~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE REPORT

April 21, 2010

**S. 243**

Introduced by Senator L. Martin

S. Printed 4/21/10--S. [SEC 4/22/10 1:57 PM]

Read the first time January 13, 2009.

**THE COMMITTEE ON JUDICIARY**

To whom was referred a Bill (S. 243) to amend the Code of Laws of South Carolina, 1976, by adding Section 27‑37‑45 so as to provide certain definitions, and to provide grounds and procedures, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass:

SHANE R. MARTIN for Committee.

**STATEMENT OF ESTIMATED FISCAL IMPACT**

ESTIMATED FISCAL IMPACT ON GENERAL FUND EXPENDITURES:

$0 (No additional expenditures or savings are expected)

ESTIMATED FISCAL IMPACT ON FEDERAL & OTHER FUND EXPENDITURES:

A Cost to Federal and/or Other Funds (See Below)

**EXPLANATION OF IMPACT:**

Judicial Department

The Judicial Department indicates this bill will have no impact on the General Fund of the State, or on federal and/or other funds.

State Board for Technical and Comprehensive Education

The State Tech Board indicates enactment would have no impact on general fund expenditures. In order to provide the continuing education instruction required by the bill the technical colleges would asses a fee for enrolled participants. The per student fee, total other finds revenue, and other funds expenditures will depend on demand for this continuing education offering.

**LOCAL GOVERNMENT IMPACT:**

Counties in the FIST network were surveyed to determine the impact of this bill and two responded. One county indicated cost of approximately $10,000 annually and the other county indicated no cost with the adoption of this bill.

*Approved By:*

Harry Bell

Office of State Budget

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 27‑37‑45 SO AS TO PROVIDE CERTAIN DEFINITIONS, AND TO PROVIDE GROUNDS AND PROCEDURES FOR AN EXPEDITED TENANT EJECTMENT; TO AMEND SECTION 8‑21‑1010, RELATING TO THE SCHEDULE OF FEES AND COSTS COLLECTED BY MAGISTRATES, SO AS TO PROVIDE A FILING FEE FOR AN ACTION FOR EXPEDITED TENANT EJECTMENT; TO AMEND SECTION 22‑1‑17, RELATING TO CONTINUING EDUCATION FOR MAGISTRATES, SO AS TO PROVIDE SOUTH CAROLINA COURT ADMINISTRATION MAY ESTABLISH A CONTINUING EDUCATION PROGRAM CONCERNING LANDLORD AND TENANT RIGHTS THAT MAGISTRATES, LANDLORDS, TENANTS, AND LAW ENFORCEMENT OFFICIALS MAY ATTEND.

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

SECTION 1. Chapter 37, Title 27 of the 1976 Code is amended by adding:

“Section 27‑37‑45. (A) For purposes of this section:

(1) ‘Malicious damage to property’ means a violation of Section 27‑40‑510(6) that causes damage to the landlord’s rental property or that poses an imminent or serious threat to the health and safety of the landlord, or his agents, the tenant and members of his household or guests, or other tenants. ‘Malicious damage to property’ does not include repairs or improvements to the leased premises undertaken by the tenant and based upon an agreement with the landlord or his agent.

(2)(a) ‘Significant threat to human life’ means a clear or imminent threat to the health and safety of the landlord or his agents, the tenant and members of his household or guests, or other tenants that is caused by a tenant, a member of his household, or his guest by the following actual or threatened criminal activity:

(i) homicide or physical assault to inflict serious bodily harm; or

(ii) illegal use of a firearm or other weapon.

(b) ‘Significant threat to human life’ does not include actual or threatened criminal domestic violence toward a tenant, a member of his household, or his guest. A landlord or his agent must not apply for an ejectment as provided in this section based substantially on the status of the tenant, a member of the tenant’s household, or a guest as a victim of domestic violence, sexual assault, or stalking. Evidence provided to the landlord or his agent or to the magistrate of domestic violence, sexual assault, or stalking may include any of the following:

(i) law enforcement, court, or federal agency records or files;

(ii) documentation from a domestic violence or sexual assault program; or

(iii) documentation from a religious, medical, or other professional.

(c) The landlord or his agent seeking relief under this section must bear the burden of proof by a preponderance of the evidence that the actions of a tenant, a member of the tenant’s household, or a guest meet the definition of ‘significant threat to human life’.

(B) For residential rental agreements, the tenant may be ejected by the procedures in this section upon application of the landlord or his agent when the tenant, a member of his household, or a guest causes:

(1) malicious damage to property; or

(2) significant threat to human life.

(C)(1) In an application for an ejectment action brought under this section, the landlord or his agent initiating the action must file an affidavit stating specific facts and instances in support of the action. The fee for initiating this action is as provided in Section 8‑21‑1010(15) and must be collected by the magistrate or his clerk.

(2) Within twenty‑four hours after the filing of an application to proceed with an action for ejectment pursuant to this section, the magistrate must review the application and affidavit in an ex parte hearing without giving the defendant notice. If the landlord or his agent shows by a preponderance of the evidence sufficient supporting facts in the application and affidavit to meet the requirements of this section, the magistrate shall authorize the action to proceed with service as provided in subsection (D).

(3) If the magistrate determines that the landlord or his agent initiating the action did so intentionally and in bad faith and without sufficient basis under the requirements of this section, the magistrate may impose a civil penalty of up to five hundred dollars for abuse of the expedited process. This civil penalty must not be recorded as a criminal matter, nor is it subject to assessments.

(D)(1) The copy of the rule to show cause may be served in the same manner as is provided by law for the service of the summons in actions pending in the court of common pleas or magistrates courts of this State or as provided by item (2). A law enforcement officer or constable is responsible only for the attempts at service as provided in this item and item (2)(a).

