COMMITTEE REPORT

May 19, 2010

**H. 4261**

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. 4261) 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, 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. Article 1, Chapter 3, Title 23 of the 1976 Code is amended by adding:

“Section 23‑3‑75. (A) An officer of the court who is employed by the South Carolina Law Enforcement Division, or the officer’s designee, when there is reasonable cause, may issue an administrative subpoena for the production of subscriber or customer records, as defined by federal law, pursuant to 18 U.S.C. Section 2703(c)(2), during the investigation of criminal cases involving financial crimes. Investigations eligible for an administrative subpoena include Section 16‑13‑230 (Breach of Trust with Fraudulent Intent), Section 16‑13‑240 (Obtaining a signature or property by false pretenses), Section 16‑13‑510 et seq (Financial Identity Fraud), Section 16‑14‑20 et seq (Financial transaction card or number theft), Section 16‑14‑60 et seq (Financial transaction card fraud), 16‑16‑10 et seq (Computer Crimes Act), and Section 34‑3‑110 (Crimes against a federally chartered or insured financial institution). Information that may be requested includes, but is not limited to, records from financial institutions, public and private utilities, and communications providers. An administrative subpoena must comply with the provisions of 18 U.S.C. Section 2703(c)(2).

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

(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 the General Assembly.” /

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 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.

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) An officer of the court who is employed by the South Carolina Law Enforcement Division, or his designee, when there is reasonable cause, may issue an administrative subpoena for the production of subscriber or customer records, as defined by Title 18, U.S.C. Section 2703(c)(2), during the investigation of criminal cases involving financial crimes. Investigations eligible for an administrative subpoena under this section shall include Section 16‑13‑230 (Breach of Trust with Fraudulent Intent), Section 16‑13‑240 (Obtaining a signature or property by false pretenses), Section 16‑13‑510 et seq (Financial Identity Fraud), Section 16‑14‑20 et seq (Financial transaction card or number theft), Section 16‑14‑60 et seq (Financial transaction card fraud), 16‑16‑10 et seq (Computer Crimes Act), and Section 34‑3‑110 (Crimes against a federally chartered or insured financial institution). Information that may be requested under this section includes, but is not limited to, records from financial institutions, public and private utilities, and communications providers.

(B) A good faith reliance by financial institutions, public and private utilities, communications providers, or other entities to provide information specified in an administrative subpoena pursuant to subsection (A), constitutes a complete defense to any civil, criminal, or administrative action arising out of the administrative subpoena.

(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 subsection until such time as permanent regulations are promulgated and affirmatively approved by the General Assembly; and

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

(D) The South Carolina Law Enforcement Division shall promulgate emergency regulations that are in compliance with Title 18, U.S.C. Section 2703(c)(2).”

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

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