) for leased real property the credit must be claimed in the taxable year in which the first direct-lease costs are incurred.

(2) The taxpayer must meet the staffing requirements of subsection (B)(2) by the end of the second taxable year following the last taxable year for which the credit is claimed. The taxpayer must have documented plans to meet the initial staffing requirements at the time the credit is claimed. If the taxpayer fails to meet the staffing requirements within the time required by this subsection, the taxpayer must increase its tax

liability for the current taxable year by an amount equal to the amount of credit, or any portion of the credit for which the taxpayer would not qualify, which was used to reduce tax in the earlier years.

(F) The credit provided in this section is nonrefundable, but an unused credit may be carried forward for ten years. In addition, a taxpayer may assign its rights to the unused credit to a succeeding taxpayer if the taxpayer transfers all or substantially all of the assets of the taxpayer or all or substantially all of the assets of a trade, business, or operating division of a taxpayer to the succeeding taxpayer, and the succeeding taxpayer maintains the headquarters facility. No credit may be claimed for a taxable year during which the taxpayer or succeeding taxpayer fails to meet the qualifying employment requirements provided in this section and the carry-forward period is not extended for any year in which the credit may not be claimed for failure to meet the employment requirements. The credit may be claimed for a taxable year in the unextended carry-forward period if the taxpayer or succeeding taxpayer requalifies for the credit by meeting the employment requirements during that taxable year.

(G) If a fee-in-lieu arrangement under Section 4-29-67 is entered into with respect to all or part of property involving a headquarters, and the taxpayer claiming the credit provided under this section is treated as the owner of the property for federal income tax purposes, then the taxpayer must be treated as the owner of the property for purposes of the credit provided by this section.

(H) To the extent that this credit applies to the cost of certain property, the basis of the property for South Carolina income tax purposes must be reduced by the amount of the credit claimed with respect to the property. This basis reduction does not reduce the basis or limit or disallow any depreciation allowable under the law of this State for other than income tax purposes, even if the depreciation is based upon or otherwise relates to income tax depreciation including, without limitation, basis or depreciation which is allowable under this title for property tax purposes. If the taxpayer fails to meet the staffing requirements of subsection (B)(2), the taxpayer may increase the basis of the property by the amount of the original basis reduction with regard to that property in the year in which the credit is recaptured.

(I) The amount of a credit allowed under this section must be reduced by the amount of any past-due debt owed this State by the taxpayer.

(J) As used in this section:

(1) “Headquarters” means the facility or portion of a facility where headquarters staff employees are employed, and where the taxpayer’s or the taxpayer’s business unit’s financial, personnel, legal, planning,

information technology, or other headquarters-related functions are handled either on a regional, national, or global basis. A headquarters must be a regional headquarters or a national corporate headquarters as defined below. A taxpayer or taxpayer's business unit doing business solely within South Carolina does not meet the definition of a headquarters.

(a) National headquarters must be the sole office or location in the nation or the world for the taxpayer or a business unit of the taxpayer with multistate operations and must handle headquarters-related functions on a national or global basis. The function and purpose of the national headquarters is to plan, direct, and control all aspects of the taxpayer or taxpayer's business unit's operations, and it has final authority over regional offices, operating facilities, or any other office of the taxpayer or business unit.

(b) Regional headquarters must be the sole office or location in the region for the taxpayer or a business unit of the taxpayer with multistate operations within the region and must handle headquarters-related functions on a regional basis. A regional headquarters performs a function that is separate from the management of operational facilities within the region. A regional headquarters performs functions similar to the national headquarters, but within a more limited area. For purposes of this section, "region" or "regional" means a geographic area comprised of either:

(i) at least five states, including this State; or

(ii) two or more states, including this State, if the entire business operations of the taxpayer or business unit of the taxpayer are performed within fewer than five states.

(c) A "business unit" is an organizational unit of a taxpayer that is defined by the particular product or category of products it sells.

(2) "New job" means a job created by an employer in this State at the time a new facility, or expansion is initially staffed, but does not include a job created when an employee is shifted from an existing location in this State to work in a new or expanded facility. An employee may be employed at a temporary location in this State pending completion of the new facility or expansion.

(3) "Full time" means a job requiring a minimum of thirty-five hours of an employee's time a week for the entire normal year of operations or a job requiring a minimum of thirty-five hours of an employee's time for a week for a year in which the employee was initially hired for or transferred to the headquarters in this State.

(4) "Headquarters-related functions and services" are those functions involving financial, personnel, administrative, legal, planning,

information technology, or similar business functions.

(5) "Headquarters staff employees" means executive, administrative, or professional workers performing headquarters-related functions and services.

(a) An executive employee is a full-time employee in which at least eighty percent of his business functions involve the management of the enterprise and directing the work of at least two employees. An executive employee has the authority to hire and fire or has the authority to make recommendations related to hiring, firing, advancement, and promotion decisions, and an executive employee must customarily exercise discretionary powers.

(b) An administrative employee is a full-time employee who is not involved in manual work and whose work is directly related to management policies or general headquarters operations. An administrative employee must customarily exercise discretion and independent judgment.

(c) A professional employee is an employee whose primary duty is work requiring knowledge of an advanced type in a field of science or learning. This knowledge is characterized by a prolonged course of specialized study. The work must be original and creative in nature, and the work cannot be standardized over a specific period of time. The work must require consistent exercise of discretion and the employee must spend at least eighty percent of the time performing headquarters-related functions and services.

(6) Reserved.

(7) Reserved.

(8) "Direct-lease costs" are cash lease payments. The term does not include any accrued, but unpaid, costs.

(9) "Remote employee" is a full-time employee of the taxpayer, including an employee who works for a business unit of the taxpayer, who works for the taxpayer performing headquarters-related functions or services either completely or partially from a home office or other residence within the State.

**Qualified recycling facility credit**

SECTION 2. Section 12-6-3460(A)(3) and (4) of the S.C. Code is amended to read:

(3) "Qualified recycling facility" means a facility certified as a qualified recycling facility by a duly authorized representative of the department which includes all real and personal property incorporated

into or associated with the facility located or to be located within this State that will be used by the taxpayer to manufacture or fabricate products for sale composed of at least fifty percent postconsumer waste material by weight or by volume. The minimum level of investment for a qualified recycling facility must be at least one hundred fifty million dollars incurred by the end of the fifth calendar year after the year in which the taxpayer begins construction or operation of the facility.

(4) "Postconsumer waste material" means any product generated by a business or consumer which has served its intended end use and which has been separated from the solid waste stream for the purpose of recycling and includes, but is not limited to, scrap metal and iron, and used plastics, paper, glass, batteries, solar panels, turbines and related structures, and rubber.

**Job development credit**

SECTION 3. Sections 12-10-20 through 12-10-80 of the S.C. Code are amended to read:

Section 12-10-20. The General Assembly finds:

(1) that the economic well-being of the citizens of the State is enhanced by the increased development and growth of industry within the State, and that it is in the best interests of the State to induce the location or expansion of manufacturing, processing, services, distribution, warehousing, research and development, corporate offices, technology intensive, and certain tourism projects within the State to promote the public purpose of creating new jobs within the State;

(2) that the inducement provided in this chapter will encourage the creation of jobs which would not otherwise exist and will create sources of tax revenues for the State and its political subdivisions;

(3) the powers to be granted to the Coordinating Council for Economic Development by this chapter and the purposes to be accomplished are proper governmental and public purposes and that the inducement of the location or expansion of manufacturing, processing, services, distribution, warehousing, research and development, corporate offices, and certain tourism facilities within the State is of paramount importance.

