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COMMITTEE REPORT

May 24, 2012

**S. 580**

Introduced by Senator Setzler

S. Printed 5/24/12--H.

Read the first time June 1, 2011.

**THE COMMITTEE ON**

**LABOR, COMMERCE AND INDUSTRY**

To whom was referred a Bill (S. 580) to amend Section 40‑18‑140, Code of Laws of South Carolina, 1976, relating to exemptions from Chapter 18 of Title 40 providing for the licensure and regulation, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass:

Amend the bill, as and if amended, by deleting all after the enacting words and inserting:

/ SECTION 1. Section 40‑18‑140 of the 1976 Code is amended to read:

“Section 40‑18‑140. (A) This chapter does not apply to:

(1) an officer or employee of the federal government, or of this State or a political subdivision of either, or of a municipal corporation while the employee or officer is engaged in the performance of official duties;

(2) a person or firm engaged as a consumer reporting agency, as defined by the Federal Fair Credit Reporting Act, when gathering, processing, or reporting information directly related to a credit rating or credit status;

(3) an attorney‑at‑law while in the performance of his duties; ~~or~~

(4) a person, as defined by Section 38‑1‑20(29), licensed or authorized by the Director of Insurance to transact business within the State, when performing duties directly related to that license or authorization~~.~~; or

(5) a certified public accountant while in the performance of his duties.

(B) This chapter must not be applied to a person based solely on his being engaged in:

(1) computer or digital forensic services, as defined in Section 40‑84‑20, or the acquisition, review, or analysis of digital or computer‑based information, whether for the purposes of obtaining or furnishing information for evidentiary or other purposes, or for providing expert testimony before a court; or

(2) network or system vulnerability testing, including network scans and risk assessment and analysis of computers connected to a network.”

SECTION 2. Title 40 of the 1976 Code is amended by adding:

“Chapter 84

Computer and Digital Forensics Registry Act

Section 40‑84‑20. (1) ‘Computer forensics’ or ‘digital forensics’ means the search for or collection of evidence from computer systems, computer networks, cellular telephones, personal digital assistants, hereafter ‘PDAs’, and all other electronic storage media, in a standardized and well‑documented manner to maintain its admissibility and probative value in a legal proceeding.

(2) ‘Computer forensics examiners’ or ‘digital forensics examiners’ means a person who collects, interprets, evaluates, tests, or analyzes pre‑existing data from computers, computer systems, networks, or other electronic media provided to them by another person who owns, controls, or possesses the computer, computer system, network, or electronic media.

(3) ‘Computer forensics business’ or ‘computer forensics examiners business’ includes soliciting or engaging in business or accepting employment to obtain or furnish information with reference to the preservation, extraction, and analysis of computer evidence in a forensically sound manner.

Section 40‑84‑30. The chief of SLED has the following powers and duties as they relate to the practice of computer forensics businesses:

(1) to maintain a registry of all people, voluntary associations, or corporations in this State that engage in the business of computer forensics or as a computer forensics examiner as defined by this chapter;

(2) to investigate alleged violations of this chapter and regulations promulgated by SLED, and;

(3) to promulgate regulations necessary to carry out this chapter.

Section 40‑84‑40. (A) SLED shall maintain a computer forensics registry of all people, voluntary associations, or corporations engaging in the business of computer forensics or as a computer forensics examiner as defined by this chapter in this State.

(B) The registry must be funded exclusively through the funds collected from the registration fees.

Section 40‑84‑50. (A) A person, voluntary association, or corporation that desires to operate a digital forensics business in this State must register with SLED and submit their information to SLED on an application form promulgated by SLED for inclusion in SLED’s Computer Forensics Registry. Each registration must be accompanied by a registration fee of fifty dollars and is valid for a term of five years, after which a registrant must reapply in the same manner as the initial application and again remit an accompanying fee of fifty dollars.

(B)(1) If the applicant company is an association or corporation, the chief executive officer of the association or corporation must be the applicant or must designate in writing the corporate officer or principal who is the applicant.

(2) If the applicant company is a partnership, each partner must complete an application form.

(C)(1) The application for registration must be made under oath and must state the applicant’s full name, age, date and place of birth, current residence address, residence addresses for the past ten years, employment for the past ten years, including names and addresses of employers, the applicant’s current occupation, including the name and address of the current employer, the date and place of any arrests, any convictions for violations of federal or state laws.

(2) An applicant must submit with the application:

(a) one complete set of his fingerprints on forms specified and furnished by SLED; and

(b) one color photograph of the applicant’s full face, without head covering, taken within six months before the application is filed.

Section 40‑84‑60. This chapter does not apply to:

(1) a person employed exclusively and regularly by an employer in connection only with the affairs of the employer, if there exists a bona fide employer‑employee relationship for which the employee is reimbursed on a salary basis and;

(2) an individual, voluntary association or corporation unless it holds itself out to the public as being entitled to practice computer forensics, render or furnish computer forensics, practice as a computer forensics examiner, or render or furnish services as a computer forensics examiner;

(3) an officer or employee of the federal government, this State, or a political subdivision of either while the employee or officer is engaged in the performance of official duties;

(4) a person or firm engaged as a consumer reporting agency, as defined by the Federal Fair Credit Reporting Act, when gathering, processing, or reporting information directly related to a credit rating or credit status;

(5) an attorney‑at‑law while in the performance of his duties;

(6) a person, as defined by Section 38‑1‑20(29), licensed or authorized by the Director of Insurance to transact business within the State when performing duties directly related to that license or authorization; or

(7) a certified public accountant while in the performance of his duties.”

SECTION 3. This act takes effect July 1, 2012. /

Renumber sections to conform.

Amend title to conform.

WILLIAM E. SANDIFER for Committee.

**A** **BILL**

TO AMEND SECTION 40‑18‑140, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO EXEMPTIONS FROM CHAPTER 18 OF TITLE 40 PROVIDING FOR THE LICENSURE AND REGULATION OF PRIVATE SECURITY AND INVESTIGATION AGENCIES, SO AS TO PROVIDE THAT THE CHAPTER MUST NOT APPLY TO A PERSON BASED SOLELY ON HIS BEING ENGAGED IN COMPUTER OR DIGITAL FORENSIC SERVICES, THE ACQUISITION, REVIEW, OR ANALYSIS OF DIGITAL OR COMPUTER‑BASED INFORMATION, OR SYSTEM VULNERABILITY TESTING.

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

SECTION 1. Section 40‑18‑140 of the 1976 Code is amended to read:

“Section 40‑18‑140. (A) This chapter does not apply to:

(1) an officer or employee of the federal government, or of this State or a political subdivision of either, or of a municipal corporation while the employee or officer is engaged in the performance of official duties;

(2) a person or firm engaged as a consumer reporting agency, as defined by the Federal Fair Credit Reporting Act, when gathering, processing, or reporting information directly related to a credit rating or credit status;

(3) an attorney‑at‑law while in the performance of his duties; or

(4) a person, as defined by Section 38‑1‑20(29), licensed or authorized by the Director of Insurance to transact business within the State, when performing duties directly related to that license or authorization.

(B) This chapter must not be applied to a person based solely on his being engaged in:

(1) computer or digital forensic services, or the acquisition, review, or analysis of digital or computer‑based information, whether for the purposes of obtaining or furnishing information for evidentiary or other purposes, or for providing expert testimony before a court; or

(2) network or system vulnerability testing, including network scans and risk assessment and analysis of computers connected to a network.”

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

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