~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE REPORT

March 21, 2018

**S. 802**

Introduced by Senator Hutto

S. Printed 3/21/18--S.

Read the first time January 9, 2018.

**THE COMMITTEE ON JUDICIARY**

To whom was referred a Bill (S. 802) to amend the Code of Laws of South Carolina, 1976, by adding Section 16‑13‑225 so as to define terms for purposes of the offenses of breach of, etc., respectfully

**REPORT:**

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

Amend the bill, as and if amended, page 2 by striking line 38 and inserting:

/ amount is ten thousand dollars or more.

(C) In a prosecution for a violation of this section, the State is not required to establish and it is not a defense that some of the acts constituting the crime did not occur in this State or within one city, county, or local jurisdiction.” /

Amend the bill further, as and if amended, page 3 by striking lines 1-18 and inserting:

/ “Section 16‑13‑240. (A) A person who by false pretense or representation or by fraudulent promise to perform obtains the signature of a person to a written instrument or obtains from another person any chattel, money, valuable security, or other property, real or personal, with intent to cheat and defraud a person of that property is guilty of a:

(1) felony and, upon conviction, must be fined not more than five hundred dollars and imprisoned not more than ten years if the value of the property is ten thousand dollars or more;

(2) felony and, upon conviction, must be fined in the discretion of the court or imprisoned not more than five years if the value of the property is more than two thousand dollars but less than ten thousand dollars;

(3) misdemeanor triable in magistrates court or municipal court, notwithstanding the provisions of Sections 22‑3‑540, 22‑3‑545, 22‑3‑550, and 14‑25‑65, if the value of the property is two thousand dollars or less. Upon conviction, the person must be fined not more than one thousand dollars~~,~~ or imprisoned not more than thirty days.

(B) In a prosecution for a violation of this section, the State is not required to establish and it is not a defense that some of the acts constituting the crime did not occur in this State or within one city, county, or local jurisdiction.” /

Renumber sections to conform.

Amend title to conform.

LUKE A. RANKIN for Committee.

**STATEMENT OF ESTIMATED FISCAL IMPACT**

**Explanation of Fiscal Impact**

**Introduced on January 9, 2018**

**State Expenditure**

This bill creates new definitions related to offenses for breach of trust with fraudulent intent and obtaining signature or property by false pretenses. It also clarifies that the offense of breach of trust with fraudulent intent occurs when a person who has received in trust an interest holder’s real or personal property and misappropriates, conceals, releases, destroys, or converts the property for his own benefit or the benefit of another non-interest holder. Additionally, the bill expands the offense of obtaining signature or property by false pretenses to include persons who fraudulently promise to perform.

**Judicial Department.**  The department reports there is no data available to determine the number of additional hearings or trials that would be heard in general sessions courts. Should there be an increase in caseloads, the department indicates it will absorb any expenditure impact on the general fund using current resources. In addition, we anticipate that any increased caseloads in magistrates or municipal courts will be managed within their existing resources.

**Commission on Prosecution Coordination.** As the bill does not add to the duties of the commission, the implementation of this bill will have no expenditure impact on the general fund, other funds, or federal funds.

**Commission on Indigent Defense.** As the bill does not add to the duties of the commission, the implementation of this bill will have no expenditure impact on the general fund, other funds, or federal funds.

Frank A. Rainwater, Executive Director

Revenue and Fiscal Affairs Office

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 16‑13‑225 SO AS TO DEFINE TERMS FOR PURPOSES OF THE OFFENSES OF BREACH OF TRUST WITH FRAUDULENT INTENT AND OBTAINING SIGNATURE OR PROPERTY BY FALSE PRETENSES; AND TO AMEND SECTIONS 16‑13‑230 AND 16‑13‑240, RELATING TO BREACH OF TRUST WITH FRAUDULENT INTENT AND OBTAINING SIGNATURE OR PROPERTY BY FALSE PRETENSES, RESPECTIVELY, BOTH SO AS TO FURTHER DEFINE THE ELEMENTS OF THE OFFENSES.

