

South Carolina General Assembly
121st Session, 2015-2016

S. 255

STATUS INFORMATION

General Bill

Sponsors: Senator Thurmond

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Companion/Similar bill(s): 3700

Introduced in the Senate on January 13, 2015

Introduced in the House on April 21, 2015

Last Amended on June 3, 2015

Currently residing in conference committee

Summary: Destruction of booking and arrest records

HISTORY OF LEGISLATIVE ACTIONS

Date	Body	Action Description with journal page number
12/10/2014	Senate	Prefiled
12/10/2014	Senate	Referred to Committee on Judiciary
1/13/2015	Senate	Introduced and read first time (Senate Journal-page 155)
1/13/2015	Senate	Referred to Committee on Judiciary (Senate Journal-page 155)
6/4/2015	Senate	Conference committee appointed Alloen, Hembree, Thurmond
1/30/2015	Senate	Referred to Subcommittee: Thurmond (ch), Allen, Corbin
3/25/2015	Senate	Committee report: Favorable with amendment Judiciary (Senate Journal-page 16)
3/26/2015		Scrivener's error corrected
4/1/2015		Scrivener's error corrected
4/1/2015	Senate	Committee Amendment Adopted (Senate Journal-page 37)
4/7/2015		Scrivener's error corrected
4/8/2015		Scrivener's error corrected
4/15/2015	Senate	Read second time (Senate Journal-page 16)
4/15/2015	Senate	Roll call Ayes-43 Nays-0 (Senate Journal-page 16)
4/16/2015	Senate	Read third time and sent to House (Senate Journal-page 15)
4/21/2015	House	Introduced and read first time (House Journal-page 15)
4/21/2015	House	Referred to Committee on Judiciary (House Journal-page 15)
5/6/2015	House	Committee report: Favorable with amendment Judiciary (House Journal-page 37)
5/12/2015	House	Amended (House Journal-page 18)
5/12/2015	House	Requests for debate-Rep(s). Tallon, Rutherford, Jefferson, King, Gagnon, WJ McLeod, Hart, McEachern, Daning, Crosby, Bradley, Clyburn, Hosey, Anderson, GA Brown, RL Brown, Allison, Forrester, Clarey, Kirby, Henegan, Hiott, Kennedy, GR Smith, Norman, Williams, Dilliards, Weeks (House Journal-page 18)
5/14/2015	House	Debate adjourned until Wed., 5-20-15 (House Journal-page 24)
6/2/2015	House	Debate adjourned until Wed., 6-3-15 (House Journal-page 65)
6/3/2015	House	Amended (House Journal-page 152)
6/3/2015	House	Read second time (House Journal-page 152)
6/3/2015	House	Roll call Yeas-95 Nays-1 (House Journal-page 163)
6/4/2015	House	Read third time and returned to Senate with amendments (House Journal-page 26)
6/4/2015	House	Roll call Yeas-104 Nays-0 (House Journal-page 26)

6/4/2015 Senate Non-concurrence in House amendment ([Senate Journal-page 91](#))
6/4/2015 Senate Roll call Ayes-1 Nays-38 ([Senate Journal-page 91](#))
6/4/2015 House House insists upon amendment and conference committee appointed Reps. Finlay, Tallon, Rutherford ([House Journal-page 53](#))
6/4/2015 Senate Conference committee appointed Allen, Hembree, Thurmond ([Senate Journal-page 32](#))

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VERSIONS OF THIS BILL

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1 ~~Indicates Matter Stricken~~

2 Indicates New Matter

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4 AMENDED

5 June 3, 2015

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S. 255

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Introduced by Senator Thurmond

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

12 Read the first time April 21, 2015.

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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.

Amend Title To Conform

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) 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

1 record pertaining to the charge or associated bench warrants may be
2 retained by any municipal, county, or state agency. Provided,
3 however, that:

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

14 (b) Detention and correctional facilities shall retain
15 booking records, identifying documentation and materials, and
16 other institutional reports and files under seal, on all persons who
17 have been processed, detained, or incarcerated, for a period not to
18 exceed three years and one hundred twenty days from the date of
19 the expungement order to manage the facilities' statistical and
20 professional information needs, and to defend the facilities and the
21 facilities' employees during litigation proceedings, except that when
22 an action, complaint, or inquiry has been initiated, the records,
23 documentation and materials, and other reports and files may be
24 retained as needed to address the action, complaint, or inquiry. The
25 information is not a public document and is exempt from disclosure,
26 except by court order. At the end of the three years and one hundred
27 twenty days from the date of the expungement order, the records
28 must be destroyed unless they are being retained to address an
29 action, complaint, or inquiry that has been initiated.

