**South Carolina General Assembly**

125th Session, 2023-2024

**S. 601**

**STATUS INFORMATION**

General Bill

Sponsors: Senator Young

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Introduced in the Senate on March 7, 2023

Introduced in the House on May 2, 2023

Last Amended on April 25, 2023

Currently residing in the House Committee on **Labor, Commerce and Industry**

Summary: State Commodity Code

**HISTORY OF LEGISLATIVE ACTIONS**

 Date Body Action Description with journal page number

 3/7/2023 Senate Introduced and read first time (Senate Journal‑page 4)

 3/7/2023 Senate Referred to Committee on **Labor, Commerce and Industry** (Senate Journal‑page 4)

 4/19/2023 Senate Committee report: Favorable with amendment **Labor, Commerce and Industry** (Senate Journal‑page 8)

 4/21/2023 Scrivener's error corrected

 4/25/2023 Senate Committee Amendment Adopted (Senate Journal‑page 16)

 4/25/2023 Senate Read second time (Senate Journal‑page 16)

 4/25/2023 Senate Roll call Ayes-42 Nays-0 (Senate Journal‑page 16)

 4/26/2023 Scrivener's error corrected

 4/26/2023 Senate Read third time and sent to House (Senate Journal‑page 11)

 5/2/2023 House Introduced and read first time (House Journal‑page 18)

 5/2/2023 House Referred to Committee on **Labor, Commerce and Industry** (House Journal‑page 18)

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**VERSIONS OF THIS BILL**

[03/07/2023](https://www.scstatehouse.gov/sess125_2023-2024/prever/601_20230307.docx)

[04/19/2023](https://www.scstatehouse.gov/sess125_2023-2024/prever/601_20230419.docx)

[04/21/2023](https://www.scstatehouse.gov/sess125_2023-2024/prever/601_20230421.docx)

[04/25/2023](https://www.scstatehouse.gov/sess125_2023-2024/prever/601_20230425.docx)

[04/26/2023](https://www.scstatehouse.gov/sess125_2023-2024/prever/601_20230426.docx)

Indicates Matter Stricken

Indicates New Matter

Committee Amendment Adopted

April 25, 2023

S. 601

Introduced by Senator Young

S. Printed 04/25/23--S. [SEC 4/26/2023 11:55 AM]

Read the first time March 07, 2023

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A bill

TO AMEND THE SOUTH CAROLINA CODE OF LAWS BY AMENDING ARTICLE 1, CHAPTER 73, TITLE 39 SO AS TO TRANSFER THE AUTHORITY TO EXECUTE THE STATE COMMODITY CODE TO THE SOUTH CAROLINA ATTORNEY GENERAL; BY AMENDING SECTION 39-73-310, RELATING TO THE AUTHORITY OF THE ADMINISTRATOR TO INVESTIGATE, THE PUBLICATION OF INFORMATION, POWERS AND PROCEDURES, AND COURT ORDERS TO COMPEL COMPLIANCE, SO AS TO PROVIDE GUIDELINES FOR THE ENFORCEMENT OF COMPLIANCE; BY AMENDING SECTION 39-73-315, RELATING TO ACTION BY the ADMINISTRATOR TO PREVENT VIOLATION OR IMMINENT VIOLATION, SO AS TO PROVIDE THAT THE ADMINISTRATOR MAY ISSUE CEASE AND DESIST ORDERS AND TO PROVIDE GUIDELINES FOR THE ISSUANCE AND ENFORCEMENT; BY AMENDING SECTION 39-73-320, RELATING TO LEGAL, EQUITABLE, AND SPECIAL REMEDIES AVAILABLE TO a COURT FOR ENFORCEMENT, and section 39-73-325, relating to penalties for wilful violation, SO AS TO PROVIDE GUIDELINES FOR ACTIONS TAKEN UPON VIOLATION OF THIS CHAPTER; BY AMENDING SECTION 39-73-350, RELATING TO APPLICABILITY OF SECTIONS 39-73-20, 39-73-50, AND 39-73-60 TO PERSONS WHO SELL, BUY, OR OFFER TO SELL OR BUY COMMODITIES IN this STATE, SO AS TO PROVIDE GUIDELINES FOR APPLICABLE RADIO AND TELEVISION COMMUNICATIONS; BY AMENDING SECTION 39-73-360, RELATING TO JUDICIAL REVIEW, SO AS TO PROVIDE GUIDELINES; BY ADDING SECTION 39-73-375 so as to provide that the office of the attorney general may retain all fines and penalties collected pursuant to this chapter; BY ADDING SECTION 39-73-400 SO AS TO PROVIDE A SEVERABILITY CLAUSE; AND BY REPEALING SECTION 39-73-355 RELATING TO ADMINISTRATIVE PROCEEDINGS, NOTICE, HEARING, and ORDER.

