**South Carolina General Assembly**

125th Session, 2023-2024

**H. 3844**

**STATUS INFORMATION**

General Bill

Sponsors: Reps. Pendarvis, J. Moore, Howard, Gilliard, Wetmore, Jefferson, Bustos, Dillard, W. Jones, Henegan and Bauer

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Introduced in the House on January 31, 2023

Currently residing in the House

Summary: Eviction Right to Counsel Program

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

1/31/2023 House Introduced and read first time ([House Journal‑page 6](h:\hj\20230131.docx))

1/31/2023 House Referred to Committee on **Judiciary** ([House Journal‑page 6](h:\hj\20230131.docx))

3/29/2023 House Member(s) request name added as sponsor: Henegan

4/5/2023 House Member(s) request name added as sponsor: Bauer

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**VERSIONS OF THIS BILL**

[01/31/2023](https://www.scstatehouse.gov/sess125_2023-2024/prever/3844_20230131.docx)

A bill

TO AMEND THE SOUTH CAROLINA CODE OF LAWS BY ADDING SECTION 31‑3‑60 SO AS TO CREATE “THE EVICTION RIGHT TO COUNSEL PROGRAM” UNDER THE SOUTH CAROLINA HOUSING AUTHORITY AND TO PROVIDE FOR THE ADMINISTRATION OF THE PROGRAM.

Whereas, the General Assembly finds that it is necessary to establish a statewide unified eviction right to counsel program to provide effective assistance of counsel to tenants in eviction court proceedings; and

Whereas, the General Assembly believes it is necessary to establish parity in eviction court proceedings; and

Whereas, the General Assembly desires to ensure that the program is free from undue political interference and conflict of interest; and

Whereas, the General Assembly wishes to provide for the delivery of legal services by qualified and competent counsel in a manner that is fair and consistent throughout the State; and

Whereas, the General Assembly’s ultimate goal is to ensure that adequate public funding of a statewide eviction right to counsel program is provided and managed in a fiscally responsible manner; and

Whereas, South Carolina was awarded Eviction Rental Assistance funds (ERA1 ‑ $198,524,744 ‑ 90.98% obligated or spent) and (ERA2 ‑ $231,969,207.70 ‑ 32.4% obligated or spent) by the U.S. Treasury and up to 10% of ERA funds may be used for legal representation of tenants facing eviction, and these funds are administered by the South Carolina Housing Authority. Now, therefore,

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

SECTION 1. Article 1, Chapter 3, Title 31 of the S.C. Code is amended by adding:

Section 31‑3‑60. (A) As used in this section:

(1) “Covered individual” means any tenant who occupies a dwelling located within this State under a claim of legal right whose household income is not greater than one hundred twenty‑five percent of the federal poverty guidelines, as established and updated periodically by the United States Department of Health and Human Services.

(2) “Covered proceeding” means:

(a) any judicial or administrative proceeding to evict or terminate the tenancy or housing subsidy of a covered individual;

(b) any proceeding considered by a designated organization as the functional equivalent of a proceeding described in subitem (a);

(c) any first appeal of such a proceeding where a designated organization determines that there are good grounds for an appeal; and

(d) any judicial or administrative proceeding to remedy a violation of laws including, but not limited to, landlord tenant matters, rent escrow, retaliatory actions, security deposits, habitability, illegal eviction, and violation of quiet use and enjoyment.

(3) “Designated organization” means any not‑for‑profit organization or association that is designated by the authority pursuant to this chapter or where a not‑for‑profit organization or association is unable to provide representation, an attorney who:

(a) is not an employee of a designated organization, but who contracts with the authority to provide legal representation to covered individuals in covered proceedings;

(b) is authorized to practice law in the State; and

(c) has completed adequate training and experience.

(4) “Designated community group” means a not‑for‑profit community organization or association designated by the authority that has the capacity to conduct tenant outreach, engagement, education, and information regarding this section.

(5) “Full legal representation” means ongoing legal representation provided by a designated organization to a covered individual, and all legal advice, advocacy, and assistance associated with that representation, that is required to provide the best possible outcome for a particular case. Where representation is provided subsequent to the filing of an eviction, “full legal representation” includes the filing of a notice of appearance on behalf of the covered individual in a covered proceeding.

(B) There is created a statewide “Eviction Right to Counsel Program” administered by the authority. The authority may utilize funds appropriated or received from local government, state government, federal government, corporations, associations, or individuals for an Eviction Right to Counsel Program provided the funds must pay the costs of legal representation to covered individuals; tenant outreach and education; the administration of the program for the authority, designated organizations, and designated community groups; expenses related to data analysis, program evaluation, and program reporting; and expenses related to legal training, attorney review, and designated organization and community group evaluations.

(C)(1) Designated organizations must have the capacity to provide legal representation to covered individuals involved in a covered proceeding and agree to adhere to the standards of practice established in rules and regulations adopted pursuant to this chapter.

