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**S. 550**

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Currently residing in the Senate Committee on **Medical Affairs**

Summary: Abolish DHEC

**HISTORY OF LEGISLATIVE ACTIONS**

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3/11/2015 Senate Referred to Committee on **Medical Affairs** ([Senate Journal‑page 5](file:///h:\SJ%20Archive\2015\03-11-15.docx))

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**VERSIONS OF THIS BILL**

[3/11/2015](file:///p:\pprever\2015-16\550_20150311.docx)

**A** **BILL**

TO AMEND CHAPTER 1, TITLE 44, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL, SO AS TO RENAME THE CHAPTER THE “DEPARTMENT OF BEHAVIORAL AND PUBLIC HEALTH” AND TO REORGANIZE THE CHAPTER TO CREATE THE DIVISION OF PUBLIC HEALTH, TO DELEGATE TO THE DIVISION THE RESPONSIBILITIES OF THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL PERTAINING TO PUBLIC HEALTH, TO ABOLISH THE DEPARTMENT AND BOARD OF HEALTH AND ENVIRONMENTAL CONTROL, TO PROVIDE FOR THE APPOINTMENT OF A DIRECTOR OF THE DEPARTMENT BY THE GOVERNOR, AND TO TRANSFER ENVIRONMENTALLY RELATED RESPONSIBILITIES OF THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL TO THE DIVISION OF ENVIRONMENTAL CONTROL OF THE DEPARTMENT OF AGRICULTURE; TO AMEND CHAPTER 9, TITLE 44, RELATING, IN PART, TO THE DEPARTMENT OF MENTAL HEALTH, SO AS TO CREATE THE DIVISION OF MENTAL HEALTH WITHIN THE DEPARTMENT OF BEHAVIORAL AND PUBLIC HEALTH, TO MAKE CONFORMING CHANGES REFLECTING THE TRANSFER OF RESPONSIBILITIES TO THE DIVISION, AND TO ABOLISH THE DEPARTMENT OF MENTAL HEALTH AND THE MENTAL HEALTH COMMISSION; TO AMEND CHAPTER 49, TITLE 44, RELATING TO THE DEPARTMENT OF ALCOHOL AND OTHER DRUG ABUSE SERVICES, SO AS TO CREATE THE DIVISION OF ALCOHOL AND OTHER DRUG ABUSE SERVICES WITHIN THE DEPARTMENT OF BEHAVIORAL AND PUBLIC HEALTH, TO MAKE CONFORMING CHANGES REFLECTING THE TRANSFER OF RESPONSIBILITIES TO THE DIVISION, AND TO ABOLISH THE DEPARTMENT OF ALCOHOL AND OTHER DRUG ABUSE SERVICES; BY ADDING CHAPTER 57 TO TITLE 46 SO AS TO CREATE A DIVISION OF ENVIRONMENTAL PROTECTION WITHIN THE DEPARTMENT OF AGRICULTURE AND TRANSFER TO THE DIVISION THE DIVISIONS, OFFICES, AND PROGRAMS OF THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL THAT PERFORM FUNCTIONS RELATED TO ENVIRONMENTAL REGULATION AND PROTECTION; TO AMEND SECTION 46‑3‑10, RELATING TO THE DUTIES OF THE DEPARTMENT OF AGRICULTURE, SO AS TO ADD THE ADMINISTRATION OF THE DIVISION OF ENVIRONMENTAL PROTECTION; TO AMEND SECTION 1‑30‑10, AS AMENDED, RELATING TO DEPARTMENTS OF STATE GOVERNMENT, SO AS TO DELETE THE DEPARTMENT OF ALCOHOL AND OTHER DRUG ABUSE SERVICES, THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL, AND THE DEPARTMENT OF MENTAL HEALTH, AND TO ADD THE DEPARTMENT OF BEHAVIORAL AND PUBLIC HEALTH; TO AMEND SECTION 1‑30‑20, RELATING TO THE DEPARTMENT OF ALCOHOL AND OTHER DRUG ABUSE SERVICES, SO AS TO CHANGE THE REFERENCE TO THE DEPARTMENT OF BEHAVIORAL AND PUBLIC HEALTH; AND TO REPEAL SECTION 1‑30‑45 RELATING TO THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL AND SECTION 1‑30‑70 RELATING TO THE DEPARTMENT OF MENTAL HEALTH.

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

SECTION 1. Effective July 1, 2015:

(1) there is created the Department of Behavioral and Public Health;

(2) the divisions, offices, and programs of the Department of Health and Environmental Control that perform health‑related functions shall become a division of the Department of Behavioral and Public Health with the director of the department being deemed the head of the division unless otherwise specified, and all relevant powers and duties assigned to the Department of Health and Environmental Control being transferred to and devolved upon the Department of Behavioral and Public Health;

(3) the divisions, offices, and programs of the Department of Alcohol and Other Drug Abuse Services shall become a division of the Department of Behavioral and Public Health with the director of the department being deemed the head of the division unless otherwise specified, and all powers and duties assigned to the Department of Alcohol and Other Drug Abuse Services being transferred to and devolved upon the Department of Behavioral and Public Health;

(4) the divisions, offices, and programs of the Department of Mental Health shall become a division of the Department of Behavioral and Public Health with the director of the department being deemed the head of the division unless otherwise specified, and all powers and duties assigned to the Department of Mental Health being transferred to and devolved upon the Department of Behavioral and Public Health;

(5) the divisions, offices, and programs of the Department of Health and Environmental Control that perform functions related to regulation and protection of the environment shall become a division of the Department of Agriculture with the director of that department being deemed the head of the division unless otherwise specified, and all relevant powers and duties assigned to the Department of Health and Environmental Control being transferred to and devolved upon the Department of Agriculture; and

(6) the South Carolina Department of Alcohol and Other Drug Abuse Services, South Carolina Mental Health Commission, the South Carolina Department of Mental Health, the South Carolina Department of Health and Environmental Control, and the South Carolina Board of Health and Environmental Control shall be abolished.

SECTION 2. Chapter 1, Title 44 of the 1976 Code is amended to read:

“CHAPTER 1

Department of ~~Health and Environmental Control~~

Behavioral and Public Health

Article 1

General Provisions

Section 44‑1‑10. There is created the Department of Behavioral and Public Health comprised of:

(1) the Division of Public Health;

(2) the Division of Alcohol and Other Drug Abuse Services; and

(3) the Division of Mental Health.

Section 44‑1‑20. ~~There is created the South Carolina Department of Health and Environmental Control which shall be administered under the supervision of the South Carolina Board of Health and Environmental Control. The board shall consist of eight members, one from each congressional district, and one from the State at large to be appointed by the Governor, upon the advice and consent of the Senate. The member who is appointed at large shall serve as the chairman of the board. The Governor may remove the chairman of the board pursuant to Section 1‑3‑240(B); however, the Governor only may remove the other board members pursuant to Section 1‑3‑240(C). The terms of the members shall be for four years and until their successors are appointed and qualify. All vacancies shall be filled in the manner of the original appointment for the unexpired portion of the term only. In making these appointments, race, gender, and other demographic factors should be considered to ensure nondiscrimination, inclusion, and representation to the greatest extent possible of all segments of the population of the State; however, consideration of these factors in making an appointment in no way creates a cause of action or basis for an employee grievance for a person appointed or for a person who fails to be appointed.~~ (A) The Governor shall appoint a Director of the Department of Behavioral and Public Health pursuant to Section 1‑30‑10(B)(1) who manages the department and who may appoint deputies for the divisions pursuant to Section 1‑30‑10(E).

(B) If a vacancy occurs in the department when the Senate is not in session, the Governor may appoint a director to fill the vacancy until the Senate acts on the appointment.

(C) The director is subject to removal by the Governor as provided for in Section 1‑3‑240.

(D) Until the Governor appoints the initial director after creation of the department on July 1, 2015, the Director of the Department of Alcohol, Drug and Other Drug Abuse Services shall serve as the Director of the Department of Behavioral and Public Health.

Section 44‑1‑30. ~~The Board shall meet at least quarterly and the members shall receive such compensation for their services as is provided by law for members of boards and commissions.~~ The director shall have all authority and duties as provided for in Chapter 30, Title 1.

~~Section 44‑1‑40. The board shall select a director for the department who shall serve a four‑year term and who shall have such authority and perform such duties as may be directed by the board. The salary of the director shall be fixed by the board, upon approval of the State Budget and Control Board. For any vacancy occurring in the office of director on or after February 1, 1995, the board, after consultation with and approval by the Governor, must submit the name of its appointee to the Senate for the Senate’s advice and consent. On or after February 1, 1995, the board may remove a director only after consultation with and approval by the Governor.~~

~~Section 44‑1‑50. The board may conduct such administrative reviews as may be required by law, as considered necessary by the board to render a final agency determination in matters involving the issuance, denial, renewal or revocation of permits, licenses, or other actions of the department which may give rise to a contested case pursuant to Chapter 23 of Title 1.~~

~~The board shall provide for the administrative organization of the department and shall consolidate and merge existing duties, functions, and officers of the former agencies as may be necessary for economic and efficient administration. Provided, however, that the board may appoint such advisory boards as it considers necessary to carry out the functions of Sections 44‑1‑10 to 44‑1‑70, and there shall be provided a compensation for their services as provided by the law for members of boards and commissions.~~

Section 44‑1‑60. (A) All ~~department~~ decisions of the Department of Behavioral and Public Health involving the issuance, denial, renewal, suspension, or revocation of permits, licenses, certificates, or other actions of the department which may give rise to a contested case ~~shall~~ must be made using the procedures set forth in this section.

(B) The department ~~staff~~ shall comply with all requirements for public notice, receipt of public comments, and public hearings before making a ~~department~~ decision. To the maximum extent possible, the department shall use a uniform system of public notice of permit applications, opportunity for public comment, and public hearings.

~~(C)~~ ~~The initial decision involving the issuance, denial, renewal, suspension, or revocation of permits, licenses, or other action of the department shall be a staff decision.~~

~~(D)~~(C) In making a ~~staff~~ decision ~~on any~~ about a permit, license, certification or other approval, the department ~~staff~~ shall take into consideration all material comments received in response to the public notice in determining whether to issue, deny or condition ~~such~~ a permit, license, certification or other approval. At the time that ~~such staff~~ a decision is made, the department shall issue a ~~department~~ written decision~~,~~ and shall base its ~~department~~ decision on the administrative record, which ~~shall~~ must consist of the application and supporting exhibits, all public comments and submissions, and other documents contained in the supporting file for the permit, license, certification or other approval. The administrative record ~~may~~ also may include material readily available at the department, or published materials which are generally available and need not be physically included in the same file as the rest of the record as long as such materials are specifically referred to in the department decision. The department ~~decision need not be issued for routine permits for which no adverse public comments have been received~~ is not required to issue a written decision for issuance of routine permits for which the department has not received adverse public comments.