 Amend Title To Conform

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

SECTION 1. Section 39-73-10(1) of the S.C. Code is amended to read:

 (1) “Administrator” means the South Carolina Secretary of State Attorney General.

SECTION 2. Section 39-73-40(D) of the S.C. Code is amended to read:

 (D) The administrator, by order, may deny, suspend, revoke, or place limitations on the authority to engage in business as a qualified seller under item (2) of subsection (A) if the administrator finds that the order is in the public interest and that the person, the person's officers, directors, partners, agents, servants, or employees, a person occupying a similar status or performing similar functions, or a person who directly or indirectly controls or is controlled by the seller, or his affiliates or subsidiaries:

 (1) has filed a notice of intention under subsection (C) with the administrator or the designee of the administrator which was incomplete in material respect or contained a statement which was, in light of the circumstances under which it was made, false or misleading with respect to a material fact;

 (2) within the last ten years, has pled guilty or nolo contendere to, or been convicted of a crime indicating a lack of fitness to engage in the investment commodity business;

 (3) has been enjoined permanently or temporarily by a court of competent jurisdiction from engaging in or continuing conduct or a practice which injunction indicates a lack of fitness to engage in the investment commodities business;

 (4) is the subject of an order of the administrator denying, suspending, or revoking the person's license as a securities broker-dealer, agent, sales representative, or investment advisor, or investment advisor representative;

 (5) is the subject of one or more of the following orders which currently are effective and which were issued within the last five years:

 (a) an order by a securities agency or an administrator of another state, Canadian province or territory, the Securities and Exchange Commission, or the Commodity Futures Trading Commission entered after notice and opportunity for hearing, denying, suspending, or revoking the person's registration as a futures commission merchant, commodity trading adviser, commodity pool operator, securities broker-dealer, agent, sales representative, or investment adviser, or investment adviser representative, or the substantial equivalent of the foregoing;

 (b) suspension or expulsion from membership in, or association with, a self-regulatory organization registered under the Securities Exchange Act of 1934 or the Commodity Exchange Act;

 (c) a United States Postal Service fraud order;

 (d) a cease and desist order entered after notice and opportunity of hearing by the administrator or a securities agency or an administrator of another state, Canadian province or territory, the Securities and Exchange Commission, or the Commodity Futures Trading Commission;

 (e) an order entered by the Commodity Futures Trading Commission denying, suspending, or revoking registration under the Commodity Exchange Act~~.~~;

 (6) has engaged in an unethical or a dishonest act or practice in the investment commodities or securities business; or

 (7) has failed reasonably to supervise sales representatives or employees.

SECTION 3. Section 39-73-60 of the S.C. Code is amended to read:

 Section 39-73-60. No person, directly or indirectly, in or in connection with the purchase or sale of, the offer to sell, the offer to purchase, the offer to enter into, or the entry into of, a commodity contract or commodity option subject to Sections 39-73-20, 39-73-310, or 39-73-40(A)(2) or (4), may:

 (1) cheat or defraud or attempt to cheat or defraud a person or employ a device, a scheme, or an artifice to defraud a person;

 (2) make a false report, enter a false record, or make an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading;

 (3) engage in a transaction, an act, a practice, or a course of business, including without limitation a form of advertising or solicitation which operates or would operate as a fraud or deceit upon a person; or

 (4) misappropriate or convert the funds, security, or property of a person.

