~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE REPORT

March 3, 2010

**S. 591**

Introduced by Senator Lourie

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

Read the first time March 17, 2009.

**THE COMMITTEE ON JUDICIARY**

To whom was referred a Bill (S. 591) to amend Sections 22‑3‑1330, 22‑3‑1340, 22‑3‑1370, 22‑3‑1400, and 22‑3‑1410 of the 1976 Code, all relating to proceedings in claim, 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 21, in Section 22-3-1330(e), as contained in SECTION 1 and inserting therein the following:

/ provided in the South Carolina Rules of Civil Procedure and the South Carolina Rules of Magistrates Court.” /

Renumber sections to conform.

Amend title to conform.

JOHN L. SCOTT, JR. 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:**

There is no fiscal impact on the General Fund of the State or on federal and/or other funds.

**LOCAL GOVERNMENT IMPACT:**

Counties in the FIST network of local governments were surveyed to determine the fiscal impact of this bill. Three responded and indicated there is no cost to them with the adoption of this bill.

*Approved By:*

Harry Bell

Office of State Budget

**A** **BILL**

TO AMEND SECTIONS 22‑3‑1330, 22‑3‑1340, 22‑3‑1370, 22‑3‑1400, AND 22‑3‑1410 OF THE 1976 CODE, ALL RELATING TO PROCEEDINGS IN CLAIM AND DELIVERY ACTIONS, TO ALLOW SERVICE OF PROCESS BY PERSONS OTHER THAN CONSTABLES.

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

SECTION 1. Section 22‑3‑1330 of the 1976 Code is amended to read:

“Section 22‑3‑1330.(a) On receipt of such affidavit and an undertaking in writing, executed by one or more sufficient sureties, to be approved by the magistrate before whom such action is commenced, to the effect that they are bound in double the value of such property as stated in such affidavit, for the prosecution of the action, for the return of the property to the defendant, if return thereof be adjudged, and for the payment to him of such sum as may, for any cause, be recovered against the plaintiff, the magistrate shall at the same time issue both a summons and a notice of right to preseizure hearing, with a copy of the undertaking and plaintiff’s affidavit, directed to ~~the defendant~~ and to be served ~~by the constable~~ upon the defendant.

(b) The notice of right to a preseizure hearing so issued and served shall notify the defendant that within five days from service thereof, he may demand such hearing and present such evidence touching upon the probable validity of the plaintiff’s claim for immediate possession and defendant’s right to continue in possession, but if the defendant fails to make timely demand for preseizure hearing, the constable will be directed to take the property described in the affidavit.

(c) The summons so issued and served will require the defendant to appear before the magistrate at a time and place to be therein specified, not more than twenty days from the date thereof, to answer the complaint of the plaintiff. The summons shall contain a notice to the defendant that in case he shall fail to appear at the time and place therein mentioned the plaintiff will have judgment for the possession of the property described in the affidavit with the costs and disbursements of the action.

(d) If the defendant fails to demand a preseizure hearing, or, if after such hearing the magistrate shall find that plaintiff’s claim for immediate possession should be allowed, then the magistrate shall endorse upon the affidavit a direction to any constable of the county in which the magistrate shall reside, requiring such constable to take the property described therein from the defendant and keep it, to be disposed of according to law. For the endorsement in such affidavit the magistrate shall receive an additional fee of twenty‑five cents, which shall be included in the costs of the suit.

(e) Unless an alternative means is authorized by this article, any service of process pursuant to this article is to be effectuated as provided in the South Carolina Rules of Civil Procedure.”

SECTION 2. Section 22‑3‑1340 of the 1976 Code is amended to read:

“Section 22‑3‑1340. The defendant may, at any time after such service and at least two days before the return day of the summons, serve upon the plaintiff ~~or upon the constable who made such service~~ a notice in writing that he excepts to the sureties in the bond or undertaking and if he fail to do so all objection thereto shall be waived. If such notice be served, the sureties shall justify or the plaintiff shall give new sureties on the return day of such summons, who shall then appear and justify, or the magistrate shall order the property delivered to the defendant and shall also render judgment for defendant’s costs and disbursements.”

SECTION 3. Section 22‑3‑1370 of the 1976 Code is amended to read:

“Section 22‑3‑1370. ~~The magistrate shall concurrently have served on the defendant, when~~ When immediate possession of the subject property is not being taken, the magistrate shall issue an order, to be served upon the defendant, which restrains ~~restraining~~ the defendant from damaging, concealing or removing such property. Upon proper showing that such order has been violated, the defendant shall be subject to a fine not to exceed one hundred dollars or imprisonment for not more than thirty days.”

SECTION 4. Section 22‑3‑1400 of the 1976 Code is amended to read:

“Section 22‑3‑1400. If it shall appear, upon proper showing, ~~by the return of a constable that he has taken the property described in the plaintiff’s affidavit and~~ that the defendant cannot be found and has no last place of abode in the county and that no agent of defendant could be found on whom service could be made, the magistrate may proceed with the cause in the same manner as though there had been a personal service.”

SECTION 5. Section 22‑3‑1410 of the 1976 Code is amended to read:

“Section 22‑3‑1410. The ~~constable to whom the~~ affidavit, endorsement, notice of preseizure hearing, and summons ~~shall be delivered,~~ shall~~, without delay, serve~~ be served upon the defendant ~~a copy of the affidavit, notice and summons,~~ by delivering them to him personally, but, if he cannot be found, to the agent of the defendant in whose possession the property shall be found and, if neither can be found, by leaving such copies at his place of business or the last or usual place of abode of the defendant with some person of suitable age and discretion. ~~He shall forthwith make a~~ A return of ~~his~~ the proceedings thereon and the manner of serving the documents shall be made to the magistrate who issued the summons. Upon the magistrate endorsing upon the affidavit a direction requiring ~~the~~ a constable to take the property, the constable to whom the affidavit and endorsement is delivered shall forthwith take the property described in the affidavit, if he can find it in the county, and shall keep it in his custody.”

SECTION 6. This act takes effect upon approval by the Governor.

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