**South Carolina General Assembly**

120th Session, 2013-2014

**A75, R93, H3184**

**STATUS INFORMATION**

General Bill

Sponsors: Reps. Pope, R.L. Brown, M.S. McLeod, Weeks, Bales, Gilliard, Whipper, W.J. McLeod and Mitchell

Document Path: l:\council\bills\ms\7051ahb13.docx

Introduced in the House on January 8, 2013

Introduced in the Senate on February 26, 2013

Last Amended on June 4, 2013

Passed by the General Assembly on June 6, 2013

Governor's Action: June 13, 2013, Signed

Summary: Expungement of criminal record

**HISTORY OF LEGISLATIVE ACTIONS**

 Date Body Action Description with journal page number

 12/18/2012 House Prefiled

 12/18/2012 House Referred to Committee on **Judiciary**

 1/8/2013 House Introduced and read first time ([House Journal‑page 126](file:///h%3A%5CHJ%20Archive%5C2013%5C01-08-13.docx))

 1/8/2013 House Referred to Committee on **Judiciary** ([House Journal‑page 126](file:///h%3A%5CHJ%20Archive%5C2013%5C01-08-13.docx))

 1/10/2013 House Member(s) request name added as sponsor: M.S.McLeod

 2/6/2013 House Member(s) request name added as sponsor: Weeks

 2/6/2013 House Committee report: Favorable **Judiciary** ([House Journal‑page 2](file:///h%3A%5CHJ%20Archive%5C2013%5C02-06-13.docx))

 2/7/2013 Scrivener's error corrected

 2/7/2013 House Member(s) request name added as sponsor: Bales, Gilliard, Whipper

 2/19/2013 House Member(s) request name added as sponsor: W.J.McLeod

 2/19/2013 House Debate adjourned until Thur., 2‑21‑13 ([House Journal‑page 32](file:///h%3A%5CHJ%20Archive%5C2013%5C02-19-13.docx))

 2/21/2013 House Member(s) request name added as sponsor: Mitchell

 2/21/2013 House Amended ([House Journal‑page 20](file:///h%3A%5CHJ%20Archive%5C2013%5C02-21-13.docx))

 2/21/2013 House Read second time ([House Journal‑page 20](file:///h%3A%5CHJ%20Archive%5C2013%5C02-21-13.docx))

 2/21/2013 House Roll call Yeas‑104 Nays‑0 ([House Journal‑page 20](file:///h%3A%5CHJ%20Archive%5C2013%5C02-21-13.docx))

 2/21/2013 House Unanimous consent for third reading on next legislative day ([House Journal‑page 26](file:///h%3A%5CHJ%20Archive%5C2013%5C02-21-13.docx))

 2/21/2013 House Reconsider unanimous consent for third reading on next legislative day ([House Journal‑page 64](file:///h%3A%5CHJ%20Archive%5C2013%5C02-21-13.docx))

 2/21/2013 House Reconsider second reading ([House Journal‑page 65](file:///h%3A%5CHJ%20Archive%5C2013%5C02-21-13.docx))

 2/21/2013 House Amended ([House Journal‑page 65](file:///h%3A%5CHJ%20Archive%5C2013%5C02-21-13.docx))

 2/21/2013 House Read second time ([House Journal‑page 65](file:///h%3A%5CHJ%20Archive%5C2013%5C02-21-13.docx))

 2/21/2013 House Roll call Yeas‑111 Nays‑0 ([House Journal‑page 65](file:///h%3A%5CHJ%20Archive%5C2013%5C02-21-13.docx))

 2/21/2013 House Unanimous consent for third reading on next legislative day ([House Journal‑page 69](file:///h%3A%5CHJ%20Archive%5C2013%5C02-21-13.docx))

 2/22/2013 House Read third time and sent to Senate ([House Journal‑page 2](file:///h%3A%5CHJ%20Archive%5C2013%5C02-22-13.docx))

 2/26/2013 Senate Introduced and read first time ([Senate Journal‑page 8](file:///h%3A%5CSJ%20Archive%5C2013%5C02-26-13.docx))

 2/26/2013 Senate Referred to Committee on **Judiciary** ([Senate Journal‑page 8](file:///h%3A%5CSJ%20Archive%5C2013%5C02-26-13.docx))

 3/27/2013 Senate Referred to Subcommittee: Hutto (ch), Corbin, Young

 5/29/2013 Senate Committee report: Favorable with amendment **Judiciary** ([Senate Journal‑page 21](file:///h%3A%5CSJ%20Archive%5C2013%5C05-29-13.docx))

 6/4/2013 Senate Committee Amendment Adopted ([Senate Journal‑page 76](file:///h%3A%5CSJ%20Archive%5C2013%5C06-04-13.docx))

 6/4/2013 Senate Read second time ([Senate Journal‑page 76](file:///h%3A%5CSJ%20Archive%5C2013%5C06-04-13.docx))

 6/4/2013 Senate Roll call Ayes‑43 Nays‑0 ([Senate Journal‑page 76](file:///h%3A%5CSJ%20Archive%5C2013%5C06-04-13.docx))

 6/5/2013 Senate Read third time and returned to House with amendments ([Senate Journal‑page 19](file:///h%3A%5CSJ%20Archive%5C2013%5C06-05-13.docx))

 6/6/2013 House Concurred in Senate amendment and enrolled ([House Journal‑page 36](file:///h%3A%5CHJ%20Archive%5C2013%5C06-06-13.docx))