SECTION 4. Section 39-73-80 of the S.C. Code is amended to read:

 Section 39-73-80. Nothing in this chapter impairs, derogates, or otherwise, affects the authority or powers of the administrator South Carolina Attorney General under state securities law or the application of this chapter to a person or transaction subject to state securities law.

SECTION 5. Section 39-73-315 of the S.C. Code is amended to read:

 Section 39-73-315. (A) If the administrator believes, whether or not based upon an investigation conducted under Section 39-73-310, determines that a person has engaged, is engaging, or is about to engage in an act, or a practice, or course of business constituting a violation of this chapter or a related regulationrule adopted or order issued under this chapter, the administrator may:

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

 (2) issue an order imposing a civil penalty of not more than ten thousand dollars for a single violation or one hundred thousand dollars for multiple violations in a single proceeding or a series of related proceedings; or

 (3) initiate the actions specified in Section 39-73-320 subsection (B).

 (B) The administrator may institute one or more of the following actions in the appropriate courts of this State or in the appropriate courts of another state in addition to legal or equitable remedies otherwise available:

 (1) a declaratory judgment;

 (2) an action for a prohibitory or mandatory injunction to enjoin the violation and to ensure compliance with this chapter or a regulation or order of the administrator;

 (3) an action for disgorgement;

 (4) an action for appointment of a receiver or conservator for the defendant or the defendant's assets.An order issued pursuant to subsection (A) is effective on the date of issuance. Upon issuance of the order, the administrator shall promptly serve each person subject to the order with a copy of the order and a notice that the order has been entered. The order must include a statement of any civil penalty or costs of investigation the administrator will seek, a statement of the reasons for the order, and notice that, within thirty days after receipt of a request in a record from the person, the matter will be scheduled for a hearing. If a person subject to the order does not request a hearing and none is ordered by the administrator within thirty days after the date of service of the order, the order, which may include a civil penalty or any costs of the investigation if a civil penalty or costs were sought, becomes final as to that person by operation of law. If a hearing is requested or ordered, the administrator, after notice of and opportunity for hearing to each person subject to the order, may modify or vacate the order or extend it until final determination.

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

 (D) In a final order under subsection (C), the administrator may impose a civil penalty in an amount not to exceed ten thousand dollars for each violation.

 (E) In a final order, the administrator may charge the actual cost of an investigation or proceeding for a violation of this chapter or a rule adopted or order issued under this chapter.

 (F) If a petition for judicial review of a final order is not filed in accordance with this chapter, the administrator may file a certified copy of the final order with the clerk of a court of competent jurisdiction. The order so filed has the same effect as a judgment of the court and may be recorded, enforced, or satisfied in the same manner as a judgment of the court.

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

 (H) All orders issued under this section are public documents subject to the Freedom of Information Act and must be published on the Attorney General's website searchable by the name of the parties involved.

SECTION 6. Section 39-73-320 of the S.C. Code is amended to read:

 Section 39-73-320. (A)(1) Upon a proper showing by the administrator that a person has violated or is about to violate this chapter or a regulation or order of the administrator, the court may grant appropriate legal or equitable remedies.

 (2) Upon a showing of a violation of this chapter or a regulation or order of the administrator, the court, in addition to traditional legal and equitable remedies, including temporary restraining orders, permanent or temporary prohibitory or mandatory injunctions, and writs of prohibition or mandamus, may grant the following special remedies:

 (a) imposition of a civil penalty of not more than ten thousand dollars for a single violation or one hundred thousand dollars for multiple violations in a single proceeding or a series of related proceedings;

 (b) disgorgement;

 (c) declaratory judgment;

 (d) restitution to investors wishing restitution;

 (e) appointment of a receiver or conservator for the defendant or the defendant's assets.

