AS PASSED BY THE SENATE

June 3, 2010

**H. 4261**

Introduced by Reps. Harrison and Weeks

S. Printed 6/3/10--S.

Read the first time March 9, 2010.

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 23‑3‑75 SO AS TO PROVIDE THAT THE DIRECTOR OF THE SOUTH CAROLINA LAW ENFORCEMENT DIVISION, OR HIS DESIGNEE, MAY ISSUE AN ADMINISTRATIVE SUBPOENA FOR THE PRODUCTION OF RECORDS DURING THE INVESTIGATION OF CERTAIN CRIMINAL CASES THAT INVOLVE FINANCIAL CRIMES.

Amend Title To Conform

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

SECTION 1. Article 1, Chapter 3, Title 23 of the 1976 Code is amended by adding:

“Section 23‑3‑75. (A) For purposes of this section:

(1) ‘Attorney General’ means the Attorney General of the State of South Carolina or the Attorney General’s designee who is employed by the Attorney General and is an officer of the court.

(2) ‘SLED’ means the South Carolina Law Enforcement Division.

(B) An officer of the court who is employed by SLED may issue an administrative subpoena to a financial institution, public or private utility, or communications provider for the production of subscriber or customer information as described in subsection (E), not including the contents of any communications, if:

(1) SLED has reasonable cause to believe that the information is material to an active investigation of at least one of the following financial crimes:

(a) breach of trust with fraudulent intent (Section 16‑13‑230);

(b) obtaining a signature or property by false pretenses (Section 16‑13‑240);

(c) financial identity fraud (Section 16‑13‑510 et seq);

(d) financial transaction card or number theft (Section 16‑14‑20 et seq);

(e) financial transaction card fraud (Section 16‑14‑60 et seq);

(f) computer crimes (Section 16‑16‑10 et seq); or

(g) crimes against a federally chartered or insured financial institution (Section 34‑3‑110); and

(2) SLED is not otherwise able to obtain a warrant or subpoena for the information from a court due to:

(a) the court not being able to issue a warrant or subpoena in a timely fashion and the immediate need to obtain the information; or

(b) SLED having reasonable cause to believe that obtaining a warrant or subpoena from the court could result in the subscriber or customer, or an agent of the subscriber or customer, destroying, erasing, transferring, or otherwise changing the information in order to knowingly conceal evidence material to an investigation.

(C)(1) An administrative subpoena must be made in writing upon oath or affirmation of the officer of the court who is employed by SLED. The officer must sign the administrative subpoena affirming that SLED has reasonable cause to believe that the information is material to an active investigation of at least one of the financial crimes listed in subsection (B)(1), and that SLED is not otherwise able to obtain a warrant or subpoena for the information from a court due to one of the reasons listed in subsection (B)(2).

(2) The officer must submit the administrative subpoena to the Attorney General for review prior to issuing the administrative subpoena to a financial institution, public or private utility, or communications provider. The officer must not issue the administrative subpoena without authorization by the Attorney General pursuant to subsection (D). The officer may submit the administrative subpoena with signature to the Attorney General in person, by mail, by facsimile, or by other electronic means. If the officer, after a good faith effort, is not able to submit the administrative subpoena with signature to the Attorney General in person, by mail, by facsimile, or by other electronic means, the officer may orally or electronically explain and affirm the administrative subpoena to the Attorney General.

(D)(1) The Attorney General must authorize an officer of the court who is employed by SLED to issue an administrative subpoena to a financial institution, public or private utility, or communications provider if, after review, the Attorney General determines that SLED has reasonable cause to believe that the information is material to an active investigation of at least one of the financial crimes listed in subsection (B)(1), and that SLED is not otherwise able to obtain a warrant or subpoena for the information from a court due to one of the reasons listed in subsection (B)(2).

(2) If the Attorney General authorizes the officer of the court who is employed by SLED to issue the administrative subpoena, the Attorney General must sign and return the administrative subpoena to SLED. The Attorney General may return the administrative subpoena with signature to SLED in person, by mail, by facsimile, or by other electronic means.

(3) If the Attorney General, after a good faith effort, is not able to return the administrative subpoena with signature to SLED in person, by mail, by facsimile, or by other electronic means, or the officer of the court employed by SLED was not able to submit the administrative subpoena with signature to the Attorney General and had to orally or electronically explain and affirm the administrative subpoena, the Attorney General may orally or electronically confirm authorization of the administrative subpoena. The Attorney General must return the administrative subpoena with signature to SLED within forty-eight hours after the Attorney General authorizes the administrative subpoena, or by the next business day, if the time period falls on a weekend or holiday, whichever is later.

(4) The good faith reliance by the Attorney General as to the information affirmed by SLED to obtain an administrative subpoena constitutes a complete defense to any civil, criminal, or administrative action arising out of the administrative subpoena. The Attorney General is not responsible for any costs related to the defense of any civil, criminal, or administrative action arising out of the administrative subpoena.

(E)(1) Upon receipt of an administrative subpoena from SLED, a financial institution, public or private utility, or communications provider shall disclose, as applicable, the subscriber’s or customer’s:

(a) name;

(b) address;

(c) local and long distance telephone connection or electronic communication records, or records of session times and durations;

(d) length of service, including the start date, and types of service utilized;

(e) telephone or instrument number or other customer or subscriber number of identity, including any temporarily assigned network addresses; and

(f) means and source of payment for such service, including any credit card or bank account numbers.

(2) If a financial institution, public or private utility, or communications provider fails to obey an administrative subpoena without lawful excuse, SLED may apply to a circuit court having jurisdiction for an order compelling compliance. The financial institution, public or private utility, or communications provider may object to the administrative subpoena on the grounds that the administrative subpoena fails to comply with this section, or upon any constitutional or other legal right or privilege. The court may issue an order modifying or setting aside the administrative subpoena or directing compliance with the original administrative subpoena.

(3) The good faith reliance by a financial institution, public or private utility, or communications provider to provide information to SLED pursuant to an administrative subpoena, constitutes a complete defense to any civil, criminal, or administrative action arising out of the administrative subpoena.

(F) Information obtained by SLED pursuant to an administrative subpoena must not be made public and is not subject to the Freedom of Information Act.

(G)(1) SLED is authorized to promulgate permanent regulations, pursuant to the Administrative Procedures Act in Chapter 23, Title 1, to define the procedures and guidelines needed to issue an administrative subpoena.

(2) Pursuant to Section 1-23-130, SLED is authorized to promulgate emergency regulations to define the procedures and guidelines needed to issue an administrative subpoena until such time as permanent regulations are promulgated. The provisions of Section 1-23-130(A), (B), (D), and (E) are applicable to emergency regulations promulgated pursuant to this subitem. The provisions of Section 1-23-130(C) are not applicable to emergency regulations promulgated pursuant to this subitem. An emergency regulation promulgated pursuant to this subitem becomes effective upon issuance and continues for one year unless terminated sooner by SLED or concurrent resolution of the General Assembly.

(H) An administrative subpoena must comply with the provisions of federal law 18 U.S.C. Section 2703(c)(2).”

SECTION 2. This act takes effect upon approval by the Governor.

‑‑‑‑XX‑‑‑‑