~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE REPORT

May 18, 2011

**S. 30**

Introduced by Senators McConnell, Leventis and Ford

S. Printed 5/18/11--H.

Read the first time April 6, 2011.

**THE COMMITTEE ON JUDICIARY**

To whom was referred a Bill (S. 30) to amend Section 22‑5‑110, Code of Laws of South Carolina, 1976, related to magistrates’ powers and duties regarding the issuance of arrest warrants and courtesy summons, 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 deleting Section 22‑5‑110(B), as contained in SECTION 1, page 2, lines 5 ‑ 28, and inserting:

/ ~~(B)~~ ~~Notwithstanding another provision of law, a person charged with any misdemeanor offense requiring a warrant signed by nonlaw enforcement personnel to ensure the arrest of a person must be given a courtesy summons.~~

(B)(1) An arrest warrant may not be issued for the arrest of a person unless sought by a law enforcement officer acting in their official capacity.

(2) If an arrest warrant is sought by someone other than a law enforcement officer, the court must issue a courtesy summons.

(3) If a defendant named in a courtesy summons fails to appear before the court pursuant to the summons, the court must issue an arrest warrant for the underlying offense based upon the original sworn statement of the affiant who sought the courtesy summons, provided the sworn statement establishes probable cause that the underlying offense was committed.” /

Renumber sections to conform.

Amend title to conform.

JAMES H. HARRISON for Committee.

**A** **BILL**

TO AMEND SECTION 22‑5‑110, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATED TO MAGISTRATES’ POWERS AND DUTIES REGARDING THE ISSUANCE OF ARREST WARRANTS AND COURTESY SUMMONS, SO AS TO PROVIDE THAT NO ARREST WARRANT SHALL BE ISSUED FOR THE ARREST OF A PERSON UNLESS SOUGHT BY A MEMBER OF A LAW ENFORCEMENT AGENCY ACTING IN THEIR OFFICIAL CAPACITY; AND TO PROVIDE THAT IF AN ARREST WARRANT IS SOUGHT BY SOMEONE OTHER THAN A LAW ENFORCEMENT OFFICER, THE COURT MUST ISSUE A COURTESY SUMMONS, EXCEPT WHEN A BUSINESS IS SEEKING AN ARREST WARRANT FOR ANY OFFENSE AGAINST THE BUSINESS OR A PERSON IS SEEKING AN ARREST WARRANT FOR A FRAUDULENT CHECK, IF THE FRAUDULENT CHECK IS PRESENTED TO THE MAGISTRATE AT THE TIME THE WARRANT IS SOUGHT.

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

SECTION 1. Section 22‑5‑110 of the 1976 Code is amended to read:

“Section 22‑5‑110. (A) Magistrates shall:

(1) cause to be arrested all persons found within their counties charged with any offense and persons who after committing any offense within the county ~~escape~~flee out of ~~it,~~the county;

(2) examine into treasons, felonies, grand larcenies, high crimes, and misdemeanors~~,~~;

(3) commit or bind over for trial those who appear to be guilty of crimes or offenses not within their jurisdiction~~,~~; and

(4) punish those guilty of such offenses within their jurisdiction.

~~(B)~~ ~~Notwithstanding another provision of law, a person charged with any misdemeanor offense requiring a warrant signed by nonlaw enforcement personnel to ensure the arrest of a person must be given a courtesy summons.~~

(B)(1) No arrest warrant shall be issued by a magistrate unless sought by:

(a) a law enforcement officer acting in the officer’s official capacity;

(b) a business seeking an arrest warrant for an offense against the business;

(c) a person seeking an arrest warrant for a fraudulent check, if the fraudulent check or a legal copy of the fraudulent check is presented to the magistrate at the time the warrant is sought; or

(d) a person seeking an arrest warrant for offenses involving criminal domestic violence, harassment, assault and battery in the second degree, or assault and battery in the third degree.

(2) If an arrest warrant is sought by a person other than a person listed in subitem (B)(1), the court must issue a courtesy summons. If, after being served the summons, a defendant named in the summons fails to appear before the court pursuant to the summons, the court may issue an arrest warrant for the underlying offense based upon the original sworn statement of the person who sought the summons, provided the sworn statement establishes probable cause that the underlying offense was committed.”

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

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