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Current Legislation

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CURRENT LEGISLATION

I. INTRODUCTION

The early months of the Second Session of the ninety-ninth General Assembly of the South Carolina State Legislature involved a concentration of time on a few publicly controversial issues while many less momentous proposals were enacted into law. Between January 11, 1972, when the Assembly was convened, and March 31, weeks of heated debate were devoted to three highly publicized issues, including a proposal to make Winthrop College coeducational,¹ a proposal to build a second medical college in South Carolina,² and the controversy over the ever-infamous "minibottle." While the public concentrated its attention on the controversial issues, several less stirring measures of significance to those in the legal profession in South Carolina were discussed. This survey selects those acts which were ratified and those bills which were debated during the first three months of 1972, which created, or could create an impact on the structure of the South Carolina law. Discussion is directed to reform in the liquor laws, as well as to changes in the areas of criminal law, contracts, insurance, and workmen's compensation. Because the 1972 edition of the Code of Laws of South Carolina is due to be published, the legislators also spent many hours on revision of the Code; several interesting revisions are therefore presented.

Since this article is primarily concerned with state-wide issues, it does not in fact present an overall view of the legislative activities. The majority of the bills passed were local measures, concerned with such matters as hunting seasons, local budgets, and the terms of office of local officials.

All acts are cited by permanent act numbers, and can be found in the 1972 edition of Acts and Joint Resolutions of the General Assembly of the State of South Carolina. All bills will be cited by House number, Senate number, or ratification

1. House Bill No. 1188, 99th Gen. Assem. of S.C., 1st Sess. (1971).

2. Senate Bill No. 676, 99th Gen. Assem. of S.C., 2nd Sess. (1972).

number.³ Any reference to code sections, are to the 1962 Code of Laws of South Carolina.

II. LIQUOR LAW REFORM

As was expected, the 1972 Session of the General Assembly began with a heated debate over the highly controversial proposed constitutional amendment to allow the sale of mixed drinks in bottles of two ounces or less. After six weeks of work, both legislative chambers finally approved a measure which called for a constitutional referendum.⁴ Should the electorate of South Carolina approve of the constitutional change in the November elections, the new law will provide,

[T]hat licenses may be granted to sell and consume alcoholic liquors and beverages in sealed containers of two ounces or less in businesses which engage primarily and substantially in the preparation and serving of meals or furnishing of lodging or on premises of certain non profit organizations with limited membership not open to the general public, during such hours as the General Assembly may provide.⁵

A companion bill, which sets license fees and various regulations controlling the sale of liquor in "minibottles" actually received more debate than the proposed constitutional amendment itself. This measure will not go into effect unless the constitutional amendment is accepted by the voters. The Act amends Act No. 398 of 1967 by striking entirely Sub-section 10 of Section 1 which is concerned with possession and consumption of alcoholic beverages, and inserting in its place, all new legislation on the topic.⁶ One major function of the new section is to repeal the "brown bagging" law, which permits persons to carry their own bottles into private establishments. Under the new law, "brown bagging" will be permitted only at private gatherings which are not repetitive in nature.⁷ Sub-section 10 would allow the sale and consumption of alcoholic liquors in bottles of two ounces or less between

3. All bills may be obtained from the clerk of the House or the clerk of the Senate. Before bills are printed, a typed copy may be obtained from the Legislative Council.

Ratification numbers are only used to cite those bills which have been ratified by the legislators, but which have not been given the final approval of a third party, such as the electorate in the case of a constitutional referendum.

4. Ratification No. 1034 of 1972.

5. *Id.* at 1-2.

6. Act No. 1063 of 1972.

7. *Id.*

the hours of ten o'clock in the morning and two o'clock the following morning provided the establishment is a restaurant or a motel; the business is licensed by the Alcoholic Beverage Control Commission; and the seal on the container is broken by the purchaser, or the seller in the presence of the purchaser.⁸

Sub-section 10.4 of Section 1 of the new Act is concerned with license eligibility requirements. Requirements for restaurants will be a minimum seating capacity of twenty-five, and a Class A restaurant permit. For a hotel or motel to be eligible for a license, it must rent to the public on a regular basis and have accommodations of not less than twenty rooms.

Sub-section 10.7 of Section 1, which is concerned with license fees, probably generated the most debate among the legislators. The section, as it was finally agreed upon, calls for a license fee of five hundred dollars per year for nonprofit organizations, and seven hundred fifty dollars per year for business establishments. This section also has a provision which gives those establishments which now have a "brown bagging" license, a certain amount of credit on the purchase price of a new "minibottle" license.