(2) Designated organizations shall:

(a) have substantial expertise in housing law and landlord and tenant law and substantial experience furnishing free legal assistance to eligible individuals;

(b) have a demonstrated track record of serving the low‑income community;

(c) identify the geographic area in which they will provide legal representation;

(d) have a plan to reach and provide legal representation to income‑eligible persons with limited English proficiency; and

(e) provide appropriate supervision and training.

(D)(1) The authority shall create and maintain a list of designated organizations and designated community groups by geographic area and make that list publicly available.

(2) The authority shall conduct an annual review of the designated organizations and designated community groups may decline to renew the designation of any such organization.

(E) A covered individual has a right to full legal representation as provided in this section as soon as a landlord provides notice to terminate or not renew a tenancy.

(F)(1) Subject to provisions of this chapter, including any rules and regulations, the authority shall ensure that all covered individuals receive full legal representation from a designated organization in a covered proceeding as soon as practicable after the covered individual’s request for such services or the initiation of that proceeding, but no later than at the time of the covered individual’s first scheduled appearance in a covered proceeding. Where covered individuals request counsel upon receipt of a notice to quit, the authority shall ensure that counsel is provided at that stage. Should full legal representation not be provided until the covered individual’s first scheduled appearance, the court must continue the case.

(2) Should a conflict with the state attorneys’ rules of professional conduct make legal representation infeasible to render as determined by a designated organization, the case must be referred to another designated organization.

(G) A landlord serving a notice to quit upon a tenant must include written notification of the tenant’s right to legal representation and how to access it. The authority shall design a notice form for use by landlords for this purpose. A copy of the notice to quit and written notification of the right to counsel must be filed contemporaneously with the appropriate court.

(H) In addition to overseeing the administration of this section, the authority shall work with designated community groups to engage and educate tenants about their rights, including: hosting know‑your‑rights trainings and other workshops for tenants; distributing written information to tenants; assisting tenants to form and maintain tenant associations; referring tenants to designated community groups; and engaging in any other activity designed to engage, educate, or inform tenants about their rights.

(I)(1) The authority shall provide each designated community group assigned pursuant to this section with fair and just compensation which will allow each designated community group to provide an organizational structure with appropriate supervision, caseloads, and oversight of staff and service delivery to promote high‑quality representation and legal work.

(2) The authority shall estimate annually the expenditures required for each year. The estimate of required expenditures must be sufficient to enable designated legal organizations to provide high‑quality assistance. Beginning July 1, 2023, and no later than each July first thereafter, the authority shall publish a summary of any changes to such estimates for expenditures.

(J) Services performed by a designated organization pursuant to this section or any contract or other agreement entered into pursuant to this section may not be used to satisfy any obligations or responsibilities of such designated organization pursuant to any other program or any other agreement or contract.

(K)(1) No later than July first of each year, each designated organization shall report to the authority the following information:

(a) number of covered individuals served;

(b) household makeup including age, race, gender, number of household members, income, estimated length of tenancy, type of lease, and receipt of public assistance at the time of service;

(c) whether the property was subject to rent control;

(d) reason for covered proceeding;

(e) the extent of legal representation performed, and metrics on evaluating outcomes, as outlined separately;

(f) instances where attorney was discharged or withdrew; and

(g) instances of serial filings on the same individual or household at the same property.

(2) No later than July first of each year, the authority shall submit a report to the General Assembly, which must include information from the prior fiscal year regarding:

(a) the number of covered individuals served;

(b) the extent of legal representation performed, and metrics on evaluating outcomes, as outlined separately; and

(c) the engagement and education of tenants.

(3) The authority shall post prominently the report required by this section on its website. The annual report must be available to the general public.

(4) No later than July first of each year, the authority shall conduct a public hearing on the report required by this section. The authority shall provide notice of the hearing by June first. Written and oral testimony may be submitted at the hearing.

(L) Regardless of whether the lease between an owner or landlord and a tenant is written or oral, a tenant also must be given a copy of the brochure approved by the authority that discusses legal representation available to tenants, including any right to representation pursuant to this section. This brochure must be provided:

(1) at the time that a lawsuit is commenced by the owner, agent, or landlord against the tenant;

(2) at the time the local housing authority sends a notice to a tenant regarding the termination of a lease or subsidy; or

(3) at the time that the sheriff's office or police department serve notice of the petition, or the summons and complaint, upon the tenant.

(M) The authority shall implement and oversee the provision of counsel for individuals in covered proceedings. Legal representation to all covered individuals in all covered proceedings, as set forth in this section, must be phased‑in during a period of time not to exceed three years, in a manner that the authority determines appropriate, based on all relevant factors including:

(1) the prioritization of certain groups of individuals, zip codes, or other criteria developed by the authority;

(2) the availability of funding from the city, State, and other sources;

(3) the availability of trained and qualified attorneys to provide legal representation;

(4) the scope of the need for legal representation; and

(5) any other appropriate logistical consideration.

(N) The failure of a court or the petitioner to comply with the requirements established in this section constitute good cause to vacate a warrant for possession.

SECTION 2. 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 3. This act takes effect upon approval by the Governor.

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