(4) The state's per capita income has not reached the United States average and certain rural, less developed counties have not experienced capital investment, per capita income, and job growth at a level equal to the state's average. The economic well-being of these areas will not be sustained without significant incentive to induce capital investment and

job creation.

Section 12-10-30. As used in this chapter:

(1) "Council" means the Coordinating Council for Economic Development.

(2) "Department" means the South Carolina Department of Revenue.

(3) "Employee" means an employee of the qualifying business who works full time in this State for the benefit of the project, including a remote employee as defined in item (20).

(4) "Gross wages" means wages subject to withholding.

(5) "Job development credit" means the amount a qualifying business may claim as a credit against employee withholding pursuant to Sections 12-10-80 and 12-10-81 and a revitalization agreement.

(6) "New job" means a job created or reinstated as defined in Section 12-6-3360(M)(3).

(7) "Qualifying business" means a business that meets the requirements of Section 12-10-50 and other applicable requirements of this chapter.

(8) "Project" means an investment for one or more purposes pursuant to this chapter needed for a qualifying business to locate, remain, or expand in this State and otherwise fulfill the requirements of this chapter.

(9) "Preliminary revitalization agreement" means the application by the qualifying business for benefits pursuant to Section 12-10-80 or 12-10-81 if the council approves the application and agrees in writing at the time of approval to allow the approved application to serve as the preliminary revitalization agreement. The date of the preliminary revitalization agreement is the date of the council approval.

(10) "Revitalization agreement" means an executed agreement entered into between the council and a qualifying business that describes the project and the negotiated terms and conditions for a business to qualify for a job development credit pursuant to Section 12-10-80 or 12-10-81.

(11) "Qualifying expenditures" means those expenditures that meet the requirements of Section 12-10-80(C) or 12-10-81(D).

(12) "Withholding" means employee withholding pursuant to Chapter 8 of this title.

(13) "Technology employee" means an employee at a technology-intensive facility as defined in Section 12-6-3360(M)(14) who is directly engaged in technology-intensive activities at that facility.

(14) "Production employee" means an employee directly engaged in manufacturing or processing at a manufacturing or processing facility as defined in Section 12-6-3360(M).

(15) "Retraining agreement" means an agreement entered into between a business and the council in which a qualifying business is entitled to retraining credit pursuant to Section 12-10-95.

(16) "Retraining credit" means the amount that a business may claim as a credit against withholding pursuant to Section 12-10-95 and the retraining agreement.

(17) "Technology-intensive activities" means the design, development, and introduction of new products or innovative manufacturing processes, or both, through the systematic application of scientific and technical knowledge at a technology-intensive facility as defined in Section 12-6-3360(M).

(18) "Significant business" means a qualifying business making a significant capital investment as defined in Section 12-44-30(7).

(19) "Related person" includes any entity or person that bears a relationship to a business as provided in Internal Revenue Code Section 267 or 707(b). The related person must be a "qualifying business" as defined in item (7), except that the related person does not have to meet the requirements of Section 12-10-50(A)(1) or, in case the qualifying business qualifies for the credit against withholding for retraining pursuant to Section 12-10-95 of this chapter, the related person does not have to meet the requirements of Section 12-10-50(B)(1).

(20) "Remote employee" is a full-time employee who is a resident of this State, North Carolina, or Georgia who is subject to withholding pursuant to Chapter 8 who is hired to fill a job for the project and who works either completely or partially from a home office or other residence within or without this State.

Section 12-10-40. The amount of benefits available to qualified businesses is determined by the county designation as defined in Section 12-6-3360(B), in which the project is located. For purposes of determining the amount of job development credit that may be claimed for a job filled by a remote employee, the physical location of the project must be used and not the physical location where the remote employee provides services.

Section 12-10-45. A tire manufacturer that has over one billion dollars in capital investment in this State and employs over five thousand workers in this State may, after certification by the council, designate up to two census tracts, but not to exceed four hundred acres per site, in any area of the State as an enterprise zone provided that a capital investment of at least one hundred million dollars be made over a five-year period at each site. The tire manufacturer's capital investment must be based

upon the gross cost of assets in South Carolina as shown on the manufacturer's property tax and fee-in-lieu of property tax filings. The council will certify the manufacturer if it determines that the available incentives are appropriate for the new project, the total benefits of the new project exceed the costs to the public, and the qualifying business otherwise fulfills the requirements of this chapter.

Section 12-10-50. (A) To qualify for the benefits provided in this chapter, a business must be located within this State and must:

(1) be engaged primarily in a business of the type identified in Section 12-6-3360;

(2) provide a benefits package, including health care, to full-time employees hired for the project;

(3) enter into a revitalization agreement that is approved by the council and that describes a minimum job requirement and minimum capital investment requirement for the project as provided in Section 12-10-90; and

(4) have negotiated incentives that the council has determined are appropriate for the project, and the council shall certify that:

(a) the total benefits of the project exceed the costs to the public; and

(b) the business otherwise fulfills the requirements of this chapter.

(B) To qualify for benefits pursuant to Section 12-10-95, a business must:

(1) be engaged in manufacturing or processing operations or technology-intensive activities at a manufacturing, processing, or technology-intensive facility as defined in Section 12-6-3360(M);

(2) provide a benefits package, including health care, to employees being retrained; and

(3) enter into a retraining agreement with the council.

Section 12-10-60. The council may enter into a revitalization agreement with each qualifying business with respect to the project. The terms and provisions of each revitalization agreement must be determined by negotiations between the council and the qualifying business. The decision to enter into a revitalization agreement with a qualifying business is solely within the discretion of the council based on the appropriateness of the negotiated incentives to the project and the determination that approval of the project is in the best interests of the State. The revitalization agreement must set a date by which the qualifying business shall have met the required investment and

employment levels. After meeting the thresholds, the qualifying business shall document the actual costs of the project in a manner acceptable to the council. A business is allowed to count jobs filled by remote employees towards the minimum employment levels. While remote employees count towards a business's minimum employment levels, a business may claim job development credits on a remote employee only to the extent the remote employee was subject to withholdings pursuant to Chapter 8. A business which pays withholdings on a remote employee in South Carolina and some other state can only claim job development credits to the extent of the South Carolina withholdings.

Section 12-10-80. (A) A business that qualifies pursuant to Section 12-10-50(A) and has certified to the council that the business has met the minimum job requirement and minimum capital investment provided for in the revitalization agreement may claim job development credits as determined by this section.

(1) A business may claim job development credits against its withholding on its quarterly state withholding tax return for the amount of job development credits allowable pursuant to this section.

(2) A business that is current with respect to its withholding tax and other tax due and owing the State and that has maintained its minimum employment and investment levels identified in the revitalization agreement may claim the credit on a quarterly basis beginning with the first quarter after the council's certification to the department that the minimum employment and capital investment levels were met for the entire quarter. If a qualifying business is not current as to all taxes due and owing to the State as of the date of the return on which the credit would be claimed, without regard to extensions, the business may claim the credit only in an amount reduced by the amount of taxes due and owing to the State as of the date of the return on which the credit is claimed.

