COMMITTEE REPORT

May 3, 2017

**S. 179**

Introduced by Senators Hutto and Hembree

S. Printed 5/3/17--H.

Read the first time April 18, 2017.

**THE COMMITTEE ON JUDICIARY**

To whom was referred a Bill (S. 179) to amend the Code of Laws of South Carolina, 1976, by adding Article 19 to Chapter 53, Title 44 so as to provide limited immunity from prosecution for certain drug, 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 53, Title 44 of the 1976 Code is amended by adding:

“Article 19

Drug or Alcohol‑Related Overdose Medical Treatment

Section 44‑53‑1910. As used in this article:

(1) ‘Controlled substance’ has the same meaning as provided in Section 44-53-110.

(2) ‘Drug or alcohol‑related overdose’ means an acute condition, including mania, hysteria, extreme physical illness, coma, or death resulting from the consumption or use of a controlled substance, alcohol, or another substance with which a controlled substance or alcohol was combined, that a layperson would reasonably believe to be a drug or alcohol overdose that requires medical assistance.

(3) ‘Seeks medical assistance’ means seeking medical assistance by contacting the 911 system, a law enforcement officer, or emergency services personnel.

Section 44‑53‑1920. (A) A person who seeks medical assistance for another person who appears to be experiencing a drug or alcohol‑related overdose may not be prosecuted for any of the offenses listed in subsection (B), if the evidence for prosecution was obtained as a result of the person seeking medical assistance for the apparent overdose on the premises or immediately after seeking medical assistance and the person:

(1) acted in good faith when seeking medical assistance, upon a reasonable belief that he was the first person to call for assistance;

(2) provided his own name to the 911 system or to a law enforcement officer upon arrival; and

(3) did not seek medical assistance during the course of the execution of an arrest warrant, search warrant, or other lawful search.

(B) A person who seeks medical assistance for another person in accordance with the requirements of subsection (A) may not be prosecuted for:

(1) dispensing or delivering a controlled substance in violation of Section 44‑53‑370(a), when the controlled substance is dispensed or delivered directly to the person who appears to be experiencing a drug‑related overdose;

(2) possessing a controlled substance in violation of Section 44‑53‑370(c);

(3) possessing less than one gram of methamphetamine or cocaine base in violation of Section 44‑53‑375(A);

(4) dispensing or delivering methamphetamine or cocaine base in violation of Section 44‑53‑375(B), when the methamphetamine or cocaine base is dispensed or delivered directly to the person who appears to be experiencing a drug‑related overdose;

(5) possessing paraphernalia in violation of Section 44‑53‑391;

(6) selling or delivering paraphernalia in violation of Section 44‑53‑391, when the sale or delivery is to the person who appears to be experiencing a drug‑related overdose;

(7) purchasing, attempting to purchase, consuming, or knowingly possessing alcoholic beverages in violation of Section 63‑19‑2440;

(8) selling alcoholic beverages to a person under twenty‑one years of age in violation of Section 61‑4‑50;

(9) purchasing beer or wine to give to a person to whom beer or wine cannot legally be sold in violation of Section 61‑4‑80;

(10) transferring or giving to a person under the age of twenty‑one years for consumption beer or wine in violation of Section 61‑4‑90; or

(11) contributing to the delinquency of a minor in violation of Section 16‑17‑490.

Section 44‑53‑1930. A person who experiences a drug or alcohol‑related overdose and is in need of medical assistance may not be prosecuted for any of the offenses listed in Section 44‑53‑1920(B) if the evidence for prosecution was obtained as a result of the drug or alcohol‑related overdose and need for medical assistance.

Section 44‑53‑1940. The court may consider a person’s decision to seek medical assistance pursuant to Section 44‑53‑1920(A) or 44‑53‑1930 as a mitigating factor in a criminal prosecution or sentencing for a drug or alcohol‑related offense that is not an offense listed in Section 44‑53‑1920(B).

Section 44‑53‑1950. This article does not prohibit a person from being arrested, charged, or prosecuted, or from having his supervision status modified or revoked, based on an offense other than an offense listed in Section 44‑53‑1920(B), whether or not the offense arises from the same circumstances for which the person sought medical assistance.

Section 44‑53‑1960. Nothing in this section may be construed to:

(1) limit the admissibility of any evidence in connection with the investigation or prosecution of a crime with regard to a defendant who does not qualify for the protections of Section 44‑53‑1920(A) or with regard to other crimes committed by a person who otherwise qualifies for protection pursuant to Section 44‑53‑1920(A) or Section 44-53-1930;

(2) limit any seizure of evidence or contraband otherwise permitted by law; or

(3) limit or abridge the authority of a law enforcement officer to detain or take into custody a person in the course of an investigation or to effect an arrest for any offense, except as provided in Section 44‑53‑1920(A) or Section 44-53-1930.

Section 44‑53‑1970. A law enforcement officer who arrests a person for an offense listed in Section 44‑53‑1920(B) is not subject to criminal prosecution, or civil liability, for false arrest or false imprisonment if the officer made the arrest based on probable cause.”

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

Renumber sections to conform.

Amend title to conform.