 6/6/2013 House Roll call Yeas‑110 Nays‑0 ([House Journal‑page 36](file:///h%3A%5CHJ%20Archive%5C2013%5C06-06-13.docx))

 6/11/2013 Ratified R 93

 6/13/2013 Signed By Governor

 6/20/2013 Effective date 06/13/13

 6/24/2013 Act No. 75

**VERSIONS OF THIS BILL**

[12/18/2012](file:///p%3A%5Cpprever%5C2013-14%5C3184_20121218.docx)

[2/6/2013](file:///p%3A%5Cpprever%5C2013-14%5C3184_20130206.docx)

[2/7/2013](file:///p%3A%5Cpprever%5C2013-14%5C3184_20130207.docx)

[2/21/2013](file:///p%3A%5Cpprever%5C2013-14%5C3184_20130221.docx)

[5/29/2013](file:///p%3A%5Cpprever%5C2013-14%5C3184_20130529.docx)

[6/4/2013](file:///p%3A%5Cpprever%5C2013-14%5C3184_20130604.docx)

(A75, R93, H3184)

**AN ACT TO AMEND SECTION 22‑5‑910, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO EXPUNGEMENT OF CRIMINAL RECORDS, SO AS TO PROVIDE THAT A PERSON MAY BE ELIGIBLE FOR EXPUNGEMENT OF A FIRST OFFENSE CRIME WHICH CARRIES A FINE OF ONE THOUSAND DOLLARS RATHER THAN FIVE HUNDRED DOLLARS; TO AMEND SECTION 17‑1‑40, AS AMENDED, RELATING TO THE DESTRUCTION OF CRIMINAL RECORDS WHEN CHARGES ARE DISMISSED, SO AS TO PROVIDE FOR DESTRUCTION OF CRIMINAL RECORDS WHEN A COURTESY SUMMONS WAS ISSUED UNDER CERTAIN CIRCUMSTANCES AND TO REQUIRE REMOVAL OF ANY INTERNET‑BASED PUBLIC RECORD OF A CHARGE THAT IS DISMISSED OR DISCHARGED NO LATER THAN THIRTY DAYS FROM THE DISPOSITION DATE.**

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

**Expungement of criminal records, persons fined up to one thousand dollars for a first offense eligible**

SECTION 1. Section 22‑5‑910 of the 1976 Code, as last amended by Act 36 of 2009, is further amended to read:

 “Section 22‑5‑910. (A) Following a first offense conviction for a crime carrying a penalty of not more than thirty days imprisonment or a fine of one thousand dollars, or both, the defendant after three years from the date of the conviction, including a conviction in magistrates or general sessions court, 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, 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 for a crime carrying a penalty of not more than thirty days imprisonment or a fine of not more than one thousand dollars, or both, including a conviction in magistrates or general sessions court, 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.

 (C) After the expungement, the South Carolina Law Enforcement Division is required to keep a nonpublic record of the offense and the date of the expungement to ensure that no person takes advantage of the rights of this section more than once. This nonpublic record is not subject to release pursuant to Section 34‑11‑95, the Freedom of Information Act, or any other provision of law except to those authorized law or court officials who need to know this information in order to prevent the rights afforded by this section from being taken advantage of more than once.

 (D) As used in this section, ‘conviction’ includes a guilty plea, a plea of nolo contendere, or the forfeiting of bail.”

**Destruction of criminal records, courtesy summons, Internet‑based public records destruction**

SECTION 2. Section 17‑1‑40 of the 1976 Code, as last amended by Act 167 of 2010, is further amended to read:

 “Section 17‑1‑40. (A)(1) 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 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. Provided, however, that local and state detention and correctional facilities may retain booking records, identifying documentation and materials, and other institutional reports and files under seal, on all persons who have been processed, detained, or incarcerated, for a period not to exceed three years from the date of the expungement order to manage their statistical and professional information needs and, where necessary, to defend such facilities during litigation proceedings except when an action, complaint, or inquiry has been initiated. Information retained by a local or state detention or correctional facility as permitted under this section after an expungement order has been issued is not a public document and is exempt from disclosure. Such information only may be disclosed by judicial order, pursuant to a subpoena filed in a civil action, or as needed during litigation proceedings. A person who otherwise intentionally retains the arrest and booking record, files, mug shots, fingerprints, or any evidence of the record pertaining to a charge discharged or dismissed pursuant to this section is guilty of contempt of court.

 (2) If a person has been issued a courtesy summons pursuant to Section 22‑3‑330 or another provision of law and the charge for which the courtesy summons was issued is discharged, proceedings against the person are dismissed, or the person is found 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 in accordance with the provisions of item (1).

 In addition, a person who violates the provisions of this item is subject to the same penalty as provided in item (1).

 (B) A municipal, county, or state agency may not collect a fee for the destruction of records pursuant to the provisions of this section.

 (C) This section does not apply to a person who is charged with a violation of Title 50, Title 56, an enactment pursuant to the authority of counties and municipalities provided in Titles 4 and 5, or any other state criminal offense if the person is not fingerprinted for the violation.

 (D) If a charge enumerated in subsection (C) is discharged, proceedings against the person are dismissed, or the person is found not guilty of the charge, the charge must be removed from any Internet‑based public record no later than thirty days from the disposition date.

 (E) The State Law Enforcement Division is authorized to promulgate regulations that allow for the electronic transmission of information pursuant to this section.”

**Time effective**

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

Ratified the 11th day of June, 2013.

Approved the 13th day of June, 2013.

\_\_\_\_\_\_\_\_\_\_