~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE REPORT

March 5, 2009

**H. 3022**

Introduced by Reps. Kirsh, Wylie, G.M. Smith and Weeks

S. Printed 3/5/09--H.

Read the first time January 13, 2009.

**THE COMMITTEE ON JUDICIARY**

To whom was referred a Bill (H. 3022) to amend Section 17‑1‑40, as amended, Code of Laws of South Carolina, 1976, relating to the destruction of criminal records when a charge is dismissed, 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 words and inserting:

/ SECTION 1. This act may be cited as the “Uniform Expungement of Criminal Records Act”.

SECTION 2. Chapter 22, Title 17 of the 1976 Code is amended by adding:

“Article 9

Uniform Expungement of Criminal Records

Section 17‑22‑910. Applications for expungement of all criminal records must be administered by the solicitor’s office in each circuit in the State as authorized pursuant to:

(1) Section 34‑11‑90(e), first offense misdemeanor fraudulent check;

(2) Section 44‑53‑450(b), conditional discharge for simple possession of marijuana or hashish;

(3) Section 22‑5‑910, first offense conviction in magistrates court;

(4) Section 22‑5‑920, youthful offender act;

(5) Section 56‑5‑750(f), first offense failure to stop when signaled by a law enforcement vehicle;

(6) Section 17‑22‑150(a), pretrial intervention;

(7) Section 17‑1‑40, criminal records destruction, except as provided in Section 17‑22‑350;

(8) Section 20‑7‑8525, juvenile expungements;

(9) Section 17‑22‑530(a), alcohol education program; and

(10) any other statutory authorization.

Section 17‑22‑920. The clerk of court shall direct all inquiries concerning the expungement process to the corresponding solicitor’s office to make application for expungement.

Section 17‑22‑930. A person applying to expunge a criminal record shall obtain the appropriate blank expungement order form from the solicitor’s office in the judicial circuit where the charge originated. The use of this form is mandatory and to the exclusion of all other expungement forms.

Section 17‑22‑940. (A) In exchange for an expungement service that is provided by the solicitor’s office, the applicant is responsible for payment to the solicitor’s office of an administrative fee in the amount of two‑hundred‑fifty‑dollars per individual order, which must be retained by that office and used to defray the costs associated with the expungement process, except as provided in subsection (B). The two‑hundred‑fifty‑dollar fee is nonrefundable, regardless of whether the offense is later determined to be statutorily ineligible for expungement or the solicitor or his designee does not consent to the expungement.

(B) The solicitor’s office prosecuting the case in a court of general sessions, at no cost to the accused person, shall cause an order for expungement to be issued for a person who is found not guilty or who has his charges dismissed or nolle prossed pursuant to Section 17‑1‑40 unless the:

(1) accused person has other charges pending;

(2) solicitor believes that the evidence in the case needs to be preserved and notifies the accused person in writing at the address listed on his bond form, or through his attorney, no later than thirty days after the person is found not guilty or his charges are dismissed or nolle prossed; or

(3) accused person’s charges were dismissed as a part of a plea agreement.

(C) The solicitor’s office shall implement policies and procedures consistent with this section to ensure that the expungement process is properly conducted. This includes, but is not limited to:

(1) assisting the applicant in completing the expungement order form;

(2) collecting from the applicant and distributing to the appropriate agencies separate certified checks or money orders for charges prescribed by this article;

(3) coordinating with the South Carolina Law Enforcement Division (SLED) and, in the case of juvenile expungements, the Department of Juvenile Justice, to confirm that the criminal charge is statutorily appropriate for expungement;

(4) obtaining and verifying the presence of all necessary signatures;

(5) filing the completed expungement order with the clerk of court; and

(6) providing copies of the completed expungement order to all governmental agencies which must receive the order including, but not limited to, the:

(a) arresting law enforcement agency;

(b) detention facility or jail;

(c) solicitor’s office;

(d) magistrates or municipal court where the arrest warrant originated;

(e) magistrates or municipal court that was involved in any way in the criminal process of the charge sought to be expunged;

(f) Department of Juvenile Justice; and

(g) SLED.