(3) A qualifying business may claim its initial job development credit only after the council has certified to the department that the qualifying business has met the required minimum employment and capital investment levels.

(4) To be eligible to apply to the council to claim a job development credit, a qualifying business shall create at least ten new, full-time jobs, as defined in Section 12-6-3360(M), at the project described in the revitalization agreement within five years of the effective date of the agreement.

(5) A qualifying business is eligible to claim a job development credit pursuant to the revitalization agreement for not more than fifteen

years.

(6) A qualifying business's job development credits shall be suspended during any quarter in which the qualifying business fails to maintain one hundred percent of the minimum job requirement set forth in the qualifying business's revitalization agreement. A company only may claim credits on jobs, including a range of jobs approved by the council, as set forth in the company's final revitalization agreement.

(7) Credits may be claimed beginning the quarter subsequent to the council's approval of the qualifying business's documentation that the minimum jobs and capital investment requirements have been met.

(8) To the extent any return of an overpayment of withholding that results from claiming job development credits is not used as permitted by subsection (C) or by Section 12-10-95, it must be treated as misappropriated employee withholding.

(9) Job development credits may not be claimed for purposes of this section with regard to an employee whose job was created in this State before the taxable year of the qualifying business in which it enters into a preliminary revitalization agreement.

(10) If a qualifying business claims job development credits pursuant to this section, it shall make its payroll books and records available for inspection by the council and the department at the times the council and the department request. Each qualifying business claiming job development credits pursuant to this section shall file with the council and the department the information and documentation requested by the council or department respecting employee withholding, the job development credit, and the use of any overpayment of withholding resulting from the claiming of a job development credit according to the revitalization agreement.

(11) Each qualifying business claiming in excess of ten thousand dollars in a calendar year must furnish to the council and to the department a report that itemizes the sources and uses of the funds. The report must be filed with the council and the department no later than June thirtieth following the calendar year in which the job development credits are claimed, except when a qualifying business obtains the written approval by the council for an extension of that date. Extensions may be granted only for good cause shown. The department shall impose a penalty pursuant to Section 12-54-210 for all reports filed after June thirtieth or the approved extension date, whichever is later. The department shall audit each qualifying business with claims in excess of ten thousand dollars in a calendar year at least once every three years to verify proper sources and uses of the funds.

(12) Each qualifying business claiming ten thousand dollars or less

in any calendar year must furnish a report prepared by the company that itemizes the sources and uses of the funds. This report must be filed with the council and the department no later than June thirtieth following the calendar year in which the job development credits are claimed, except when a qualifying business obtains the written approval by the council for an extension of that date. Extensions may be granted only for good cause shown. The department shall impose a penalty pursuant to Section 12-54-210 for all reports filed after June thirtieth or the approved extension date, whichever is later.

(13) An employer may not claim an amount that results in an employee's receiving a smaller amount of wages on either a weekly or on an annual basis than the employee would receive otherwise in the absence of this chapter.

(14)(a) For purposes of this chapter, a qualifying business may designate up to two related persons whose jobs and investments located at the project may be included to determine whether the qualifying business has met and maintained the minimum job requirement and minimum capital investment requirement. Qualified expenditures described in subsection (C) incurred by a related person may be treated as though such qualifying expenditures were incurred by the qualifying business for purposes of claiming the job development credit and each related person may claim the job development credit for the jobs created by such related person and include any qualifying expenditures of the qualifying business or another related person for purposes of claiming the job development credit as if created and made by the related person.

(b) A single-member limited-liability company that is not regarded as an entity separate from its owner and a qualified subchapter "S" subsidiary as defined in Section 1361(b)(3)(B) of the Internal Revenue Code that is not regarded as a separate entity from the "S" corporation that owns its stock, is treated as the qualifying business for all purposes under this chapter, including for purposes of claiming the job development credit against withholding but it counts as a related person for purposes of the limit described in subitem (a).

(B)(1) The maximum job development credit a qualifying business may claim for new employees is limited to the lesser of withholding tax paid to the State on a quarterly basis or the sum of the following amounts:

(a) two percent of the gross wages of each new employee who earns $8.74 or more an hour but less than $11.64 an hour;

(b) three percent of the gross wages of each new employee who earns $11.65 or more an hour but less than $14.55 an hour;

(c) four percent of the gross wages of each new employee who earns $14.56 or more an hour but less than $21.84 an hour; and

(d) five percent of the gross wages of each new employee who earns $21.85 or more an hour.

(2) The hourly gross wage figures in item (1) must be adjusted annually by an inflation factor determined by the Revenue and Fiscal Affairs Office.

(C) To claim a job development credit, the qualifying business must incur qualified expenditures at the project or for utility or transportation improvements that serve the project. To be qualified, the expenditures must be:

(1) incurred during the term of the revitalization agreement, including a preliminary revitalization agreement, or within sixty days before the council's receipt of an application for benefits pursuant to this section;

(2) authorized by the revitalization agreement; and

(3) used for any of the following purposes:

(a) training costs and facilities;

(b) acquiring and improving real property whether constructed or acquired by purchase, or in cases approved by the council, acquired by capital or operating lease with at least a five-year term or otherwise;

(c) improvements to both public and private utility systems including water, sewer, electricity, natural gas, and telecommunications;

(d) fixed transportation facilities including highway, rail, water, and air;

(e) construction or improvements of real property and fixtures constructed or improved primarily for the purpose of complying with local, state, or federal environmental laws or regulations;

(f) employee relocation expenses, but only for those employees to whom the company is paying gross wages at least two times the lower of the per capita income for either the state or the county in which the project is located;

(g) financing the costs of a purpose described in items (a) through (f);

(h) training for all relevant employees that enable a company to export or increase a company's ability to export its products, including training for logistics, regulatory, and administrative areas connected to the company's export process and other export process training that allows a qualified company to maintain or expand its business in this State;

(i) apprenticeship programs;

(j) quality improvement programs of the South Carolina Quality Forum.

(D)(1) The amount of job development credits a qualifying business

may claim for its use for qualifying expenditures is limited according to the designation of the county as defined in Section 12-6-3360(B), as follows:

(a) one hundred percent of the maximum job development credits may be claimed by businesses located in counties designated as "Tier IV";

(b) eighty-five percent of the maximum job development credits may be claimed by businesses located in counties designated as "Tier III";

(c) seventy percent of the maximum job development credits may be claimed by businesses located in counties designated as "Tier II"; or

(d) fifty-five percent of the maximum job development credits may be claimed by businesses located in counties designated as "Tier I".

(2) The amount that may be claimed as a job development credit by a qualifying business is limited by this subsection and by the revitalization agreement. The council may approve a waiver of ninety-five percent of the limits provided in item (1) for a significant business as defined in Section 12-10-30(18).

(3) The designation of the county in which the project is located on the date the application for job development credit incentives is received in the office of the council remains in effect for the entire period of the revitalization agreement.

(E) The council shall certify to the department the maximum job development credit for each qualifying business. After receiving certification, the department shall remit an amount equal to the difference between the maximum job development credit and the job development credit actually claimed to the State Rural Infrastructure Fund as defined and provided in Section 12-10-85.

(F) Any job development credit of a qualifying business permanently lapses upon expiration or termination of the revitalization agreement. If an employee is terminated, the qualifying business immediately must cease to claim job development credits as to that employee.

