~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE REPORT

April 18, 2012

**H. 3274**

Introduced by Reps. Huggins, Atwater, Hamilton, Stringer, Nanney, Henderson and G.R. Smith

S. Printed 4/18/12--H.

Read the first time January 12, 2011.

**THE COMMITTEE ON JUDICIARY**

To whom was referred a Bill (H. 3274) to amend the Code of Laws of South Carolina, 1976, by adding Section 27‑37‑5 so as to define the terms “malicious property damage” and “threat to human life”, 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 all after the enacting words and inserting:

/ SECTION 1. Chapter 37, Title 27 of the 1976 Code is amended by adding:

“Section 27‑37‑45. (A) For purposes of this section:

(1)(a) ‘Malicious damage to property’ means the knowing and deliberate destruction, defacing, damaging, impairment, or removal any part of the premises by the tenant, a member of his household, or his guest. ‘Malicious damage to property’ does not include repairs or improvements to the leased premises.

(b) ‘Malicious damage to property’ does not include damage to the property that occurs as a result of one or more incidents of domestic violence, dating violence, stalking, or sexual assault against the tenant or a member of the tenant’s household.

(2)(a) ‘Significant threat to safety’ means the threat of criminal activity to harm the health and safety of the landlord or his agents, the tenant and members of his household or guests, or other tenants that is caused by a tenant, a member of his household, or his guest, such as:

(i) homicide or physical assault to inflict bodily harm; or

(ii) illegal use of a firearm or other weapon.

(b) ‘Significant threat to safety’ does not include actual or threatened criminal domestic violence toward a tenant or a member of a tenant’s household.

(B) A landlord or his agent must not apply for an ejectment as provided in this section based substantially on the status of the tenant, a member of the tenant’s household, or a guest as a victim of domestic violence, sexual assault, or stalking. Evidence provided to the landlord or his agent or to the magistrate of domestic violence, sexual assault, or stalking may include:

(1) law enforcement, court, or federal agency records or files;

(2) documentation from a domestic violence or sexual assault program; or

(3) documentation from a religious, medical, or other professional.

(C)(1) For residential rental agreements, the tenant may be ejected by the procedures in this section upon application of the landlord or his agent only when the tenant, a member of his household, or a guest causes:

(a) malicious damage to property; or

(b) significant threat to safety.

(2) The landlord or his agent seeking relief under this section must bear the burden of proof by a preponderance of the evidence that the actions of a tenant, a member of the tenant’s household, or a guest meet the definition of ‘malicious damage to property’ or ‘significant threat to safety’.

(D)(1) In an application for an ejectment action brought under this section, the landlord or his agent who initiates the action must file an affidavit stating specific facts and instances to support the action. The fee for initiating this action is as provided in Section 8‑21‑1010(15) and by the magistrate or his clerk must collect this fee.

(2) Within twenty‑four hours after the filing of an application to proceed with an action for ejectment pursuant to this section, the magistrate must review the application and affidavit in an ex parte hearing without giving the defendant notice of the hearing. If the landlord or his agent shows by a preponderance of the evidence sufficient supporting facts in the application and affidavit to meet the requirements of this section, the magistrate shall authorize the action to proceed with service provided in subsection (E).

(3) If the magistrate determines that the landlord or his agent initiating the action did so intentionally and in bad faith and without sufficient basis under the requirements of this section, the magistrate may impose a civil penalty of up to five hundred dollars for abuse of the expedited process. This civil penalty must not be recorded as a criminal matter, nor is it subject to assessments.

(E)(1) The copy of the rule to show cause may be served in the same manner as is provided by law for the service of the summons in actions pending in the court of common pleas or magistrates courts of this State or as provided by item (2). A law enforcement officer or constable is responsible only for the attempts at service as provided in this item and item (2)(a).

(2) When service as provided in item (1) has been attempted unsuccessfully two times in the manner described in subitem (a), a copy of the rule may be served by affixing both it and documentation of the two service attempts to the most conspicuous part of the premises and mailing a copy of the rule in the manner described in subitem (b).

(a) Each of the two attempts to serve the defendant must be separated by a minimum of twenty‑four hours and must occur at times of day separated by a minimum of eight hours. The service attempts shall take place after the magistrate authorizes the action to proceed with service as provided in subsection (C)(2). The person attempting to serve the rule must document the date and time of the attempts by affidavit or by certificate in the case of a law enforcement officer. On the first unsuccessful attempt to serve the rule, a copy of the rule must be affixed to the most conspicuous part of the premises and the ten‑day period for the tenant to appear and show cause provided in subsection (E) begins the following day. On the second unsuccessful attempt to serve the rule, the documentation of the two attempts to serve the rule must be attached to the copy of the rule when it is affixed to the most conspicuous part of the premises.

