~~Indicates Matter Stricken~~

Indicates New Matter

AS PASSED BY THE SENATE

June 3, 2010

**H. 4256**

Introduced by Reps. Harrison and Weeks

S. Printed 6/3/10--S. [SEC 6/11/10 10:02 AM]

Read the first time March 9, 2010.

**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.

Amend Title To Conform

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

SECTION 1. Section 17‑30‑125 of the 1976 Code is amended to read:

“Section 17‑30‑125. (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) The supervising agent of ~~the South Carolina Law Enforcement Division~~ SLED 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)~~(C) An officer of the court who is employed by SLED may issue an administrative subpoena to a telephone company, Internet service provider, or communications entity for the production of subscriber or customer information as described in subsection (F), not including the contents of any communications, if

(1) SLED has reasonable cause to believe that the information is material to an active emergency incident involving at least one of the following situations:

(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); 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 perpetuating an emergency incident that the warrant or subpoena is intended to prevent.

(D)(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 emergency incident involving at least one of the situations listed in subsection (C)(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 (C)(2).

(2) The officer must submit the administrative subpoena to the Attorney General for review prior to issuing the administrative subpoena to a telephone company, Internet service provider, or communications entity. The officer must not issue the administrative subpoena without authorization by the Attorney General, pursuant to subsection (E). 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.

(E)(1) The Attorney General must authorize an officer of the court who is employed by SLED to issue an administrative subpoena to a telephone company, Internet service provider, or communications entity, if, after review, the Attorney General determines that SLED has reasonable cause to believe that the information is material to an active emergency incident involving at least one of the situations listed in subsection (C)(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 (C)(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.

(F)(1) Upon receipt of an administrative subpoena from SLED, a telephone company, Internet service provider, or communications entity 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 telephone company, Internet service provider, or communications entity fails to obey an administrative subpoena without lawful excuse, SLED may apply to a circuit court having jurisdiction for an order compelling compliance. The telephone company, Internet service provider, or communications entity 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.

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

(H)(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 as provided in this section.

(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 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 SLED or concurrent resolution of the General Assembly.

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

(J) 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)~~(B), or the good faith reliance by a telephone company, Internet service provider, or communications entity 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 order or administrative subpoena.”

SECTION 2. Section 17‑30‑20 of the 1976 Code is amended by adding an appropriately numbered subsection to read:

“( ) intentionally uses, attempts to use, or procures any other person to use any electronic, mechanical, or other device or service that causes the telephone network to display a telephone number on a phone call recipient’s caller identification display that is not the number of the originating device. This provision shall not apply to:

(a) the legitimate law enforcement use of this procedure by the South Carolina Law Enforcement Division;

(b) a person or entity that places a call and blocks or otherwise prevents the delivery of a telephone number to a call recipient’s caller identification display;

(c) a person or entity that places an authorized call on behalf of another person or entity and inserts a telephone number identified with the person or entity on behalf of whom the call is being placed; or

(d) a communications service provider that delivers a call originated by another person or entity.”

SECTION 3. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this chapter, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

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

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