(G) For purposes of the job development credit allowed by this section, an employee is a person whose job was created in this State.

(H) Job development credits may not be claimed by a governmental employer who employs persons at a closed or realigned military installation as defined in Section 12-10-88(E).

(I) A taxpayer who qualifies for the job development credit pursuant to the provisions of this section and who is located in a multicounty business or industrial park jointly established pursuant to Section 13 of Article VIII of the Constitution of this State is allowed a job development credit equal to the amount allowed pursuant to subsection

(D) for the designation of the county which has the lowest development status of the counties containing the park if:

(1) the park is developed and established on the geographical boundary of adjacent counties; and

(2) the written agreement, pursuant to Section 4-1-170, requires revenue from the park to be allocated to each county on an equal basis.

(J) Where the qualifying business that creates new jobs under this section is a qualifying service-related facility as defined in Section 12-6-3360(M)(13), the determination of the number of jobs created for purposes of eligibility must be based on the total number of new jobs created within five years of the effective date of the revitalization agreement, without regard to monthly or other averaging.

(K) For purposes of this section, the job and per capita income thresholds contained in the definition of "qualifying service-related facility" as set forth in Section 12-6-3360(M)(13)(b) must be modified to read as set forth in the item below:

(1) a business, other than a business engaged in legal, accounting, banking, or investment services (including a business identified under NAICS Section 55) or retail sales, which has a net increase of at least:

(a) one hundred twenty-five jobs on the payroll for a single location;

(b) one hundred jobs at a single location comprised of a building or portion of a building that has been vacant for at least twelve consecutive months before the business's investment;

(c) seventy-five jobs on the payroll for a single location and the jobs have an average cash compensation level of more than one and one-half times the lower of state per capita income or per capita income in the county where the jobs are located;

(d) fifty jobs on the payroll for a single location and the jobs have an average cash compensation level of more than twice the lower of state per capita income or per capita income in the county where the jobs are located; or

(e) twenty-five jobs on the payroll for a single location and the jobs have an average cash compensation level of more than two and one-half times the lower of state per capita income or per capita income in the county where the jobs are located.

(L) For purposes of this section and notwithstanding the provisions of Section 12-10-50(A)(1), subject to the discretion of the council, the definition of "qualifying service-related facility" as defined in Section 12-6-3360(M)(13), as modified by Section 12-10-80(K)(1), shall also include the following:

(1) a business engaged in legal, accounting, banking, or investment

services operating at a single facility if the single facility would otherwise qualify as a qualifying service-related facility as defined in Section 12-6-3360(M)(13)(b), as modified by subsections (J) and (K) above, if not for the exclusions contained in Section 12-6-3360(M)(13)(b);

(2) a business generally engaged in retail sales at a single facility if that single facility would otherwise qualify as a qualifying service-related facility as defined in Section 12-6-3360(M)(13)(b), as modified by subsections (J) and (K) above, if not for the exclusions contained in Section 12-6-3360(M)(13)(b) and provided that no retail sales are conducted at that single facility; and

(3) in making a determination with regard to Section 12-10-80(L)(1) or Section 12-10-80(L)(2), the council may consider the following:

(a) the percentage of such business's annual gross receipts from services or other income-producing activity derived from customers or clients located outside of South Carolina for the twelve months preceding the month in which such business applies to the council to claim a job development credit and such percentage may not be less than seventy-five percent;

(b) the nature of the new jobs to be created at the project;

(c) the wages of the new jobs to be created at the project;

(d) the capital investment of the project; and

(e) the potential for expansion or growth of the business or industry.

(M) If the council approves an operating lease as an eligible expenditure under Section 12-10-80(C) for a qualifying business that qualifies pursuant to subsections (K) or (L) and will create at least twenty-five jobs for a project and all of the jobs will have a cash compensation level of more than two and one-half times the per capita income in the county where the project is located, the qualifying business may be reimbursed on an annual basis for lease payments before the certification to the council that the qualifying business has met the minimum job requirement and minimum capital investment provided for in the revitalization agreement. The reimbursements may begin in the first year in which the business creates at least ten new jobs that meet such wage threshold and may continue for up to ten years. This subsection does not apply to build-to-suit lease payments.

**Retraining credit**

SECTION 4. Section 12-10-95 of the S.C. Code is amended to read:

Section 12-10-95. (A)(1) Subject to the conditions in this section, a business engaged in manufacturing or processing operations or technology-intensive activities at a manufacturing, processing, or technology-intensive facility as defined in Section 12-6-3360(M), or warehousing and distribution, and that meets the requirements of Section 12-10-50(B)(2), with approval from the State Board for Technical and Comprehensive Education, may claim as a credit against withholding one thousand dollars a year for the retraining of a production or technology or warehousing and distribution first line employee or immediate supervisor who has been continuously employed by the business for a minimum of one year and is a full-time employee, so long as retraining is necessary for the qualifying business to remain competitive or to introduce new technologies. In addition to the yearly limits, the retraining credit claimed against withholding may not exceed five thousand dollars over five consecutive years for each retrained production or technology first line employee or immediate supervisor.

(2) Retraining programs that are eligible for the credit include, but are not limited to:

(a) retraining of current employees on newly installed equipment;

(b) retraining of current employees on newly implemented technology, such as computer platforms, software implementation and upgrades, Total Quality Management, ISO 9000, and self-directed work teams; and

(c) retraining of current employees for the purpose of upskilling, management development, or recertification in production-related competencies.

Executive training, personal enrichment training, and cross-training of employees on equipment or technology that is not new to the company are not eligible for the credit.

(B) A qualifying business is eligible to claim as a retraining credit against withholding the lower amount of the following:

(1) the retraining credit for the applicable withholding period as determined by subsection (A); or

(2) withholding paid to the State for the applicable withholding period.

(C) All retraining must be approved by the State Board for Technical and Comprehensive Education.

(D) An employer may not receive the credit allowed by this section if the employer requires that the employee reimburse or pay the employer for the direct costs of retraining, or if the employee is required to reimburse or pay the employer indirectly through the forfeiture of leave time, vacation time, or other compensable time. Direct costs of retraining include instructor salaries, development of retraining programs, purchase or rental of materials and supplies, textbooks and manuals, instructional media, such as video tapes, presentations, equipment used for retraining only, not to include production equipment, and reasonable travel costs as limited by the state's travel expense reimbursement policy.

(E) The qualifying business must expend at least one dollar on retraining eligible employees for every dollar claimed as a credit against withholding for retraining. All training costs, including costs in excess of the retraining credits and matching funds, are the responsibility of the business.

(F) A qualifying business may not claim retraining credit for training provided to the following production or technology first line employees or immediate supervisors:

(a) temporary or contract employees; and

(b) employees who are included in the minimum job requirement of an ongoing revitalization agreement, including a preliminary revitalization agreement and for which the company is eligible to claim job development credits. A qualifying business may claim retraining credits for employees who are not subject to the job development credit but who are included in the base employment of an ongoing revitalization agreement provided that such employees meet the requirements for retraining eligibility included in this section.

(G) In addition to another provision of this section, the retraining credit allowed by this section is for:

(1) training included in a registered apprenticeship program; and

(2) retraining for all relevant employees that enable a company to export or increase its ability to export its products, including training for logistics, regulatory, and administrative areas connected to its export process and other export process training that allows a qualified company to maintain or expand its business in this State.