(b) For mailing by ordinary mail to be considered to complete service under this item, it must be accomplished by placing a copy of the rule in an envelope in the presence of the clerk of the magistrates court. The clerk is responsible for verifying that the envelope is addressed to the defendant at the address shown in the rule as the rental premises of the defendant or another address for receipt of mail furnished in writing by the tenant to the landlord, that the envelope contains the necessary documents, and that the clerk has placed the sealed and stamped envelope in the United States mail on the same day that the ex parte hearing described in subsection (C) occurs. The clerk’s verification must be made a part of the record in the case, and service by ordinary mail is not considered complete without the clerk’s verification. A fee as provided for in Section 8‑21‑1010(14) must be collected by the magistrate or his clerk for the verification and mailing in this item.

(3) Mailing of the rule constitutes service when the requirements of subitems (a) and (b) of item (2) have been met. If these requirements have been met, the specified time period for the tenant to show cause why he should not be ejected as provided in subsection (C) begins to run on the day after service of the rule to show cause as provided in item (1) or item (2)(b).

(F) If the tenant fails to appear and show cause within the ten calendar days following the first attempt at service as provided in subsection (E), then the magistrate shall issue a warrant of ejectment and the tenant shall be ejected by his regular or special constable or by the sheriff of the county.

(G) Nothing in this section may be construed to proscribe or limit any other rights a landlord or tenant may have under other statutes or by law.

(H) The provisions of this section shall be strictly construed.”

SECTION 2. Section 8-21-1010(A) of the 1976 Code is amended to read:

“(A) Except as otherwise expressly provided, the following fees and costs must be collected by the magistrates and deposited in the general fund of the county:

(1) for taking civil recognizance, with or without sureties, five dollars;

(2) for granting an order for civil special bail, with or without sureties, five dollars;

(3) for receiving and filing bond in claim and delivery, attachment, five dollars; if justification of sureties required, an additional five dollars;

(4) for administering and certifying oaths or documents in writing, two dollars;

(5) for issuing any prerogative writ, five dollars;

(6) in all civil actions, for issuing a summons and a copy for defendant, and for giving judgment with or without a hearing, forty‑five dollars;

(7) for issuing execution and renewal thereof, ten dollars;

(8) for making up, certifying, and forwarding a transcript of record and judgment in a case for purpose of appeal, ten dollars;

(9) for proceedings by a landlord or lessor against a tenant or lessee, including notices to quit, eviction orders, or recovery of rents, twenty dollars;

(10) for proceedings on a coroner's inquest, as prescribed by law, ten dollars, if inquest is demanded by a party other than the State or county or authorized officer of either;

(11) for proceeding on estrays, including judgment for possession, sale, or damages, ten dollars;

(12) for qualifying appraisers to set off homestead or qualifying sureties on a bond posted in a case, including bail bonds, five dollars;

(13) for each tax execution collected, five dollars; ~~and~~

(14) for filing or issuing any other paper not provided for in this section, five dollars; and

(15) for filing an application for an expedited ejectment as provided in Section 27-27-45(C)(1), fifty dollars.”

SECTION 3. This act takes effect upon approval by the Governor. /

Renumber sections to conform.

Amend title to conform.

JAMES H. HARRISON for Committee.

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 27‑37‑5 SO AS TO DEFINE THE TERMS “MALICIOUS PROPERTY DAMAGE” AND “THREAT TO HUMAN LIFE”; TO AMEND SECTION 27‑37‑30, RELATING TO A RULE TO SHOW CAUSE FOR THE EJECTMENT OF A TENANT, SO AS TO PROVIDE THE RULE MAY BE SERVED BY AFFIXING A COPY OF IT ALONE TO THE MOST CONSPICUOUS PART OF THE PREMISES IF GROUNDS FOR EJECTMENT FOR A RESIDENTIAL RENTAL AGREEMENT ARE CIRCUMSTANCES THAT CONSTITUTE MALICIOUS PROPERTY DAMAGE OR A THREAT TO HUMAN LIFE; TO AMEND SECTION 27‑37‑40, RELATING TO TENANT EJECTMENT ON FAILURE TO SHOW CAUSE, SO AS TO PROVIDE IF GROUNDS FOR EJECTMENT CONSTITUTE MALICIOUS PROPERTY DAMAGE OR THREAT TO HUMAN LIFE AND TENANT FAILS TO APPEAR AND SHOW CAUSE WITHIN FIVE DAYS, THE MAGISTRATE IMMEDIATELY SHALL ISSUE AN EJECTMENT WARRANT AND TENANT MUST BE EJECTED BY CERTAIN LAW ENFORCEMENT OFFICERS; AND TO AMEND SECTION 27‑40‑720, RELATING TO LANDLORD REMEDIES FOR TENANT NONCOMPLIANCE AFFECTING HEALTH AND SAFETY, SO AS TO PROVIDE AN EMERGENCY MEANS CIRCUMSTANCES CONSIDERED TO THREATEN SIGNIFICANT PROPERTY DAMAGE OR HUMAN LIFE.

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

SECTION 1. Chapter 37, Title 27 of the 1976 Code is amended by adding:

“Section 27‑37‑5. As used in this chapter:

(1) ‘Malicious property damage’ means to wilfully and deliberately cause physical damage to rental property through a violation of Section 27‑40‑510. The landlord shall bear the burden of proof that the tenant had the intent to cause the property damage.

