~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE REPORT

March 25, 2015

**S. 255**

Introduced by Senator Thurmond

S. Printed 3/25/15--S. [SEC 3/26/15 2:08 PM]

Read the first time January 13, 2015.

**THE COMMITTEE ON JUDICIARY**

To whom was referred a Bill (S. 255) to amend Section 17‑1‑40, Code of Laws of South Carolina, 1976, relating to the destruction of arrest and booking records, so as to provide that a person, 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. Section 17-1-40 of the 1976 Code is 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.

(B)(1) If a person’s record is expunged pursuant to Article 9, Title 17, Chapter 22, 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 the arrest and booking record, 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 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, administrative hearings, 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) Detention and correctional facilities 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 the facilities’ statistical and professional information needs, and to defend the facilities and the facilities’ employees during litigation proceedings, except when an action, complaint, or inquiry has been initiated. The information is not a public document and is exempt from disclosure, except by court order. At the end of the three years and one hundred twenty days from the date of the expungement order the records must be destroyed.

(2) A municipal, county, or state agency, or an employee of a municipal, county, or state agency that intentionally 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.

(C)(1) If a person’s record is expunged pursuant to Article 9, Title 17, Chapter 22, 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, administrative hearings, 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.

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

~~(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.~~

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

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

~~(G)~~(F) 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. Chapter 1, Title 17 of the 1976 Code is amended by adding:

“Section 17-1-60. (A) For purposes of this section, a person or entity who publishes on the person or entity’s website the arrest and booking records, including booking photographs, of a person who is arrested and booked in South Carolina is deemed to be transacting business in South Carolina.

(B) It is unlawful for a person or entity to obtain, or attempt to obtain, the arrest and booking records, including booking photographs, of a person who is arrested and booked in South Carolina knowing:

(1) the arrest and booking records will be published on a website; and

(2) removal or revision of the arrest or booking records requires the payment of a fee or other consideration.

(C) It is unlawful for a person or entity to require the payment of a fee or other consideration to remove, revise, or refrain from posting to a website the arrest and booking records, including booking photographs, of a person who is arrested and booked in South Carolina.

(D)(1) A person or entity who publishes on the person or entity’s website the arrest and booking records, including booking photographs, of a person who is arrested and booked in South Carolina shall remove the arrest and booking records from the person or entity’s website without requiring the payment of a fee or other consideration within thirty days of the sending of a request to remove the arrest and booking records, if the request:

(a) is made in writing via certified mail, return receipt requested, to the registered agent, principal place of business, or primary residence of the person or entity who publishes the website;

(b) includes the person’s name, date of arrest, and the name of the arresting law enforcement agency;

(c) contains certified documentation that the original charges stemming from the arrest were discharged, dismissed, expunged, or the person was found not guilty; and

(d) includes a complete and accurate description of where the arrest and booking records are located, including, but not limited to, the uniform resource locator (URL) and e‑edition, if applicable.

(2) If the original charges stemming from the arrest were discharged or dismissed as a result of the person pleading to a lesser included offense, or a different offense, the person or entity who publishes the website is not required to remove the arrest and booking records from the person or entity’s website; however, the person or entity shall revise the arrest and booking records published on the person or entity’s website to reflect the lesser included offense, or different offense, instead of the original charges, without requiring the payment of a fee or other consideration within thirty days of the sending of a request to remove the arrest and booking records pursuant to item (D)(1).

(3) This subsection does not apply to the following:

(a) motion picture producers and distributors, and their products as released in theaters, to DVD, pay‑per‑view, broadcast, cable and satellite television, as well as Internet services;

(b) acts done by the publisher, owner, agent, employee, or retailer of a newspaper, periodical, books, radio station, radio network, television station, television broadcast network, or cable television network in the publication or dissemination in print or electronically of:

(i) news, history, entertainment, or commentary; or

(ii) an advertisement of or for another person, when the publisher, owner, agent, or employee did not have actual knowledge of the false, misleading, or deceptive character of the advertisement, did not prepare the advertisement, or did not have a direct financial interest in the sale or distribution of the advertised product or service.

(4) A person or entity who violates this subsection is not subject to the criminal penalty provided in subsection (F); however, the person or entity is subject to a civil cause of action as provided in subsection (G).

(E)(1) This section does not apply to a state or local government agency.

(2) Except as otherwise provided by state law, it is unlawful for an employee of a state or local government agency to provide the arrest or booking records, including booking photographs, of a person who is arrested and booked in South Carolina knowing:

(a) the arrest and booking records will be published on a non‑governmental website; and

(b) removal or revision of the arrest or booking records requires the payment of a fee or other consideration.