 (3) Appropriate remedies when the defendant is shown only about to violate this chapter or a regulation or order of the administrator is limited to:

 (a) temporary restraining order;

 (b) temporary or permanent injunction;

 (c) writ of prohibition or mandamus; or

 (d) order appointing a receiver or conservator for the defendant or the defendant's assets.If the administrator believes that a person has engaged, is engaging, or is about to engage in an act, practice, or course of business constituting a violation of this chapter or a rule adopted or order issued under this chapter or that a person has, is, or is about to engage in an act, practice, or course of business that materially aids a violation of this chapter or a rule adopted or order issued under this chapter, the administrator may maintain an action in the Richland County Court of Common Pleas to enjoin the act, practice, or course of business and to enforce compliance with this chapter or a rule adopted or order issued under this chapter.

 (B) The court may not require the administrator to post a bond in an official action under this chapter. In an action pursuant to this section and on a proper showing, the court may:

 (1) issue a permanent or temporary injunction, restraining order, or declaratory judgment;

 (2) order other appropriate or ancillary relief, which might include:

 (a) an asset freeze, accounting, writ or attachment, writ of general or specific execution, and appointment of a receiver or conservator, that may be the administrator, for the defendant or the defendant’s assets;

 (b) ordering the administrator to take charge and control of a defendant’s property, including investment accounts and accounts in a depository institution, rents, and profits; to collect debts; and to acquire and dispose of property;

 (c) imposing a civil penalty in an amount not to exceed ten thousand dollars for each violation; an order of rescission, restitution, or disgorgement directed to a person that has engaged in an act, practice, or course of business constituting a violation of this chapter or the or a rule adopted or order issued under this chapter; and

 (d) ordering the payment of prejudgment and post-judgment interest; or

 (3) order such other relief as the court considers appropriate.

 (C) The administrator may not be required to post a bond in an action or proceeding under this chapter.

 (D)(1) Upon a proper showing by the administrator or securities or commodity agency of another state that a person, other than a government or governmental agency or instrumentality, has violated, or is about to violate, the commodity code of that state or a regulation or order of the administrator or securities or commodity agency of that state, the court may grant appropriate legal and equitable remedies.

 (2) Upon showing of a violation of the securities or commodity act of the foreign state or a regulation or order of the administrator or securities or commodity agency of the foreign state, the court, in addition to traditional legal or equitable remedies, including temporary restraining orders, permanent or temporary prohibitory or mandatory injunctions, and writs of prohibition or mandamus, may grant the following special remedies:

 (a) disgorgement;

 (b) appointment of a receiver, conservator, or ancillary receiver or conservator for the defendant or the defendant's assets located in this State.

 (3) Appropriate remedies when the defendant is shown only about to violate the securities or commodity act of the foreign state or a regulation or order of the administrator or securities or commodity agency of the foreign state is limited to:

 (a) temporary restraining order;

 (b) temporary or permanent injunction;

 (c) writ or prohibition or mandamus; or

 (d) order appointing a receiver, conservator, or ancillary receiver or conservator for the defendant or the defendant's assets located in this State.

SECTION 7. Section 39-73-325 of the S.C. Code is amended to read:

 Section 39-73-325. (A) A person who wilfully violates this chapter or a regulation or order of the administrator under this chapter, upon conviction, must be fined not more than twenty thousand dollars, or imprisoned not more than ten years, or both, for each violation.

 (B) A person convicted of violating this chapter or a regulation or order under this chapter may be fined but must not be imprisoned if the person proves he had no knowledge of the rule or order.

 (C) The administrator may refer evidence available concerning violations of this chapter or a regulation or order of the administrator to the appropriate division of the Attorney General’s office or the appropriate solicitor or other appropriate prosecution, law enforcement, or licensing authorities who, with or without a reference from the administrator, may institute the appropriate criminal proceedings under this chapter.

SECTION 8. Section 39-73-330 of the S.C. Code is amended to read:

 Section 39-73-330. (A) This chapter must be administered by the South Carolina Secretary of StateAttorney General.

 (B) The administrator and his employees may not use information filed with or obtained by the administrator which is not public information for personal gain or benefit and may not conduct securities or commodity dealings based upon the information, even though public, if there has not been sufficient time for the securities or commodity markets to assimilate the information.

 (C)(1) Except as provided in item (2), all information collected, assembled, or maintained by the administrator is public information and is available for examination by the public.