The new liquor law, if enacted, will generate much additional revenue for the State of South Carolina. Section 2 of the Act requires a twenty-five cent tax on each "minibottle" sold, while Section 5 provides that twenty-five percent of the revenue derived from the sale of "minibottles" will be returned to the counties on a per capita basis. The counties are to use these funds for alcohol education programs, and for the rehabilitation of alcoholics and drug addicts.

III. CRIMINAL LAW

As of March 31, 1972, the General Assembly had produced very little new legislation in the field of criminal law. However, there have been several bills introduced in both the House and the Senate which are currently being studied by various committees, and which would, upon ratification, make significant reforms in the area of criminal law.

The most important legislation enacted in this area to date is an Act which makes it mandatory for any individual

8. *Id.*

with any knowledge of child abuse to report all such cases to the county sheriff's office, or the department of public welfare.⁹ The Act applies to doctors as well as to "[a]ny other person having reasonable cause to believe that a child under the age of seventeen years has been subjected to physical abuse or neglect. . . ."¹⁰ The Act repeals Act 81 of 1965, which required only doctors and other medical personnel to report any known incidents of physical abuse, and which made no mention of child neglect. Under the old law, the maximum penalty for failing to make such a report was thirty days imprisonment or a one hundred dollar fine,¹¹ whereas, under the new legislation, the maximum penalty is imprisonment for not more than six months or a fine of not more than five hundred dollars, or both, at the discretion of the court.¹² Also, any individual who in good faith makes such a report will be immune from any liability, both civil and criminal. The enactment of legislation concerning child abuse reflects the strengthened response of South Carolina's legislators to the urgent social need to protect children from those who would abuse or neglect them.

Several significant proposals have been made but have not as yet been given approval; of these, the most significant included several bills which were drafted in order to alleviate the crowding of court dockets, speed up court processes, and to give the indigent defendant more opportunity to aid in his own defense. The first of these measures is aimed at helping the poor, who are often unable to afford bond when charged with an infraction of the law. This bill would permit a defendant charged with a non-capital offense and with no prior conviction, to be automatically presumed eligible for release on his own recognizance.¹³ Under the present law, a determination of eligibility for release on personal recognizance is left entirely to the discretion of the court.^{13a} Apparently the bill is an attempt by the South Carolina legislators to alleviate the problem of overcrowded jails. It would also permit defendants to maintain their employment while allow-

9. Act No. 1068 of 1972.

10. *Id.* at 2231.

11. Act No. 81 of 1965.

12. Act No. 1068 of 1972.

13. House Bill No. 2717, 99th Gen. Assem. of S.C., 2nd Sess. (1972).

13a. S.C. CODE ANN. §17-300 (1962).

ing them to assist in every way possible in the preparation of their own defense.

Another proposal, House Bill No. 2716, is aimed entirely at speeding up court processes by eliminating unnecessary waiting for grand jury action. This bill would permit defendants in custody to waive indictment before the grand jury, and either seek a trial *or* plead guilty without such indictment. The measure would amend Section 17-511 of the 1962 Code, which permits a defendant to waive presentment before the grand jury for indictment purposes, but only if he enters a guilty plea following such waiver. Should the proposal be enacted, it would apply only to defendants charged with non-capital offenses, and Section 17-511 would remain the law as far as defendants charged with capital offenses are concerned.

A third proposal in the area of criminal procedure would credit an individual with any time served in jail while awaiting trial and sentencing.¹⁴ Although it is common knowledge that most judges already follow this procedure, there is still a need to make such a law a permanent part of the Code of Laws of South Carolina.

Two proposals worthy of mention were introduced during last fall's unusual reconvened session which was held primarily for the purpose of reapportioning the South Carolina State Legislature.^{14a} The first was the result of a number of reports that children had been given Halloween candy and apples which contained poisons, glass, razor blades, and other foreign objects. The bill would make it a felony "[t]o knowingly give away food to which poison or deleterious ingredients have been added or in which harmful matter has been inserted."¹⁵ A second bill is directed at curbing shootings in bars, taverns, and night clubs. Under the proposal, there would be a minimum sentence of thirty days imprisonment or three hundred dollars fine for anyone convicted of carrying a handgun into a bar or any establishment licensed to sell alcoholic beverages.¹⁶ At the time of this publication, both of these proposals have received full approval by the House, and have been referred to the Senate Judiciary Committee.

14. House Bill No. 2718, 99th Gen. Assem. of S.C., 2nd Sess. (1972).

14a. See discussion *infra*.

