COMMITTEE REPORT

March 1, 2018

**H. 4830**

Introduced by Reps. Delleney and Pope

S. Printed 3/1/18--H.

Read the first time February 1, 2018.

**THE COMMITTEE ON JUDICIARY**

To whom was referred a Bill (H. 4830) to amend the Code of Laws of South Carolina, 1976, by adding Section 17‑3‑47 so as to require certain information to be contained on all affidavits of, 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 language and inserting:

/ SECTION 1. Article 1, Chapter 3, Title 17 of the 1976 Code is amended by adding:

“Section 17‑3‑47. (A) All Affidavits of Indigency and Application for Counsel forms as required pursuant to Section 17‑3‑45 shall include, but not be limited to:

(1) identifying information contained on the Affidavits of Indigency and Application for Counsel forms as of the effective date of this section;

(2) present employment and salary or wages and past employment and salary or wages for the past five years for the applicant and the applicant’s spouse;

(3) unemployment or workers’ compensation benefits or other forms of public assistance programs such as TANF, SNAP, Medicaid, or supplemental social security or disability income paid to the applicant or the applicant’s spouse within the past five years;

(4) current military, veterans, or retirement benefits;

(5) current information regarding dependents such as monthly daycare costs and any court‑ordered child support payments;

(6) court‑ordered alimony payments;

(7) current miscellaneous assets regarding business, profession, and any form of self‑employment; rent payments, interest, and dividends; pensions, annuities, and life insurance payments; gifts and inheritances; and any other assets from any other source valued over one thousand dollars;

(8) current personal property including real estate, stocks, bonds, notes, motor vehicles, or other personal property valued over one thousand dollars;

(9) current cash on hand in a checking or savings account with any bank or credit union;

(10) current debt including amounts owed on liens, mortgages, encumbrances, or other debts;

(11) current unusual or continuing medical expenses and those incurred within the previous year;

(12) whether anyone else claims the applicant as a dependent for tax purposes;

(13) whether the applicant is currently incarcerated or on probation or parole for the offense or another offense and whether other criminal charges are pending for which an attorney has been appointed; and

(14) any other information deemed necessary and useful by the South Carolina Court Administration.

(B) In determining whether the requirements of subsection (A) have been fully disclosed, the South Carolina Department of Probation, Parole and Pardon Services (department) shall require supporting documentation including, but not limited to:

(1) the most recent tax return and tax returns for the previous five years, if applicable, for the applicant and the applicant’s spouse and the year in which the last income tax return was filed;

(2) W2s for the most recent year and for the previous five years of the applicant and the applicant’s spouse if tax returns are not available;

(3) any relevant court orders pertaining to the financial status of the applicant or the applicant’s spouse including bankruptcy or debt proceedings or court‑ordered child support or alimony payments; and

(4) a credit report obtained within the previous year for the applicant and the applicant’s spouse. Costs associated with obtaining the required credit report must be borne by the applicant.

(C) In addition to the requirements of subsection (A) and any other certifications or acknowledgments deemed necessary by the department presently existing as of the effective date of this section or required in the future, the applicant must certify by signature on all Affidavits of Indigency and Application for Counsel forms knowledge as to the existence of the provisions contained in Section 17‑3‑48 and the form must contain the following:

‘I certify and acknowledge that it is a crime to wilfully give false, misleading, or incomplete information on any Affidavit of Indigency and Application for Counsel form for the purpose of misrepresenting my financial status or situation in order to qualify for appointed counsel pursuant to the provisions of this chapter and doing so is a crime punishable by a fine of not more than five thousand dollars or imprisonment for not more than five years.’

(D) All Affidavits of Indigency and Application for Counsel forms must be notarized with any costs associated with the notarization borne by the applicant.

(E) The department shall review all Affidavits of lndigency and Application for Counsel forms to determine whether:

(1) the reported income appears to be consistent with reported expenses;

(2) the reported income appears to be consistent with reported assets;

(3) court‑ordered child support payments appear to indicate an income higher than the reported income; and

(4) the applicant posted an amount of bail inconsistent with the claim that he is financially unable to employ counsel.

The department is required to verify the accuracy of the information provided by an applicant. An agent of the department must sign the document forms certifying that the department has verified the information and determined that the applicant is eligible for the appointment of counsel pursuant to the provisions of this chapter.

