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Senate Focus On Alcohol Monitoring & Common Law Marriage; House Restructures & Fights Over The Physician Practice Act

Senate Judiciary Agenda

The Senate Judiciary committee met several hours Tuesday with a full agenda, carrying over as many bills as they referred to the Senate calendar.

Gambling

S.732 providing exceptions to gambling (raffles four times a year) for non-profit organizations was defeated in committee.

Senator Lourie expressed concern over the number of times a year raffles could be held and wanted to reduce the number from 4 to 2. Senator Hutto said 4 are not unreasonable. "In my area, you don't want to go against helping sick children. You don't know whose house is going to burn down or whose child will be sick," said Hutto. Lourie did not agree and Senator Sheheen pointed out that money raised did not have to go to a good cause.

Senator Ford discussed sin and gambling. Senator Knotts agreed with Ford saying, "The Senator from Charleston made common sense. Common sense is not made around here

anymore. This is a community effort. Money is being donated to help families in need. If you are going to vote against sinning, don't vote for this."

Senator Gregory said he did not see "the boogiemán in this." He does not see it as a "gambling venture."

The committee adopted the amendment to change the number of raffles per year and per organization from 4 to 2.

Gregory tried to get the committee to give the bill a favorable report as amended and that motion failed.

Hutto pointed out the bill had nothing to do with Catawba bingo.

Ford said, "I would like to announce that I'm against gambling. I don't understand how these senators can be so hypocritical. You can't play both sides."

Senator Elliott had two concerns – there are other ways to raise money for needs and how much money would actually go to charity.

The bill failed by a vote of 8-13.

S.967 a Constitutional amendment relating to prohibitions on lotteries was given a favorable with amendment report by the

committee. The Attorney General has ruled that raffles constitute a lottery. The bill clarifies that raffles are not lotteries. They also gave a favorable report with amendment to **S.1151**, enabling legislation to **S.967**.

Bonds

The committee gave a favorable with amendment report to **S.1055** regarding bail. The adopted amendment allows a judge to deny bail based on the safety of the community.

S.392 Illegal Immigration

The conference committee on illegal immigration legislation met this week. The Senate conferees are Senators Ritchie, Campsen and Sheheen. The House conferees are Representatives Harrison, Delleney and Viers.

The meeting was organizational in nature. Senator Ritchie characterized the bill as the "best thinking of both bodies."

The major differences are the hot line, verification of employment, harboring, identity fraud, the state grand jury, higher education and the

severability clause. Vice-chairman Harrison said some of the changes were technical and others were policy. They carried over all actions but did have some discussion on the hot line Tuesday.

The committee did not meet again during the week. They have tentatively planned to meet Tuesday at 10:00.

Minority Affairs Hot Line

Senator Sheheen said the Commission on Minority Affairs had limited information on immigrants coming into a community. The Senate wants the hot line to field complaints. Representative Viers said the issue got stuck in committee in the House and asked if the hot line would be used for racial profiling and Sheheen said it would be for legitimate complaints.

Restructuring

H.4620, appointed instead of elected offices, passed the House of Representatives this week.

The bill called for the Adjutant General, the Commissioner of Agriculture, the Secretary of State and Superintendent of Education to be appointed by the Governor. It also called for the Governor and Lt. Governor to run on the same ticket. All of these would be ballot questions. Representative Witherspoon was successful in an amendment to take the Commissioner of Agriculture out of the bill.

Attempts to remove the Superintendent of Education from the bill failed.

An amendment by Representative Viers to allow the State Board of Education to remain in place passed. He believes the state board would provide checks and balances. Representative Harrison was successful in removing the adjutant general from the bill. Representative Merrill tried to have the amendment reconsidered calling it a "poison pill." His efforts for reconsideration failed.

The bill now puts the Secretary of State and the Superintendent of Education for appointment by the Governor on the ballot. It also puts the joint election of the Governor and Lt. Governor on the ballot.