15. House Bill No. 2398, 99th Gen. Assem. of S.C., 1st Sess. at 1 (1972).

16. House Bill No. 2343, 99th Gen. Assem. of S.C., 1st Sess. (1971).

IV. CONTRACTS

A rather significant new law in the area of contracts is Act No. 957 which creates a manufacturer's warranty on certain automobiles sold and licensed in the State of South Carolina. The Act was designed to comply with federal safety regulations drafted by the United States Department of Transportation. Under the requirement of the new law, all automobiles manufactured on and after August 1, 1972, and sold in South Carolina must be equipped with an energy absorption system which permits the automobile to withstand a front end collision at five miles per hour and a rear end collision at two and one-half miles per hour without any damage.¹⁷ The Act further provides that all automobiles manufactured on and after August 1, 1974, and sold in South Carolina shall be capable of withstanding a crash into the front and rear at five miles per hour "[w]ithout sustaining any damage to the automobile other than minor deformation of bumper parts."¹⁸ An obvious consequence of this Act should be a reduction in automobile liability and collision premiums. The possibility of such a reduction was perhaps the reason why the measure was approved by both chambers of the General Assembly with virtually no dissent from the legislators.

A bill which provides for the much needed enactment of the Uniform Consumer Credit Code¹⁹ was introduced in the Senate on February 1, 1971, but has as yet failed to proceed any further than the Senate Banking and Insurance Committee, where the proposal was initially referred after introduction to the legislators. The enormous complexity of the proposal, coupled with the fact that in such a complex measure there will always be certain provisions to which some legislators will be opposed, are reasons given for the failure of the bill to make any headway.²⁰ On January 26, 1972, a bill for consumer protection that is practically identical to last year's proposed Uniform Consumer Credit Code was also in-

17. Act No. 957 of 1972.

18. *Id.* at 2116.

19. Senate Bill No. 120, 99th Gen. Assem. of S.C., 1st Sess. (1971). H. 1359, a similar proposal, was introduced in the House on February 18, 1971. It also has failed to advance.

20. *See generally* 23 S.C.L. REV. 540 (1971).

troduced in the Senate.²¹ This bill is also currently in the Senate Banking and Insurance Committee. The basic difference in the two proposals is that the more recent bill eliminates a provision in last year's proposal which would increase certain interest rates. The value of a consumer credit code to the people of South Carolina is implicit in Section 1.102 of this year's bill, which states the purpose and underlying policies of the proposal to be as follows:

- (a) To simplify, clarify and modernize the law governing retail installment sales, consumer credit, small loans and usury.
- (b) To provide rate ceilings to assure an adequate supply of credit to consumers.
- (c) To further consumer understanding of the terms of credit transactions and to foster competition among suppliers of consumer credit so that consumers may obtain credit at reasonable cost.
- (d) To protect consumer buyers, lessees and borrowers against unfair practices by some suppliers of consumer credit, having due regard for the interests of legitimate and scrupulous creditors.
- (e) To permit and encourage the development of fair and economically-sound consumer credit practices.²²

Included in the proposal are certain consumer protection features which are worthy of mention at this time. Perhaps the most significant provision of the bill is Section 3.201, which creates the office of Consumer Credit Commissioner. The Commissioner will have the responsibility of protecting the consumer from illegal or deceptive business practices. Generally, consumer complaints do not involve large sums of money and, in fact, are seldom significant enough to be worthy of court consideration. Thus, the merchant or lender remains free to continue his illegal practices. Under Section 3.301 of the bill, all consumer complaints will be submitted to the office of the Commissioner, who will implement an investigation. The section further provides that if the investigation discloses a violation by any person, the Commissioner may request the Attorney General to bring an action in the name of the state against such person or in the alternative enjoin him from continuing the violation.

Another significant consumer protective feature can be found in Section 7.105, which is concerned with retail installment sales. This section regulates the ability of an individual

21. Senate Bill No. 792, 99th Gen. Assem. of S.C., 2nd Sess. (1972).

22. *Id.* at 1-2.

to assert his status as a holder in due course.²³ Under the proposed measure, an assignee of a retail installment contract will not be permitted to avail himself of the protection afforded a holder in due course in any action to enforce the retail installment contract. This proposed legislation is designed to preserve the rights of the consumer against the seller of merchandise which proved to be defective, even though that seller has assigned the installment sales agreement to a party who qualifies as a holder in due course. Until the legislators of South Carolina enact consumer credit legislation, consumers of this state will continue to be exposed to unfair commercial transactions.