30 (2) A municipal, county, or state agency, or an employee of a
31 municipal, county, or state agency that intentionally violates this
32 subsection is guilty of contempt of court.

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

37 (4) If a person pleads guilty to a lesser-included offense and
38 the solicitor deems it appropriate, the solicitor shall notify the State
39 Law Enforcement Division (SLED) and SLED shall ensure the
40 person's record contained in the National Crime Information Center
41 (NCIC) database or other similar database reflects the
42 lesser-included offense rather than the offense originally charged.

1 (C)(1) If a person's record is expunged pursuant to Article 9,
2 Title 17, Chapter 22, because the person was charged with a criminal
3 offense, or was issued a courtesy summons pursuant to Section
4 22-3-330 or another provision of law, and the charge was
5 discharged, proceedings against the person were dismissed, or the
6 person was found not guilty of the charge, then law enforcement and
7 prosecution agencies shall retain the ~~evidence gathered~~, unredacted
8 incident and supplemental reports, and investigative files under seal
9 for three years and one hundred twenty days. A law enforcement or
10 prosecution agency may retain the information indefinitely for
11 purposes of ongoing or future investigations, other law enforcement
12 or prosecution purposes, administrative hearings, and to defend the
13 agency and the agency's employees during litigation proceedings.
14 The information must remain under seal. The information is not a
15 public document, is exempt from disclosure, except by court order,
16 and is not subject to an order for destruction of arrest records.

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

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

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

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

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

41 ~~(E)(1) This section does not apply to a person who is charged~~
42 ~~with a violation of Title 50, Title 56, or an enactment pursuant to the~~
43 ~~authority of counties and municipalities provided in Titles 4 and 5.~~

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

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

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

15
16 SECTION 2. Chapter 1, Title 17 of the 1976 Code is amended by
17 adding:

18
19 “Section 17-1-60. (A) For purposes of this section, a person or
20 entity who publishes on the person or entity's website or any other
21 publication the arrest and booking records, including booking
22 photographs, of a person who is arrested and booked in South
23 Carolina is deemed to be transacting business in South Carolina.

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

28 (1) the arrest and booking records will be published on a
29 website or any other publication; and

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

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

37 (D)(1) A person or entity who publishes on the person or entity's
38 website or any other publication the arrest and booking records,
39 including booking photographs, of a person who is arrested and
40 booked in South Carolina shall remove the arrest and booking
41 records from the person or entity's website or any other publication
42 without requiring the payment of a fee or other consideration within

1 thirty days of the receipt of a request to remove the arrest and
2 booking records, if the request:

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

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

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

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

15 (2) If the original charges stemming from the arrest were
16 discharged or dismissed as a result of the person pleading to a lesser
17 included offense, or a different offense, the person or entity who
18 publishes the website or any other publication is not required to
19 remove the arrest and booking records from the person or entity's
20 website or any other publication; however, the person or entity shall
21 revise the arrest and booking records published on the person or
22 entity's website or any other publication to reflect the lesser
23 included offense, or different offense, instead of the original
24 charges, without requiring the payment of a fee or other
25 consideration within thirty days of the receipt of a request to remove
26 the arrest and booking records pursuant to item (D)(1).

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

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

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

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

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

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

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

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

11 (a) the arrest and booking records will be published on a
12 non-governmental website or any other publication; and

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

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

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

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

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

36
37 SECTION 3. Section 17-22-950 of the 1976 Code is amended to
38 read:

39
40 "Section 17-22-950. (A)(1) ~~When~~ If criminal charges are
41 brought in a summary court, ~~and~~ the accused person is found not
42 guilty or if the charges are dismissed or nolle prossed, ~~pursuant to~~
43 ~~Section 17-1-40, the presiding judge of~~ and the accused person was