Representative Grady Brown spoke against the bill in terms of taking away the right to vote calling it a "God given right." Representative McLeod called it a "cold topic to the people of our state." Merrill responded by saying, "This is the ultimate poll put on the ballot. We aren't taking anything away. The people will decide."

Prompt Pay

The House of Representatives passed **H.3674** prompt pay as amended by the House Labor, Commerce and Industry committee. The strike and insert amendment reflects the compromise agreed to by the insurance industry and the doctors. The bill was referred to the Senate Banking and Insurance committee.

South Carolina Health Net

A meeting was held Tuesday by a sparsely attended subcommittee chaired by Senator Thomas on **S.1129** SC Health Net Program.

There was a review of previously discussed information and Thomas scheduled another meeting for Thursday to discuss possible solutions to the problems pointed to by the insurance industry.

The bill received a favorable report as amended, by the subcommittee Thursday. The panel approved several amendments, including, the promulgation of regulations and allowing the board to decide the most advantageous network or systems. They included a measure that would allow an employer to purchase Health Net for either 6 months or 12 months – per financial hardships.

Sue Berkowitz, representing SC Appleseed Legal Justice, voiced concern over people with financial hardships having to wait 6 months.

Commissions paid to agents will be at reduced rates from the traditional structure. If an insurer sells less than one-half of one percent market share, those insurers have the option on whether to offer the plan.

The amendments allow the three largest insurers measured by South Carolina market share, as determined by the Department of Insurance, shall offer and other insurers may at their option offer, the plans developed by the program to covered persons who meet

eligibility requirements for the program.

They added a section to require employers who do not offer Health Net post in bold letters that the plan is available through another carrier and any employers must make information available to employees as to how they can apply for Health Net.

The Board of Directors membership was increased from eleven to fifteen, with four being nominated from the insurance industry, two from the medical community, one from DHHS, one from the pharmaceutical community, one from the Senate, one from the House of Representatives, and two from consumer advocate groups. These consumer advocate groups include AARP, Applesseed, Fair Share, and two from SC Chamber and Small Business Chamber.

They clarified eligibility and added a final amendment to provide that the director of the Department of Insurance, within 30 days of enactment of this law, shall notify all nominating organizations to provide their nominations for board membership; and appointees will be made within 10 days of selection.

Real ID

Senator Knotts filed **S.1179** Wednesday asking the Governor to file an extension with the federal government on the Real ID requirements.

The new introduction prompted a lengthy discussion on the Senate floor. Senator Martin said the federal requirements would be "an extreme cost to

the taxpayers and will throw the DMV back to the stone ages."

He said he had been working closely with the DMV and they had "taken lots of steps since last year. The federal government issued about 360 pages of legislation. There is no way we can meet all of these requirements." He also said out of 18 benchmarks, the DMV could meet 16 now but it would cost money.

Martin would like to see an extension until December 2010. "Homeland security will grant an extension if the Governor asks for it," said Martin. He said it was in the hands of the Governor and if an extension was not granted "when we go to the airport to fly, they will not accept our driver's license for ID. This is mistreating the citizens of South Carolina."

Senator Sheheen agreed saying, "The federal government should not hold us hostage."

Martin said he was "extremely disappointed in our members in Congress" and that he was waiting for the Governor's call. He added, "Our South Carolina congressmen have failed the American people." Senator Ryberg concluded the discussion asking, "How do you expect Congress to address this when they spend all of their time investigating Roger Clemons?"

Knotts & Patterson On The DMV

Senator Knotts thanked the Governor for the "way he handled the DMV situation." He also thanked the Black Caucus and the President Pro

Tem of the Senate for how they handled the situation.

"The people of South Carolina will not tolerate citizens of this type," said Knotts.

Senator Patterson also thanked Senator McConnell and the Governor. Patterson said the "background of the FBI is not a good background for people of color" so he was not surprised "when Mr. Schweitzer didn't do anything."

Alcohol Monitoring Devices

The Senate amended and gave a second reading to **S.333** alcohol monitoring devices. They returned the bill to the Special Order calendar.