(D) The solicitor or his designee also must provide a copy of the completed expungement order to the applicant or his retained counsel.

(E) In cases when charges are sought to be expunged pursuant to Section 17‑22‑150(a), 17‑22‑530(a), 22‑5‑910, or 44‑53‑450(b), the circuit pretrial intervention director, alcohol education program director, or summary court judge shall attest by signature on the application to the eligibility of the charge for expungement before either the solicitor or his designee and then the circuit court judge, or the family court judge in the case of a juvenile, signs the application for expungement.

(F) SLED shall verify and document that the criminal charges in all cases, except in cases when charges are sought to be expunged pursuant to Section 17‑1‑40, are appropriate for expungement before the solicitor or his designee, and then a circuit court judge, or a family court judge in the case of a juvenile, signs the application for expungement. If the expungement is sought pursuant to Section 34‑11‑90(e), Section 22‑5‑910, Section 22‑5‑920, or Section 56‑5‑750(f), the conviction for any traffic related offense which is punishable only by a fine or loss of points will not be considered as a bar to expungement.

(1) SLED shall receive a twenty‑five‑dollar certified check or money order from the solicitor or his designee on behalf of the applicant made payable to SLED for each verification request, except that no verification fee may be charged when an expungement is sought pursuant to Section 17‑1‑40, 17‑22‑150(a), or 44‑53‑450(b). SLED then shall forward the necessary documentation back to the solicitor’s office involved in the process.

(2) In the case of juvenile expungements, verification and documentation that the charge is statutorily appropriate for expungement must first be accomplished by the Department of Juvenile Justice and then SLED.

(3) Neither SLED, the Department of Juvenile Justice, nor any other official shall allow the applicant to take possession of the application for expungement during the expungement process.

(G) The applicant also is responsible to the clerk of court for the filing fee per individual order as required by Section 8‑21‑310(21), which must be forwarded to the clerk of court by the solicitor or his designee and deposited in the county general fund. If the charge is determined to be statutorily ineligible for expungement, this prepaid clerk of court filing fee must be refunded to the applicant by the solicitor or his designee.

(H) Each expungement order may contain only one charge sought to be expunged, except in those circumstances when expungement is sought for multiple charges occurring out of a single incident and subject to expungement pursuant to Section 17‑1‑40 or 17‑22‑150(a). Only in those circumstances may more than one charge be included on a single application for expungement and, when applicable, only one two‑hundred‑fifty‑dollar fee, one twenty‑five‑dollar SLED verification fee, and one thirty‑five‑dollar clerk of court filing fee may be charged.

(I) A filing fee may not be charged by the clerk’s office to an applicant seeking the expungement of a criminal record pursuant to Section 17‑1‑40, when the charge was discharged, dismissed, nol prossed, or the applicant was acquitted.

(J) Nothing in this article precludes an applicant from retaining counsel to apply to the solicitor’s office on his behalf or precludes retained counsel from initiating an action in circuit court seeking a judicial determination of eligibility when the solicitor, in his discretion, does not consent to the expungement. In either event, retained counsel is responsible to the solicitor or his designee, when applicable, for the two‑hundred‑fifty‑dollar fee, the twenty‑five‑dollar SLED verification fee, and the thirty‑five‑dollar clerk of court filing fee which must be paid by retained counsel’s client.

(K) The solicitor or his designee has the discretion to waive the two‑hundred‑fifty‑dollar fee only in those cases when it is determined that a person has been falsely accused of a crime as a result of identity theft.

(L) Each solicitor’s office shall maintain a record of all fees collected related to the expungement of criminal records, which must be made available to the chairmen of the House and Senate Judiciary Committees. Those records shall remain confidential otherwise.

