COMMITTEE REPORT

May 9, 2012

**H. 3543**

Introduced by Reps. Hart and Weeks

S. Printed 5/9/12--S.

Read the first time April 14, 2011.

**THE COMMITTEE ON JUDICIARY**

To whom was referred a Bill (H. 3543) to amend the Code of Laws of South Carolina, 1976, by adding Section 17‑15‑175 so as to provide that a judge may not issue a bench warrant, 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 all after the enacting words, and inserting:

/ SECTION 1. Chapter 15, Title 17 of the 1976 Code is amended by adding:

“Section 17‑15‑175. (A) A general sessions court may not issue a bench warrant sought by a solicitor for failure to appear in court, unless the solicitor files an affidavit with the court attesting that:

(1) proper notice was given to the defendant to appear in court, specifying the type of notice, the date of notice, and the name and address where the notice was delivered;

(2) the defendant failed to appear in court pursuant to the notice, specifying the date the defendant failed to appear;

(3) the solicitor notified the defendant’s attorney of record, if applicable, in writing by hand delivery, facsimile, or electronic mail regarding the solicitor’s intention to seek the bench warrant and the basis for the bench warrant;

(4) at least forty-eight hours, excluding weekends and holidays, have passed since the solicitor notified the defendant’s attorney of record, if applicable; and

(5) the defendant’s attorney of record, if applicable, has not provided the solicitor with a copy of a written objection to the issuance of the bench warrant by hand delivery, facsimile, or electronic mail.

(B) This section does not apply if the solicitor requests the issuance of a bench warrant in court and the defendant’s attorney of record is present at the time of the request.

(C) The defendant’s attorney of record may file a written objection to the issuance of the bench warrant with the court and request a hearing within forty-eight hours, excluding weekends and holidays, of receiving the notice regarding the solicitor’s intention to seek the bench warrant. The objection must show good cause why the bench warrant should not be issued. The defendant’s attorney of record shall provide the solicitor with a copy of the written objection by hand delivery, facsimile, or electronic mail within forty-eight hours, excluding weekends and holidays, of receiving the notice regarding the solicitor’s intention to seek the bench warrant.

(D) If the solicitor files an affidavit as required by this section and the defendant’s attorney of record has not filed a written objection to the issuance of the the bench warrant with the court within forty-eight hours, excluding weekends and holidays, of receiving the notice regarding the solicitor’s intention to seek the bench warrant, the court may issue the bench warrant. If the defendant’s attorney of record files a written objection, the court may issue the bench warrant without a hearing, refuse to issue the bench warrant without a hearing for good cause shown, grant a hearing and issue the bench warrant, or grant the hearing and refuse to issue the bench warrant for good cause shown.

(E) Court administration shall develop a form affidavit for the solicitors to use to comply the requirements of this section.”

SECTION 2. The repeal or amendment by this act of any law, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

SECTION 3. This act takes effect six months after approval by the Governor. /

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 Judicial Department indicates that this bill will have no fiscal impact on the General Fund of the State, or on federal and/or other funds.

*Approved By:*

Brenda Hart

Office of State Budget

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 17‑15‑175 SO AS TO PROVIDE THAT A JUDGE MAY NOT ISSUE A BENCH WARRANT FOR FAILURE TO APPEAR UNLESS THE SOLICITOR FILES AN AFFIDAVIT WITH THE COURT TO CONFIRM THAT WRITTEN NOTICE OF HIS INTENT TO SEEK A BENCH WARRANT FOR FAILURE TO APPEAR HAS BEEN GIVEN TO THE DEFENDANT, HIS ATTORNEY, AND THE BOND SURETY COMPANY AND TO REQUIRE THE COURT TO HOLD A RULE TO SHOW CAUSE HEARING BEFORE ISSUING THE BENCH WARRANT.

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

SECTION 1. Chapter 15, Title 17 of the 1976 Code is amended by adding:

“Section 17‑15‑175. A judge may not issue a bench warrant for failure to appear in court, unless the solicitor or clerk of court has provided notice to the attorney of record before the bench warrant is issued.”

SECTION 2. The repeal or amendment by this act of any law, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

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

‑‑‑‑XX‑‑‑‑