Senator Fair's strike and insert amendment was adopted. It defines continuous remote alcohol monitoring device, and on demand alcohol monitoring device. It also requires the Department of Probation, Parole and Pardon Services to develop an alcohol monitoring device program and sets up the guidelines for second and subsequent violations. It also addresses the fees for the device. As a condition for probation, the court could require abstinence from drinking for not less than 30 days and not more than 60 days. Fair said it would be at the discretion of the judge to utilize these devices and waive fees for indigents. "The goal of this legislation is to make people think. This is just one more tool to use against drunk drivers," said Fair.

Senator Malloy questioned the cost and Fair deferred any cost questions to the Budget and

Control Board and said, "Drinking alcohol is an illegal drug."

Spending Caps

At their last meeting, the subcommittee asked for additional information regarding various levels of spending caps. Dr. Bill Gillespie provided this information to the subcommittee including charts that display a ten-year scenario of the budget stabilization fund with spending limits of 10%, 15% and 20%.

In this display of a ten-year revenue cycle, Gillespie explained, "You have to decide what percentage you want to use to get through a recession period." He added, "In a minor recession you could use a 10% cap. A tax swap is not included in these calculations."

The panel discussed the Constitutional amendment, the enabling legislation and what would happen in the event of 'revenue enhancements'. Gillespie explained, "Any percentage change in revenue would be in the enabling legislation, not the Constitutional amendment; and any tax increase would be put in the next year's budget."

Trying to rush things, Senator Ford lamented, "We need to vote on this as soon as possible. It took us seven months to get this far; and it needs to go to Finance committee." He scolded, "We shouldn't pretend that we are the Finance committee." Senator McConnell bristled, "All Constitutional amendments are generated in Judiciary. I would never send this to Finance first."

Ford said, "We have done everything we can do. Now we are delving into budget and we are not the budget committee." McConnell responded, "The one thing I am looking at is experience. We need to look at language carefully. We need policy flexibility. Dr. Gillespie has come up with an ingenious way to balance out this roller coaster."

The panel settled on a 15% limit on the budget stabilization fund balance, and directed staff to work with Gillespie to re-draft a Constitutional amendment that would require a 2/3's ratification vote and enabling legislation based on the 15% cap. The subcommittee will meet again for final approval of the new language.

Common Law Marriage

The Senate debated **H.4620** abolishing common law marriage extensively this week. Senator Martin spoke for the bill saying South Carolina is one of eight states still recognizing common law marriage. He discussed the issue and said, "If you want the benefits of marriage, then get married."

He later added, "We are debating civil law – not religion. I am talking about equity and fairness. I don't understand why we would acknowledge double standards." Senator Campsen agreed saying, "It would bring certainty to marriage. We do a lot in law to bring certainty to transactions. We should bring certainty to marriage."

Senator Knotts expressed his concern that people have ample notification to pursue a legal

marriage. He offered an amendment to extend the deadline to January 1, 2010. This amendment passed.

In addressing the amendment, Senator Rankin called it a "feel good bill. This law is saying that after the cut-off date no judge could legislate fairly or equitably." Rankin and Martin sparred over whether or not the bill would help people. Rankin said, "We want to be the gods of the clocks of morality up here."

The Senate adjourned Wednesday with Rankin retaining the floor and debated the subject again Thursday.

Martin and Rankin sparred over different court cases during the Thursday session. Martin went over the list of organizations supporting the bill. The Senate adjourned for the week without resolving the issue.

DUI

The House of Representatives appointed their conferees to **H.3496** DUI this week. Representatives Murrell Smith, Talley and Weeks will represent the House on the conference committee.

Physician Practice Act

The House of Representatives passed **H.3912** after hours of contentious debate. **H.3912** is a bill to clarify that a physician may delegate certain tasks to unlicensed personnel if the physician is immediately available; requires certain documentation for physicians educated outside of the US or Canada; and requirements for

physicians who provide expert testimony.

The biggest bone of contention was the expert testimony pitting the trial lawyers against the medical community. Representative Delleney tried to have the bill committed to Judiciary to slow the bill down. This motion failed.