1 fingerprinted for the charges, the summary court, at no cost to the
2 accused person, immediately shall issue an order to expunge the
3 criminal records, including any associated bench warrants, of the
4 accused person unless the dismissal of the charges occurs at a
5 preliminary hearing or ~~unless~~ the accused person has charges
6 pending in summary court and a court of general sessions and ~~such~~
7 ~~the~~ charges arise out of the same course of events. ~~This~~
8 ~~expungement must occur no sooner than the appeal expiration date~~
9 ~~and no later than thirty days after the appeal expiration date. Except~~
10 ~~as provided in item (2), upon~~ Upon issuance of the order, the judge
11 ~~of the summary court or a member of the summary court staff must~~
12 ~~coordinate with SLED to confirm that the criminal charge is~~
13 ~~statutorily appropriate for expungement;~~ shall obtain and verify the
14 presence of all necessary signatures; ~~file the completed~~
15 ~~expungement order with the clerk of court;~~ and provide copies of
16 the completed expungement order to all governmental agencies
17 which must receive the order, including, but not limited to, the
18 arresting law enforcement agency; the detention facility or jail; the
19 solicitor's office; the clerk of court, but only in cases in which the
20 charges were appealed to the circuit court or remanded to the
21 summary court from general sessions court; ~~the magistrates or~~
22 ~~municipal summary~~ court where the arrest or bench warrant
23 warrants originated; ~~the magistrates or municipal summary~~ court
24 that was involved in any way in the criminal process of the ~~charge~~
25 charges or bench warrant warrants ~~sought to be expunged;~~ and
26 SLED. ~~The judge of the summary court or a member of the~~
27 ~~summary court staff also must provide a copy of the completed~~
28 ~~expungement order to the applicant or his retained counsel. The~~
29 ~~prosecuting agency or appropriate law enforcement agency may file~~
30 ~~an objection to a summary court expungement. If an objection is~~
31 ~~filed by the prosecuting agency or law enforcement agency, that~~
32 ~~expungement then must be heard by the judge of a general sessions~~
33 ~~court. The prosecuting agency's or the appropriate law enforcement~~
34 ~~agency's reason for objecting must be that the:~~
35 (a) ~~accused person has other charges pending;~~
36 (b) ~~prosecuting agency or the appropriate law enforcement~~
37 ~~agency believes that the evidence in the case needs to be preserved;~~
38 ~~or~~
39 (c) ~~accused person's charges were dismissed as a part of a~~
40 ~~plea agreement.~~
41 (2)(B) If criminal charges are brought in a summary court, ~~and~~
42 the accused person is found not guilty; or the charges are dismissed

1 or nolle prossed, pursuant to ~~Section 17-1-40~~, and the person was
2 not fingerprinted for the ~~violation charges~~,
3 ~~Then, upon issuance of the order, the summary court shall~~
4 ~~coordinate with the arresting law enforcement agency to confirm~~
5 ~~that the person was not fingerprinted for the violation; the accused~~
6 ~~person may apply to the summary court, at no cost to the accused~~
7 ~~person, for an order to expunge the criminal records, including any~~
8 ~~associated bench warrants, of the accused person unless the~~
9 ~~dismissal of the charges occurs at a preliminary hearing or the~~
10 ~~accused person has charges pending in summary court and a court~~
11 ~~of general sessions and the charges arise out of the same course of~~
12 ~~events. Upon application, and after verification that the charges are~~
13 ~~appropriate for expungement, the summary court shall issue an~~
14 ~~order to expunge the criminal records, obtain and verify the presence~~
15 ~~of all necessary signatures; and provide copies of the completed~~
16 ~~expungement order to the arresting law enforcement agency and all~~
17 ~~summary courts that were involved in the criminal process of the~~
18 ~~charges. The summary court is not required to provide copies of the~~
19 ~~completed expungement order to SLED. All summary courts that~~
20 ~~were involved in the criminal process of the charges shall destroy~~
21 ~~all documentation related to the charges, including, but not limited~~
22 ~~to, removing the charges from Internet-based public records. All~~
23 ~~other provisions of subsection (A)(1) apply.~~

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

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

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

37 ~~(B)(F)~~ A prosecution or law enforcement agency may file an
38 objection to a summary court expungement. If an objection is filed,
39 the expungement must be heard by the judge of a general sessions
40 court. The prosecution or law enforcement agency's reason for
41 objecting must be that the accused person has other charges pending
42 or the charges are not eligible for expungement. If the prosecuting
43 agency or the appropriate law enforcement agency objects to an

1 ~~expungement order being issued pursuant to subsection (A)(1)(b);~~
2 ~~the The prosecuting agency prosecution or appropriate law~~
3 ~~enforcement agency must shall~~ notify the accused person of the
4 objection. ~~This The~~ notice must be given in writing at the most
5 current address ~~listed on the accused person's bond form on file with~~
6 the summary court, or through ~~his~~ the accused person's attorney, no
7 later than thirty days after the accused person is found not guilty or
8 the accused person's charges are dismissed or nolle prossed.