~~(E)~~(D)(1) ~~Notice of a~~ The department ~~decision must be sent~~ shall send a notice of a decision by certified mail, returned receipt requested to the applicant, permittee, licensee, certificate holder, and affected persons who have requested in writing to be notified. Affected persons may request in writing to be notified by regular mail or electronic mail in lieu of certified mail. ~~Notice of staff decisions for which a department decision is not required pursuant to subsection (D) must be provided~~ The department shall send notice of a decision which the department is not required to provide in writing pursuant to subsection (C) by mail, delivery, or other appropriate means to the applicant, permittee, licensee, certificate holder, and affected persons who have requested in writing to be notified.

~~(2)~~ ~~The staff decision becomes the final agency decision fifteen calendar days after notice of the staff decision has been mailed to the applicant, unless a written request for final review accompanied by a filing fee is filed with the department by the applicant, permittee, licensee, or affected person.~~

~~(3)~~ ~~The filing fee must be in the amount of one hundred dollars unless the department establishes a fee schedule by regulation after complying with the requirements of Article 1, Chapter 23, Title 1. This fee must be retained by the department in order to help defray the costs of the proceedings and legal expenses.~~

~~(F)~~ ~~No later than sixty calendar days after the date of receipt of a request for final review, a final review conference must be conducted by the board, its designee, or a committee of three members of the board appointed by the chair. If the board declines in writing to schedule a final review conference or if a final review conference is not conducted within sixty calendar days, the staff decision becomes the final agency decision, and an applicant, permittee, licensee, or affected person requests pursuant to subsection (G) a contested case hearing before the Administrative Law Court. The department shall set the place, date, and time for the conference; give the applicant and affected persons at least ten calendar days’ written notice of the conference; and advise the applicant that evidence may be presented at the conference. The final review conference must be held as follows:~~

~~(1)~~ ~~Final review conferences are open to the public; however, the officers conducting the conference may meet in closed session to deliberate on the evidence presented at the conference. The burden of proof in a conference is upon the moving party. During the course of the final review conference, the staff must explain the staff decision and the materials relied upon in the administrative record to support the staff decision. The applicant or affected party shall state the reasons for protesting the staff decision and may provide evidence to support amending, modifying, or rescinding the staff decision. The staff may rebut information and arguments presented by the applicant or affected party and the applicant or affected party may rebut information and arguments presented by the staff. Any final review conference officer may request additional information and may question the applicant or affected party, the staff, and anyone else providing information at the conference.~~

(2) ~~After the final review conference, the board, its designee, or a committee of three members of the board appointed by the chair shall issue a written final agency decision based upon the evidence presented. The decision may be announced orally at the conclusion of the final review conference or it may be reserved for consideration. The written decision must explain the basis for the decision and inform the parties of their right to request a contested case hearing before the Administrative Law Court. In either event, the written decision must be mailed to the parties no later than thirty calendar days after the date of the final review conference.~~ Within thirty calendar days after the receipt of the decision pursuant to item (1) an applicant, permittee, licensee, certificate holder, or affected person desiring to contest the ~~final~~ agency decision may request a contested case hearing before the Administrative Law Court, in accordance with the Administrative Procedures Act. The court shall give consideration to the provisions of Section 1‑23‑330 regarding the department’s specialized knowledge.

~~(3)~~ ~~Prior to the initiation of the final review conference, an applicant, permittee, licensee, or affected person must be notified of their right to request a transcript of the proceedings of the final review conference. If a transcript is requested, the applicant, permittee, licensee, or affected person making the request is responsible for all costs.~~

~~(G)~~ ~~An applicant, permittee, licensee, or affected person may file a request with the Administrative Law Court for a contested case hearing within thirty calendar days after:~~

~~(1)~~ ~~notice is mailed to the applicant, permittee, licensee, and affected persons that the board declined to hold a final review conference; or~~

~~(2)~~ ~~the sixty calendar day deadline to hold the final review conference lapses and no conference has been held; or~~

~~(3)~~ ~~the final agency decision resulting from the final review conference is received by the parties.~~

~~(H)~~ ~~Applicants, permittees, licensees, and affected persons are encouraged to engage in mediation during the final review process.~~

~~(I)~~ ~~The department may promulgate regulations providing for procedures for final reviews.~~

~~(J)~~ ~~Any statutory deadlines applicable to permitting and licensing programs administered by the department must be extended to all for this final review process.~~

(E) If ~~any~~ a deadline provided for in this section falls on a Saturday, Sunday, or state holiday, the deadline must be extended until the next calendar day that is not a Saturday, Sunday, or state holiday.

Article 3

Division of Public Health

Section 44‑1‑70. ~~All rules and regulations promulgated by the Board shall be null and void unless approved by a concurrent resolution of the General Assembly at the session of the General Assembly following their promulgation.~~ There is established the Division of Public Health within the Department of Behavioral and Public Health. The division is be vested with all the functions, powers, and duties of the divisions, offices, and programs of the Department of Health and Environmental Control on June 30, 2015, that perform functions related to public health.

Section 44‑1‑80. (A) The ~~Board of Health and Environmental Control~~ Department of Behavioral and Public Health or its designated agents must investigate the reported causes of communicable or epidemic disease and must enforce or prescribe these preventive measures as may be needed to suppress or prevent the spread of these diseases by proper quarantine or other measures of prevention, as may be necessary to protect the citizens of the State. The ~~Board of Health and Environmental Control~~ department or its designated agents shall declare, when the facts justify it, any place as infected and, in case of hydrophobia or other diseases transmitted from animals to man, must declare such animal or animals quarantined, and must place all such restrictions upon ingress and egress of persons or animals therefrom as may be, in its judgment, necessary to prevent the spread of disease from the infected locality.

(B)(1) Whenever the ~~board~~ department learns of a case of a reportable illness or health condition, an unusual cluster, or a suspicious event that it reasonably believes has the potential to cause a public health emergency, as defined in Section 44‑4‑130, it is authorized to notify the appropriate public safety authority, tribal authorities, and federal health and public safety authorities.

(2) The sharing of information on reportable illnesses, health conditions, unusual clusters, or suspicious events between authorized personnel must be restricted to information necessary for the treatment, control, investigation, and prevention of a public health emergency. Restriction of access to this information to those authorized personnel for the protection of public health ensures compliance with all state and federal health information privacy laws.

(3) The ~~board~~ department and its agents ~~must~~ shall have full access to medical records and nonmedical records when necessary to investigate the causes, character, and means of preventing the spread of a qualifying health event or public health emergency. For purposes of this item, ‘nonmedical records’ ~~mean~~ means records of entities, including businesses, health facilities, and pharmacies, which are needed to adequately identify and locate persons believed to have been potentially exposed or known to have been infected with a contagious disease.

(4) An order of the ~~board~~ department given to effectuate the purposes of this subsection is enforceable immediately by the public safety authority.

(5) For purposes of this subsection, the terms qualifying health event, public health emergency, and public safety authority have the same meanings as provided in Section 44‑4‑130.

Section 44‑1‑90. The ~~State Board of Health and Environmental Control~~ Department of Behavioral and Public Health or its designated agents, when it is deemed necessary by the municipal officers of any town or city or the governing body of any county, may (a) visit cities, towns, villages, or localities where disease is prevalent or threatened, (b) investigate and advise with the local authorities or persons as to such measures as may tend to prevent the spread of disease or to remove or abate causes that may tend to cause or intensify disease, (c) advise, when practicable or possible, as to measures of sanitation or hygiene, and (d) investigate and advise as to all matters respecting water supply, sewage, drainage, ventilation, heating, lighting, or other measures connected with public sanitation or safety.

Section 44‑1‑100. All sheriffs and constables in the several counties of this State and police officers and health officers of cities and towns must aid and assist the Director of the ~~Department of~~ ~~Health and Environmental Control~~ Division of Public Health and must carry out and obey his orders, or those of the ~~Department of Health and Environmental Control~~ division, to enforce and carry out any and all restrictive measures and quarantine regulations that may be prescribed. During a state of public health emergency, as defined in Section 44‑4‑130, the director may request assistance in enforcing orders issued pursuant to this chapter and pursuant to Chapter 4, Title 44, from the public safety authority, as defined in Section 44‑4‑130, other state law enforcement authorities, and local law enforcement. The public safety authority may request assistance from the South Carolina National Guard in enforcing orders made pursuant to this chapter or pursuant to Chapter 4, Title 44.

Section 44‑1‑110. (A) The Department of ~~Health and Environmental Control~~ Behavioral and Public Health is invested with all the rights and charged with all the duties pertaining to organizations of like character and is the sole advisor of the State in all questions involving the protection of the public health within its limits.

(B) ~~It shall~~ The department, through its representatives, shall investigate the causes, character, and means of preventing the epidemic and endemic diseases as the State is liable to suffer from and the influence of climate, location, and occupations, habits, drainage, scavengering, water supply, heating, and ventilation. It ~~shall have~~ has, upon request, full access to the medical records, tumor registries, and other special disease record systems maintained by physicians, hospitals, and other health facilities as necessary to carry out its investigation of these diseases. No physician, hospital, or health facility, or person in charge of these records is liable in any action‑at‑law for permitting the examination or review. Patient‑identifying information elicited from these records and registries must be kept confidential by the department, and ~~it~~ the information is exempt from the provisions of Chapter 4, ~~of~~ Title 30. ~~It~~ The department shall supervise and control the quarantine system of the State~~. It~~ and may establish quarantine both by land and sea.

Section 44‑1‑130. The Department of ~~Health and Environmental Control~~ Behavioral and Public Health may divide the State into health districts and establish in these districts advisory boards of health which shall consist of representatives from each county in the district. Boards of health now existing in the districts shall have representation on the district advisory board. Counties not having local boards of health ~~shall~~ must be represented by individuals appointed by the county legislative delegation. The number of members of a district advisory board ~~shall~~ must be determined by the department with due consideration to the population and community needs of the district. District advisory boards of health ~~shall be~~ are subject to the supervisory and advisory control of the department. District advisory boards are charged with the duty of advising the district medical director or administrator in all matters of sanitary interest and scientific importance bearing upon the protection of the public health. The district medical director or administrator ~~shall be~~ is the secretary of the advisory board, and the district advisory board shall elect annually from its membership a chairman.