 (2) The following information is confidential and an exception to item (1):

 (a) information obtained in private investigations pursuant to Section 39-73-310;

 (b) information made confidential by the Freedom of Information Act;

 (c) information obtained from federal agencies which must not be disclosed under federal law.

 (3) The administrator in his discretion may disclose information made confidential under subsection (C)(2)(a) to persons identified in Section 39-73-335(A).

 (4) This chapter does not create or derogate a privilege which exists at common law, by statute, or otherwise when documentary or other evidence is sought under subpoena directed to the administrator or his employees.

SECTION 9. Section 39-73-340(A) of the S.C. Code is amended to read:

 (A) In addition to specific authority granted elsewhere in this chapter, the administrator may make, amend, or rescind regulations, forms, and orders as are necessary to carry out this chapter. The regulations or forms must include, but are not limited to, regulations defining terms, whether or not used in this chapter. The definitions must not be inconsistent with this chapter. For the purpose of regulations or forms the administrator may classify commodities and commodity contracts, persons, and matters within the administrator's jurisdiction.

SECTION 10. Section 39-73-350 of the S.C. Code is amended to read:

 Section 39-73-350. (A) Sections 39-73-20, 39-73-50, and 39-73-60 apply to persons who:

 (1) sell or offer to sell when an offer to:

 (a) sell is made in this State; or

 (b) buy is made and accepted in this State;

 (2) buy or offer to buy when an offer to:

 (a) buy is made in this State; or

 (b) sell is made and accepted in this State.

 (B) For the purpose of this section, an offer to sell or buy is made in this State, whether or not either party is then present in this State, when the offer:

 (1) originates from this State; or

 (2) is directed by the offeror to this State and received at the place to which it is directed, or at a post office in this State for a mailed offer.

 (C) For the purpose of this section, an offer to buy or sell is accepted in this State when acceptance:

 (1) is communicated to the offeror in this State; or

 (2) previously has not been communicated to the offeror, orally or in writing, outside this State, and acceptance is communicated to the offeror in this State, whether or not either party is then present in this State, when the offeree directs it to the offeror in this State, reasonably believing the offeror to be in this State and it is received at the place to which it is directed or at a post office in this State for a mailed acceptance.

 (D) An offer to sell or to buy is not made in this State when one or both of the following exist:

 (1) Tthe publisher circulates or there is circulated on his behalf in this State a bona fide newspaper or other publication of general, regular, and paid circulation which is not published in this State or which is published in this State but has had more than two-thirds of its circulation outside this State during the past twelve months or when a radio or television program or other electronic communication originating outside this State is received in this State. A radio or television program, or other electronic communication, is considered as having originated in this State if either the broadcast studio or the originating source of transmission is located in this State, unless:

 (1) the program or communication is syndicated and distributed from outside this State for redistribution to the general public in this State;

 (2) the program or communication is supplied by a radio, television, or other electronic network with the electronic signal originating from outside this State for redistribution to the general public in this State;

 (3) the program or communication is an electronic communication that originates outside this State and is captured for redistribution to the general public in this State by a community antenna or cable, radio, cable television, or other electronic system; or

 (4) the program or communication consists of an electronic communication that originates in this State, but which is not intended for distribution to the general public in this State.

 (2) A radio or television program originating outside this State is received in this State.

SECTION 11. Section 39-73-360 of the S.C. Code is amended to read:

 Section 39-73-360. (A) A person aggrieved by a final order of the administrator may obtain a review of the order in the Richland County Court of Common Pleas by filing in the court, within thirty days after entry of the order, a written petition praying that the order may be modified or set aside, in whole or in part. The aggrieved person, upon filing a petition, may move before the court in which the petition is filed to stay the effectiveness of the administrator’s final order until such time as the court has reviewed the order. If the court orders a stay, the aggrieved person must post any bond set by the court in which a petition is filed. A copy of the petition must be served upon the administrator, and the administrator shall certify and file in court a copy of the filing and evidence upon which the order was entered. When these have been filed, the court has exclusive jurisdiction to affirm, modify, enforce, or set aside the order, in whole or in part. The findings of the administrator regarding the facts, if supported by competent, material, and substantial evidence, are conclusive.of the administrator may obtain a review of the order in court by filing, within sixty days after the entry of the order, a written petition requesting the order be modified or set aside in whole or in part. A copy of the petition for review must be served upon the administrator.