(H) There is hereby established an annual renewal fee of two hundred fifty dollars to be billed and collected by the department.

(I)(1) All approved programs and training must be reviewed annually by the State Board for Technical and Comprehensive Education.

(2) A qualifying business may contract with the State Board for Technical and Comprehensive Education or a subsidiary technical

college to assist with additional program administration beyond what is required in a typical retraining agreement for a quarterly fee not to exceed twenty percent of the retraining credit amount claimed. Fees must be collected on a quarterly basis.

(3) Every three years, the Department of Revenue must audit any business that claimed the job retraining credit pursuant to this section during that time period, solely for the purpose of verifying proper sources and uses of the credits.

(J) The State Board for Technical and Comprehensive Education shall establish policies and procedures to provide the oversight and review provisions of this section. By November fifteenth of each year, the State Board for Technical and Comprehensive Education shall submit a statewide aggregated report detailing the utilization of the retraining credit pursuant to this section, as well as the board's activities in regard to oversight, to the Governor, the Chairman of the House Ways and Means Committee, the Chairman of the Senate Finance Committee, the Coordinating Council for Economic Development, and the Department of Revenue. Also, the board shall make the report available in a conspicuous place on the website maintained by the board.

**Gross income modification**

SECTION 5. Section 12-6-1120 of the S.C. Code is amended by adding:

(11) For taxable years beginning on or after January 1, 2023, and prior to January 1, 2029, there shall be subtracted from taxable income any grant or subgrant pursuant to the Broadband Equity, Access, and Deployment Program established pursuant to 47 U.S.C. 1702, or the American Rescue Plan Act of 2021, Public Law 117-2, received for the purpose of making investments in broadband infrastructure but only to the extent that such grant or subgrant is included in the corporation's taxable income, as defined under the Internal Revenue Code of 1986.

**Time effective**

SECTION 6. This act takes effect upon approval by the Governor and first applies to income tax years beginning after 2023, except that SECTION 3 first applies to income tax years beginning after 2020.

Ratified the 27th day of June, 2024

Approved the 2nd day of July, 2024

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**No. 223**

(R248, H4116)

**AN ACT TO AMEND THE SOUTH CAROLINA CODE OF LAWS BY ADDING SECTION 40-19-295 SO AS TO PROHIBIT THE DIVIDING OF FEES OR OTHER COMPENSATION CHARGED OR RECEIVED BY LICENSEES OF THE BOARD OF FUNERAL SERVICES WITH ANOTHER PERSON, PARTNERSHIP, CORPORATION, ASSOCIATION, OR LEGAL ENTITY FOR THE DELIVERY OR PERFORMANCE OF FUNERAL SERVICES; BY AMENDING SECTION 32-7-100, RELATING TO PENALTIES FOR VIOLATIONS OF PROVISIONS REGULATING PRENEED FUNERAL CONTRACTS, SO AS TO INCREASE FINE RANGES AND PERMANENTLY BAR PERSONS CONVICTED OF A FELONY FROM CONDUCTING PRENEED CONTRACT SALES; BY AMENDING SECTION 32-7-110, RELATING TO THE INVESTIGATION OF COMPLAINTS AGAINST UNLICENSED PRENEED CONTRACT SALES PROVIDERS, SO AS TO PROVIDE COMPLAINTS TO WHICH THE DEPARTMENT SHALL RESPOND MAY BE WRITTEN OR ORAL; BY AMENDING SECTION 32-8-305, RELATING TO DEFINITIONS IN THE SAFE CREMATION ACT, SO AS TO REVISE A DEFINITION; BY AMENDING SECTION 32-8-360, RELATING TO PENALTIES FOR VIOLATIONS OF THE SAFE CREMATION ACT, SO AS TO INCREASE MONETARY FINES AND REQUIRE IMMEDIATE REPORTING OF VIOLATIONS**

**TO THE BOARD; BY AMENDING SECTION 32-8-385, RELATING TO REQUIREMENTS THAT CREMATORIES EMPLOY CERTAIN TRAINED STAFF TO PERFORM CREMATIONS, SO AS TO REQUIRE ALL CREMATIONS BE PERFORMED BY THESE TRAINED STAFF MEMBERS; BY AMENDING SECTION 40-19-20, RELATING TO DEFINITIONS CONCERNING THE REGULATION OF EMBALMERS AND FUNERAL DIRECTORS, SO AS TO REVISE CERTAIN DEFINITIONS; BY AMENDING SECTION 40-19-30, RELATING TO THE REQUIREMENT OF LICENSURE TO PRACTICE FUNERAL SERVICES, SO AS TO PROVIDE CONDUCT CONSTITUTING THE PRACTICE OF FUNERAL SERVICES INCLUDES PARTIES WHO EXERCISE ANY CONTROL OR AUTHORITY OVER A FUNERAL ESTABLISHMENT OR ITS EMPLOYEES, AGENTS, OR REPRESENTATIVES, AND TO PROHIBIT CORPORATIONS, PARTNERSHIPS, OR INDIVIDUALS IN WHOSE NAME APPEARS THE NAME OF A PERSON WITH A REVOKED OR LAPSED LICENSE FROM HAVING A LICENSE TO OPERATE A FUNERAL HOME; BY AMENDING SECTION 40-19-70, RELATING TO POWERS AND DUTIES OF THE BOARD, SO AS TO PROVIDE BOARD MEMBERS, COMMITTEES, OR EMPLOYEES MAY NOT BE LIABLE FOR ACTS PERFORMED IN THE COURSE OF THEIR OFFICIAL DUTIES IN THE ABSENCE OF MALICE SHOWN AND PROVEN IN A COURT OF COMPETENT JURISDICTION; BY AMENDING SECTION 40-19-80, RELATING TO INSPECTORS EMPLOYED BY THE BOARD, SO AS TO INSTEAD REQUIRE THE BOARD TO EMPLOY AT LEAST TWO INVESTIGATORS WHO MAY BE LICENSED EMBALMERS AND FUNERAL DIRECTORS WITH CERTAIN EXPERIENCE BUT WHO HAVE NOT BEEN DISCIPLINED; BY AMENDING SECTION 40-19-110, RELATING TO CONDUCT CONSTITUTING UNPROFESSIONAL CONDUCT BY A LICENSEE OF THE BOARD, SO AS TO MAKE GRAMMATICAL CHANGES; BY AMENDING SECTION 40-19-115, RELATING TO JURISDICTION OF THE BOARD, SO AS TO INCLUDE UNLICENSED PERSONS WITHIN THIS JURISDICTION; BY AMENDING SECTION 40-19-200, RELATING TO PENALTIES FOR VIOLATIONS OF PROVISIONS PROHIBITING THE PRACTICE OF FUNERAL SERVICES WITHOUT A LICENSE OR USING FALSE INFORMATION TO OBTAIN SUCH LICENSURE, SO AS TO**