(2) ‘Threat to human life’ means a verbal, written, or physical threat by the tenant or a member of the tenant’s household of physical bodily harm to the landlord, an employee of the landlord, or another tenant of the landlord.”

SECTION 2. Section 27‑37‑30 of the 1976 Code is amended to read:

“(A) The copy of the rule provided for in Section 27‑37‑20 may be served in the same manner as is provided by law for the service of the summons in actions pending in the court of common pleas or magistrates courts of this State. The methods of service described in subsections (B) ~~and~~, (C), and (D) may be used as alternatives to the method of service described in this subsection.

(B) When no person can be found in possession of the premises~~,~~ and the premises have remained abandoned~~,~~ as defined in Section 27‑40‑730 for residential rental agreements and in Section 27‑35‑150 for nonresidential rental agreements~~,~~ for a period of fifteen days or more immediately before the date of service, the copy of the rule may be served by leaving it affixed to the most conspicuous part of the premises.

(C) When service as provided in subsection (A) has been attempted unsuccessfully two times in the manner described in item (1), a copy of the rule may be served by affixing ~~both~~ it and documentation of the two service attempts to the most conspicuous part of the premises and mailing a copy of the rule in the manner described in item (2):

(1) Each of the two attempts to serve the defendant must be separated by a minimum of forty‑eight hours and must occur at times ~~of day~~ separated by a minimum of eight hours. The person attempting to serve the rule must document the date and time of the attempts by affidavit or by certificate in the case of a law enforcement officer. On the first unsuccessful attempt to serve the rule, a copy of the rule must be affixed to the most conspicuous part of the premises. On the second unsuccessful attempt to serve the rule, the documentation of the two attempts to serve the rule must be attached to the copy of the rule when it is affixed to the most conspicuous part of the premises.

(2) For mailing by ordinary mail to be considered to complete service under this item, it must be accomplished by placing a copy of the rule and documentation of the prior service attempts ~~at service~~ in an envelope in the presence of the clerk of the magistrates court. The clerk is responsible for verifying that the envelope is addressed to the defendant at the address shown in the rule as the rental premises of the defendant or another address for receipt of mail furnished in writing by the tenant to the landlord, that the envelope contains the necessary documents, and that the clerk has placed the sealed and stamped envelope in the United States mail. The clerk’s verification must be made a part of the record in the case, and service by ordinary mail is not considered complete without the clerk’s verification. A fee as provided for in Section 8‑21‑1010(14) must be collected by the magistrate or his clerk for the verification and mailing in this item.

(3) Mailing of the rule constitutes service when the requirements of items (1) and (2) have been met and ten days have elapsed from the time of mailing. If these requirements have been met, the specified time period for the tenant to show cause why he should not be ejected as provided in Section 27‑37‑20 begins to run on the eleventh day after mailing. However, if the tenant contacts the magistrates court prior to the eleventh day, the specified time period for the tenant to show cause as provided in Section 27‑37‑20 must begin to run at the time of contact.

(D) If grounds for ejectment for a residential rental agreement are circumstances that constitute malicious property damage or a threat to human life, then the rule may be served by affixing a copy of it alone to the most conspicuous part of the premises.”

SECTION 3. Section 27‑37‑40 of the 1976 Code is amended to read:

“Section 27‑37‑40. (A) If the tenant fails to appear and show cause within ~~the aforesaid~~ ten days then the magistrate shall issue a warrant of ejectment and the tenant shall be ejected by his regular or special constable or by the sheriff of the county.

(B) If grounds for ejectment constitute malicious property damage or a threat to human life as defined in Section 27‑37‑5 and the tenant fails to appear and show cause within five days, then the magistrate immediately shall issue a warrant of ejectment and the tenant must be ejected by his regular or special constable or by the sheriff of the county.”

SECTION 4. Section 27‑40‑720 of the 1976 Code is amended to read:

“Section 27‑40‑720. (~~a~~A) If there is noncompliance by the tenant with Section 27‑40‑510 materially affecting health and safety that can be remedied by repair, replacement of a damaged item, or cleaning, and the tenant fails to comply as promptly as conditions require in case of emergency as defined in subsection (C) or within fourteen days after written notice by the landlord specifying the breach and requesting that the tenant remedy it within that period of time, the landlord may enter the dwelling unit and cause the work to be done in a workmanlike manner and the tenant shall reimburse the landlord for the cost and, in addition, the landlord shall have the remedies available under this chapter.

(~~b~~B) If there is noncompliance by the tenant with Section 27‑40‑510 materially affecting health and safety other than as set forth in subsection (~~a~~ A) ~~above~~, and the tenant fails to comply as promptly as conditions require in case of ~~emergency,~~ malicious property damage as defined in Section 27‑37‑5 or within fourteen days after written notice by the landlord if it is not ~~an emergency~~ malicious property damage, specifying the breach and requesting that the tenant remedy within that period of time, the landlord may terminate the rental agreement.

(C) For the purposes of this section, an emergency refers to circumstances considered to threaten significant property damage or human life.”

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

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