(F) If the department finds that a person to whom counsel has been provided in any court in this State is financially able to employ counsel, or contribute to the costs of employing counsel, the department shall provide the court that initially appointed counsel a written report as to the reasons the department believes the person is financially able to employ counsel or contribute to the costs of employing counsel based on the factors included in subsection (A) and determinations made pursuant to subsection (E). In addition, if an attorney appointed to represent a defendant pursuant to the provisions of this chapter has reason to believe his client is financially able to employ counsel, or contribute to the costs of employing counsel, the attorney has a duty to notify the department, in writing, as to his beliefs regarding the matter. After receipt of such notice, the department shall examine the financial condition of the defendant. If in the course of the investigation, the department reasonably believes that the defendant is partially or fully able to employ counsel, the department shall report those findings to the court. The court shall question the defendant under oath concerning the contents of the Affidavit of Indigency and Application for Counsel form and may require the department to produce any additional evidence on the issue of the defendant’s financial inability to employ counsel. If the court determines that the defendant is partially or fully able to employ counsel, the defendant’s counsel may ask that he be relieved as counsel or continue his representation of the defendant with the court ordering the defendant to pay a reasonable attorney fee to the South Carolina Commission on Indigent Defense. The determination that a defendant is indigent or partially indigent is subject to review at any time by any court before whom the defendant’s case is pending.”

SECTION 2. Article 1, Chapter 3, Title 17 of the 1976 Code is amended by adding:

“Section 17‑3‑48. (A) Notwithstanding another provision of law, it is unlawful for a person to wilfully give false, misleading, or incomplete information on any Affidavit of Indigency and Application for Counsel form for the purpose of misrepresenting his financial status or situation in order to qualify for appointed counsel pursuant to the provisions of this chapter. A person who violates the provisions of this section is guilty of a felony and, upon conviction, must be fined not more than five thousand dollars or imprisoned for not more than five years.

(B) If a public defender or an attorney representing a defendant previously determined indigent for purposes of this chapter has knowledge of a violation of the provisions of subsection (A), the public defender or the appointed attorney must comply with Rule 407 of the South Carolina Rules of Professional Conduct.”

SECTION 3. The South Carolina Court Administration is directed to submit revised forms for Affidavits of Indigency and Application for Counsel in compliance with the requirements of this act. The South Carolina Court Administration shall provide a revised form for publication by the South Carolina Supreme Court. Additionally, beginning January 15, 2019, and each year thereafter, the South Carolina Department of Probation, Parole and Pardon Services shall report to the General Assembly the number of Affidavits of Indigency and Application for Counsel accepted and rejected and, if rejected, the reasons for the rejection; and the department shall make further recommendations to the General Assembly on additional requirements for applicants and supporting documentation that should be required of all applicants in order to verify their financial status and whether their application should be approved and counsel appointed accordingly. The respective House and Senate Oversight Committees shall include a review of this report in their regularly scheduled review of the South Carolina Department of Probation, Parole and Pardon Services.

SECTION 4. 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 5. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this act, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

SECTION 6. A pilot program is created in the following counties: Richland, Horry, Chester, Colleton, Edgefield, and Lee Counties. The purpose of the pilot program is to gather information regarding the implementation of this act. The South Carolina Department of Probation, Parole and Pardon Services must issue a report to the General Assembly no later than January 1, 2019. The report must include, but is not limited to, the number of Affidavits of Indigency and Application for Counsel forms accepted and rejected and, if rejected, the reasons for the rejection, any additional resources, if any, required to fully implement this act, and any other information or recommendations the department deems necessary.

SECTION 7. SECTION 6 of this act takes effect upon approval by the Governor. The remaining sections take effect July 1, 2019. /