23. S.C. CODE ANN. §10.3-302 (1962) provides:

HOLDER IN DUE COURSE—

- (1) A holder in due course is a holder who takes the instrument
 - (a) for value; and
 - (b) in good faith; and
 - (c) without notice that it is overdue or has been dishonored or of any defense against or claim to it on the part of any person.
- (2) A payee may be a holder in due course.
- (3) A holder does not become a holder in due course of an instrument:
 - (a) by purchase of it at judicial sale or by taking it under legal process; or
 - (b) by acquiring it in taking over an estate; or
 - (c) by purchasing it as part of a bulk transaction not in regular course of business of the transferor.
- (4) A purchaser of a limited interest can be a holder in due course only to the extent of the interest purchased.

S.C. CODE ANN. §10.3-305 (1962) provides:

RIGHTS OF A HOLDER IN DUE COURSE.—To the extent that a holder is a holder in due course he takes the instrument free from

- (1) all claims to it on the part of any person; and
- (2) all defenses of any party to the instrument with whom the holder has not dealt except
 - (a) infancy, to the extent that it is a defense to a simple contract; and
 - (b) such other incapacity, or duress, or illegality of the transaction, as renders the obligation of the party a nullity; and
 - (c) such misrepresentation as has induced the party to sign the instrument with neither knowledge nor reasonable opportunity to obtain knowledge of its character or its essential terms; and
 - (d) discharge in insolvency proceedings; and
 - (e) any other discharge of which the holder has notice when he takes the instrument.

V. INSURANCE

Relatively little legislative action has been directed to issues which involve insurance. As of March 31, only one new law concerning insurance had been ratified.²⁴ This law is of peculiar significance to the practicing attorney in South Carolina because it pertains to the payment of attorney's fees. The new law assists insurance claimants by penalizing the insurer for failure to pay a claim within a reasonable time and without reasonable cause. Under the new Act, if an insurer refuses to pay a valid claim within ninety days from the date of a demand by a policyholder, and upon a finding made by a trial judge that such refusal was without reasonable cause or in bad faith, then the insurer "[s]hall be liable to pay such holder, in addition to any sum or any amount otherwise recoverable, all reasonable attorney's fees for the prosecution of the case against the insurer. . . ."²⁵ The amount considered reasonable will be determined by the trial judge, but in no instance will this amount exceed one-third of the amount of the judgment or twenty-five hundred dollars, whichever is less.²⁶ Section 2 of the Act further provides that if the defendant insurer appeals to the supreme court and the judgment is affirmed, then the insurer will also be liable for reasonable attorney's fees of the respondent on such appeal.²⁷

The legislators have not as yet attempted to implement a no-fault automobile insurance plan or any variation thereof in South Carolina. Apparently because of the facts that twelve states now have no-fault automobile insurance plans in effect, and because the United States Congress has considered a bill which would establish nationwide no-fault automobile insurance,²⁸ South Carolina's legislators have introduced two proposals that would seem to indicate a possible revamp of the

24. Act No. 1057 of 1972.

25. *Id.* at 2203.

26. *Id.*

27. *Id.*

28. S. 945. 92nd Cong., 2nd Sess. (1972). The proposal would require all states to enact no-fault legislation which meets the minimum federal standard within two years from the date of enactment of the bill. Under this proposed legislation, any one operating a motor vehicle would be required to be insured with a no-fault policy. On August 8, 1972, the bill was committed to the Committee on the Judiciary by a forty-nine to forty-six roll call vote.

automobile insurance system in South Carolina at some time in the future. The first of these proposals is a Concurrent Resolution²⁹ which would create a committee to make a study and investigate automobile insurance plans, including, but not limited to, the no-fault automobile insurance system. The committee would make its report and recommendations to the 1973 session of the General Assembly. Another proposal is a Joint Resolution³⁰ which would require the State Insurance Department to initiate a program to educate the populace of South Carolina on the concept of no-fault automobile insurance. The Resolution would require that "the information presented shall be comprehensive in nature and objective, unbiased and factual and shall include the experience of other states where 'No-Fault' automobile insurance legislation has been enacted."³¹

VI. WORKMEN'S COMPENSATION

Only one piece of legislation in the field of workmen's compensation has been enacted thus far in the Second Session.³² The measure, an amendment to Section 72-175 of the 1962 Code, actually increases workmen's compensation benefits, by permitting interest to be added to the award. Under the new law, the first installment of compensation payable under the terms of an award will become due seven days from the date of such an award, and on the due date "[a] 11 compensation then due shall be paid, including interest from the original date of the award at the maximum legal rate."³³

VII. CODE REVISION

Over two hundred bills which have been introduced thus far in the Second Session are aimed at repealing useless, antiquated laws. Many of these bills propose to eliminate statutes which have simply fallen into obsolescence, while others will nullify laws which were originally enacted for the purpose of maintaining racial segregation. Some of the more interesting statutes which have been eliminated by the ratification of several of these proposed bills include the following:

29. Senate Bill No. 674, 99th Gen. Assem. of S.C., 2nd Sess. (1972).

30. House Bill No. 2391, 99th Gen. Assem. of S.C., 1st Sess. (1971).

31. *Id.* at 2.

