~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE REPORT

May 19, 2010

**H. 4256**

Introduced by Reps. Harrison and Weeks

S. Printed 5/19/10--S.

Read the first time March 9, 2010.

**THE COMMITTEE ON JUDICIARY**

To whom was referred a Bill (H. 4256) to amend Section 17‑30‑125, Code of Laws of South Carolina, 1976, relating to incidences when the supervising agent of a law enforcement agency may order certain, 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, by striking SECTION 1 in its entirety and inserting:

/ SECTION 1. Section 17‑30‑125 of the 1976 Code, as added by Act 339 of 2002, is amended to read:

“Section 17‑30‑125. (A) The supervising agent of the South Carolina Law Enforcement Division or the supervising law enforcement officer of a political subdivision of this State at the scene of an incident where there is reasonable cause to believe that:

(1) the incident involves immediate danger of death or serious ~~physical~~ bodily injury to ~~any~~ a person or the danger ~~of escape~~ of a ~~prisoner~~ prisoner’s escape;

(2) ~~that~~ a person is holding one or more hostages;

(3) ~~that there is~~ the probability exists that a subject about to be arrested will resist with the use of weapons; ~~or~~

(4) ~~that~~ a person has barricaded himself, ~~and~~ is armed, and is threatening to commit suicide; or

(5) a threat has been made against a critical infrastructure in South Carolina as defined by federal law pursuant to 42 U.S.C. 5195c(e); may order law enforcement or telephone company personnel to cut, reroute, or divert telephone lines solely for the purpose of preventing telephone communications between the suspect and any person other than a law enforcement officer or the law enforcement officer’s designee, if the cutting, rerouting, or diverting of telephone lines is technically feasible and can be performed without endangering the lives of telephone company or other utility personnel.

(B)(1) An officer of the court who is employed by the South Carolina Law Enforcement Division, or the officer’s designee, may issue an administrative subpoena to a telephone company, an Internet service provider, or another communications entity to obtain information necessary to resolve an emergency situation, if the South Carolina Law Enforcement Division is in receipt of information indicating that the emergency situation involves one or more of the following:

(a) a threat of death or serious bodily injury to a person;

(b) the danger of a prisoner’s escape;

(c) a person who is holding one or more hostages;

(d) the probability exists that a person about to be arrested will resist arrest with the use of weapons;

(e) a person who has barricaded himself, is armed, and is threatening to commit suicide; or

(f) a threat against a critical infrastructure in South Carolina as defined by federal law pursuant to 42 U.S.C. Section 5195c(e);

(2) An administrative subpoena issued pursuant to this subsection must comply with the provisions of 18 U.S.C. Section 2703(c)(2).

(C)(1) The South Carolina Law Enforcement Division 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 as provided in this section.

(2) Pursuant to Section 1-23-130, the South Carolina Law Enforcement Division is authorized to promulgate emergency regulations to define the procedures and guidelines needed to issue an administrative subpoena as provided in this section 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 the South Carolina Law Enforcement Division or concurrent resolution of the General Assembly.

(D) The good faith reliance by a telephone company on an oral or written order to cut, reroute, divert, or intercept telephone lines given by a supervising law enforcement officer ~~under~~ pursuant to subsection (A), or the good faith reliance by a telephone company, Internet service provider, or another communications entity to provide information specified in an administrative subpoena pursuant to subsection (B), constitutes a complete defense to any civil, criminal, or administrative action arising out of the order or administrative subpoena.” /

Renumber sections to conform.

Amend title to conform.

C. BRADLEY HUTTO 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:

$0 (No additional expenditures or savings are expected)

**EXPLANATION OF IMPACT:**

The State Law Enforcement Division indicates that enactment of this bill will have no impact on the General Fund of the State, or on federal and/or other funds.