Section 44‑1‑140. The Department of ~~Health and Environmental Control~~ Behavioral and Public Health may make, adopt, promulgate, and enforce reasonable rules and regulations from time to time requiring and providing for:

~~(1)~~ ~~For the thorough sanitation and disinfection of all passenger cars, sleeping cars, steamboats and other vehicles of transportation in this State and all convict camps, penitentiaries, jails, hotels, schools and other places used by or open to the public;~~

~~(2)~~ ~~For the sanitation of hotels, restaurants, cafes, drugstores, hot dog and hamburger stands, and all other places or establishments providing eating or drinking facilities and all other places known as private nursing homes or places of similar nature, operated for gain or profit;~~

~~(3)~~ ~~For the production, storing, labeling, transportation, and selling of milk and milk products, filled milk and filled milk products, imitation milk and imitation milk products, synthetic milk and synthetic milk products, milk derivatives and any other products made in semblance of milk or milk products;~~

~~(4)~~ ~~For the sanitation and control of abattoirs, meat markets, whether the same be definitely provided for that purpose or used in connection with other business, and bottling plants;~~

~~(5)~~ ~~For the classification of waters and for the safety and sanitation in the harvesting, storing, processing, handling and transportation of mollusks, fin fish and crustaceans;~~

~~(6)~~ ~~For the control of disease‑bearing insects, including the impounding of waters;~~

~~(7)~~(1) ~~For~~ the safety, safe operation and sanitation of public swimming pools and other public bathing places, construction, tourist and trailer camps, and fairs;

~~(8)~~ ~~For the control of industrial plants, including the protection of workers from fumes, gases and dust, whether obnoxious or toxic;~~

~~(9)~~ ~~For the use of water in air humidifiers;~~

~~(10)~~(2) ~~For~~ the care, segregation and isolation of persons having or suspected of having any communicable, contagious, or infectious disease; and

~~(11)~~ ~~For the regulation of the methods of disposition of garbage or sewage and any like refuse matter in or near any village, town or city of the State, incorporated or unincorporated, and to abate obnoxious and offensive odors caused or produced by septic tank toilets by prosecution, injunction or otherwise;~~

~~(12)~~(3) ~~For~~ the thorough investigation and study of the causes of all diseases, epidemic and otherwise, in this State, the means for the prevention of contagious disease and the publication and distribution of such information as may contribute to the preservation of the public health and the prevention of disease~~; and~~

~~(13)~~ ~~For alteration of safety glazing material standards and the defining of additional structural locations as hazardous areas, and for notice and hearing procedures by which to effect these changes~~.

(B) The department may make separate orders and rules to meet any emergency not provided for by general rules and regulations, for the purpose of suppressing ~~nuisances~~ conditions dangerous to the public health and communicable, contagious and infectious diseases, and other danger to the public life and health.

~~Section 44‑1‑143.~~ ~~(A)~~ ~~For the purposes of this section:~~

~~(1)~~ ~~‘Home‑based food production operation’ means an individual, operating out of the individual’s dwelling, who prepares, processes, packages, stores, and distributes nonpotentially hazardous foods for sale directly to a person.~~

~~(2)~~ ~~‘Nonpotentially hazardous foods’ are candy and baked goods that are not potentially hazardous foods.~~

~~(3)~~ ~~‘Person’ means an individual consumer.~~

~~(4)~~ ~~‘Potentially hazardous foods’ includes:~~

~~(a)~~ ~~an animal food that is raw or heat‑treated; a plant food that is heat‑treated or consists of raw seed sprouts; cut melons; cut leafy greens; cut tomatoes or mixtures of cut tomatoes not modified to prevent microorganism growth or toxin formation; garlic‑in‑oil mixtures not modified to prevent microorganism growth or toxin formation;~~

~~(b)~~ ~~certain foods that are designated as Product Assessment Required (PA) because of the interaction of the pH and Aw values in these foods. Below is a table indicating the interaction of pH and Aw for control of spores in food heat‑treated to destroy vegetative cells and subsequently packaged:~~

~~Aw values~~ ~~pH values~~

~~4.6 or less~~ ~~>4.6‑‑5.6~~ ~~>5.6~~

~~(1)~~ ~~<0.92~~ ~~non‑PHF~~ ~~non‑PHF~~

~~(2)~~ ~~>0.92‑‑0.95~~ ~~non‑PHF~~ ~~non‑PHF~~ ~~PHF~~

~~(3)~~ ~~>0.95~~ ~~non‑PHF~~ ~~PHF~~ ~~PHF~~

~~Foods in item (2) with a pH value greater than 5.6 and foods in item (3) with a pH value greater than 4.6 are considered potentially hazardous unless a product assessment is conducted pursuant to the 2009 Federal Drug Administration Food Code.~~

~~(B)~~ ~~The operator of the home‑based food production operation must take all reasonable steps to protect food items intended for sale from contamination while preparing, processing, packaging, storing, and distributing the items, including, but not limited to:~~

~~(1)~~ ~~maintaining direct supervision of any person, other than the operator, engaged in the processing, preparing, packaging, or handling of food intended for sale;~~

~~(2)~~ ~~prohibiting all animals, including pets, from entering the area in the dwelling in which the home‑based food production operation is located while food items are being prepared, processed, or packaged and prohibiting these animals from having access to or coming in contact with stored food items and food items being assembled for distribution;~~

~~(3)~~ ~~prohibiting all domestic activities in the kitchen while the home‑based food production operation is processing, preparing, packaging, or handling food intended for sale;~~

~~(4)~~ ~~prohibiting any person who is infected with a communicable disease that can be transmitted by food, who is a carrier of organisms that can cause a communicable disease that can be transmitted by food, who has an infected wound, or who has an acute respiratory infection from processing, preparing, packaging, or handling food intended for sale by the home‑based food production operation; and~~

~~(5)~~ ~~ensuring that all people engaged in processing, preparing, packaging, or handling food intended for sale by the home‑based food production operation are knowledgeable of and follow safe food handling practices.~~

~~(C)~~ ~~Each home‑based food production operation shall maintain a clean and sanitary facility to produce nonpotentially hazardous foods including, but not limited to:~~

~~(1)~~ ~~department‑approved water supply;~~

~~(2)~~ ~~a separate storage place for ingredients used in foods intended for sale;~~

~~(3)~~ ~~a properly functioning refrigeration unit;~~

~~(4)~~ ~~adequate facilities, including a sink with an adequate hot water supply to meet the demand for the cleaning and sanitization of all utensils and equipment;~~

~~(5)~~ ~~adequate facilities for the storage of utensils and equipment;~~

~~(6)~~ ~~adequate hand washing facilities separate from the utensil and equipment cleaning facilities;~~

~~(7)~~ ~~a properly functioning toilet facility;~~

~~(8)~~ ~~no evidence of insect or rodent activity; and~~

~~(9)~~ ~~department‑approved sewage disposal, either onsite treatment or publicly provided.~~

~~(D)~~ ~~All food items packaged at the operation for sale must be properly labeled. The label must comply with federal laws and regulations and must include:~~

~~(1)~~ ~~the name and address of the home‑based food production operation;~~

~~(2)~~ ~~the name of the product being sold;~~

~~(3)~~ ~~the ingredients used to make the product in descending order of predominance by weight; and~~

~~(4)~~ ~~a conspicuous statement printed in all capital letters and in a color that provides a clear contrast to the background that reads: ‘NOT FOR RESALE ‑ PROCESSED AND PREPARED BY A HOME‑BASED FOOD PRODUCTION OPERATION THAT IS NOT SUBJECT TO SOUTH CAROLINA’S FOOD SAFETY REGULATIONS.’~~

~~(E)~~ ~~Home‑based food operations only may sell, or offer to sell, food items directly to a person for his own use and not for resale. A home‑based food operation may not sell, or offer to sell, food items at wholesale. Food produced from a home‑based food production operation must not be considered to be from an approved source, as required of a retail food establishment pursuant to Regulation 61.25.~~

~~(F)~~ ~~A home‑based food production operation is not a retail food establishment and is not subject to regulation by the department pursuant to Regulation 61.25.~~

~~(G)~~ ~~The provisions of this section do not apply to an operation with net earnings of less than five hundred dollars annually but that would otherwise meet the definition of a home‑based food operation provided in subsection (A)(1).~~

~~(H)~~ ~~A home‑based food production operation may apply for an exemption from inspection and label review by the South Carolina Department of Agriculture under Section 39‑25‑10, et seq., if its annual sales are less than fifteen thousand dollars. Exemption forms must be provided by the South Carolina Department of Agriculture.~~

~~Section 44‑1‑145.~~ ~~(A)~~ ~~Notwithstanding any other provision of law, ground beef or any food containing ground beef prepared by a food service provider for public consumption must be cooked to heat all parts of the food to at least one hundred fifty‑five degrees Fahrenheit (sixty‑eight degrees Celsius), unless otherwise ordered by the immediate consumer.~~

~~(B)~~ ~~The food service provider, its business or its employees or agents, are not liable for any adverse affects to the purchaser or anyone else for providing a ground beef product cooked at an internal temperature less than one hundred fifty‑five degrees Fahrenheit (sixty‑eight degrees Celsius), if providing the product is at the request of the purchaser and if the food service provider has notified the purchaser in advance that a possible health risk may exist by eating the product. The notice must state that a possible health risk may exist in eating undercooked ground beef at an internal temperature less than one hundred fifty‑five degrees Fahrenheit (sixty‑eight degrees Celsius), and be given to the purchaser:~~

~~(1)~~ ~~in writing;~~

~~(2)~~ ~~as stated on the menu; or~~

~~(3)~~ ~~by visible sign warning.~~

~~(C)~~ ~~In order for an immediate consumer or purchaser, as used in this section, to request or order ground beef to be cooked to a temperature less than one hundred fifty‑five degrees Fahrenheit (sixty‑eight degrees Celsius), the individual must be eighteen years of age or older.~~

~~Section 44‑1‑148. Fresh meat or fresh meat products sold to a consumer may not be offered to the public for resale for human consumption if the fresh meat or fresh meat products have been returned by the consumer.~~

Section 44‑1‑150. (A) ~~Except as provided in Section 44‑1‑151, a~~ A person who after notice violates, disobeys, or refuses, omits, or neglects to comply with a regulation of the Department of ~~Health and Environmental Control~~ Behavioral and Public Health, made by the department pursuant to Section 44‑1‑140, is guilty of a misdemeanor and, upon conviction, must be fined not more than two hundred dollars or imprisoned for thirty days.