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

12
13 SECTION 4. Section 22-5-910(A) of the 1976 Code, as last
14 amended by Act 276 of 2014, is further amended to read:

15
16 "(A) Following a first offense conviction for a crime carrying a
17 penalty of not more than thirty days imprisonment or a fine of one
18 thousand dollars, or both, the defendant after three years from the
19 date of the conviction, including a conviction in magistrates or
20 general sessions court, may apply, or cause someone acting on his
21 behalf to apply, to the circuit court for an order expunging the
22 records of the arrest and conviction and any associated bench
23 warrant. However, this section does not apply to:

24 (1) an offense involving the operation of a motor vehicle; or
25 (2) ~~a violation of Title 50 or the regulations promulgated~~
26 ~~pursuant to Title 50 for which points are assessed, suspension~~
27 ~~provided for, or enhanced penalties for subsequent offenses are~~
28 ~~authorized; or~~

29 ~~(3)~~ an offense contained in Chapter 25, Title 16, except first
30 offense criminal domestic violence as contained in Section
31 16-25-20, which may be expunged five years from the date of the
32 conviction."

33
34 Section 5. Section 22-5-920(B) of the 1976 Code, as last amended
35 by Act 273 of 2010, is further amended to read:

36
37 "(B)(1) Following a first offense conviction as a youthful
38 offender for which a defendant is sentenced pursuant to the
39 provisions of chapter 19, Title 24, Youthful Offender Act, the
40 defendant, after five years from the date of completion of ~~his~~ the
41 defendant's sentence, including probation and parole, may apply, or
42 cause someone acting on ~~his~~ the defendant's behalf to apply, to the

1 circuit court for an order expunging the records of the arrest and
2 conviction.

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

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

5 (b) ~~to a violation of Title 50 or the regulations promulgated~~
6 ~~under it for which points are assessed, suspension provided for, or~~
7 ~~enhanced penalties for subsequent offenses authorized, to an offense~~
8 classified as a violent crime in Section 16-1-60; or

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

11 (3) If the defendant has had no other conviction during the
12 five-year period following completion of ~~his~~ the defendant's
13 sentence, including probation and parole, for a first offense
14 conviction as a youthful offender for which the defendant was
15 sentenced pursuant to the provisions of Chapter 19, Title 24,
16 Youthful Offender Act, the circuit court may issue an order
17 expunging the records. No person may have ~~his~~ the person's records
18 expunged under this section more than once. A person may have ~~his~~
19 the person's record expunged even though the conviction occurred
20 before the effective date of this section. A person eligible for a
21 sentence pursuant to the provisions of Chapter 19, Title 24, Youthful
22 Offender Act, and who is not sentenced pursuant to those
23 provisions, is not eligible to have ~~his~~ the person's record expunged
24 pursuant to the provisions of this section.”

25
26 SECTION 6. Article 9, Chapter 22, Title 17 of the 1976 Code is
27 amended by adding:

28
29 “Section 17-22-960. (A)(1) A person who is applying for an
30 order of pardon for an offense pursuant to Article 11, Chapter 9,
31 Title 24 may request that the South Carolina Board of Pardons and
32 Pardons recommend the expungement of records related to the
33 offense.

34 (2) A person who has received an order of pardon for an
35 offense as provided by law prior to the effective date of this section
36 may apply to the South Carolina Board of Pardons and Pardons to
37 request that the board recommend the expungement of records
38 related to the offense.

39 (B) This section does not apply to a person who is applying for
40 an order of pardon or has received an order of pardon for a crime of
41 violence as provided in Section 16-23-10 or for breach of trust as
42 provided in Sections 16-13-230(B) and (C).

1 (C) The applicant shall pay a recommendation of expungement
2 application fee of one hundred-fifty dollars, which must be retained
3 by the South Carolina Department of Probation, Parole and Pardon
4 Services and used to defray the costs associated with the
5 expungement process. The fee is nonrefundable, regardless of
6 whether the offense is later determined to be ineligible for
7 expungement. If the applicant is applying for an order of pardon and
8 a recommendation of expungement at the same time, the applicant
9 shall pay both the order of pardon application fee and the
10 recommendation of expungement application fee.

