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FREE CONFERENCE COMMITTEE REPORT ADOPTED -- NOT PRINTED

June 5, 2014

**H. 4560**

Introduced by Reps. G.M. Smith and Weeks

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Read the first time March 5, 2014.

**A** **BILL**

TO AMEND SECTION 17‑1‑40, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO DESTRUCTION OR EXPUNGEMENT OF CERTAIN ARREST AND BOOKING RECORDS UNDER CERTAIN CIRCUMSTANCES, SO AS TO PROVIDE FOR THE RETENTION OF EVIDENCE GATHERED, INCIDENT REPORTS, AND INVESTIGATIVE FILES PRODUCED AS A RESULT OF A LAW ENFORCEMENT ACTION, TO PROVIDE THAT THESE MATERIALS ARE NOT SUBJECT TO AN EXPUNGEMENT ORDER, AND AUTHORIZE REDACTION OF CERTAIN INFORMATION FOLLOWING A NO CONVICTION DISPOSITION OF THE CRIMINAL CHARGE.

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

SECTION 1. Section 17‑1‑40 of the 1976 Code, as last amended by Act 75 of 2013, is further amended to read:

“Section 17‑1‑40. (A) For purposes of this section, ‘under seal’ means not subject to disclosure other than to a law enforcement or prosecution agency, and attorneys representing a law enforcement or prosecution agency, unless disclosure is allowed by court order.

~~(A)(1)~~(B)(1) ~~A person who after being~~ If a person’s record is expunged pursuant to Title 17, Chapter 22, Article 9, because the person was charged with a criminal offense, or was issued a courtesy summons pursuant to Section 22-3-330 or another provision of law, and the charge ~~is~~ was discharged, proceedings against the person ~~are~~ were dismissed, or the person ~~is~~ was found not guilty of the charge, then the arrest and booking record, ~~files~~ associated bench warrants, mug shots, and fingerprints of the person must be destroyed and no evidence of the record pertaining to the charge or associated bench warrants may be retained by any municipal, county, or state ~~law enforcement~~ agency. Provided, however, that:

(a) Law enforcement and prosecution agencies shall retain the arrest and booking record, associated bench warrants, mug shots, and fingerprints of the person under seal for three years and one hundred twenty days. A law enforcement or prosecution agency may retain the information indefinitely for purposes of ongoing or future investigations and prosecution of the offense, and to defend the agency and the agency’s employees during litigation proceedings. The information must remain under seal. The information is not a public document and is exempt from disclosure, except by court order.

(b) ~~local and state detention~~ Detention and correctional facilities ~~may~~ shall 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 and one hundred twenty days from the date of the expungement order to manage ~~their~~ the facilities’ statistical and professional information needs, and~~, where necessary,~~ to defend ~~such~~ the facilities and the facilities’ employees 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~~ The information is not a public document and is exempt from disclosure~~.~~, ~~Such information only may be disclosed~~ except by ~~judicial~~ court order~~, pursuant to a subpoena filed in a civil action, or as needed during litigation proceedings~~.

(2) A ~~person~~ municipal, county, or state agency, or an employee of a municipal, county, or state agency that ~~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~~ violates this subsection is guilty of contempt of court.

(3) Nothing in this subsection requires the South Carolina Department of Probation, Parole and Pardon Services to expunge the probation records of persons whose charges were dismissed by conditional discharge pursuant to Section 44-53-450.

~~(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).~~

(C)(1) If a person’s record is expunged pursuant to Title 17, Chapter 22, Article 9, because the person was charged with a criminal offense, or was issued a courtesy summons pursuant to Section 22-3-330 or another provision of law, and the charge was discharged, proceedings against the person were dismissed, or the person was found not guilty of the charge, then law enforcement and prosecution agencies shall retain the evidence gathered, unredacted incident and supplemental reports, and investigative files under seal for three years and one hundred twenty days. A law enforcement or prosecution agency may retain the information indefinitely for purposes of ongoing or future investigations, other law enforcement or prosecution purposes, and to defend the agency and the agency’s employees during litigation proceedings. The information must remain under seal. The information is not a public document, is exempt from disclosure, except by court order, and is not subject to an order for destruction of arrest records.