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 SECTION 17‑3‑47 SO AS TO REQUIRE CERTAIN INFORMATION TO BE CONTAINED ON ALL AFFIDAVITS OF INDIGENCY AND APPLICATION FOR COUNSEL FORMS, TO REQUIRE CERTAIN CERTIFICATIONS REGARDING THE WILFUL PROVISION OF FALSE INFORMATION ON A FORM, REQUIRE THE FORM TO BE NOTARIZED, PROVIDE FOR NOTIFICATION TO THE COURT WHEN THE DEPARTMENT OF PROBATION, PAROLE AND PARDON SERVICES OR AN APPOINTED ATTORNEY FINDS THAT A DEFENDANT IS FINANCIALLY ABLE TO EMPLOY COUNSEL OR CONTRIBUTE TO THE COSTS OF EMPLOYING COUNSEL, AND TO PROVIDE A PROCEDURE FOR THE SOUTH CAROLINA DEPARTMENT OF PROBATION, PAROLE AND PARDON SERVICES TO FOLLOW TO AID THE COURT WHEN DETERMINING IF INDIGENCY EXISTS; BY ADDING SECTION 17‑3‑48 SO AS TO CREATE THE OFFENSE OF WILFULLY PROVIDING FALSE, MISLEADING, OR INCOMPLETE INFORMATION ON AN AFFIDAVIT FOR INDIGENCY AND APPLICATION FOR COUNSEL FORM AND TO PROVIDE A PENALTY; AND TO DIRECT THE SOUTH CAROLINA COURT ADMINISTRATION TO REVISE THE AFFIDAVITS OF INDIGENCY AND APPLICATION FOR COUNSEL FORMS FOR PUBLICATION BY THE SUPREME COURT, TO DIRECT THE SOUTH CAROLINA DEPARTMENT OF PROBATION, PAROLE AND PARDON SERVICES TO REPORT TO THE GENERAL ASSEMBLY BY JANUARY FIFTEENTH OF EACH YEAR ON THE NUMBER OF AFFIDAVITS BOTH ACCEPTED AND REJECTED ALONG WITH AN EXPLANATION OF THOSE AFFIDAVITS REJECTED AND THE GROUNDS UPON WHICH THEY WERE REJECTED, AND TO REQUIRE THAT THE RESPECTIVE LEGISLATIVE OVERSIGHT COMMITTEES INCLUDE THE REVIEW OF THESE REPORTS IN THEIR REGULARLY SCHEDULED REVIEW OF THE SOUTH CAROLINA DEPARTMENT OF PROBATION, PAROLE AND PARDON SERVICES.

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

SECTION 1. Article 1, Chapter 3, Title 17 of the 1976 Code is amended by adding:

“Section 17‑3‑47. (A) All Affidavits of Indigency and Application for Counsel forms as required pursuant to Section 17‑3‑45 shall include, but not be limited to:

(1) identifying information contained on the Affidavits of Indigency and Application for Counsel forms as of the effective date of this section;

(2) present employment and salary or wages and past employment and salary or wages for the past five years for the applicant and the applicant’s spouse;

(3) unemployment or workers’ compensation benefits or other forms of public assistance programs such as TANF, SNAP, Medicaid, or supplemental social security or disability income paid to the applicant or the applicant’s spouse within the past five years;

(4) current military, veterans, or retirement benefits;

(5) current information regarding dependents such as monthly daycare costs and any court‑ordered child support payments;

(6) court‑ordered alimony payments;

(7) current miscellaneous assets regarding business, profession, and any form of self‑employment; rent payments, interest, and dividends; pensions, annuities, and life insurance payments; gifts and inheritances; and any other assets from any other source valued over one thousand dollars;

(8) current personal property including real estate, stocks, bonds, notes, motor vehicles, or other personal property valued over one thousand dollars;

(9) current cash on hand in a checking or savings account with any bank or credit union;

(10) current debt including amounts owed on liens, mortgages, encumbrances, or other debts;

(11) current unusual or continuing medical expenses and those incurred within the previous year;

(12) whether anyone else claims the applicant as a dependent for tax purposes;

(13) whether the applicant is currently incarcerated or on probation or parole for the offense or another offense and whether other criminal charges are pending for which an attorney has been appointed; and

(14) any other information deemed necessary and useful by the South Carolina Court Administration.

(B) In determining whether the requirements of subsection (A) have been fully disclosed, the South Carolina Department of Probation, Parole and Pardon Services (department) shall require supporting documentation including, but not limited to:

(1) the most recent tax return and tax returns for the previous five years, if applicable, for the applicant and the applicant’s spouse and the year in which the last income tax return was filed;

(2) W2s for the most recent year and for the previous five years of the applicant and the applicant’s spouse if tax returns are not available;

(3) any relevant court orders pertaining to the financial status of the applicant or the applicant’s spouse including bankruptcy or debt proceedings or court‑ordered child support or alimony payments; and

(4) a credit report obtained within the previous year for the applicant and the applicant’s spouse. Costs associated with obtaining the required credit report must be borne by the applicant.