Representative White pointed out that no one showed up to testify against the bill and Delleney responded that the solicitors want to testify now.

Delleney tried to amend the bill to remove the Board of Medical Examiners and expert testimony language and this failed.

Representative Stavrinakis said the House was wasting time because the Supreme Court would “knock it down.”

They invoked cloture and went to lunch.

Representative Cato offered an amendment which passed. His amendment deleted the phrase that the practice of medicine means rendering a determination of medical necessity or a decision affecting the diagnosis and /or treatment of a patient. It also sets up a procedure that would allow a medical director to file a complaint with the Board of Medical Examiners if an insurer willfully and knowingly denies claims with no rational basis.

The House also adopted Representative Rutherford’s amendment to require reporting of physician errors. According to the amendment, if a physician makes a medical error or knows about or witnesses a medical error committed by another physician that results in great bodily injury or death, the physician shall report the medical error to the board,

which shall assess what action, if any, must be taken against the physician committing the medical error. Further, for purposes of this section, ‘great bodily injury’ means bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.

The amendment was originally tabled but reconsidered and adopted. Rutherford still chose to speak against the bill. He pointed out that no one could testify at subcommittee because there were no experts available at the time. “If no one can testify in our subcommittee and we aren’t experts, we wait to hear from an expert,” said Rutherford.

Representative Jennings said the bill had unintended consequences and asked the House to let the Judiciary committee look at the bill.

Representative Whipper said the bill got in the way of a fair trial. “What is this hide and seek game we are playing with the truth?” said Whipper.

The bill was sent to the Senate.

Car Sales Tax Revenue

The Ways and Means committee met on **H.4549**, a bill by Representative Harrell and others, which provides for a phased-in transfer of motor vehicle sales tax revenue to the State Highway Fund to be used exclusively for highway, road and bridge maintenance. According to the original draft, \$10 million would be credited to the State Highway fund in FY08-09, and in each

succeeding year \$30 million must be added to the cumulative total until \$100,150,000 is reached in FY11-12. The committee gave the bill a favorable with amendment report trying to place the bill before the budget.

Representative Ott spoke against the bill and questioned how they would account for the \$10 million reduced from the General Fund by this transfer. Chairman Cooper said that would be determined by the legislature. Ott said, “This legislation is going to cost \$10 million and doesn’t say where it’s coming from.”

Representative Rice offered an amendment to increase motor fuel tax from 16¢ to 21¢ per gallon and repeal the \$300 sales tax cap on motor vehicles, thus adding motor vehicles to the list of sales tax exemptions. According to Rice, he’s tired of the poor and working people of the state bearing the cost of upkeep and safety for the highways. Referring to out of state travelers and truckers, Rice said, “The (maintenance of) roads should be paid for by the people who use them.” Limehouse supported the Rice amendment. He said, “If we do away with sales tax on vehicles and add five cents on gas, we’ll still be lower than North Carolina or Georgia.” He added, “Truckers are using our roads and not paying – our roads are falling apart. This is the right step.” Rice said, “If we went up (on gas prices) no one would realize it...I’m not trying to hide.” Limehouse agreed, “It’s jumping a nickel every night anyway.” Representative Simrill joined, “In the car business, we’d love to have

zero-sales tax – but buying cars is a choice and needing fuel is not. I think we should stick with what we have. An increase in gas tax is just not smart now.” That amendment was tabled. Rice offered another amendment that would phase-in a gas tax increase as it phased-out the sales tax on motor vehicles. That amendment was also tabled.

Representative Young offered an amendment that would move \$10 million from the Highway Fund to the Transportation Infrastructure Bank. Ott challenged, “I have a big concern for the rural areas who are already penalized under DOT reform. All projects are based on traffic. We are creating a hole in the General Fund to create a pot of money to improve roads.” He added, “The rural sections of the state are getting shortchanged.”

Representative Littlejohn urged the committee to pass the bill as originally drafted. Rice opposed the bill saying, “It makes citizens pay for roads and people who drive through don’t.”

The Young amendment was adopted