(B) A person who after notice violates a rule, regulation, permit, permit condition, final determination, or order of the department issued pursuant to Section 44‑1‑140 is subject to a civil penalty not to exceed one thousand dollars a day for each violation.

(C) Fines collected pursuant to subsection (B) must be remitted by the department to the State Treasurer for deposit in the state general fund.

(D) The term ‘notice’ as used in this section means either actual notice or constructive notice.

~~(E)~~ ~~This section does not apply to fines levied under Section 44‑1‑140(8) or any other areas regulated by the South Carolina Occupational Health and Safety Act, Section 41‑12‑10 et seq.~~

~~Section 44‑1‑151. Notwithstanding any other provision of law, all shellfish involved in any violation of law, including any regulation, regarding shellfish may be confiscated and disposed of at the discretion of the arresting officer. Any person convicted of a second offense of harvesting shellfish in any polluted area shall, upon such conviction, be fined not less than two hundred dollars and not more than five hundred dollars or imprisoned for not less than thirty days and not more than sixty days. Any person convicted of a third or subsequent offense of harvesting shellfish in any polluted area shall, upon such conviction, be fined not less than five hundred dollars and not more than one thousand or imprisoned for not less than sixty days and not more than ninety days. All equipment, including, but not limited to, vehicles, boats, motors, trailers, harvesting equipment, weapons, spotlights, bags, boxes, or tools, used or in any other manner involved in a first offense of harvesting shellfish in any polluted area, may be impounded at the discretion of the arresting officer. The equipment impounded shall be delivered to the sheriff of the county in which the arrest was made and shall be retained by the sheriff. Such equipment may not be returned to the owner until the case has been finally disposed of. All equipment, including, but not limited to, vehicles, boats, motors, trailers, harvesting equipment, weapons, spotlights, bags, boxes, or tools, used or in any other manner involved in a second, third, or subsequent offense of harvesting shellfish in any polluted area, shall be confiscated. All such confiscated equipment shall be sold at auction by the sheriff of the county in which such second, third, or subsequent offense took place and by a representative of the State Department of Health and Environmental Control, except for weapons, which, following confiscation, shall be disposed of in the manner set forth in Sections 16‑23‑50, 16‑23‑460, and 16‑23‑500.~~

~~Section 44‑1‑152. Notwithstanding any other provision of law, all revenue from any fine or any forfeiture of bond for any violation of any shellfish law or regulation provided by this title must be deposited monthly with the treasurer of the county in which the arrest for such violation was made. One‑third of such revenue must be retained by the county treasurer to be used for the general operating needs of the county pursuant to the direction of the governing body of the county. Two‑thirds of such revenue must be remitted quarterly to the state Department of Health and Environmental Control of which one‑half is to be used in enforcing shellfish laws and regulations and one‑half of such revenue must be remitted quarterly to the state’s general fund. All monies derived from auction sales of confiscated equipment pursuant to Section 44‑1‑151 must be deposited, retained, remitted, and used in the same manner as provided in this section for all revenue derived from any fine or any violation of any shellfish law or regulation. A report of fines for forfeitures of bonds regarding shellfish violations must be sent to the state Department of Health and Environmental Control monthly by each magistrate and clerk of court in this State. A report of monies derived from auction of sales of confiscated equipment must be sent to the state Department of Health and Environmental Control monthly by each sheriff.~~

~~Section 44‑1‑155. When any person is apprehended by a shellfish patrolman upon a charge of violating the health and sanitary aspects of shellfish, crab, and shrimp laws or regulations, such person upon being served with a summons by the patrolman may in lieu of being immediately brought before the proper judicial officer enter into a formal recognizance or deposit a proper sum of money in lieu of a recognizance or incarceration with the patrolman as bail which shall be not less than the minimum nor more than the maximum fine, but in no case to exceed one hundred dollars. The bail shall be turned over to the proper judicial officer. A receipt for the sum so deposited shall be given to the person by the patrolman. The summons duly served shall give the judicial officer jurisdiction to dispose of the matter. Upon receipt of bail the patrolman shall release the person so charged and he may appear in court at the time stated in and required by the summons.~~

Section 44‑1‑160. Nothing contained in Section 44‑1‑140 ~~shall~~ in any way ~~abridge or limit~~ abridges or limits the right of ~~any~~ a person to maintain or prosecute ~~any proceedings, civil or criminal,~~ a civil or criminal proceeding against a person maintaining a nuisance.

~~Section 44‑1‑165.~~ ~~(A)~~ ~~There is established within the Department of Health and Environmental Control the Expedited Review Program to provide an expedited process for permit application review. Participation in this program is voluntary and the program must be supported by expedited review fees promulgated in regulation pursuant to subsection (B)(1). The department shall determine the project applications to review, and the process may be applied to any one or all of the permit programs administered by the department.~~

~~(B)(1)~~ ~~Before January 1, 2009, the department shall promulgate regulations necessary to carry out the provisions of this Section. The regulations shall include, but are not limited to, definitions of ‘completeness’ for applications submitted, consideration of joint federal‑ state permitting activities, standards for applications submitted that advance environmental protection, and expedited process application review fees.~~

~~(2)~~ ~~Regulations promulgated pursuant to this Section must not alter public notice requirements for any permits, certifications, or licenses issued by the department.~~

~~(C)~~ ~~Until such time as regulations are promulgated pursuant to subsection (B), the department shall conduct a pilot expedited review program to determine the most environmentally sound, cost efficient, and economically beneficial process for implementation of a statewide expedited review program. The department shall determine which permit programs, or subcomponents of a program, to include in the pilot program and also may establish pilot program expedited process application fees.~~

~~(D)~~ ~~There is created the Expedited Review Fund that is separate and distinct from the general fund of the State and all other funds. Fees established in regulation pursuant to subsection (B)(1) and assessed pursuant to subsection (C) must be credited to the fund and used for the costs of implementing the expedited review program. Interest accruing to the fund must be retained by the fund and used for the same purposes. Revenue in the fund not expended during a fiscal year, including fees generated pursuant to subsection (C), must be carried forward to the succeeding fiscal year and must be used for the same purposes.~~

~~(E)~~ ~~No later than January 1, 2008, the department shall report to the Board of Health and Environmental Control the department’s findings on the implementation of the pilot expedited review program provided for in subsection (C).~~

Section 44‑1‑170. The ~~Department of Health and Environmental Control~~ Division of Public Health may direct and supervise the action of the local boards of health in incorporated cities and towns and in all townships in all matters pertaining to ~~such~~ these local boards.

Section 44‑1‑180. The Department of ~~Health and Environmental Control~~ Behavioral and Public Health may establish charges for maintenance and medical care for all persons served in state health centers and other health facilities under the jurisdiction of the department and by personnel of the department and of the health units under its jurisdiction in homes and any other places where health services are needed. The terms ‘medical care’ and ‘health services’ include the services of physicians, dentists, optometrists, nurses, sanitarians, physical therapists, medical social workers, occupational therapists, health aides, speech therapists, X‑ray technologists, dietitians, nutritionists, laboratory technicians, and other professional and subprofessional health workers. The charges, which may be adjusted from time to time, ~~shall~~ must be reasonable and based on the total costs of the services rendered, including operating costs, depreciation costs, and all other elements of costs.

Section 44‑1‑190. The Department of ~~Health and Environmental Control~~ Behavioral and Public Health shall make such investigations as it deems necessary to determine which persons or which of the parents, guardians, trustees, committees, or other persons or agencies legally responsible therefor are financially able to pay the expenses of the care and treatment, and may contract with any person or agency for the care and treatment of any person to the extent permitted by the resources available to the department. The department may require any county or state agency to furnish information which would be helpful to it in making the investigations. In arriving at the amount to be charged, the department shall have due regard for the financial condition and estate of the person, his present and future needs and the present and future needs of his lawful dependents, and whenever considered necessary to protect him or his dependents, may agree to accept a sum less than the actual cost of services. ~~No~~ A person ~~shall~~ may not be deprived of available health services solely because of inability to pay. ~~No fees shall~~ A fee must not be charged for services which in the judgment of the department should be made freely available in order to protect and promote the public health.

Section 44‑1‑200. The Department of ~~Health and Environmental Control~~ Behavioral and Public Health may provide home health services to those persons living in areas of the State in which adequate home health services are not available and may charge fees for such services. Home health services ~~shall~~ must include care of the ill and disabled rendered at home including, but not limited to, bedside care, treatment, and rehabilitation services. In order that it may provide such services, the department may employ the necessary personnel, including nurses, physical therapists, speech therapists, occupational therapists, medical social workers, home health aides, nutritionists, and supervisory personnel, and may purchase equipment and materials necessary to maintain an effective program. The department shall, wherever possible, assist and advise nonprofit agencies or associations in the development of home health services programs and may enter into agreements with such agencies or associations specifying the type of assistance and advice it will provide.

Section 44‑1‑210. All fees and charges collected pursuant to Sections 44‑1‑180 to 44‑1‑200, including vital statistics fees as now provided by law, ~~shall~~ must be deposited in the State Treasury and ~~shall~~ must be used in the operation of the public health program of the bureau, division, district health unit, or local county health department which performed the services for which the fees and charges were collected. An annual report ~~shall~~ must be made to the ~~State Budget and Control Board~~ Department of Administration of the receipts and expenditures made under the provisions of Sections 44‑1‑180 to 44‑1‑200.

Section 44‑1‑215. Notwithstanding Section 13‑7‑85, the Department of ~~Health and Environmental Control~~ Behavioral and Public Health may retain all funds generated in excess of those funds remitted to the general fund in ~~fiscal year~~ Fiscal Year 2000‑2001 from fees listed in Regulation R61‑64 Title B.

Section 44‑1‑220. All skilled and intermediate care nursing facilities licensed by the Department of ~~Health and Environmental Control shall~~ Behavioral and Public Health must be required to furnish an item‑by‑item billing for all charges to the patient or the person paying ~~such~~ the bill, upon request by ~~such~~ the patient or person. Items which remain unpaid are not required to be itemized again. ~~Such requests~~ A request for itemized billing ~~shall remain~~ remains in effect until further notification by the patient or person paying ~~such~~ the bill. Provided, that the provision herein ~~shall~~ does not apply to the contracted amount of a state or federal agency. Any amount above ~~such~~ a contract ~~shall~~ must be itemized as provided herein.

