~~Indicates Matter Stricken~~

Indicates New Matter

HOUSE AMENDMENTS AMENDED

June 1, 2011

**S. 30**

Introduced by Senators McConnell, Leventis and Ford

S. Printed 6/1/11--S.

Read the first time January 11, 2011.

**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.

Amend Title To Conform

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. The first sentence of Section 22-1-10(A) of the 1976 Code is amended to read:

“Section 22-1-10(A). The Governor, by and with the advice and consent of the Senate, may appoint magistrates in each county of the State for a term of four years and until their successors are appointed and qualified, or their positions are terminated as provided in subsection (B), Section 22-1-30, or Section 22-2-40.”

SECTION 3. Section 22‑1‑30 of the 1976 Code is amended to read:

“Section 22-1-30. (A) A magistrate may be suspended or removed by order of the Supreme Court pursuant to its rules for incapacity, misconduct, or neglect of duty. A magistrate’s failure to retire in accordance with Section 22‑1‑25 or a magistrate’s failure to comply with the training and examination requirements of Section 22‑1‑10(C) may subject the magistrate to suspension or removal by order of the Supreme Court.

(B) If a senatorial delegation recommends that the Governor not reappoint a magistrate upon completion of his term of office, the Governor may send a message to the Senate that the magistrate is not reappointed. Upon receipt of the message, the Senate must ratify the message not to reappoint by the confirmation process. If the ratification takes place, the magistrate’s service is terminated at the end of his term and the magistrate does not continue to serve until a successor is appointed. Notice of the ratification must be sent to the Supreme Court.”

SECTION 4. Section 22-2-40(C) of the 1976 Code is amended to read:

“(C) Notwithstanding the provisions of subsection (A), Section 22‑1‑10(A), or Section 22‑8‑40(C) and (D), the number, location, and full‑time or part‑time status of magistrates in the county may be increased or decreased from the required and permissive provisions in Section 22‑8‑40(C) and (D) as provided in Section 22-1-30(B), or by filing with court administration a written agreement between the members of the Senate delegation for the county and the county governing body; however, a magistrate’s compensation must not be decreased during his term in office.”

SECTION 5. This act takes effect upon approval by the Governor.

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