(2) If a request is made to inspect or obtain the incident reports pursuant to the South Carolina Freedom of Information Act, the law enforcement agency shall redact the name of the person whose record is expunged and other information which specifically identifies the person from copies of the reports provided to the person or entity making the request.

(3) If a person other than the person whose record is expunged is charged with the offense, a prosecution agency may provide the attorney representing the other person with unredacted incident and supplemental reports. The attorney shall not provide copies of the reports to a person or entity nor share the contents of the reports with a person or entity, except during judicial proceedings or as allowed by court order.

(4) A person who intentionally violates this subsection is guilty of a misdemeanor, and, upon conviction, must be fined not more than one hundred dollars or imprisoned not more than thirty days, or both.

(5) Nothing in this subsection prohibits evidence gathered or information contained in incident reports or investigation and prosecution files from being used for the investigation and prosecution of a criminal case or for the defense of a law enforcement or prosecution agency or agency employee.

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

~~(C)~~(E)(1) This section does not apply to a person who is charged with a violation of Title 50, Title 56, or 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)~~(2) If a charge enumerated in ~~subsection (C)~~ item (1) is discharged, proceedings against the person are dismissed, ~~or~~ the person is found not guilty of the charge, or the person’s record is expunged pursuant to Title 17, Chapter 22, Article 9, the charge must be removed from any Internet‑based public record no later than thirty days from the disposition date.

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

(G) Unless there is an act of gross negligence or intentional misconduct, nothing in this section gives rise to a claim for damages against the State, a state employee, a political subdivision of the State, an employee of a political subdivision of the State, a public officer, or other persons.”

SECTION 2. Section 22-5-910 of the 1976 Code, as last amended by Act 75 of 2013, 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 and any associated bench warrant. 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 including any associated bench warrant. 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.”

SECTION 3. Section 17-22-910 of the 1976 Code is amended to read:

“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 17‑22‑950;

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

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

(10) Section 17-22-330(A), traffic education program; and

(11) any other statutory authorization.”

SECTION 4. Section 17-22-940(E) of the 1976 Code is amended to read:

“(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, traffic 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.”

SECTION 5. Section 17-22-950 of the 1976 Code is amended to read:

“Section 17-22-950. (A)(1) 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, including any associated bench warrants, 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~~ Except as provided in item 2, 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 or bench warrant originated, the magistrates or municipal court that was involved in any way in the criminal process of the charge or bench warrant 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)~~(a) accused person has other charges pending;

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

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

(2) If criminal charges are brought in a summary court and the accused person is found not guilty, or the charges are dismissed or nolle prossed pursuant to Section 17‑1‑40, and the person was not fingerprinted for the violation, then, upon issuance of the order, the summary court shall coordinate with the arresting law enforcement agency to confirm that the person was not fingerprinted for the violation; obtain and verify all necessary signatures; and provide copies of the completed expungement order to the arresting law enforcement agency and all summary courts that were involved in the criminal process of the charges. The summary court is not required to provide copies of the completed expungement order to SLED. All summary courts that were involved in the criminal process of the charges shall destroy all documentation related to the charges, including, but not limited to, removing the charges from Internet-based public records. All other provisions of subsection (A)(1) apply.

(B) If the prosecuting agency or the appropriate law enforcement agency objects to an expungement order being issued pursuant to subsection (A)~~(2)~~(1)(b), 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 6. This act takes effect upon approval by the Governor.

/s/Sen. A. Shane Massey /s/ Rep. G. Murrell Smith, Jr.

/s/Sen. Karl B. Allen /s/ Rep. J. Todd Rutherford

/s/Sen. Paul Thurmond /s/ Rep. Peter M. McCoy, Jr.

On Part of the Senate. On Part of the House.

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