Section 44‑1‑230. The Department of ~~Health and Environmental Control~~ Behavioral and Public Health shall give consideration to any benefits available to an individual, including private, group, or other insurance benefits, to meet, in whole or in part, the cost of any medical or health services. ~~Such benefits shall~~ Benefits must be utilized insofar as possible; provided, however, the availability of ~~such~~ benefits ~~shall~~ must not be the sole basis for determining eligibility for program services of the department. Insurance carriers ~~shall~~ must not deny payment of benefits otherwise available to the insured solely on the basis that an individual has applied for, or has been deemed eligible to receive, or has received, services, or on the basis that payments have been made for services by the department.

Section 44‑1‑260. Upon conducting an early periodic screening, diagnosis, and treatment screening (EPSDT), or another physical examination of a child from which it is determined that the child may benefit from the use of assistive technology, the department or person conducting the screening or examination may refer the child to an appropriate agency for an assistive technology evaluation. For purposes of this section, ‘assistive technology’ means a device or service which is used to increase, maintain, or improve the functional capacities of an individual with a disability. An ‘assistive technology device’ ~~is~~ means an item, piece of equipment, or product system, whether acquired commercially, off the shelf, modified, or customized that is used to increase, maintain, or improve the functional capacities of an individual with a disability including, but not limited to, aids for daily living, augmentative communication devices, wheelchairs, and mobility aids, seating and positioning aids, computer aids, environmental controls, home and workplace modifications, prosthetics and orthotics, or aids for vision or hearing impairments. An ‘assistive technology service’ ~~is~~ means a service that directly assists an individual with a disability in the selection, acquisition, or use of an assistive technology device.

Section 44‑1‑280. The ~~Board and Department of Health and Environmental Control~~ Department of Behavioral and Public Health in establishing priorities and funding for programs and services which impact on children and families during the first years of a child’s life, within the powers and duties granted to it, must support, as appropriate, the South Carolina First Steps to School Readiness initiative, as established in ~~Title 59, Chapter 152~~ Chapter 152, Title 59, at the state and local levels.

~~Section 44‑1‑290.~~ ~~A corporation or person whose only purpose is furnishing, supplying, marketing, or selling treated effluent for irrigation purposes, shall not be considered a public utility for purposes of Title 58 by virtue of the furnishing, supplying, marketing, or selling of the treated effluent, provided that the effluent has not been permitted for consumption by the department or other regulatory agency.~~

~~Section 44‑1‑300. The department shall not use any funds appropriated or authorized to the department to enforce Regulation 61‑25 to the extent that its enforcement would prohibit a church or charitable organization from preparing and serving food to the public on their own premises at not more than one function a month or not more than twelve functions a year.~~”

SECTION 3. Chapter 9, Title 44 of the 1976 Code is amended to read:

“CHAPTER 9

~~State Department~~ Division of Mental Health,

Department of Behavioral and Public Health

Section 44‑9‑10. There is ~~hereby~~ created the ~~State Department~~ Division of Mental Health within the Department of Behavioral and Public Health which ~~shall have~~ has jurisdiction over all of the state’s mental hospitals, clinics and centers, joint state and community sponsored mental health clinics and centers, and facilities for the treatment and care of alcohol and drug addicts, including the authority to name each facility.

Section 44‑9‑20. All the powers and duties vested in the South Carolina Mental Health Commission immediately ~~prior to~~ before March 26, 1964, are ~~hereby~~ transferred to and vested in the Division of Mental Health, Department of ~~Mental Health~~ Behavioral and Public Health. All records, files, and other papers belonging to the South Carolina Mental Health Commission ~~shall~~ must be continued as part of the records and files of the ~~Department~~ Division of Mental Health, Department of Behavioral and Public Health.

~~Section 44‑9‑30. (A)(1)~~ ~~There is created the governing board for the State Department of Mental Health known as the South Carolina Mental Health Commission. The commission shall consist of seven members, one from each congressional district, appointed by the Governor, upon the advice and consent of the Senate.~~

~~(2)~~ ~~The Governor shall consider consumer and family representation when appointing members.~~

~~(B)~~ ~~The members serve for terms of five years and until their successors are appointed and qualify. The terms of no more than two members may expire in one year. The Governor may remove a member pursuant to the provisions of Section 1‑3‑240. A vacancy must be filled by the Governor for the unexpired portion of the term.~~

~~(C)~~ ~~The commission shall determine policies and promulgate regulations governing the operation of the department and the employment of professional and staff personnel.~~

~~(D)~~ ~~The members shall receive the same subsistence, mileage, and per diem provided by law for members of state boards, committees, and commissions.~~

Section 44‑9‑40. The ~~Mental Health Commission~~ Director of the Department of Behavioral and Public Health shall appoint and remove ~~a state director of Mental Health, who is chief executive of the State Department of Mental Health~~ the Director of the Division of Mental Health. ~~Subject to the supervision and control of the Mental Health Commission,~~ The ~~state~~ division director shall administer the policies and regulations ~~established by the commission~~ of the department. The division director must be a person of proven executive and administrative ability with appropriate education and substantial experience in the field of mental illness treatment. ~~The director must appoint and remove all other officers and employees of the Department of Mental Health, subject to the approval of the Mental Health Commission.~~

Section 44‑9‑50. The ~~Department~~ Division of Mental Health may be divided into ~~such divisions~~ subdivisions as may be authorized by the Director of ~~Mental Health and approved by the commission~~ the Department of Behavioral and Public Health. ~~One of the divisions must be a Division on Alcohol and Drug Addiction which shall have primary responsibility in the State for treatment of alcohol and drug addicts.~~ One of the ~~divisions~~ subdivisions must be ~~a Division~~ the Office for Long Term Care which ~~shall have~~ has primary responsibility for care and treatment of elderly persons with mental and physical disabilities to the extent that their needs are not met in other facilities either public or private.

Section 44‑9‑60. The ~~director of the Department of Mental Health~~ Director of the Department of Behavioral and Public Health may appoint a director of each hospital. Each director must be knowledgeable in the treatment of the mentally ill and in hospital administration. The director of each hospital under the jurisdiction of the Department of ~~Mental Health~~ Behavioral and Public Health is responsible for the employment of all personnel at the hospital, subject to the approval of the director of the department. The director of the department may serve as director of one or more hospitals or other mental health facilities.

Section 44‑9‑70. The ~~State department of Mental Health~~ Department of Behavioral and Public Health is ~~hereby~~ designated as the state’s mental health authority for purposes of administering federal funds allotted to South Carolina under the provisions of the National Mental Health Act, as amended. The ~~State department~~ Division of Mental Health is ~~further~~ designated as the state ~~agency~~ entity authorized to administer minimum standards and requirements for mental health clinics as conditions for participation in federal‑state grants‑in‑aid under the provisions of the National Mental Health Act, as amended, and is authorized to promote and develop community mental health outpatient clinics. Provided, that nothing in this article ~~shall~~ may be construed to prohibit the operation of outpatient mental health clinics by the South Carolina Medical College Hospital in Charleston. ~~Provided, further, that nothing herein shall be construed to include any of the functions or responsibilities now granted the Department of Health and Environmental Control, or the administration of the State Hospital Construction Act (Hill‑Burton Act), as provided in the 1976 Code of Laws and amendments thereto.~~

Section 44‑9‑80. Payments made to a mental health facility which are derived in whole or in part from federal funds which become available after June 30, 1967, and which are provided with the stipulation that they be used to improve services to patients ~~shall~~ are not ~~be~~ considered fees from paying patients under the terms of Act No. 1100 of 1964 but may be utilized by the ~~State department~~ Division of Mental Health to improve South Carolina’s comprehensive mental health program.

Section 44‑9‑90. The ~~commission~~ Division of Mental Health shall:

~~(1)~~ ~~form a body corporate in deed and in law with all the powers incident to corporations;~~

~~(2)~~(1) cooperate with persons in charge of ~~penal~~ correctional institutions in this State for the purpose of providing proper care and treatment for mental patients confined in ~~penal~~ these institutions because of emergency;

~~(3)~~(2) inaugurate and maintain an appropriate mental health education and public relations program;

~~(4)~~(3) collect statistics bearing on mental illness, drug addiction, and alcoholism;

~~(5)~~(4) provide vocational training and medical treatment which must tend to the mental and physical betterment of patients and which is designed to lessen the increase of mental illness, drug addiction, and alcoholism;

~~(6)~~(5) encourage the directors of hospitals and their medical staffs in the investigation and study of these subjects and of mental health treatment in general; and

~~(7)~~(6) provide a statewide system for the delivery of mental health services to treat, care for, reduce, and prevent mental illness and provide mental health services for citizens of this State, whether or not in a hospital. The system must include services to prevent or postpone the commitment or recommitment of citizens to hospitals.

Section 44‑9‑100. The ~~commission~~ Department of Behavioral and Public Health may:

(1) prescribe the form of and information to be contained in applications, records, reports, and medical certificates provided for under this chapter, Chapter 11, Chapter 13, Article 1 ~~of~~, Chapter 15, Chapter 17, Chapter 22, Chapter 23, Chapter 24, Chapter 27, Chapter 48, and Chapter 52;

(2) require reports from the director of a state hospital relating to the admission, examination, diagnosis, discharge, or conditional discharge of a patient;

(3) investigate complaints made by a patient or by a person on behalf of a patient;

(4) adopt regulations not inconsistent with this chapter, Chapter 11, Chapter 13, Article 1 ~~of~~, Chapter 15, Chapter 17, Chapter 22, Chapter 23, Chapter 24, Chapter 27, Chapter 48, and Chapter 52 as it may find to be reasonably necessary for the government of all institutions over which it has authority and of state mental health facilities and the proper and efficient treatment of persons with a mental illness or substance abuse disorder;

(5) take appropriate action to initiate and develop relationships and agreements with state, local, federal, and private agencies, hospitals, and clinics as the commission considers necessary to increase and enhance the accessibility and delivery of emergency and all other types of mental health services.