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

SECTION 1. Article 1, Chapter 13, Title 16 of the 1976 Code is amended by adding:

“Section 16‑13‑225. For purposes of Sections 16‑13‑230 and 16‑13‑240, the following terms apply:

(1) ‘False pretense’ means any fraudulent representation of a past or present fact.

(2) ‘Interest holder’ means a person who has an actual, vested interest in the property, whether in whole or in part, at the time of commission of the crime.

(3) ‘Personal property’ includes, but is not limited to, money, merchandise, chattel, security interests, or other things of value not considered real property.

(4) ‘Promise to perform’ means an agreement, whether verbal or written, to purchase, construct, make, remove, repair, or improve personal or real property, or to perform any other duty or labor, when money or other thing of value is exchanged in consideration of the promise to perform.

(5) ‘Real property’ includes, but is not limited to, land; natural resources located upon or within land; and structures affixed to land to include homes, buildings, wells, docks, utility poles, and other things of value connected to or otherwise on land.

(6) ‘Trust’ means an arrangement or promise to perform in which an interest holder or an interest holder’s agent transfers property, real or personal, or other thing of value to another person with the intent that the property be administered for an interest holder’s benefit, whether in whole or in part.”

SECTION 2. Section 16‑13‑230 of the 1976 Code is amended to read:

“Section 16‑13‑230. (A) A person ~~committing a breach of trust with a fraudulent intention or a~~ commits the offense of breach of trust with fraudulent intent when, after receiving in trust either an interest holder’s property, real or personal, the person misappropriates, conceals, releases, destroys, or otherwise converts the property, in whole or in part, for his benefit or the benefit of another person who is not an interest holder, and does so with the intent to deprive an interest holder of its use. A person who hires or counsels another person to commit a breach of trust with ~~a~~ fraudulent ~~intention~~ intent is also guilty of ~~larceny~~ breach of trust with fraudulent intent.

(B) A person who violates the provisions of this section is guilty of a:

(1) misdemeanor triable in magistrates court or municipal court, notwithstanding the provisions of Sections 22‑3‑540, 22‑3‑545, 22‑3‑550, and 14‑25‑65, if the amount is two thousand dollars or less. Upon conviction, the person must be fined not more than one thousand dollars~~,~~ or imprisoned not more than thirty days;

(2) felony and, upon conviction, must be fined in the discretion of the court or imprisoned not more than five years if the amount is more than two thousand dollars but less than ten thousand dollars;

(3) felony and, upon conviction, must be fined in the discretion of the court or imprisoned not more than ten years if the amount is ten thousand dollars or more.”

SECTION 3. Section 16‑13‑240 of the 1976 Code is amended to read:

“Section 16‑13‑240. A person who by false pretense or representation or by fraudulent promise to perform obtains the signature of a person to a written instrument or obtains from another person any chattel, money, valuable security, or other property, real or personal, with intent to cheat and defraud a person of that property is guilty of a:

(1) felony and, upon conviction, must be fined not more than five hundred dollars and imprisoned not more than ten years if the value of the property is ten thousand dollars or more;

(2) felony and, upon conviction, must be fined in the discretion of the court or imprisoned not more than five years if the value of the property is more than two thousand dollars but less than ten thousand dollars;

(3) misdemeanor triable in magistrates court or municipal court, notwithstanding the provisions of Sections 22‑3‑540, 22‑3‑545, 22‑3‑550, and 14‑25‑65, if the value of the property is two thousand dollars or less. Upon conviction, the person must be fined not more than one thousand dollars~~,~~ or imprisoned not more than thirty days.”

SECTION 4. The repeal or amendment by this act of any law, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

SECTION 5. This act takes effect upon approval by the Governor.

‑‑‑‑XX‑‑‑‑