*Approved By:*

Harry Bell

Office of State Budget

**A** **BILL**

TO AMEND SECTION 17‑30‑125, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO INCIDENCES WHEN THE SUPERVISING AGENT OF A LAW ENFORCEMENT AGENCY MAY ORDER CERTAIN PERSONS TO CUT, REROUTE, OR DIVERT TELEPHONE LINES FOR CERTAIN PURPOSES, SO AS TO PROVIDE THAT THE SUPERVISING AGENT OF A LAW ENFORCEMENT AGENCY MAY ISSUE ADMINISTRATIVE SUBPOENA TO A TELEPHONE COMPANY, INTERNET SERVICE PROVIDER, OR ANOTHER COMMUNICATIONS ENTITY WHEN IT RECEIVES INFORMATION THAT INDICATES THAT A PERSON’S LIFE IS THREATENED, A PRISONER MAY ESCAPE, A PERSON IS BEING HELD AS A HOSTAGE, A PERSON MAY RESIST ARREST WHILE USING A WEAPON, OR AN ARMED PERSON MAY COMMIT SUICIDE, AND TO PROVIDE THAT THE GOOD FAITH RELIANCE BY A TELEPHONE COMPANY, INTERNET SERVICE PROVIDER, OR ANOTHER COMMUNICATIONS ENTITY TO PROVIDE INFORMATION SPECIFIED IN AN ADMINISTRATIVE SUBPOENA IS A COMPLETE DEFENSE TO A CIVIL, CRIMINAL, OR ADMINISTRATIVE ACTION ARISING OUT OF THE ORDER OR ADMINISTRATIVE SUBPOENA.

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

SECTION 1. Section 17‑30‑125 of the 1976 Code, as added by Act 339 of 2002, is amended to read:

“Section 17‑30‑125. (A) The supervising agent of the South Carolina Law Enforcement Division or the supervising law enforcement officer of a political subdivision of this State at the scene of an incident where there is reasonable cause to believe:

(1) that it involves immediate danger of death or serious physical injury to any person or the danger of escape of a prisoner;

(2) that a person is holding one or more hostages;

(3) that there is the probability that a subject about to be arrested will resist with the use of weapons; ~~or~~

(4) that a person has barricaded himself and is armed and is threatening suicide; or

(5) that a threat has been made against a critical infrastructure in South Carolina as defined by 42 U.S.C. 5195c(e); may order law enforcement or telephone company personnel to cut, reroute, or divert telephone lines solely for the purpose of preventing telephone communications between the suspect and any person other than a law enforcement officer or the law enforcement officer’s designee, if the cutting, rerouting, or diverting of telephone lines is technically feasible and can be performed without endangering the lives of telephone company or other utility personnel.

(B) An officer of the court who is employed by the South Carolina Law Enforcement Division, or his designee, when in receipt of information indicating that a situation:

(1) involves a threat of death or serious physical injury to a person or the danger of the escape of a prisoner;

(2) involves a person who is holding one or more hostages;

(3) exists where there is the probability that a person about to be arrested will resist arrest with the use of weapons;

(4) exists where a person has barricaded himself, is armed, and is threatening to commit suicide; or

(5) exists that a threat has been made against a critical infrastructure in South Carolina as defined by 42 U.S.C. 5195c(e);

may issue an administrative subpoena to a telephone company, an internet service provider, or another communications entity to provide information needed to resolve a situation contained in this subsection.

(C) The South Carolina Law Enforcement Division is authorized pursuant to the Administrative Procedures Act in Chapter 23, Title 1 to promulgate:

(1) emergency regulations to define the procedures and guidelines needed to issue an administrative subpoena as defined in this section until such time as permanent regulations are promulgated and affirmatively approved by the General Assembly; and

(2) permanent regulations to define the procedures and guidelines needed to issue an administrative subpoena as defined in this section, which are to be affirmatively approved by the General Assembly.

(D) The good faith reliance by a telephone company on an oral or written order to cut, reroute, divert, or intercept telephone lines given by a supervising law enforcement officer ~~under~~ pursuant to subsection (A), or good faith reliance by a telephone company, Internet Service Provider, or another communications entity to provide information specified in an administrative subpoena pursuant to subsection (B), constitutes a complete defense to any civil, criminal, or administrative action arising out of the order or administrative subpoena.

(E) The South Carolina Law Enforcement Division regulations shall comply with the requirements and limitations established in Title 18, U.S.C. Section 2703(c)(2).”

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

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