Section 44‑9‑110. The ~~Mental Health Commission~~ director may accept on behalf of the Department ~~of Mental Health~~ Behavioral and Public Health or any of its facilities or services, gifts, bequests, devises, grants, donations of money or real and personal property of whatever kind, but ~~no such~~ a gift or grant ~~shall~~ may not be accepted upon the condition that it ~~shall~~ diminish an obligation due the department. The ~~Commission~~ director may refuse to accept ~~any such~~ this gift or grant and the acceptance of ~~any such~~ this gift or grant ~~shall~~ may not incur ~~any~~ an obligation on the part of the State. ~~Any~~ A gift or grant given to a specific facility or service ~~shall~~ must be used for that facility or service only, or to its successor. The ~~Commission~~ director may ~~promulgate~~ make rules and promulgate regulations governing the disposition of ~~such~~ these gifts and grants.

Section 44‑9‑120. The ~~Commission~~ director shall submit an annual report to the Governor ~~before the eleventh day of~~ by January eleventh of each year setting forth its activities, the financial affairs, and the state and condition of the state mental health facilities and ~~any~~ other statistical information which is usually required of facilities of the type over which it has charge. The report shall include ~~any~~ recommendations ~~which~~ that in the opinion of the ~~Commission~~ director will improve the mental health program of the State. A copy of the report ~~shall also~~ must be submitted to the General Assembly.

Section 44‑9‑160. ~~Wherever in~~ In the 1976 Code when reference is made to the State Hospital, it ~~shall mean~~ means a state hospital; wherever reference is made requiring the signature of the superintendent of any mental health facility, it ~~shall mean~~ means the director or superintendent or his designee; and wherever reference is made to the State Commissioner of Mental Health, it ~~shall mean~~ means the ~~State~~ Director of the Department of ~~Mental Health~~ Behavioral and Public Health.”

SECTION 4. Chapter 49, Title 44 of the 1976 Code is amended to read:

“CHAPTER 49

~~Department~~ Division of Alcohol and Other Drug Abuse Services,

Department of Behavioral and Public Health

Section 44‑49‑10. (A) There is established the ~~Department~~ Division of Alcohol and Other Drug Abuse Services within the Department of Behavioral and Public Health. The ~~department shall be~~ Division of Alcohol and Other Drug Abuse Services is vested with all the functions, powers, and duties, of the ~~South Carolina Commission on Alcoholism and the South Carolina Commission on Alcohol and Drug Abuse~~ Department of Alcohol and Other Drug Abuse Services related to the delivery of services and shall have full authority for formulating, coordinating, and administering the state plans for controlling narcotics and controlled substances and alcohol abuse and for providing treatment to people with alcohol and drug addictions.

(B) All functions, powers, and duties of the former commissioner of the narcotics and controlled substances section of the former State Planning and Grants Division (Division of Administration in the Office of the Governor) are hereby transferred to the ~~department~~ division, except those powers and duties related to the traffic of narcotics and controlled substances as defined in Section 44‑53‑130 which ~~shall be~~ are vested in the State Law Enforcement Division.

(C) All ~~rules and~~ regulations promulgated by the ~~commissioner of narcotics and controlled substances~~ Department of Alcohol and Other Drug Abuse Services shall remain in effect until changed by the ~~department~~ Department of Behavioral and Public Health.

(D) The ~~department~~ Department of Behavioral and Public Health is authorized to establish a block grant mechanism to provide such monies as may be ~~appropriated by the Legislature~~ disbursed to the department for this purpose to each of the agencies designated under Section 61‑12‑20(a). The distribution of these monies must be on a per capita basis according to the most recent United States Census. The agencies designated under Section 61‑12‑20(a) must expend any funds received through this mechanism in accordance with the county plans required under Section 61‑12‑20(b).

(E) The department is authorized to develop ~~such~~ rules and regulations not inconsistent with the provisions of this chapter as it may find to be reasonably appropriate for the government of the county plans called for in Section 61‑12‑20(b), and the financial and programmatic accountability of funds provided under this section and all other funds provided by the department to agencies designated under Section 61‑12‑20(a).

Section 44‑49‑20. The ~~Department~~ Division of Alcohol and Other Drug Abuse Services ~~shall~~ must be headed by a director appointed by the ~~Governor, upon the advice and consent of the Senate. The director is subject to removal by the Governor pursuant to the provisions of Section 1‑3‑240~~ Director of the Department of Behavioral and Public Health.

Section 44‑49‑40. (A) The ~~department~~ division shall arrange for the exchange of information between governmental officials concerning the use and abuse of controlled substances.

~~(B)~~ ~~Results, information, and evidence received from the Department of Health and Environmental Control relating to the regulatory functions of this chapter and Article 3 of Chapter 53, including results of inspections conducted by such department, may be relied upon and acted upon by the department in conformance with its administration and coordinating duties under this Chapter and Article 3 of Chapter 53.~~

~~(C)(1)~~(B) The ~~department~~ division shall:

(1) plan, coordinate and cooperate in educational programs for schools, communities, and general public designed to prevent and deter misuse and abuse of controlled substances;

(2) promote better recognition of the problems of misuse and abuse of controlled substances within the regulated industry and among interested groups and organizations;

(3) assist the regulated industry, interested groups and organizations in contributing to the reduction of misuse and abuse of controlled substances;

(4) consult with interested groups and organizations to aid them in solving administrative and organizational problems;

(5) evaluate procedures, projects, techniques, and controls conducted or proposed as part of educational programs on misuse and abuse of controlled substances;

(6) disseminate the results of research on misuse and abuse of controlled substances to promote a better public understanding of what problems exist and what can be done to combat them;

(7) assist in the education and training of state and local law enforcement officials in their efforts to control misuse and abuse of controlled substances;

(8) encourage research on misuse and abuse of controlled substances;

(9) cooperate in establishing methods to assess accurately the effects of controlled substances and to identify and characterize controlled substances with potential for abuse;

(10) cooperate in making studies and in undertaking programs of research to:

(a) develop new or improved approaches, techniques, systems, equipment, and devices to strengthen the enforcement of this section, Sections 44‑49‑10~~, 44‑49‑40~~ and 44‑49‑50, and Article 3 ~~of~~, Chapter 53;

(b) determine patterns of misuse and abuse of controlled substances and the social effects ~~thereof~~; and

(c) improve methods for preventing, predicting, understanding, and dealing with the misuse and abuse of controlled substances.

~~(D)~~(C) The department may enter into contracts with public agencies, institutions of higher education, and private organizations or individuals for the purpose of conducting research, demonstrations, or special projects which bear directly on misuse and abuse of controlled substances.

~~(E)~~(D) The department may enter into contracts for educational and research activities without performance bonds.

~~(F)~~(E) The department is authorized to accept gifts, bequests, devises, contributions, and grants, public or private, including federal funds, or funds from any other source for use in furthering the purpose of the department. The department is authorized to administer the grants and contracts arising from the federal program entitled the Drug‑Free Schools and Communities Act of 1986, P.L. 99‑570.

Section 44‑49‑50. It ~~shall be~~ is the duty of all departments, officers, agencies, and employees of the State to cooperate with the ~~Department~~ Division of Alcohol and Other Drug Abuse Services in carrying out its functions. The Attorney General shall furnish ~~such~~ legal services as are necessary to the department.

Section 44‑49‑60. The ~~department~~ division shall appoint a supervisor of adult education for the prevention of alcoholism, who ~~shall be~~ is responsible for activating and implementing an adequate alcoholic education program for the citizens of this State above high school age. The program ~~shall~~ must be designed to prevent or reduce alcoholism in this State and to create a recognition and understanding of the problem.

~~In carrying out the provisions of this section the department and the supervisor of adult education for the prevention of alcoholism may consult and work in conjunction with groups such as Alcoholics Anonymous, the Yale Center of Alcohol Studies of Yale University, the Research Council on Problems of Alcohol of the American Association for the Advancement of Science, the South Carolina Medical Association, the department of Mental Health, the Christian Action Council, the Committee on Alcoholism of the South Carolina Conference of Social Work and other groups or agencies that are able to assist in the study, prevention, treatment and rehabilitation of alcoholics and in a scientific educational program on the problems of alcohol.~~

Section 44‑49‑70. The ~~department~~ division shall furnish the supervisor of adult education for the prevention of alcoholism adequate ways and means to accomplish an effective educational program for the prevention of alcoholism in this State.

Section 44‑49‑80. The ~~department~~ division shall establish a program to provide alcohol and drug abuse intervention, prevention, and treatment services for the public schools of the State. The ~~department~~ division shall provide staff and support necessary to administer the program. Funds for this program must be annually appropriated by the General Assembly from the Education Improvement Act of 1984 Fund as it determines appropriate. The appropriated funds must be forwarded to the ~~South Carolina~~ Department of Health and Human Services for disbursal to the Division of Alcohol and Other Drug Abuse Services from the Education Improvement Act of 1984 Fund in the manner the State Treasurer shall direct.”

SECTION 5. Title 46 of the 1976 Code is amended by adding:

“CHAPTER 57

Division of Environmental Control

Article 1

General Provisions

Section 46‑57‑10. There is created the Division of Environmental Control within the Department of Agriculture. The division is vested with all the functions, powers, and duties of the environmental divisions, offices, and programs of the Department of Health and Environmental Control on June 30, 2015, including, but not limited to, functions, powers, and duties provided for in this chapter and Chapters 2, 56, 93, 95, and 96 of Title 44, Title 48, and Title 49.

Section 46‑57‑20. (A) The Department of Agriculture may make, adopt, promulgate, and enforce reasonable rules and regulations from time to time requiring and providing for:

(1) the thorough sanitation and disinfection of all passenger cars, sleeping cars, steamboats, and other vehicles of transportation in this State and all correctional facilities, jails, hotels, schools, and other places used by or open to the public;

(2) the sanitation of hotels, restaurants, cafes, drugstores, hot dog and hamburger stands, and all other places or establishments providing eating or drinking facilities and all other places known as private nursing homes or places of similar nature, operated for gain or profit;

(3) the production, storing, labeling, transportation, and selling of milk and milk products, filled milk and filled milk products, imitation milk and imitation milk products, synthetic milk and synthetic milk products, milk derivatives, and any other products made in semblance of milk or milk products;

(4) the sanitation and control of abattoirs, meat markets, whether the same be definitely provided for that purpose or used in connection with other business, and bottling plants;

(5) the classification of waters and for the safety and sanitation in the harvesting, storing, processing, handling, and transportation of mollusks, fin fish, and crustaceans;

(6) the control of disease‑bearing insects, including the impounding of waters;

(7) the control of industrial plants, including the protection of workers from fumes, gases, and dust, whether obnoxious or toxic;

(8) the use of water in air humidifiers;

(9) the regulation of the methods of disposition of garbage or sewage and any like refuse matter in or near any village, town, or city of the State, incorporated or unincorporated, and to abate obnoxious and offensive odors caused or produced by septic tank toilets by prosecution, injunction or otherwise; and

(10) the alteration of safety glazing material standards and the defining of additional structural locations as hazardous areas, and for notice and hearing procedures by which to effect these changes.