**INCREASE MONETARY FINES, AND TO SUBJECT PERSONS WHO AID AND ABET UNLICENSED PERSONS OR ENTITIES IN ENGAGING IN THE PRACTICE OF FUNERAL SERVICE WITHOUT LICENSURE TO THESE PENALTIES; BY AMENDING SECTION 40-19-230, RELATING TO QUALIFICATIONS FOR LICENSURE AS AN EMBALMER OR A FUNERAL DIRECTOR, SO AS TO REVISE DISQUALIFICATIONS FOR CRIMINAL CONVICTIONS; BY AMENDING SECTION 40-19-250, RELATING TO CONTINUING EDUCATION PROGRAMS, SO AS TO REQUIRE CERTAIN COURSEWORK IN ETHICS, TO REQUIRE FOUR HOURS OF TOTAL ANNUAL COURSEWORK, TO REQUIRE A CERTAIN PORTION OF THIS COURSEWORK TO BE IN ETHICS, AND TO REQUIRE A CERTAIN PORTION OF THIS COURSEWORK BE COMPLETED IN PERSON; BY AMENDING SECTION 40-19-265, RELATING TO FUNERAL HOME, BRANCH FUNERAL HOME, AND CREMATORY PERMITTING REQUIREMENTS, SO AS TO REVISE MANAGER RESIDENCY REQUIREMENTS; BY AMENDING SECTION 40-19-290, RELATING TO THE FIDUCIARY RESPONSIBILITIES OF FUNERAL ESTABLISHMENTS WITH RESPECT TO PAYMENTS RECEIVED FOR FUNERAL MERCHANDISE BEING PURCHASED, SO AS TO PROVIDE THESE PAYMENTS MUST BE KEPT IN A TRUST ACCOUNT UNTIL THE MERCHANDISE IS DELIVERED FOR ITS INTENDED USE OR IS DELIVERED INTO THE PHYSICAL POSSESSION OF THE PURCHASER; AND BY AMENDING SECTION 40-19-20, RELATING TO DEFINITIONS CONCERNING THE REGULATION OF EMBALMERS, FUNERAL DIRECTORS, AND RELATED FACILITIES, SO AS TO REVISE CERTAIN DEFINITIONS.**

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

**Embalmers and funeral directors, funeral business participation prohibitions**

SECTION 1. Chapter 19, Title 40 of the S.C. Code is amended by adding:

Section 40-19-295. No licensee whose license has been suspended or revoked, or who has applied for a license but whose application has

been denied, may participate in any manner in a business licensed by the board until that person has obtained a license or the person's license has been restored. No business licensed by the board may permit or allow a person whose license has been suspended or revoked, or any person who has applied for a license but whose application has been denied, to participate in any manner in the business licensed by the board.

**Preneed funeral contracts, penalties for violations**

SECTION 2. Section 32-7-100(A) of the S.C. Code is amended to read:

(A) A person wilfully violating the provisions of this chapter is guilty of a:

(1) misdemeanor, if the value of money obtained or sought to be obtained is ten thousand dollars or less and, upon conviction or plea, the person may be fined up to twenty-five thousand dollars, or imprisoned for not more than six months, or both;

(2) felony, if the value of money obtained or sought to be obtained is more than ten thousand dollars, and, upon conviction or plea, the person must be fined in the discretion of the court in an amount not less than twenty-five thousand dollars, or imprisoned for not more than ten years, or both;

(3) in addition, a person convicted of a misdemeanor pursuant to this section may be prohibited from entering into further preneed funeral contracts, if the department, in its discretion, finds that the offense is sufficiently grievous. A person convicted of a felony pursuant to this chapter is subject to the following additional penalties when the value of the money obtained or sought to be obtained is:

(a) twenty-five thousand dollars or less, upon conviction or plea, the person is subject to a two-year suspension from conducting preneed funeral contract sales, and restitution as may be ordered by the court;

(b) greater than twenty-five thousand dollars, but less than one hundred thousand dollars, upon conviction or plea, the person is subject to a five-year suspension from conducting preneed funeral contract sales, and restitution as may be ordered by the court;

(c) greater than one hundred thousand dollars, upon conviction or plea, the person is subject to a ten-year suspension from conducting preneed funeral contract sales, and restitution as may be ordered by the court.

**Preneed funeral contracts, investigations**

SECTION 3. Section 32-7-110(B) of the S.C. Code is amended to read:

(B)(1) Upon its own initiative or upon receipt of a written complaint, the department shall investigate a funeral home, funeral director, individual, or business the department has reason to believe is acting as a provider without a license. In order to conduct its investigation, the department shall review the books, records, and accounts of:

(a) a funeral home or funeral director licensed by the State Board of Funeral Service even if the funeral home or funeral director is not licensed to sell preneed funeral contracts; or

(b) an individual or business the department has reason to believe is acting as a provider without a license. If the department discovers that a violation of this chapter has occurred by a funeral home, funeral director, individual, or business that is not licensed to sell preneed funeral contracts, the department may initiate an action for a violation of this chapter in the Administrative Law Court for a cease and desist order or assess an administrative fine not to exceed ten thousand dollars, or both.

(2) A person aggrieved by an order of the department may request a contested case hearing before the Administrative Law Court.

**Safe Cremation Act, definition**

SECTION 4. Section 32-8-305(9) of the S.C. Code is amended to read:

(9) "Cremation" means the technical process using either alkaline hydrolysis or heat and flame that reduces human remains to components of either liquid and bone, or bone fragments, and which may include the pulverization of the bone fragments.

**Safe Cremation Act, penalties for violations**

SECTION 5. Section 32-8-360(B) of the S.C. Code is amended to read:

(B) A person who violates a provision of this chapter is subject to a civil fine of up to twenty-five thousand dollars. A licensed funeral director or embalmer who violates a provision of this chapter must be reported to the State Board of Funeral Service for immediate investigation and disciplinary proceedings.

**Safe Cremation Act, cremation training requirements**

SECTION 6. Section 32-8-385 of the S.C. Code is amended to read:

Section 32-8-385. (A) A crematory is required to have in its employ at least one individual who has been trained in performing cremations by the licensed crematory authority who is his employer, and also by the manufacturer of the equipment to be used to perform cremations, or by some other appropriate method as provided by regulation of the board. Upon meeting the requirements of this section, this individual is considered to be sufficiently trained for the purposes of this chapter. All cremations must be performed by a trained individual who has registered with the board.

(B) To be registered with the board, the individual must:

(1) complete an application in the format prescribed by the board;

(2) successfully complete a crematory operator training course approved by the board of not less than eight hours of instructional time;

(3) have not been convicted of or pled guilty to a crime that directly relates to the duties, responsibilities, or fitness of the occupation or profession; and

(4) pay a fee as established in regulation not to exceed fifty dollars.

(C) Registrations under this section must be renewed every two years by submitting a renewal application and paying a renewal fee established in regulation not to exceed fifty dollars.

(D) Registered, trained individuals are subject to applicable provisions of Section 40-1-110, Chapter 19, Title 40, Chapter 8, Title 32, and board regulations.

**Embalmers and funeral directors, definitions**

SECTION 7. Section 40-19-20(11) and (21) of the S.C. Code is amended to read:

(11) “Funeral director” means a person licensed by the board to engage for hire, for direct or indirect compensation, or for profit or benefit, and in exchange for or related to the profession of arranging, directing, or supervising funerals.

(21) “Owner” means a sole proprietor, partnership, limited partnership, corporation, limited liability corporation, or any business entity possessing authority or control over a funeral establishment or its employees, agents, or representatives.

**Embalmers and funeral directors, funeral home licensure prohibitions**

SECTION 8. Section 40-19-30 of the S.C. Code is amended to read:

Section 40-19-30. (A) It is unlawful for a person to engage in the practice of funeral service unless the person is licensed in accordance with this chapter. A person who engages or participates actively in directing or in the management of a funeral establishment is considered to be in the practice of funeral service.