F. GREGORY DELLENEY, JR. for Committee.

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING ARTICLE 19 TO CHAPTER 53, TITLE 44 SO AS TO PROVIDE LIMITED IMMUNITY FROM PROSECUTION FOR CERTAIN DRUG AND ALCOHOL‑RELATED OFFENSES COMMITTED BY A PERSON WHO SEEKS MEDICAL ASSISTANCE FOR ANOTHER PERSON WHO IS EXPERIENCING A DRUG OR ALCOHOL‑RELATED OVERDOSE OR BY A PERSON WHO IS EXPERIENCING A DRUG OR ALCOHOL‑RELATED OVERDOSE AND SEEKS MEDICAL ASSISTANCE, TO ALLOW THE COURT TO CONSIDER AS A MITIGATING FACTOR IN PROCEEDINGS RELATED TO OTHER CRIMINAL OFFENSES WHETHER THE PERSON SOUGHT MEDICAL ASSISTANCE FOR A PERSON EXPERIENCING AN OVERDOSE, TO LIMIT THE IMMUNITY TO ALLOW PROSECUTION OF A PERSON FOR OTHER CRIMES ARISING OUT OF THE DRUG OR ALCOHOL‑RELATED OVERDOSE, TO ALLOW FOR ADMISSIBILITY OF CERTAIN EVIDENCE, TO PROVIDE CIVIL AND CRIMINAL IMMUNITY FOR LAW ENFORCEMENT OFFICERS RELATING TO THE ARREST OF A PERSON LATER DETERMINED TO QUALIFY FOR LIMITED IMMUNITY, AND FOR OTHER PURPOSES.

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

SECTION 1. Chapter 53, Title 44 of the 1976 Code is amended by adding:

“Article 19

Drug or Alcohol‑Related Overdose Medical Treatment

Section 44‑53‑1910. As used in this article, ‘drug or alcohol‑related overdose’ means an acute condition, including mania, hysteria, extreme physical illness, coma, or death resulting from the consumption or use of a controlled substance, alcohol, or another substance with which a controlled substance or alcohol was combined, that a layperson would reasonably believe to be a drug or alcohol overdose that requires medical assistance.

Section 44‑53‑1920. (A) Except as otherwise provided in subsection (B), a person acting in good faith who seeks medical assistance from an emergency room, outpatient medical clinic, the 911 system or other medical facility, for another person who appears to be experiencing a drug or alcohol‑related overdose may not be prosecuted, if the evidence for prosecution was solely obtained as a result of the person seeking medical assistance for the apparent overdose for:

(1) dispensing or delivering a controlled substance in violation of Section 44‑53‑370(a), when the controlled substance is dispensed or delivered directly to the person who appears to be experiencing a drug‑related overdose;

(2) possessing a controlled substance in violation of Section 44‑53‑370(c);

(3) possessing less than one gram of methamphetamine or cocaine base in violation of Section 44‑53‑375(A);

(4) dispensing or delivering methamphetamine or cocaine base in violation of Section 44‑53‑375(B), when the methamphetamine or cocaine base is dispensed or delivered directly to the person who appears to be experiencing a drug‑related overdose;

(5) possessing paraphernalia in violation of Section 44‑53‑391;

(6) selling or delivering paraphernalia in violation of Section 44‑53‑391, when the sale or delivery is to the person who appears to be experiencing a drug‑related overdose;

(7) purchasing, attempting to purchase, consuming, or knowingly possessing alcoholic beverages in violation of Section

63‑19‑2440; or

(8) contributing to the delinquency of a minor in violation of Section 16‑17‑490 based solely upon the provision of a controlled substance to the minor in need of medical assistance.

(B) If the person seeking medical assistance pursuant to subsection (A) previously has sought medical assistance for another person pursuant to this article, the court may consider the circumstances of the prior incidents and the related offenses to determine whether to grant the person immunity from prosecution.

(C) A person described in subsection (A) must use his or her own name when contacting authorities, fully cooperate with law enforcement and medical personnel and must remain with the individual needing medical assistance until help arrives.

Section 44‑53‑1930. (A) A person who experiences a drug or alcohol‑related overdose, is in need of medical assistance and who requests medical assistance from an emergency room, outpatient medical clinic, the 911 system, or other medical facility may not be prosecuted for any of the offenses listed in Section 44‑53‑1920 if the evidence for prosecution was solely obtained as a result of the drug or alcohol‑related overdose and need for medical assistance.

(B) A person described in Section 44-53-1920(A) must use his or her own name when contacting authorities, and fully cooperate with law enforcement and medical personnel.

Section 44‑53‑1940. The court may consider a person’s decision to seek medical assistance pursuant to Section 44‑53‑1920 or 44‑53‑1930 as a mitigating factor in a criminal prosecution or sentencing for a drug or alcohol‑related offense that is not an offense listed in Section 44‑53‑1920.

Section 44‑53‑1950. This article does not prohibit a person from being arrested, charged, or prosecuted, or from having his supervision status modified or revoked, based on an offense other than an offense listed in Section 44‑53‑1920, whether or not the offense arises from the same circumstances for which the person sought medical assistance.

Section 44‑53‑1960. Nothing in this section bars the admissibility of evidence obtained in connection with the investigation and prosecution of other crimes committed by a person who otherwise qualifies for limited immunity pursuant to this article.

Section 44‑53‑1970. A law enforcement officer who arrests a person for an offense listed in Section 44‑53‑1920 is not subject to criminal prosecution, or civil liability, for false arrest or false imprisonment if the officer made the arrest based on probable cause.

Section 44-53-1980. Nothing in this article shall be construed to limit any seizure of evidence or contraband otherwise permitted by law.”

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

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