

South Carolina General Assembly

121st Session, 2015-2016

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Bill 255

~~Indicates Matter Stricken~~

Indicates New Matter

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FREE CONFERENCE COMMITTEE REPORT ADOPTED -- NOT PRINTED

February 3, 2016

S. 255

Introduced by Senator Thurmond

S. Printed 6/3/15--H.

Read the first time April 21, 2015.

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, as last amended by Act 276 of 2014, 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.

(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 that when an action, complaint, or inquiry has been initiated, the records, documentation and materials, and other reports and files may be retained as needed to address the action, complaint, or inquiry. 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 unless they are being retained to address an action, complaint, or inquiry that has been initiated.

(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.

(4) If a person pleads guilty to a lesser-included offense and the solicitor deems it appropriate, the solicitor shall notify the State Law Enforcement Division (SLED) and SLED shall request that the

person's record contained in the National Crime Information Center (NCIC) database or other similar database reflects the lesser-included offense rather than the offense originally charged.

(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)~~(E) 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 or any other publication 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 or any other publication; 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 or any other publication 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 or any other publication 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 or any other publication without requiring the payment of a fee or other consideration within thirty days of the receipt 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 or any other publication;
- (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 or any other publication is not required to remove the arrest and booking records from the person or entity's website or any other publication; however, the person or entity shall revise the arrest and booking records published on the person or entity's website or any other publication 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 receipt of a request to remove the arrest and booking records pursuant to item (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 nongovernmental website or any other publication; 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 sixty 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 (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 subsection (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, as last amended by Act 276 of 2014, is further 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~~ 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 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:

(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 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 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 ~~his~~ 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. Section 22-5-910(A) of the 1976 Code, as last amended by Act 58 of 2015, is further amended to read:

"(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; or~~

~~(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."~~

SECTION 5. Section 22-5-920(B) of the 1976 Code, as last amended by Act 273 of 2010, is further amended to read:

"(B)(1) Following a first offense conviction as a youthful offender for which a defendant is sentenced pursuant to the provisions of Chapter 19, Title 24, Youthful Offender Act, the defendant, after five years from the date of completion of ~~his~~ the defendant's sentence, including probation and parole, may apply, or cause someone acting on ~~his~~ the defendant's behalf to apply, to the circuit court for an order expunging the records of the arrest and conviction.

(2) However, this section does not apply to:

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

(b) ~~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

(c) ~~to~~ an offense contained in Chapter 25, Title 16, except as otherwise provided in Section 16-25-30.

(3) If the defendant has had no other conviction during the five-year period following completion of ~~his~~ the defendant's sentence, including probation and parole, for a first offense conviction as a youthful offender for which the defendant was sentenced pursuant to the provisions of Chapter 19, Title 24, Youthful Offender Act, the circuit court may issue an order expunging the records. No person may have ~~his~~ the person's records expunged under this section more than once. A person may

have ~~his~~ the person's record expunged even though the conviction occurred before the effective date of this section. A person eligible for a sentence pursuant to the provisions of Chapter 19, Title 24, Youthful Offender Act, and who is not sentenced pursuant to those provisions, is not eligible to have ~~his~~ the person's record expunged pursuant to the provisions of this section."

SECTION 6. This act takes effect ninety days after approval by the Governor. This act applies retroactively to allow for the expungement of offenses charged, discharged, dismissed, or nolle prossed prior to the effective date of this act, and persons convicted or found not guilty prior to the effective date of this act.

/s/Sen. Karl B. Allen /s/Rep. Kirkman Finlay III

/s/Sen. Greg Hembree Rep. J. Todd Rutherford

/s/Sen. Paul Thurmond /s/Rep. Edward R. Tallon, Sr.

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

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