(B) No permit to operate a funeral home may be issued to a corporation, partnership, or individual when the name of either an unlicensed person or a person whose license has been revoked or is suspended appears in the name of the corporation, partnership, or individually owned business. This prohibition does not apply to established funeral homes existing prior to July 1, 1969.

**Embalmers and funeral directors, board members and staff liability limitations**

SECTION 9. Section 40-19-70 of the S.C. Code is amended to read:

Section 40-19-70. In addition to the powers and duties as provided for in this chapter, the board also has those powers and duties as set forth in Section 40-1-70. A member of the board, or its committees or employees, may not be liable for acts performed in the course of their official duties, except when gross negligence is shown and proven in a court of competent jurisdiction in this State.

**Embalmers and funeral directors, inspector staffing and qualifications**

SECTION 10. Section 40-19-80 of the S.C. Code is amended to read:

Section 40-19-80. The board shall employ at least two inspectors who must be licensed embalmers and funeral directors with no fewer than five consecutive years' experience as a licensee under this chapter but who have not been disciplined during the time of their past or current licensure under this chapter.

**Embalmers and funeral directors, releases of dead human bodies**

SECTION 11. Section 40-19-110(9) of the S.C. Code is amended to read:

(9) refusing to properly release a dead human body to the custody of the person or entity that has the legal right to affect a release. The release must include payment for the actual services provided by the initial funeral home as transferor of the dead human body over to the receiving transferee. The receiving transferee funeral home is responsible for the payment to the transferring funeral home at the time of the transfer of the dead human body;

**Embalmers and funeral directors, board jurisdiction**

SECTION 12. Section 40-19-115 of the S.C. Code is amended to read:

Section 40-19-115. The board has jurisdiction over the actions of licensees, unlicensed persons, and former licensees as provided for in Section 40-1-115.

**Embalmers and funeral directors, prohibited conduct, penalties**

SECTION 13. Section 40-19-200 of the S.C. Code is amended to read:

Section 40-19-200. A person who practices or offers to practice funeral service or who aids and abets any unlicensed person or unlicensed entity to engage in the practice of funeral service in this State in violation of this chapter or who knowingly submits false information for the purpose of obtaining a license is guilty of a misdemeanor and, upon conviction, may be fined up to twenty-five thousand dollars or imprisoned for not more than six months, or both.

**Embalmers and funeral directors, embalmer qualifications, licensure**

SECTION 14. Section 40-19-230(A) and (B) of the S.C. Code is amended to read:

Section 40-19-230. (A) A person may be issued a license as an embalmer if the person:

(1) is at least eighteen years of age;

(2) has not been convicted of or pled guilty to a crime that directly relates to the duties, responsibilities, or fitness of the occupation or profession;

(3) has a high school education or the equivalent of a high school education, the equivalence to be determined by the board;

(4) has completed successfully a regular course in an embalming college accredited by the American Board of Funeral Service Education and approved by the board;

(5) has completed a minimum of twenty-four months of service pursuant to Section 40-19-240 as an embalmer under the direct supervision of a licensed embalmer actively engaged in the practice of embalming in this State;

(6) has passed an examination prescribed by the board.

(B) A person may be issued a license as a funeral director if the person:

(1) is at least eighteen years of age;

(2) has not been convicted of or pled guilty to a crime that directly relates to the duties, responsibilities, or fitness of the occupation or profession;

(3) has a high school education or the equivalent of a high school education and has a minimum of two years of successful attendance at an accredited academic college or successful completion of a regular course of not less than one year, twelve scholastic months, in an accredited mortuary college;

(4) has completed a minimum of twenty-four months of service pursuant to Section 40-19-240 as a funeral director under the direct supervision of a licensed funeral director actively engaged in the practice of funeral directing in this State;

(5) has passed an examination prescribed by the board.

**Embalmers and funeral directors, continuing education, exemptions**

SECTION 15. Section 40-19-250 of the S.C. Code is amended to read:

Section 40-19-250. The board shall develop in regulation a continuing education program and each licensee must attend a minimum of four credit hours annually, of which one credit hour must be an ethics in funeral service course. This continuing education program must be offered, at a minimum, four times a year at locations easily accessible to participants. Three of the four required hours must be available through correspondence courses, with at least two of the four hours requiring the physical attendance of the licensee. This continuing education requirement does not apply to a person who is not the manager of record

of a funeral home, funeral establishment, or mortuary if the person has been licensed for thirty or more years and is sixty years old or older.

**Embalmers and funeral directors, permit requirements**

SECTION 16. Section 40-19-265 of the S.C. Code is amended to read:

Section 40-19-265. (A) A permit for a funeral home may be issued if the applicant:

(1) submits an application on a form approved by the board;

(2) submits to and successfully passes an inspection approved by the board;

(3) submits the applicable nonrefundable fee;

(4) designates a manager who meets the requirements of Section 40-19-20(16) and is current and in good standing with the board and lives within a radius of seventy-five miles of the establishment;

(5) possesses the necessary equipment or merchandise, or both, required by regulation;

(6) is in full compliance with Section 40-19-290.

(B) A permit for a branch funeral home may be issued if the applicant:

(1) submits an application on a form approved by the board;

(2) submits to and successfully passes an inspection approved by the board;

(3) submits the applicable nonrefundable fee;

(4) designates a manager who meets the requirements of Section 40-19-20(16) and is current and in good standing with the board and lives within a radius of seventy-five miles of the establishment;

(5) possesses the necessary equipment or merchandise, or both, required by regulation;

(6) is in full compliance with Section 40-19-290;

(7) provides the name of the parent funeral home.

(C) A permit for a retail sales outlet may be issued if the applicant:

(1) submits an application on a form approved by the board;

(2) submits to and successfully passes an inspection approved by the board;

(3) submits the applicable nonrefundable fee;

(4) is in full compliance with Section 40-19-290.

(D) A permit for a crematory may be issued if the applicant:

(1) submits an application on a form approved by the board;

(2) submits to and successfully passes an inspection approved by the board;

(3) submits the applicable nonrefundable fee;

(4) designates a manager who meets the requirements of Section 40-19-20(16) and is current and in good standing with the board and lives within a radius of seventy-five miles of the establishment;

(5) possesses the necessary equipment or merchandise, or both, required by regulation;

(6) is in full compliance with Section 40-19-290;

(7) provides evidence of employment of a factory-trained operator.

(E) An application for a permit issued pursuant to this section must identify every person having the ability to direct the management or policies, or both, of the funeral establishment including, but not limited to, corporate officers employed, shareholders, partners, and other representatives of the corporation or business.

**Embalmers and funeral directors, definitions**

SECTION 17. Section 40-19-20(6) and (7) of the S.C. Code is amended to read:

(6) "Cremation" means the technical process using either alkaline hydrolysis or heat and flame that reduces human remains to components of either liquid and bone, or bone fragments, and which may include the pulverization of the bone fragments.

(7) "Crematory" means an establishment in which cremation occurs.