Section 17‑22‑950. (A) When criminal charges are brought in a summary court and the accused person is found not guilty or if the charges are dismissed or nolle prossed, pursuant to Section 17‑1‑40, the presiding judge of the summary court, at no cost to the accused person, immediately shall issue an order to expunge the criminal records of the accused person unless the dismissal of the charges occurs at a preliminary hearing or unless the accused person has charges pending in summary court and a court of general sessions and such charges arise out of the same course of events. This expungement must occur no sooner than the appeal expiration date and no later than thirty days after the appeal expiration date. Upon issuance of the order, the judge of the summary court or a member of the summary court staff must coordinate with SLED to confirm that the criminal charge is statutorily appropriate for expungement; obtain and verify the presence of all necessary signatures; file the completed expungement order with the clerk of court; provide copies of the completed expungement order to all governmental agencies which must receive the order including, but not limited to, the arresting law enforcement agency, the detention facility or jail, the solicitor’s office, the magistrates or municipal court where the arrest warrant originated, the magistrates or municipal court that was involved in any way in the criminal process of the charge sought to be expunged, and SLED. The judge of the summary court or a member of the summary court staff also must provide a copy of the completed expungement order to the applicant or his retained counsel. The prosecuting agency or appropriate law enforcement agency may file an objection to a summary court expungement. If an objection is filed by the prosecuting agency or law enforcement agency, that expungement then must be heard by the judge of a general sessions court. The prosecuting agency’s or the appropriate law enforcement agency’s reason for objecting must be that the:

(1) accused person has other charges pending;

(2) prosecuting agency or the appropriate law enforcement agency believes that the evidence in the case needs to be preserved; or

(3) accused person’s charges were dismissed as a part of a plea agreement.

(B) If the prosecuting agency or the appropriate law enforcement agency objects to an expungement order being issued pursuant to subsection (A)(2), the prosecuting agency or appropriate law enforcement agency must notify the accused person of the objection. This notice must be given in writing at the address listed on the accused person’s bond form, or through his attorney, no later than thirty days after the person is found not guilty or his charges are dismissed or nolle prossed.”

SECTION 3. Section 17‑1‑40(A) of the 1976 Code, as last amended by Act 82 of 2007, is further amended to read:

“(A) A person who after being charged with a criminal offense and the charge is discharged, proceedings against the person are dismissed, or the person is found ~~to be innocent~~ not guilty of the charge, the arrest and booking record, files, mug shots, and fingerprints of the person must be destroyed and no evidence of the record pertaining to the charge may be retained by any municipal, county, or state law enforcement agency. A person who intentionally retains the arrest and booking record, files, mugshots, fingerprints, or any evidence of the record pertaining to a charge discharged or dismissed pursuant to this section is guilty of contempt of court.”

SECTION 4. Section 22‑5‑910(A) and (B) of the 1976 Code is amended to read:

“(A) Following a first offense conviction ~~in a magistrates court or a municipal court,~~for a crime carrying a penalty of not more than thirty days imprisonment or a fine of five hundred dollars, or both, the defendant after three years from the date of the conviction may apply, or cause someone acting on his behalf to apply, to the circuit court for an order expunging the records of the arrest and conviction. However, this section does not apply to:

(1) an offense involving the operation of a motor vehicle;

(2) a violation of Title 50 or the regulations promulgated pursuant to Title 50 for which points are assessed, suspension provided for, or enhanced penalties for subsequent offenses are authorized; or

(3) an offense contained in Chapter 25 of Title 16, except first offense criminal domestic violence as contained in Section 16‑25‑20, which may be expunged five years from the date of the conviction.

(B) If the defendant has had no other conviction during the three‑year period, or during the five‑year period as provided in subsection (A)(3), following the first offense conviction ~~in a magistrates court or a municipal court,~~for a crime carrying a penalty of not more than thirty days imprisonment or a fine of not more than five hundred dollars, or both, the circuit court may issue an order expunging the records. No person may have his records expunged under this section more than once. A person may have his record expunged even though the conviction occurred prior to June 1, 1992.”