 (B) Upon the filing of a petition for review, except where the taking of additional evidence is ordered by the court pursuant to subsection (E) or (F), the court shall have exclusive jurisdiction of the matter, and the administrator may not modify or set aside the order, in whole or in part.

 (C) The filing of a petition for review under subsection (A), unless specifically ordered by the court, does not operate as a stay of the administrator's order, and the administrator may enforce or ask the court to enforce the order pending the outcome of the review proceedings.

 (D) Upon receipt of the petition for review, the administrator shall certify and file in the court a copy of the order and the transcript or record of the evidence upon which it was based. If the order became final by operation of law under Section 39-73-355(D), the administrator shall certify and file in court the summary order and evidence of its source upon the parties to it and an affidavit certifying that no hearing has been held and the order became final pursuant to Section 39-73-355(D).

 (E) If the aggrieved party or the administrator applies to the court for leave to adduce additional evidence and shows to the satisfaction of the court there were reasonable grounds for failure to adduce the evidence in the hearing before the administrator or other good cause, the court may order the additional evidence to be taken by the administrator under conditions the court considers proper.

 (F) If new evidence is ordered taken by the court, the administrator may modify the findings and order by reason of the additional evidence and shall file in the court the additional evidence with modified or new findings or order.

 (G) The court shall review the petition based upon the original record before the administrator as amended under subsections (E) and (F). The findings of the administrator as to the facts, if supported by competent, material, and substantive evidence, are conclusive. Based upon this review, the court may affirm, modify, enforce, or set aside the order, in whole or in part.

 (H) The judgment of the court is subject to review by the court.

SECTION 12. Section 39-73-370 of the S.C. Code is amended to read:

 Section 39-73-370. It is a defense in a complaint, information, indictment, a writ, or a proceeding brought under this chapter alleging a violation of Section 39-73-20 based solely on the failure in an individual case to make physical delivery within the applicable time under Section 39-73-10(5) or Section 39-73-40(A)(2) if:

 (1) failure to make physical delivery was due solely to factors beyond the control of the seller, the seller's officers, directors, partners, agents, servants, or employees, persons occupying a similar status or performing similar functions, persons who directly or indirectly control or are controlled by the seller, or the seller's affiliates, subsidiaries, or successors; or

 (2) physical delivery was completed within a reasonable time under the applicable circumstances.

SECTION 13. Chapter 73, Title 39 of the S.C. Code is amended by adding:

 Section 39-73-375. The Office of the Attorney General may retain the first seven hundred fifty thousand dollars in fines and penalties received in a fiscal year in settlement of litigation enforcement actions and reimbursements of expenses arising from violations under this chapter to offset investigative, prosecutorial, and administrative costs of enforcing this chapter, after which any excess fines and penalties received in a fiscal year must be deposited into the general fund. The Attorney General shall issue an annual report to the President of the Senate, the Speaker of the House, the Chairman of the Senate Finance Committee, the Chairman of the House Ways and Means Committee, the Chairman of the Senate Labor, Commerce and Industry Committee, and the Chairman of the House Labor, Commerce and Industry Committee. This report shall include the total amount of civil penalties collected by the Attorney General’s Office for violations of the Commodities Code, the amount of restitution and disgorgement ordered to be paid for violations of the Commodities Code, the amount of fines and penalties retained by the Attorney General’s Office pursuant to this section, and the amount of excess fines and penalties that were deposited into the general fund pursuant to this section.

SECTION 14. Chapter 73, Title 39 of the S.C. Code is amended by adding:

 Article 4

 Severability Clause

 Section 39-73-400. If any provision of this chapter or its application to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of this chapter that can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

SECTION 15. Section 39-73-355 of the S.C. Code is repealed.

SECTION 16. This act takes effect upon approval by the Governor.

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