32. Act No. 979 of 1972.

33. *Id.* at 2135.

Section 28-760 of the 1962 Code, which required that all fishing and shrimping boats operating from any South Carolina port or shore have a natural-born citizen on board.³⁴

Section 40-71 of the 1962 Code, which required that all workers on street railways work no more than twelve hours a day.³⁵

Section 40-452 of the 1962 Code, which required that persons of different races could not work together in the same room of a textile factory.³⁶

Section 22-3 of the 1962 Code, which stipulated that an institution of higher learning must close if a court orders the institution to admit certain pupils.³⁷

Section 32-1311 of the 1962 Code, which required property owners in towns with populations ranging from twenty-seven hundred to thirty-five hundred to furnish garbage cans on the premises.³⁸

Section 47-144 of the 1962 Code, which required certain police duties by the public and which set penalties for failure to perform such duties.³⁹

Sections 58-1331 through 58-1340 of the 1962 Code, which required that all street railway companies provide separate accommodations for white and black passengers.⁴⁰

Section 32-1670 of the 1962 Code, an 1896 law which required that all restaurants which used imitation butter had to display a ten-inch by fourteen-inch white card which read "Imitation Butter Used Here."⁴¹

Perhaps the most interesting is Section 32-1645 of the 1962 Code, which required that no person buy, sell or trade a second hand milk bottle unless he had the bottle in his possession on March 20, 1930.⁴²

34. Act No. 1075 of 1972.

35. Act No. 1010 of 1972.

36. Act No. 1049 of 1972.

37. Act No. 1085 of 1972.

38. Act No. 1018 of 1972.

39. Act No. 1086 of 1972.

40. Act No. 1123 of 1972.

41. Act No. 1076 of 1972.

42. Act No. 997 of 1972.

VIII. CONCLUSION

Many significant issues were debated and enacted by the legislators in the months following March 31, 1972. These measures will be discussed in a subsequent survey issue. For the present, it will suffice to present a highly condensed summary of some of the more important issues which stimulated much controversy and public concern during the latter months of the Second Session.

The legislators have probably spent more time in attempting to reapportion the Senate of the General Assembly of South Carolina than on any other issue. Last fall, in a special reconvened session, both the Senate and the House finally gave approval to two alternate Senate reapportionment plans.⁴³ This effort proved to be of no avail, as a three-judge federal district court rejected both plans in early April.⁴⁴ The panel imposed upon the legislators a thirty-day deadline in which to devise an acceptable plan. Therefore, during the month of April, many of the legislators' hours were devoted to discussion over the reapportionment of the Senate.

Another proposal which has generated much controversy is Senate Bill No. 977. This is the widely publicized "Tidelands Bill." Section 21 of the bill provides that individuals who presently claim ownership to tidelands which were formerly used for the cultivation of rice, will be able to acquire title to such land if they can meet the burden of proof of ownership. The tidelands are presently owned by the state, and the lands and beaches are generally open to the public. The bill has induced much dissent from conservationist groups who fear that private ownership will cause the marshes and beaches to be cleared, and the property used for commercial, industrial, or residential purposes.

Other issues of significance upon which the legislators spent the remaining months of the Second Session include: a measure aimed at giving full legal rights to eighteen-year-olds;⁴⁵ a proposal to prohibit the arbitrary confiscation of

43. Ratification No. 961 of 1972.

44. *Twiggs v. West*, ___ F. Supp. ___ (D.S.C. 1972).

45. House Bill No. 2524, 99th Gen. Assem. of S.C., 2nd Sess. (1972).

vehicles used in the trafficking of illegal drugs;⁴⁶ a proposal to revamp the judicial system of South Carolina;⁴⁷ and an Act which provides that certain persons having a life estate in a dwelling place may claim a homestead exemption.⁴⁸

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46. Senate Bill No. 2-65, 99th Gen. Assem. of S.C., 2nd Sess. (1972).

47. Senate Bill No. 428, 99th Gen. Assem. of S.C., 1st Sess. (1971).

48. Act No. 1132 of 1972.