(F)(1) A person or entity who violates this section, except for subsection (D), is guilty of a misdemeanor, and, upon conviction, must be fined not more than one thousand dollars or be imprisoned not more than 60 days, or both.

(2) Each arrest and booking record obtained, attempted to obtain, or provided, and each payment solicited or accepted in violation of this section constitutes a separate violation.

(G)(1) Except as provided in item (G)(2), a person who suffers a loss or harm as a result of a violation of this section may file a civil cause of action against a person or entity who violates this section for damages suffered, along with costs, attorney’s fees, and any other legal or equitable relief.

(2) A person who suffers a loss or harm as a result of a violation of this section may not file a civil cause of action against a state or local government agency pursuant to this section; however, the person may file a civil cause of action against an employee of a state or local government agency who violates item (E)(2) pursuant to the South Carolina Tort Claims Act. A state or local government agency may not be substituted for an employee of the state or local government agency in a civil cause of action against the employee.”

SECTION 3. Section 17-22-950 of the 1976 Code is amended to read:

“Section 17-22-950. (A)~~(1)~~ ~~When~~ If 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~~ and the accused person was fingerprinted for the charges, 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~~ the 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. 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;~~ shall obtain and verify the presence of all necessary signatures~~;~~ ~~file the completed expungement order with the clerk of court;~~ and 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 clerk of court, but only in cases in which the charges were appealed to the circuit court or remanded to the summary court from general sessions court; the ~~magistrates or municipal~~ summary court where the arrest or bench ~~warrant~~ warrants originated~~,~~; the ~~magistrates or municipal~~ summary court that was involved in any way in the criminal process of the ~~charge~~ charges or bench ~~warrant~~ warrants ~~sought to be expenuged,~~; 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:~~

~~(a)~~ ~~accused person has other charges pending;~~

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

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

~~(2)~~(B) 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~~ charges,

~~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;~~ the accused person may apply to the summary court, at no cost to the accused person, for 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 the accused person has charges pending in summary court and a court of general sessions and the charges arise out of the same course of events. Upon application, and after verification that the charges are appropriate for expungement, the summary court shall issue an order to expunge the criminal records, obtain and verify the presence of 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.~~

(C) An expungement pursuant to this section must occur no sooner than the appeal expiration date and no later than thirty days after the appeal expiration date.

(D) A summary court shall provide a copy of a completed expungement order issued pursuant to this section to the applicant or the applicant’s counsel of record. The copy must be certified or marked with the court’s raised seal.

(E) Criminal charges must be removed pursuant to this section from all Internet-based public records no later than thirty days from the disposition date, regardless of whether the accused person applies to the summary court for expungement pursuant to subsection (B). All other criminal records must be destroyed or retained pursuant to the provisions of Section 17-1-40.

~~(B)~~(F) A prosecution or law enforcement agency may file an objection to a summary court expungement. If an objection is filed, the expungement must be heard by the judge of a general sessions court. The prosecution or law enforcement agency’s reason for objecting must be that the accused person has other charges pending or the charges are not eligible for expungement. ~~If the prosecuting agency or the appropriate law enforcement agency objects to an expungement order being issued pursuant to subsection (A)(1)(b),~~ The ~~prosecuting agency~~ prosecution or ~~appropriate~~ law enforcement agency ~~must~~ shall notify the accused person of the objection. ~~This~~ The notice must be given in writing at the most current address ~~listed on the accused person’s bond form~~ on file with the summary court, or through ~~his~~ the accused person’s attorney, no later than thirty days after the accused person is found not guilty or the accused person’s charges are dismissed or nolle prossed.

(G) The Office of Court Administration shall provide uniform application forms to be used for expungements pursuant to this section.”

SECTION 4. This act takes effect ninety days after approval by the Governor. /

Renumber sections to conform.

Amend title to conform.

PAUL THURMOND for Committee.

**STATEMENT OF ESTIMATED FISCAL IMPACT**

**Fiscal Impact Summary**

This bill is not expected to significantly impact State expenditures. All agencies surveyed indicated that either the costs associated with implementation would be minimal and could be absorbed, or that there would be no cost to the agency.

**Explanation of Fiscal Impact**

**State Expenditure**

Senate Bill 255 provides that a person/entity publishing on his/its website the arrest and booking record(s) of a person whose legal charges have been discharged or dismissed, or of a person who is found not guilty of a charge, shall, without fee or compensation, remove the arrest and booking record(s) within thirty days of receipt of a written request for removal. The bill also establishes penalties for violations.