(B) The department may make separate orders and rules to meet any emergency not provided for by general rules and regulations, for the purpose of suppressing nuisances dangerous to the environment and public life and health.

Section 46‑57‑30. (A) All decisions of the Department of Agriculture involving the issuance, denial, renewal, suspension, or revocation of permits, licenses, or other actions of the department, which may give rise to a contested case must be made using the procedures set forth in this section.

(B) The department shall comply with all requirements for public notice, receipt of public comments, and public hearings before making a decision provided for in subsection (A). To the maximum extent possible, the department shall use a uniform system of public notice of permit applications, opportunity for public comment, and public hearings.

(C) In making a decision about a permit, license, certification, or other approval, the department shall take into consideration all material comments received in response to the public notice in determining whether to issue, deny, or condition a permit, license, certification, or other approval. At the time that a decision is made, the department shall issue a written decision and shall base its decision on the administrative record, which must consist of the application and supporting exhibits, all public comments and submissions, and other documents contained in the supporting file for the permit, license, certification, or other approval. The administrative record also may include material readily available at the department, or published materials which are generally available and need not be physically included in the same file as the rest of the record as long as those materials are referred to specifically in the department decision. The department is not required to issue a written decision for issuance of routine permits for which the department has not received adverse public comments.

(D)(1) The department shall send notice of a decision by certified mail, return receipt requested to the applicant, permittee, licensee, and affected persons who have requested in writing to be notified. Affected persons may request in writing to be notified by regular mail or electronic mail in lieu of certified mail. The department shall send notice of a decision which the department is not required to provide in writing pursuant to subsection (C) by mail, delivery, or other appropriate means to the applicant, permittee, licensee, and affected persons who have requested in writing to be notified.

(2) Within thirty calendar days after the receipt of a decision pursuant to item (1), an applicant, permittee, licensee, or affected person desiring to contest the agency decision may request a contested case hearing before the Administrative Law Court, in accordance with the Administrative Procedures Act. The court shall give consideration to the provisions of Section 1‑23‑330 regarding the department’s specialized knowledge.

(E) If a deadline provided for in this section falls on a Saturday, Sunday, or state holiday, the deadline must be extended until the next calendar day that is not a Saturday, Sunday, or state holiday.

Section 46‑57‑40. (A) There is established within the Division of Environmental Control an Expedited Review Program to provide an expedited process for permit application review. Participation in this program is voluntary, and the program must be supported by expedited review fees promulgated in regulation pursuant to subsection (B)(1). The division shall determine the project applications to review, and the process may be applied to any one or all of the permit programs administered by the division.

(B)(1) Before January 1, 2009, the Department of Health and Environmental Control shall promulgate regulations necessary to carry out the provisions of this section. The regulations must include, but are not limited to, definitions of ‘completeness’ for applications submitted, consideration of joint federal‑state permitting activities, standards for applications submitted that advance environmental protection, and expedited process application review fees. Beginning July 1, 2015, the Department of Agriculture shall promulgate regulations it determines necessary to carry out the purposes of this section.

(2) Regulations promulgated pursuant to this section must not alter public notice requirements for permits, certifications, or licenses issued by the Department of Agriculture.

(C) Until the Department of Health and Environmental Control promulgates regulations pursuant to subsection (B)(1), it shall conduct a pilot expedited review program to determine the most environmentally sound, cost efficient, and economically beneficial process for implementation of a statewide expedited review program and shall determine which permit programs, or subcomponents of a program, to include in the pilot program and also may establish pilot program expedited process application fees.

(D) There is created the Expedited Review Fund that is separate and distinct from the general fund of the State and all other funds. Fees established in regulation pursuant to subsection (B) and assessed pursuant to subsection (C) must be credited to the fund and used for the costs of implementing the expedited review program. Interest accruing to the fund must be retained by the fund and used for the same purposes. Revenue in the fund not expended during a fiscal year, including fees generated pursuant to subsection (C), must be carried forward to the succeeding fiscal year and must be used for the same purposes.

Section 46‑57‑50. A corporation or person whose only purpose is furnishing, supplying, marketing, or selling treated effluent for irrigation purposes, is not a public utility for purposes of Title 58 by virtue of the furnishing, supplying, marketing, or selling of the treated effluent, provided that the effluent has not been permitted for consumption by the Department of Agriculture or other regulatory agency.

Section 46‑57‑60. (A) Except as provided in Section 44‑57‑510, a person who after notice violates, disobeys, or refuses, omits, or neglects to comply with a regulation of the Department of Agriculture, made by the department pursuant to Section 44‑57‑20, is guilty of a misdemeanor and, upon conviction, must be fined not more than two hundred dollars or imprisoned for thirty days.

(B) A person who after notice violates a rule, regulation, permit, permit condition, final determination, or order of the department issued pursuant to Section 44‑57‑20 is subject to a civil penalty not to exceed one thousand dollars a day for each violation.

(C) Fines collected pursuant to subsection (B) must be remitted by the department to the State Treasurer for deposit in the state general fund.

(D) The term ‘notice’ as used in this section means either actual notice or constructive notice.

(E) This section does not apply to fines levied pursuant to Section 44‑57‑20(7) or any other areas regulated by the South Carolina Occupational Health and Safety Act, Section 41‑12‑10, et seq.

Section 46‑57‑70. Nothing contained in Section 44‑57‑20 in any way abridges or limits the right of a person to maintain or prosecute a civil or criminal proceeding against a person maintaining a nuisance.

Article 3

Home‑Based Food Production

Section 46‑57‑310. (A) For the purposes of this section:

(1) ‘Home‑based food production operation’ means an individual, operating out of the individual’s dwelling, who prepares, processes, packages, stores, and distributes nonpotentially hazardous foods for sale directly to a person.

(2) ‘Nonpotentially hazardous foods’ means candy and baked goods that are not potentially hazardous foods.

(3) ‘Person’ means an individual consumer.

(4) ‘Potentially hazardous foods’ means:

(a) an animal food that is raw or heat‑treated, a plant food that is heat‑treated or consists of raw seed sprouts, cut melons, cut leafy greens, cut tomatoes or mixtures of cut tomatoes not modified to prevent microorganism growth or toxin formation, or garlic‑in‑oil mixtures not modified to prevent microorganism growth or toxin formation;

(b) certain foods that are designated as Product Assessment Required (PA) because of the interaction of the pH and Aw values in these foods. Below is a table indicating the interaction of pH and Aw for control of spores in food heat‑treated to destroy vegetative cells and subsequently packaged:

Aw values pH values

4.6 or less >4.6‑‑5.6 >5.6

(1) <0.92 non‑PHF non‑PHF non‑PHF

(2) >0.92‑‑0.95 non‑PHF non‑PHF PHF

(3) >0.95 non‑PHF PHF PHF

Foods in item (2) with a pH value greater than 5.6 and foods in item (3) with a pH value greater than 4.6 are considered potentially hazardous unless a product assessment is conducted pursuant to the 2009 Federal Drug Administration Food Code.

(B) The operator of the home‑based food production operation must take all reasonable steps to protect food items intended for sale from contamination while preparing, processing, packaging, storing, and distributing the items including, but not limited to:

(1) maintaining direct supervision of any person, other than the operator, engaged in the processing, preparing, packaging, or handling of food intended for sale;

(2) prohibiting all animals, including pets, from entering the area in the dwelling in which the home‑based food production operation is located while food items are being prepared, processed, or packaged and prohibiting these animals from having access to or coming in contact with stored food items and food items being assembled for distribution;

(3) prohibiting all domestic activities in the kitchen while the home‑based food production operation is processing, preparing, packaging, or handling food intended for sale;

(4) prohibiting any person who is infected with a communicable disease that can be transmitted by food, who is a carrier of organisms that can cause a communicable disease that can be transmitted by food, who has an infected wound, or who has an acute respiratory infection from processing, preparing, packaging, or handling food intended for sale by the home‑based food production operation; and

(5) ensuring that all people engaged in processing, preparing, packaging, or handling food intended for sale by the home‑based food production operation are knowledgeable of and follow safe food handling practices.

(C) Each home‑based food production operation shall maintain a clean and sanitary facility to produce nonpotentially hazardous foods including, but not limited to:

(1) department‑approved water supply;

(2) a separate storage place for ingredients used in foods intended for sale;

(3) a properly functioning refrigeration unit;

(4) adequate facilities, including a sink with an adequate hot water supply to meet the demand for the cleaning and sanitization of all utensils and equipment;

(5) adequate facilities for the storage of utensils and equipment;

(6) adequate hand washing facilities separate from the utensil and equipment cleaning facilities;

(7) a properly functioning toilet facility;

(8) no evidence of insect or rodent activity; and

(9) department‑approved sewage disposal, either on-site treatment or publicly provided.

(D) All food items packaged at the operation for sale must be properly labeled. The label must comply with federal laws and regulations and must include:

(1) the name and address of the home‑based food production operation;

(2) the name of the product being sold;

(3) the ingredients used to make the product in descending order of predominance by weight; and

(4) a conspicuous statement printed in all capital letters and in a color that provides a clear contrast to the background that reads: ‘NOT FOR RESALE ‑ PROCESSED AND PREPARED BY A HOME‑BASED FOOD PRODUCTION OPERATION THAT IS NOT SUBJECT TO SOUTH CAROLINA’S FOOD SAFETY REGULATIONS.’

(E) Home‑based food operations only may sell, or offer to sell, food items directly to a person for his own use and not for resale. A home‑based food operation may not sell, or offer to sell, food items at wholesale. Food produced from a home‑based food production operation must not be considered to be from an approved source, as required of a retail food establishment pursuant to Regulation 61.25.

(F) A home‑based food production operation is not a retail food establishment and is not subject to regulation by the department pursuant to Regulation 61.25.

(G) The provisions of this section do not apply to an operation with net earnings of less than five hundred dollars annually but that would otherwise meet the definition of a home‑based food operation provided in subsection (A)(1).

(H) A home‑based food production operation may apply for an exemption from inspection and label review by the Department of Agriculture pursuant to Section 39‑25‑10, et seq., if its annual sales are less than fifteen thousand dollars. Exemption forms must be provided by the department.