11 (D) The South Carolina Department of Probation, Parole and
12 Pardon Services shall implement policies and procedures consistent
13 with this section to ensure that the recommendation of expungement
14 process is properly conducted. Such policies and procedures must
15 include, but are not limited to:

16 (1) assisting the applicant in completing the recommendation
17 of expungement application;

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

21 (3) notifying the appropriate victim of the application
22 pursuant to Section 16-3-1560, and the appropriate prosecuting or
23 law enforcement agency;

24 (4) coordinating with the South Carolina Law Enforcement
25 Division to confirm that the offense is statutorily appropriate for
26 expungement;

27 (5) obtaining and verifying the presence of all necessary
28 signatures; and

29 (6) providing copies of the completed recommendation of
30 expungement to the applicant.

31 (E) The South Carolina Law Enforcement Division shall verify
32 and document that the offense sought to be expunged is appropriate
33 for expungement. The South Carolina Law Enforcement Division
34 and the appropriate solicitor's office with jurisdiction over the
35 offense shall each receive a twenty-five dollar certified check or
36 money order from the South Carolina Department of Probation,
37 Parole and Pardon Services on behalf of the applicant made payable
38 to the South Carolina Law Enforcement Division and to the
39 appropriate solicitor's office with jurisdiction over the offense. The
40 South Carolina Law Enforcement Division shall forward the
41 necessary documentation back to the South Carolina Department of
42 Probation, Parole and Pardon Services. Neither the South Carolina
43 Department of Probation, Parole and Pardon Services nor the South

1 Carolina Law Enforcement Division shall allow the applicant to take
2 possession of the application during the recommendation of
3 expungement application process.

4 (F)(1) The appropriate prosecuting or law enforcement agency
5 may file an objection to the recommendation of expungement with
6 the South Carolina Board of Pardons and Paroles within sixty days
7 of receiving notice of the application. The prosecuting or law
8 enforcement agency's reason for objecting must be that the:

9 (a) applicant has other charges pending;

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

12 (c) applicant's charges were dismissed as a part of a plea
13 agreement.

14 (2) The prosecuting or law enforcement agency must notify
15 the applicant of the objection in writing at the address listed on the
16 application.

17 (G) The appropriate victim may file an objection to the
18 recommendation of expungement with the Board of Pardons and
19 Pardon within one year of receiving notice of the application.

20 (H) If an objection is filed by the prosecuting agency, law
21 enforcement agency, or the victim, the objection must be heard by
22 the South Carolina Board of Pardons and Paroles, acting in a
23 three-member panel or meeting as a full board, and taken into
24 consideration when the board is making a determination as to
25 whether to recommend expungement of the applicant's records.

26 (I) If no objection is filed by the prosecuting agency, law
27 enforcement agency, or the victim, an administrative hearing
28 officer, appointed by the Director of the South Carolina Department
29 of Probation, Parole and Pardon Services, may review the
30 application and submit to the South Carolina Board of Pardons and
31 Pardons written findings of fact and recommendations which must
32 be taken into consideration when the board is making a
33 determination as to whether to recommend expungement of the
34 applicant's records.

35 (J) If the South Carolina Board of Pardons and Paroles, acting
36 in a three-member panel or meeting as a full board, recommends
37 expungement of the applicant's records, five years have passed
38 since the completion of all terms and conditions of the person's
39 sentence, including payment of restitution, and the person has had
40 no other convictions other than minor traffic offenses during the
41 five-year period, the person may apply to the appropriate solicitor's
42 office for expungement pursuant to this article.

1 (K)(1) No person may have the person's records expunged
2 pursuant to this section more than once.

3 (2) After the expungement, the South Carolina Department of
4 Probation, Parole and Pardon Services and the South Carolina Law
5 Enforcement Division shall keep a nonpublic record of the offense
6 and the order of expungement to ensure that no person takes
7 advantage of the rights of this section more than once. The
8 nonpublic record is not subject to release pursuant to Section
9 34-11-95, the Freedom of Information Act, or any other provision
10 of law except to those authorized law or court officials who need to
11 know the information in order to prevent the rights afforded by this
12 section from being taken advantage of more than once."

13
14 SECTION 7. This act takes effect ninety days after approval by the
15 Governor.

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