**Department of Public Safety.**

The agency indicates this bill will have no impact on the general fund, federal funds, or other funds.

**Judicial Department**.

It is anticipated that additional hearings may be held in common pleas and magistrates courts due to the creation of a new legal offense and new civil cause of action. There is no data available to indicate the number of additional hearings which may result, as the offense and civil cause of action are new additions to this section of law. It is presumed that any additional costs will be absorbed by the agency. Should this legislation result in a significant number of additional hearings, it could result in an increased backlog for the common pleas and magistrate courts. Any additional costs to the Magistrate courts would be borne by the counties.

**SLED.**

Pursuant to Section 17-22-940 and Fiscal Year 2015 Proviso 62.13, SLED is authorized to collect a twenty-five dollar fee for each request to expunge a criminal record. However, no fee may be charged when an expungement is sought pursuant to Section 17-1-40. Therefore, SLED does not anticipate any loss of revenue due to the revision of this section of law. Effective June 9, 2014, Section 17-1-40 was revised to include language that authorizes law enforcement and prosecution agencies to retain a person’s arrest and booking records, associated bench warrants, mug shots, and fingerprints under seal for three years and one hundred twenty days. The current legislation will force law enforcement to retain records indefinitely for the purposes of ongoing or future investigations. Senate Bill 255 appears to change Section 17-1-40 in its entirety by eliminating this requirement, which will affect SLED’s recent reprogramming of its internal database to meet the existing retention guidelines. The additional verbiage in the bill requires businesses in South Carolina to remove criminal information from their websites within thirty days of receipt of a written request by a person whose charge has been dismissed. SLED provides the capability of ordering criminal background check information through its website, Citizens Access to Criminal Histories (CATCH). However, the agency states that meeting a thirty (30) day turnaround time may be challenging with current resources.

**Local Expenditure**

The Revenue and Fiscal Affairs Office surveyed the Municipal Association of South Carolina and thirteen county governments. Responses were received from both the Municipal Association and Charleston County. The Municipal Association reports this bill will have no impact on municipalities. Charleston County indicates costs will be minimal.

Frank A. Rainwater, Executive Director

Revenue and Fiscal Affairs Office

**A** **BILL**

TO AMEND SECTION 17‑1‑40, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE DESTRUCTION OF ARREST AND BOOKING RECORDS, SO AS TO PROVIDE THAT A PERSON OR ENTITY WHO PUBLISHES ON THE PERSON OR ENTITY’S WEBSITE THE ARREST AND BOOKING RECORDS OF A PERSON WHOSE CHARGES HAVE BEEN DISCHARGED OR DISMISSED, OR OF A PERSON WHO IS FOUND NOT GUILTY OF A CHARGE, SHALL, WITHOUT FEE OR COMPENSATION, REMOVE THE ARREST AND BOOKING RECORDS WITHIN THIRTY DAYS OF A WRITTEN REQUEST, AND TO PROVIDE THE PENALTIES FOR A PERSON OR ENTITY WHO FAILS TO REMOVE THE ARREST AND BOOKING RECORDS.

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

SECTION 1. Section 17‑1‑40 of the 1976 Code is amended to read:

“Section 17‑1‑40. (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 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.

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

(E)(1) A person or entity who publishes on the person or entity’s website the arrest and booking records, including mug shots, of a person who is arrested and booked in South Carolina is deemed to be transacting business in South Carolina.

(2) Except as provided in item (3), within thirty days of the sending of a written request by a person described in subsection (A), including the person’s name, date of birth, date of arrest, and the name of the arresting law enforcement agency, a person or entity shall, without fee or compensation, remove from the person or entity’s website any arrest and booking records, including mug shots, of the person described in subsection (A).

(3) If the original charge against the person described in subsection (A) is discharged or dismissed as a result of the person pleading to a lesser offense, the person or entity who publishes the website is not required to remove the records; however, the person or entity shall change any published information to reflect the lesser offense instead of the original charge.

(4) The written request must be sent via certified mail, return receipt requested, to the registered agent, principal place of business, or primary residence of the person or entity who publishes the website.

(5) A person or entity who publishes a website and violates this subsection is guilty of a misdemeanor, and, upon conviction, must be fined not more than five hundred dollars or be imprisoned not more than thirty days, or both.

(6) A person described in subsection (A) may file a civil cause of action against a person or entity who publishes a website and violates this subsection.”

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

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