SECTION 5. Section 22‑5‑920(B) of the 1976 Code is amended to read:

“(B) Following a first offense conviction as a youthful offender, the defendant after ~~fifteen~~ five years from the date of ~~the conviction~~completion of his sentence, including probation and parole, may apply, or cause someone acting on his behalf to apply, to the circuit court for an order expunging the records of the arrest and conviction. However, this section does not apply to an offense involving the operation of a motor vehicle, to a violation of Title 50 or the regulations promulgated under it for which points are assessed, suspension provided for, or enhanced penalties for subsequent offenses authorized, to an offense classified as a violent crime in Section 16‑1‑60, or to an offense contained in Chapter 25 of Title 16, except as otherwise provided in Section 16‑25‑30. If the defendant has had no other conviction during the ~~fifteen~~ five‑year period following ~~the~~ completion of his sentence, including probation and parole, for a first offense conviction as a youthful offender, the circuit court may issue an order expunging the records. No person may have his records expunged under this section more than once. A person may have his record expunged even though the conviction occurred before the effective date of this section.”

SECTION 6. Section 44‑53‑450(b) of the 1976 Code is amended to read:

“(B) Upon the dismissal of ~~such~~the person and discharge of the proceedings against him ~~under~~pursuant to subsection (a)~~of this section, such person if he was not over twenty‑five years of age at the time of the offense~~, and if the offense did not involve a controlled substance classified in Schedule I which is a narcotic drug and Schedule II which is a narcotic drug, may apply to the court for an order to expunge from all official records (other than the nonpublic records to be retained as provided in subsection (a)~~of this section~~) all recordation relating to his arrest, indictment or information, trial, finding of guilty, and dismissal and discharge pursuant to this section. If the court determines, after hearing, that ~~such~~the person was dismissed and the proceedings against him discharged~~and that he was not over twenty‑five years of age at the time of the offense~~, it shall enter ~~such~~the order. The effect of ~~such~~the order ~~shall be~~is to restore ~~such~~the person, in the contemplation of the law, to the status he occupied before ~~such~~the arrest or indictment or information. No person as to whom ~~such~~the order has been entered ~~shall~~may be held ~~thereafter under any~~pursuant to another provision of ~~any~~law to be guilty of perjury or otherwise giving a false statement by reason of his ~~failures~~failure to recite or acknowledge ~~such~~the arrest, or indictment or information, or trial in response to ~~any~~an inquiry made of him for any purpose.”

SECTION 7. This act takes effect upon approval by the Governor. /

Renumber sections to conform.

Amend title to conform.

JAMES H. HARRISON for Committee.

**A** **BILL**

TO AMEND SECTION 17‑1‑40, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE DESTRUCTION OF CRIMINAL RECORDS WHEN A CHARGE IS DISMISSED OR THE PERSON IS FOUND INNOCENT OF THE CHARGE, SO AS TO SPECIFICALLY INCLUDE THAT A CIRCUIT SOLICITOR’S OFFICE OR CLERK OF COURT MAY NOT CHARGE A FEE FOR THE DESTRUCTION OR EXPUNGEMENT OF RECORDS OR FOR THE APPLICATION PROCESS REGARDING THE DESTRUCTION OR EXPUNGEMENT OF RECORDS UNDER CERTAIN CIRCUMSTANCES.

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

SECTION 1. Section 17‑1‑40(B) of the 1976 Code, as added by Act 82 of 2007, is amended to read:

“(B) A municipal, county, or state agency including, but not limited to, a circuit solicitor’s office or clerk of court may not collect a fee for the destruction or expungement of records or for the application or processing of an application for destruction or expungement of records pursuant to the provisions of this section.”

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

‑‑‑‑XX‑‑‑‑