**Embalmers and funeral directors, merchandise sales and payments**

SECTION 18. Section 40-19-290(E) of the S.C. Code is amended to read:

(E) Other than payments received for at-need funeral merchandise and funeral services, all payments received by any establishment licensed under this chapter for funeral merchandise being purchased must be placed in a trust account in a federally insured institution until the merchandise is delivered for its intended funeral services use as provided in the contract and in accordance with the sales agreement. Upon its own initiative or upon receipt of a complaint, the South Carolina Department of Consumer Affairs shall undertake investigations; review the books, records, and accounts of any establishment licensed under this chapter; subpoena witnesses; require audits and reports; and conduct hearings to determine if payments are being received in violation of the provisions of Chapter 7, Title 32.

**Embalmers and funeral directors, definition**

SECTION 19. Section 40-19-20(12)(c) of the S.C. Code is amended to read:

(c) a means of showing photographs or other representations of available caskets and other necessary funeral supplies;

**Time effective**

SECTION 20. This act takes effect July 1, 2024.

Ratified the 27th day of June, 2024

Approved the 2nd day of July, 2024

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**No. 224**

(R250, H4820)

**AN ACT TO AMEND THE SOUTH CAROLINA CODE OF LAWS BY AMENDING SECTION 50-11-580, RELATING TO THE SEASON FOR HUNTING AND TAKING MALE WILD TURKEYS, BAG LIMITS, TAKING FEMALE WILD TURKEYS, AND ANNUAL REPORTING, SO AS TO ADJUST THE HUNTING SEASON AND LIMIT FOR TAKING MALE WILD TURKEYS; BY AMENDING SECTION 50-11-500, RELATING TO PROVISIONS APPLICABLE TO WILD TURKEY, SO AS TO PROHIBIT HUNTING, KILLING, OR POSSESSING A MALE WILD TURKEY WITH A BEARD LESS THAN SIX INCHES LONG AND A TAIL FAN THAT IS NOT FULLY DEVELOPED, AND STALKING A WILD TURKEY BEHIND A DECOY OR TAILFAN; BY AMENDING SECTION 50-11-590, RELATING TO YOUTH TURKEY HUNTING WEEKEND, SO AS TO ADJUST THE DATES AND TO PROVIDE FOR THE ALLOWED TOTAL BAG LIMIT; BY AMENDING SECTION 50-9-640, RELATING TO WILD TURKEY TAG FEES, SO AS TO INCREASE TAG FEES; TO PROVIDE A SUNSET CLAUSE; AND BY**

**REPEALING SECTION 5 OF ACT 91 OF 2021, RELATING TO CATCH AND SIZE LIMITS FOR THE TAKING, POSSESSING, LANDING, SELLING, OR PURCHASING OF CERTAIN FISH FROM THE STATE'S WATERS.**

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

**Season for hunting and taking wild male turkeys, bag limits, annual report**

SECTION 1. Section 50-11-580 of the S.C. Code is amended to read:

Section 50-11-580. (A) The season for the hunting and taking of legal male wild turkeys is April 3 through May 3.

(B) The season bag limit for legal male wild turkeys is two statewide for residents and two statewide for nonresidents. The daily bag limit is one, provided that only one legal male wild turkey may be taken prior to April 10.

(C) It is unlawful for a person to take a female wild turkey unless authorized by the department pursuant to Section 50-11-500(3).

(D) The department shall provide an annual report on wild turkey resources in South Carolina to the Chairman of the Senate Fish, Game and Forestry Committee and the Chairman of the House Agriculture and Natural Resources Committee, to include an itemized list of expenditures from the revenues generated from the sale of resident and nonresident wild turkey tags.

**Provisions applicable to wild turkey, beard length**

SECTION 2. Section 50-11-500 of the S.C. Code is amended by adding:

(10) It is unlawful for a person to hunt, kill, or possess a male wild turkey with a beard less than six inches long and a tail fan that is not fully developed.

**Provisions applicable to wild turkey, stalking**

SECTION 3. Section 50-11-500 of the S.C. Code is amended by adding:

(11) It is unlawful for a person to stalk a wild turkey while behind a

decoy or tail fan. Tail fans include those made of real or synthetic feathers or an image or likeness of a tail fan applied to any material.

**Youth Turkey Hunting Weekend**

SECTION 4. Section 50-11-590 of the S.C. Code is amended to read:

Section 50-11-590. (A) The Saturday and Sunday preceding April 3 and the Saturday and Sunday following May 3 is declared to be a "Youth Turkey Hunting Weekend" for youth turkey hunters under eighteen years of age.

(B) A license or tag requirement is waived for a youth turkey hunter during a Youth Turkey Hunting Weekend.

(C) The total bag limit for the two Youth Turkey Hunting Weekends combined is one legal male wild turkey that shall count toward the season bag limit. A youth turkey hunter who has reached the season bag limit on or prior to May 3 must not harvest or attempt to harvest a turkey during the Youth Turkey Hunting Weekend following May 3 but is permitted to call turkeys for another youth turkey hunter. A turkey harvest must be reported to the electronic harvest reporting system pursuant to the provisions of Section 50-11-546.

(D) Youth turkey hunters who have not completed the hunter education program pursuant to Section 50-9-310, and who hunt during a Youth Turkey Hunting Weekend, must be accompanied by an adult who is at least twenty-one years of age. An adult must not harvest or attempt to harvest a turkey during a Youth Turkey Hunting Weekend but is permitted to call turkeys for a youth turkey hunter.

**Wild turkey tag fees**

SECTION 5. Section 50-9-640 of the S.C. Code is amended to read:

Section 50-9-640. (A) For the privilege of hunting wild turkey, in addition to the required hunting license and big game permit, a person must possess a wild turkey tag issued in the person's name. The fee for a:

(1) resident is twenty-five dollars for two tags, one dollar of which may be retained by the license sales vendor; and

(2) nonresident is one hundred twenty-five dollars for two tags, one dollar of which may be retained by the license sales vendor.

(B) There is no cost for wild turkey tags for persons under the age of sixteen, lifetime licensees, and gratis licensees upon request to the

department.

**Sunset provision**

SECTION 6. The amendments contained in SECTIONS 1 and 4 of this act are repealed on May 11, 2028, and the text of these SECTIONS shall revert back to the language contained in the South Carolina Code of Laws as of January 1, 2024.

**Repeal**

SECTION 7. SECTION 5 of Act 91 of 2021 is repealed.

**Time effective**

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

Ratified the 27th day of June, 2024

Approved the 2nd day of July, 2024

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**No. 225**

(R251, H4843)

**AN ACT TO AMEND THE SOUTH CAROLINA CODE OF LAWS BY ADDING SECTION 48-39-148 SO AS TO AUTHORIZE CERTAIN BUSINESSES WITH A DECK OR OTHER STRUCTURE LOCATED IN A CRITICAL AREA TO USE THE STRUCTURE FOR PURPOSES OF PROVIDING FOOD OR BEVERAGE SERVICES TO PATRONS.**

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

**Wetlands**

SECTION 1. Chapter 39, Title 48 of the S.C. Code is amended by adding:

Section 48-39-148. Notwithstanding any statutory or regulatory provision of law to the contrary, including any provision of or authorized by this chapter, a business that contains a grandfathered or permitted commercial deck or marina that is located in a critical area may utilize such structure for purposes of providing food and beverage services for consumption by patrons of the business.

**Time effective**

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

Ratified the 27th day of June, 2024

Approved the 2nd day of July, 2024

ASHLEY HARWELL-BEACH
Code Commissioner
P. O. Box 11489
Columbia, S.C. 29211