Section 46‑57‑320. (A) Notwithstanding any other provision of law, ground beef or any food containing ground beef prepared by a food service provider for public consumption must be cooked to heat all parts of the food to at least one hundred fifty‑five degrees Fahrenheit, or sixty‑eight degrees Celsius, unless otherwise ordered by the immediate consumer.

(B) The food service provider, its business or its employees or agents, are not liable for any adverse effects to the purchaser or anyone else for providing a ground beef product cooked at an internal temperature less than one hundred fifty‑five degrees Fahrenheit, or sixty‑eight degrees Celsius, if providing the product is at the request of the purchaser and if the food service provider has notified the purchaser in advance that a possible health risk may exist by eating the product. The notice must state that a possible health risk may exist in eating undercooked ground beef at an internal temperature less than one hundred fifty‑five degrees Fahrenheit, or sixty‑eight degrees Celsius, and be given to the purchaser:

(1) in writing;

(2) as stated on the menu; or

(3) by visible sign warning.

Section 46‑57‑330. Fresh meat or fresh meat products sold to a consumer may not be offered to the public for resale for human consumption if the fresh meat or fresh meat products have been returned by the consumer.

Article 5

Shellfish

Section 46‑57‑510. (A) Notwithstanding any other provision of law, shellfish that is the subject of a violation of law, including regulations, may be confiscated and disposed of at the discretion of the arresting officer.

(B) A person convicted of a second offense of harvesting shellfish in a polluted area, upon conviction, must be fined not less than two hundred dollars and not more than five hundred dollars or imprisoned for not less than thirty days and not more than sixty days.

(C) A person convicted of a third or subsequent offense of harvesting shellfish in a polluted area, upon conviction, must be fined not less than five hundred dollars and not more than one thousand or imprisoned for not less than sixty days and not more than ninety days.

(D) All equipment including, but not limited to, vehicles, boats, motors, trailers, harvesting equipment, weapons, spotlights, bags, boxes, or tools, used or in any other manner involved in a first offense of harvesting shellfish in any polluted area, may be impounded at the discretion of the arresting officer. The equipment impounded must be delivered to the sheriff of the county in which the arrest was made and must be retained by the sheriff. The equipment may not be returned to the owner until the case has been finally disposed of. All equipment including, but not limited to, vehicles, boats, motors, trailers, harvesting equipment, weapons, spotlights, bags, boxes, or tools, used or in any other manner involved in a second, third, or subsequent offense of harvesting shellfish in a polluted area, must be confiscated. All confiscated equipment must be sold at auction by the sheriff of the county in which the second, third, or subsequent offense took place and by a representative of the Department of Agriculture, except for weapons, which, following confiscation, must be disposed of in the manner set forth in Sections 16‑23‑50, 16‑23‑460, and 16‑23‑500.

Section 46‑57‑520. Notwithstanding any other provision of law, all revenue from a fine or a forfeiture of bond for a violation of a shellfish law or regulation provided by this title must be deposited monthly with the treasurer of the county in which the arrest for the violation was made. One‑third of the revenue must be retained by the county treasurer to be used for the general operating needs of the county pursuant to the direction of the governing body of the county. Two‑thirds of the revenue must be remitted quarterly to the Department of Agriculture of which one‑half is to be used in enforcing shellfish laws and regulations and one‑half is to be remitted quarterly to the state’s general fund. All monies derived from auction sales of confiscated equipment pursuant to Section 46‑57‑510 must be deposited, retained, remitted, and used in the same manner as provided in this section for all revenue derived from a fine or a violation of a shellfish law or regulation. A report of fines for forfeitures of bonds regarding shellfish violations must be sent to the department monthly by each magistrate and clerk of court in this State. A report of monies derived from auction of sales of confiscated equipment must be sent to the department monthly by each sheriff.

Section 46‑57‑530. When a person is apprehended by a shellfish patrolman upon a charge of violating the health and sanitary aspects of shellfish, crab, and shrimp laws or regulations, the person upon being served with a summons by the patrolman in lieu of being immediately brought before the proper judicial officer may enter into a formal recognizance or deposit a proper sum of money in lieu of a recognizance or incarceration with the patrolman as bail which must not be less than the minimum or more than the maximum fine, but in no case exceed one hundred dollars. The bail must be turned over to the proper judicial officer. A receipt for the sum deposited must be given to the person by the patrolman. The summons duly served must give the judicial officer jurisdiction to dispose of the matter. Upon receipt of bail the patrolman shall release the person so charged, and the person may appear in court at the time stated in and required by the summons.”

SECTION 6. Section 46‑3‑10 of the 1976 Code is amended to read:

“Section 46‑3‑10. The Department of Agriculture shall:

(1) execute the laws of this State pertaining to agriculture except ~~such~~ laws ~~as are~~ specifically designated for execution by others; and

(2) administer the Division of Environmental Control.”

SECTION 7. Section 1‑30‑10(A) of the 1976 Code, as last amended by Act 121 of 2014, is further amended to read:

“(A) There are hereby created, within the executive branch of the state government, the following departments:

1. Department of Administration

2. Department of Agriculture

3. Department of ~~Alcohol and Other Drug Abuse Services~~ Behavioral and Public Health

4. Department of Commerce

5. Department of Corrections

6. Department of Disabilities and Special Needs

7. Department of Education

~~8.~~ ~~Department of Health and Environmental Control~~

~~9~~8. Department of Health and Human Services

~~10~~9. Department of Insurance

~~11~~10. Department of Juvenile Justice

~~12~~11. Department of Labor, Licensing and Regulation

~~13.~~ ~~Department of Mental Health~~

~~14~~12. Department of Motor Vehicles

~~15~~13. Department of Natural Resources

~~16~~14. Department of Parks, Recreation and Tourism

~~17~~15. Department of Probation, Parole and Pardon Services

~~18~~16. Department of Public Safety

~~19~~17. Department of Revenue

~~20~~18. Department of Social Services

~~21~~19. Department of Transportation

~~22~~20. Department of Employment and Workforce.”

SECTION 8. Section 1‑30‑20 of the 1976 Code is amended to read:

“Section 1‑30‑20. (A) Effective on July 1, ~~1993~~ 2015, the following agencies, boards, and commissions, including all of the allied, advisory, affiliated, or related entities as well as the employees, funds, property and all contractual rights and obligations associated with any such agency, except for those subdivisions specifically included under another department, are hereby transferred to and incorporated in and shall be administered as part of the Department of ~~Alcohol and Other Drug Abuse Services~~ Behavioral and Public Health:

~~(A)~~ ~~South Carolina Commission on Alcohol and Drug Abuse, formerly provided for at Section 44‑49‑10, et seq.;~~

~~(B)~~ ~~Drug‑free Schools and Communities Program in the Governor’s Office, provided for under grant programs~~

(1) the health‑related divisions, offices, and programs of the Department of Health and Environmental Control;

(2) the Department of Alcohol and Other Drug Abuse Services, formerly provided for in Chapter 49, Title 44;

(3) the Department of Mental Health, formerly provided for in Chapter 9, Title 44.

(B) Effective on July 1, 2015, the divisions, offices, and programs of the Department of Health and Environmental Control performing functions related to regulation and protection of the environment, including all of the allied, advisory, affiliated, or related entities as well as the employees, funds, property and all contractual rights and obligations associated with these divisions, offices, programs, and other related entities, except for those subdivisions specifically included under another department, are hereby transferred to and incorporated in and shall be administered as part of the Department of Agriculture.”

SECTION 9. Sections 1‑30‑45 and 1‑30‑70 of the 1976 Code are repealed.

SECTION 10. (A) When the provisions of this act transfer particular state agencies, departments, boards, commissions, committees or entities, or sections, divisions or portions thereof (transferring departments), to another state agency, department, division or entity or make them a part of another department or division (receiving departments), the employees, authorized appropriations, bonded indebtedness if applicable, and real and personal property of the transferring department also are transferred to and become part of the receiving department or division unless otherwise specifically provided. All classified or unclassified personnel of the affected agency, department, board, commission, committee, entity, section, division or position employed by these transferring departments on the effective date of this act, either by contract or by employment at will, shall become employees of the receiving department or division, with the same compensation, classification, and grade level, as applicable. The Department of Administration shall cause all necessary actions to be taken to accomplish this transfer and shall in consultation with the agency head of the transferring and receiving agencies prescribe the manner in which the transfer provided for in this section shall be accomplished. The board’s action in facilitating the provisions of this section are ministerial in nature and shall not be construed as an approval process over any of the transfers.

(B) When an agency, department, entity or official is transferred to or consolidated with another agency, department, division, entity or official, regulations promulgated by that transferred agency, department, entity or official under the authority of former provisions of law pertaining to it are continued and are considered to be promulgated under the authority of present provisions of law pertaining to it.

(C) References to the names of agencies, departments, entities or public officials changed by this act, to their duties or functions herein devolved upon other agencies, departments, entities or officials, or to provisions of law consolidated with or transferred to other parts of the 1976 Code are considered to be and must be construed to mean appropriate references.

(D) Employees or personnel of agencies, departments, entities or public officials, or sections, divisions or portions thereof, transferred to or made a part of another agency, department, division, or official pursuant to the terms of this act shall continue to occupy the same office locations and facilities which they now occupy unless or until otherwise changed by appropriate action and authorization. The rent and physical plant operating costs of these offices and facilities, if any, shall continue to be paid by the transferring agency, department, entity or official formerly employing these personnel until otherwise provided by the General Assembly. The records and files of the agencies that formerly employed these personnel shall continue to remain the property of these transferring agencies, except that these personnel shall have complete access to these records and files in the performance of their duties as new employees of the receiving agency.

(E) Unless otherwise provided herein or by law, all fines, fees, forfeitures, or revenues imposed or levied by agencies, personnel, or portions thereof, so transferred to other agencies or departments must continue to be used and expended for those purposes provided prior to the effective date of this act. If a portion of these fines, fees, forfeitures, or revenues were required to be used for the support, benefit, or expense of personnel transferred, these funds must continue to be used for these purposes.

(F) When the functions of former agencies have been devolved on more than one department or departmental division, the general support services of the former agency must be transferred to the restructured departments or departmental divisions as provided by the General Assembly in the annual general appropriations act.

(G) The Code Commissioner of the Legislative Council shall cause the changes to the 1976 Code as contained in this act to be printed in replacement volumes or in cumulative supplements as he considers practical and economical.

SECTION 11. 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.

SECTION 12. 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.

SECTION 13. This act takes effect upon approval by the Governor.

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