**South Carolina General Assembly**

120th Session, 2013-2014

**H. 3100**

**STATUS INFORMATION**

General Bill

Sponsors: Reps. Chumley, G.R. Smith, Henderson, Crosby, Southard, Long and V.S. Moss

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Introduced in the House on January 8, 2013

Currently residing in the House Committee on **Judiciary**

Summary: Public Proceedings First Amendment Protection Act

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

12/11/2012 House Prefiled

12/11/2012 House Referred to Committee on **Judiciary**

1/8/2013 House Introduced and read first time ([House Journal‑page 83](file:///h:\HJ%20Archive\2013\01-08-13.docx))

1/8/2013 House Referred to Committee on **Judiciary** ([House Journal‑page 83](file:///h:\HJ%20Archive\2013\01-08-13.docx))

1/17/2013 House Member(s) request name added as sponsor: V.S.Moss

**VERSIONS OF THIS BILL**

[12/11/2012](file:///p:\pprever\2013-14\3100_20121211.docx)

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, SO AS TO ENACT THE “SOUTH CAROLINA PUBLIC PROCEEDINGS FIRST AMENDMENT PROTECTION ACT” BY ADDING CHAPTER 36 TO TITLE 1 SO AS TO AUTHORIZE AND DIRECT THE ATTORNEY GENERAL OF THE STATE OF SOUTH CAROLINA TO DEFEND THE RIGHTS OF ANY CITIZEN WHILE PARTICIPATING IN ANY ACTION OF ANY BOARD, COMMISSION, COUNCIL, OR OTHER INSTRUMENTALITY OF THE STATE OF SOUTH CAROLINA TO FREE EXERCISE OF SPEECH AND RELIGION UNDER THE FIRST AMENDMENT OF THE CONSTITUTION OF THE UNITED STATES AND SECTION 2, ARTICLE I OF THE CONSTITUTION OF THE STATE OF SOUTH CAROLINA, 1895; TO PROHIBIT CERTAIN INDIVIDUALS FROM ENFORCING OR ATTEMPTING TO ENFORCE LAWS THAT VIOLATE THIS CHAPTER; AND TO ESTABLISH CRIMINAL PENALTIES AND CIVIL LIABILITY FOR VIOLATING THIS CHAPTER.

Whereas, the people of South Carolina, and those several states comprising the United States of America, created the federal government to be their agent for certain enumerated purposes, and nothing more; and

Whereas, the First Amendment to the United States Constitution provides that the federal government shall make no law infringing on the right of the people to freedom of speech and free exercise of religion; and

Whereas, Section 2, Article I of the Constitution of the State of South Carolina, 1895 provides that the General Assembly shall make no law respecting an establishment of religion or prohibiting the free exercise thereof, or abridging the freedom of speech; and

Whereas, the Tenth Amendment to the United States Constitution defines the total scope of federal power as being that which has been delegated by the people of the several states to the federal government, and all power not delegated to the federal government in the Constitution of the United States is reserved to the states respectively, or to the people themselves; and

Whereas, the Eleventh Amendment to the United States Constitution recognizes the sovereign immunity of the State of South Carolina in regard to the limits of the judicial power of the United States; and

Whereas, the State of South Carolina recognizes its fundamental and primary responsibility for the protection of the liberties of its citizens as enumerated in the First Amendment to the United States Constitution and in Section 2, Article I of the Constitution of the State of South Carolina, 1895; and

Whereas, the rights of the citizens of the State of South Carolina to the free exercise of speech and of religion are not abrogated during such times as they may participate in the acts of public boards, commissions, councils, and other instrumentalities of the State of South Carolina, and those rights are endangered when said instrumentality is not afforded a legal defense by the State of South Carolina to claims that said participation violates the First Amendment of the United States Constitution or Section 2, Article I of the Constitution of the State of South Carolina, 1895. Now, therefore,

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

SECTION 1. Title 1 of the 1976 Code is amended by adding:

“CHAPTER 36

South Carolina Public Proceedings First Amendment Protection Act

Section 1‑36‑10. This chapter may be cited as the ‘South Carolina Public Proceedings First Amendment Protection Act’.