(C) In addition to the requirements of subsection (A) and any other certifications or acknowledgments deemed necessary by the department presently existing as of the effective date of this section or required in the future, the applicant must certify by signature on all Affidavits of Indigency and Application for Counsel forms knowledge as to the existence of the provisions contained in Section 17‑3‑48 and the form must contain the following:

‘I certify and acknowledge that it is a crime to wilfully give false, misleading, or incomplete information on any Affidavit of Indigency and Application for Counsel form for the purpose of misrepresenting my financial status or situation in order to qualify for appointed counsel pursuant to the provisions of this chapter and doing so is a crime punishable by a fine of not more than five thousand dollars or imprisonment for not more than five years.’

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(1) the reported income appears to be consistent with reported expenses;

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(3) court‑ordered child support payments appear to indicate an income higher than the reported income; and

(4) the applicant posted an amount of bail inconsistent with the claim that he is financially unable to employ counsel.

The department is required to verify the accuracy of the information provided by an applicant. An agent of the department must sign the document forms under penalty of perjury, pursuant to Section 16‑9‑10(A)(2), certifying that the department has verified the information and determined that the applicant is eligible for the appointment of counsel pursuant to the provisions of this chapter.

(F) If the department finds that a person to whom counsel has been provided in any court in this State is financially able to employ counsel, or contribute to the costs of employing counsel, the department shall provide the court that initially appointed counsel a written report as to the reasons the department believes the person is financially able to employ counsel or contribute to the costs of employing counsel based on the factors included in subsection (A) and determinations made pursuant to subsection (E). In addition, if an attorney appointed to represent a defendant pursuant to the provisions of this chapter has reason to believe his client is financially able to employ counsel, or contribute to the costs of employing counsel, the attorney has a duty to notify the court, in writing, as to his beliefs regarding the matter and may ask that he be relieved as appointed counsel or be permitted to accept compensation for his services from the defendant. In either case, the court shall question the defendant under oath concerning the contents of the Affidavit of Indigency and Application for Counsel form and may direct the department to examine and report on the financial condition of the defendant and may require production of additional evidence on the issue of the defendant’s financial inability to employ counsel. The determination that a defendant is indigent or partially indigent is subject to review at any time by any court before whom the defendant’s case is pending.”

SECTION 2. Article 1, Chapter 3, Title 17 of the 1976 Code is amended by adding:

“Section 17‑3‑48. (A) Notwithstanding another provision of law, it is unlawful for a person to wilfully give false, misleading, or incomplete information on any Affidavit of Indigency and Application for Counsel form for the purpose of misrepresenting his financial status or situation in order to qualify for appointed counsel pursuant to the provisions of this chapter. A person who violates the provisions of this section is guilty of a felony and, upon conviction, must be fined not more than five thousand dollars or imprisoned for not more than five years.

(B) If a public defender or an attorney representing a defendant previously determined indigent for purposes of this chapter has knowledge of a violation of the provisions of subsection (A), it is his duty to report the alleged violation to the appropriate circuit solicitor’s office with jurisdiction over the offense who shall cause charges to be filed in the appropriate county.”

SECTION 3. The South Carolina Court Administration is directed to submit revised forms for Affidavits of Indigency and Application for Counsel in compliance with the requirements of this act. The South Carolina Court Administration shall provide a revised form for publication by the South Carolina Supreme Court. Additionally, beginning January 15, 2019, and each year thereafter, the South Carolina Department of Probation, Parole and Pardon Services shall report to the General Assembly the number of Affidavits of Indigency and Application for Counsel accepted and rejected and, if rejected, the reasons for the rejection; and the department shall make further recommendations to the General Assembly on additional requirements for applicants and supporting documentation that should be required of all applicants in order to verify their financial status and whether their application should be approved and counsel appointed accordingly. The respective House and Senate Oversight Committees shall include a review of this report in their regularly scheduled review of the South Carolina Department of Probation, Parole and Pardon Services.

SECTION 4. 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 5. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this act, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

SECTION 6. This act takes effect upon approval by the Governor.

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