(2) When service as provided in item (1) has been attempted unsuccessfully two times in the manner described in subitem (a), a copy of the rule may be served by affixing both it and documentation of the two service attempts to the most conspicuous part of the premises and mailing a copy of the rule in the manner described in subitem (b).

(a) Each of the two attempts to serve the defendant must be separated by a minimum of twenty‑four hours and must occur at times of day separated by a minimum of eight hours. The service attempts shall take place after the magistrate authorizes the action to proceed with service as provided in subsection (C)(2). The person attempting to serve the rule must document the date and time of the attempts by affidavit or by certificate in the case of a law enforcement officer. On the first unsuccessful attempt to serve the rule, a copy of the rule must be affixed to the most conspicuous part of the premises and the ten‑day period for the tenant to appear and show cause provided in subsection (E) begins the following day. On the second unsuccessful attempt to serve the rule, the documentation of the two attempts to serve the rule must be attached to the copy of the rule when it is affixed to the most conspicuous part of the premises.

(b) For mailing by ordinary mail to be considered to complete service under this item, it must be accomplished by placing a copy of the rule in an envelope in the presence of the clerk of the magistrates court. The clerk is responsible for verifying that the envelope is addressed to the defendant at the address shown in the rule as the rental premises of the defendant or another address for receipt of mail furnished in writing by the tenant to the landlord, that the envelope contains the necessary documents, and that the clerk has placed the sealed and stamped envelope in the United States mail on the same day that the ex parte hearing described in subsection (C) occurs. The clerk’s verification must be made a part of the record in the case, and service by ordinary mail is not considered complete without the clerk’s verification. A fee as provided for in Section 8‑21‑1010(14) must be collected by the magistrate or his clerk for the verification and mailing in this item.

(3) Mailing of the rule constitutes service when the requirements of subitems (a) and (b) of item (2) have been met. If these requirements have been met, the specified time period for the tenant to show cause why he should not be ejected as provided in subsection (C) begins to run on the day after service of the rule to show cause as provided in item (1) or item (2)(b).

(E) If the tenant fails to appear and show cause within the ten calendar days following the first attempt at service as provided in subsection (D), then the magistrate shall issue a warrant of ejectment and the tenant shall be ejected by his regular or special constable or by the sheriff of the county.

(F) Nothing in this section shall be construed to proscribe or limit any other rights a landlord or tenant may have under other statutes or by law.”

SECTION 2. Section 8‑21‑1010 of the 1976 Code, as last amended by Act 226 of 2000, is further amended to read:

“Section 8‑21‑1010. (A) Except as otherwise expressly provided, the following fees and costs must be collected by the magistrates and deposited in the general fund of the county:

(1) for taking civil recognizance, with or without sureties, five dollars;

(2) for granting an order for civil special bail, with or without sureties, five dollars;

(3) for receiving and filing bond in claim and delivery, attachment, five dollars; if justification of sureties required, an additional five dollars;

(4) for administering and certifying oaths or documents in writing, two dollars;

(5) for issuing any prerogative writ, five dollars;

(6) in all civil actions, for issuing a summons and a copy for defendant, and for giving judgment with or without a hearing, forty‑five dollars;

(7) for issuing execution and renewal thereof, ten dollars;

(8) for making up, certifying, and forwarding a transcript of record and judgment in a case for purpose of appeal, ten dollars;

(9) for proceedings by a landlord or lessor against a tenant or lessee, including notices to quit, eviction orders, or recovery of rents, twenty dollars;

(10) for proceedings on a coroner’s inquest, as prescribed by law, ten dollars, if inquest is demanded by a party other than the State or county or authorized officer of either;

(11) for proceeding on estrays, including judgment for possession, sale, or damages, ten dollars;

(12) for qualifying appraisers to set off homestead or qualifying sureties on a bond posted in a case, including bail bonds, five dollars;

(13) for each tax execution collected, five dollars; ~~and~~

(14) for filing or issuing any other paper not provided for in this section, five dollars; and

(15) for filing an application for an expedited ejectment as provided in Section 27‑37‑45(C)(1), fifty dollars.

(B) Fees or costs may not be assessed against a party for summoning jurors or expense of jury service in a criminal case in which a trial by jury is had.”

SECTION 3. Section 22‑1‑17 of the 1976 Code is amended to read:

“Section 22‑1‑17. (A)(1) The South Carolina Court Administration is authorized to establish and determine the number of contact hours to be completed in a continuing education program of two years available to a magistrate who has successfully completed the certification examination. The program must provide extensive instruction in civil and criminal procedures and must encourage magistrates to develop contacts and resources of information in conjunction with their instructors and fellow magistrates.

(2) In addition, the South Carolina Court Administration is authorized to establish a continuing education program concerning the legal rights, remedies, and actions available to landlords and tenants that magistrates, landlords, tenants, and law enforcement officials may attend.

(B) ~~The program~~ These programs shall be administered through the state’s technical college system and may be used to facilitate continuing legal education opportunities for all magistrates. The technical college system may assess a reasonable fee for each participant in the program in order to pay for the program’s expenses.

(C) The funding for ~~this program~~ these programs shall be provided from fees and costs collected by magistrates or magistrates~~’~~ courts and deposited in the general fund of the county and from fees assessed by the technical college system in order to pay for the program’s expenses.

~~(D)~~ ~~Subsections (A) and (B) are effective July 1, 2001; however, the planning and development of this program shall begin on or after July 1, 2000, and the effective date for subsections (C) and (D) is July 1, 2000.~~”

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

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