Section 1‑36‑20. (A) No locality, municipality, county, or other instrumentality of the State of South Carolina has the power to violate the First Amendment of the United States Constitution or Section 2, Article I of the Constitution of South Carolina, 1895 at any time, including during the course of its proceedings.

(B) A restriction on the free exercise of speech or religion during the course of a proceeding of a locality, municipality, county, or other instrumentality of the State of South Carolina is a direct infringement on liberties protected by the First Amendment of the United States Constitution and Section 2, Article I of the Constitution of this State and implicates a fundamental and paramount interest of the State of South Carolina.

(C) An action of a locality, municipality, county, or other instrumentality of the State of South Carolina which is alleged to modify rights held under the First Amendment of the United States Constitution or Section 2, Article I of the Constitution of this State is hereby deemed to be adopted by the General Assembly as an action of its own for purposes of its right to sovereign immunity under the Eleventh Amendment of the Constitution of the United States. The Attorney General of the State of South Carolina is authorized and directed to review such action as provided herein, determine its constitutionality and, if found by the Attorney General to be constitutional, to defend such action from any and all judicial challenges in state or federal court.

Section 1‑36‑30. A person who alleges that an action of a locality, municipality, county, or other instrumentality of the State of South Carolina has the effect of restricting rights held under the First Amendment to the United States Constitution or Section 2, Article I of the Constitution of this State during the course of a proceeding of that body shall provide the Attorney General of the State of South Carolina with notice of the alleged constitutional infirmity. The Attorney General of the State of South Carolina shall issue a written opinion within thirty days of submission of such complaint, stating whether the action complained of violates the First Amendment of the United States Constitution or Section 2, Article I of the Constitution of this State.

Section 1‑36‑40. If the Attorney General of the State of South Carolina determines that the action complained of is inconsistent with and violates the First Amendment to the United States Constitution or Section 2, Article I of the Constitution of this State, the Attorney General shall not defend said action in response to a challenge in state or federal court.

Section 1‑36‑50. If the Attorney General of the State of South Carolina determines that the action complained of is consistent with and does not violate the First Amendment to the United States Constitution or Section 2, Article I of the Constitution of this State, the Attorney General’s written opinion must be deemed to specifically authorize the locality, municipality, county, or other instrumentality of the State of South Carolina to enforce the challenged action on the ground that the State of South Carolina shall have specifically authorized the challenged action, and the Attorney General shall defend said action from any legal action filed against it in state and federal courts.

Section 1‑36‑60. The General Assembly declares that an order of a federal court contrary to the determination of the Attorney General of the State of South Carolina under this chapter, as reviewed and affirmed or reversed by the Supreme Court of South Carolina, is hereby invalid in this State, is not recognized by this State, is specifically rejected by this State, and is null and void and of no effect in this State.

Section 1‑36‑70. It is the duty of the General Assembly to adopt and enact all measures as may be necessary to prevent the enforcement within the limits of this State of actions of the federal government contrary to the determination of the Attorney General of the State of South Carolina under this chapter.

Section 1‑36‑80. (A) An official, agent, or employee of the United States government or an employee of a corporation providing services to the United States government who enforces or attempts to enforce an act, order, law, statute, rule, or regulation of the United States government in violation of this chapter is guilty of a felony and, upon conviction, must be fined not more than five thousand dollars or imprisoned not more than five years, or both.

(B) A public officer or employee of the State of South Carolina who enforces or attempts to enforce an act, order, law, statute, rule, or regulation of the government of the United States in violation of this chapter is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than two years, or both.

Section 1‑36‑90. An aggrieved party also shall have a private right of action against a person violating a provision of this chapter and is entitled to the recovery of reasonable attorney fees incurred in prosecution of said action.”

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

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